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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

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In Re:)	Case No. 2:02-bk-14216-BB
)	
J.T. THORPE, INCORPORATED,)	Chapter 11
)	
Debtor.)	Los Angeles, California
)	Thursday, February 1, 2018
)	10:00 a.m.
<hr/>		
J.T. THORPE SETTLEMENT TRUST,)	
et al.,)	Adv. No. 2:12-ap-02182-BB
)	
Plaintiffs,)	
)	
vs.)	
)	
MANDELBROT, et al.,)	
)	
Defendants.)	
)	
)	

STATUS CONFERENCE RE: USDC
APPEAL JUDGMENT - ORDER
REMANDING MATTER TO BANKRUPTCY
COURT FOR FURTHER PROCEEDINGS
RE: APPEAL USDC NUMBER 2:14-
CV-03883 VAP

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SHERI BLUEBOND
UNITED STATES BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 LOS ANGELES, CALIFORNIA THURSDAY, FEBRUARY 1, 2018 10:00 AM

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Okay. We have number one, J.T.
5 Thorpe, Inc., among others, J.T. Thorpe Settlement Trust, et
6 al versus Mandelbrot, et al, a status conference after the
7 remand and -- I guess that's good enough.

8 Appearances, please.

9 MR. PATTERSON: Good morning, your Honor. Tom
10 Patterson, Dan Bussel, and Sasha Gurvitz from Klee Tuchin
11 for the Plaintiff Trust.

12 THE COURT: All right.

13 MR. PATTERSON: Also Eve Karasik from Levene,
14 Neale for the Trust. Also in the courtroom today, your
15 Honor, is the Trust executive director, Ms. Sarah Beth
16 Brown.

17 THE COURT: Hello.

18 MR. PATTERSON: And we have on the phone the
19 Trust's general counsel, Ms. Jeanine Donohue, and the
20 Trust's managing Trustee, Mr. Steven Snyder.

21 THE COURT: Got it. Okay. And I noticed that we
22 had approved telephonics for Ms. Karasik and Ms. Brown, but
23 maybe you didn't get that notice in time to not be here or
24 something. I don't know. But, anyway, you're certainly
25 welcome to be here in person. So thank you.

1 MR. PATTERSON: Thank you, your Honor.

2 THE COURT: Thank you.

3 MR. FERGUS: Gary Fergus on behalf of the Office
4 of the Futures Representative for the J.T. Thorpe Settlement
5 Trust and the Thorpe Insulation Settlement Trust.

6 THE COURT: Got it.

7 MR. FERGUS: Good morning, your Honor.

8 THE COURT: Thank you.

9 All right. And that's --

10 MR. MANDELBROT: Thank you, your Honor. Michael
11 Mandelbrot on behalf of the Mandelbrot Law Firm and myself,
12 Michael Shay Mandelbrot. Thank you.

13 THE COURT: All right. Thank you.

14 MR. VANAUSDALL: Good morning, your Honor. Dirk
15 VanAusdall also appearing along with Michael Mandelbrot for
16 the Defendant.

17 THE COURT: Okay. But only one of you is going to
18 argue? I mean, I don't want to have to get everything
19 twice, right?

20 MR. MANDELBROT: Yes.

21 THE COURT: Okay. All right. So let me go
22 through my tentative, and then I'll entertain argument.

23 Okay. So last time around we were here back in
24 December, and I set out the list of what I thought the
25 issues were, and we had a discussion about what was going to

1 happen today, and basically what I said was it wasn't going
2 to be an evidentiary hearing. So we would deal with legal
3 issues, and anything else I can deal with that's, you know,
4 not -- I can deal with and ascertain the extent to which we
5 had undisputed facts if there were factual, you know, as
6 opposed to if there's just genuine issues of material fact
7 that are disputed, then I'd want to have an evidentiary
8 hearing. But to the extent we didn't have a genuine issue
9 of material fact, then I could resolve things today.

10 Okay. So here we are today. The list of the
11 issues that I said were the open issues which fortunately
12 we're all on the same page about -- I see that even Mr.
13 Mandelbrot's briefs start with -- start with a recitation of
14 the issues. So we're all on the same page with that,
15 although I just -- I'm looking for something. Hang on one
16 minute.

17 Here we go. Okay. Now I'm in good shape. Okay.
18 So the four issues that I've outlined were whether
19 Plaintiffs had waived the right to argue that federal law
20 governs the enforceability of the parties' settlement
21 agreement.

22 Two, if there isn't such a waiver, whether federal
23 law governs, rendering California Business and Professions
24 Code Section 16600 and California Rule of Professional
25 Conduct 1-500(A) and Nevada common law inapplicable.

1 Three, if state law governs the dispute, should
2 the Court apply California law or Nevada law.

3 And if California law is the appropriate law for
4 this Court to apply, do either or both of the above
5 California authorities render the parties' settlement
6 agreement unenforceable, and we all need to discuss the
7 Ninth Circuit's opinion in Golden v. Cal Emergency
8 Physician's Med Group, 782 F.3d 1083, Ninth Circuit 2015,
9 which I'm just going to call the Golden case.

10 And then, five, if Nevada law applies, is the
11 agreement an enforceable -- an unenforceable restraint on
12 the Defendant's ability to practice law.

13 Okay. So that was the last time. Now here we
14 are. I only saw one evidentiary objection which was that of
15 Plaintiffs to the two Mandelbrot declarations.

16 Were there other evidentiary objections that have
17 been interposed in writing?

18 MR. MANDELBROT: Well, your Honor, I think with
19 regards to the -- the Trust's objection, the Trust's
20 objection, they weren't timely filed, first of all. They
21 must be filed --

22 THE COURT: Okay. Can you answer the question
23 first, which was is that the only evidentiary objection out
24 there in writing or is there another document I'm missing.
25 That's all I'm trying to ascertain at the moment.

1 MR. MANDELBROT: There's no further documents that
2 we've filed. If we had a full and fair opportunity and if
3 we knew the Court was going to entertain evidentiary
4 objections since it was supposed to be a non-evidentiary
5 hearing, we clearly would have filed extensive objections,
6 and to the extent any of their objections are sustained or
7 overruled, we don't -- we reserve our right to appeal any of
8 those rulings.

9 THE COURT: Okay. But there was no other document
10 on your side. So was there any other document on the
11 Plaintiff's side as -- that was an evidentiary objection?

12 MR. PATTERSON: No, your Honor.

13 THE COURT: No. Okay. All right. So then let me
14 go through my rulings on the evidentiary objections, and
15 this evidentiary objection that I'm looking at was Docket
16 Number 327 filed January 29, 2018, and the way I've
17 articulated the numbers, I've just tracked the numbers of
18 the objections in that document, not the paragraph numbers
19 to which they relate. So I hope that isn't too confusing.

20 There is no specific ruling on the general
21 objections. I've just done specific rulings on the specific
22 objections on the theory and with the hope that you've
23 renewed in your specific objections any portions of the
24 declarations you meant to object to, that that was going to
25 be sufficiently inclusive and that I didn't need to address

1 in addition the general objections.

2 Is that a fair reading of the document or are
3 there portions of the declarations that are objected to in
4 the general objections that I won't reach if I only rule on
5 the specific objections?

6 MR. PATTERSON: It's the second, your Honor, and
7 it's our bad. By including objections within the general
8 description and not separately enumerating them below, I
9 think we've created some confusion.

10 THE COURT: Okay.

11 MR. PATTERSON: Some of the general objections are
12 independent and read portions of the declaration that the
13 specific declarations don't --

14 THE COURT: Okay.

15 MR. PATTERSON: -- specific objections don't
16 cover, pardon me.

17 THE COURT: Okay. Well, as we go through this,
18 again, I don't see -- and you'll learn more about this later
19 -- I don't see any genuine issues of disputed fact, frankly,
20 whether I'm admitting or not admitting the evidence. I
21 mean, I think I could because most of what the problem --
22 much of what's in the -- what we're calling the supplemental
23 declaration -- and let me clarify my terms on this. I saw
24 two declarations of Mr. Mandelbrot. I saw one that was a
25 January 12 declaration, Docket Number 316, and I saw one

1 that was a declaration filed January 25th, and you've given
2 me the docket number of that. That's Docket Number 326 I
3 guess, and that -- that we've been -- or you've called the
4 supplemental declaration. Those are the only two
5 declarations of Mr. Mandelbrot I saw that were relevant to
6 today, correct?

7 MR. PATTERSON: Yes.

8 THE COURT: Okay. Mr. Mandelbrot, that's just
9 those two declarations for today, yes?

10 MR. MANDELBROT: No, your Honor. I think there
11 was a request for judicial notice as well where -- which
12 there was no objection to, where there were multiple
13 declarations filed by my office.

14 THE COURT: Okay. But the filing of a request for
15 judicial notice isn't a declaration. It's simply you're
16 asking me to take judicial notice of the fact that that
17 thing was filed. So that's not -- that's not really
18 responsive to what I'm asking.

19 The -- your request for judicial notice has
20 Exhibit 1, the trial declaration of Michael Mandelbrot, and
21 that came from what, back when we were -- this matter was at
22 trial?

23 MR. MANDELBROT: I would presume if --

24 THE COURT: Yeah, January 21, 20 --

25 MR. MANDELBROT: -- it's called a trial

1 declaration, yes.

2 THE COURT: Back January 21, 2014 -- please try
3 not to be -- how can I put this -- snippy. How's that?
4 Please try not to be snippy.

5 MR. MANDELROT: I apologize, your Honor.

6 THE COURT: Okay. Number -- Exhibit 2 is your
7 declaration in support of the motion to stay enforcement of
8 the judgment, and Exhibit 4 is not a declaration. Okay.

9 All right. Yeah. So as a request for judicial
10 notice, though, all you're asking me to do is to take
11 judicial notice of the fact that you filed the thing.

12 Anyway. Okay. Let me go back to the evidentiary
13 objections here. All right. So the second one, the January
14 25th I'm calling the supplemental declaration. All right.

15 So there was much of -- particularly the second --
16 the supplemental declaration, that had nothing to do with
17 what we're talking about here. Much of the second
18 declaration was about -- not about the issues that I've
19 outlined, not about the impact on your practice, not about
20 the extent to which there was an impact on -- I want to get
21 the right thing that I want to say. Yeah, not about whether
22 the settlement agreement would constitute a restraint of a
23 substantial character on your practice.

24 Much of the supplemental declaration was "Here's
25 why these people want me out of business. Here's why I was

1 reluctantly entered into the settlement agreement," facts
2 that don't bear on or alleged facts that don't bear on the
3 specific issue. So to the extent even if I were to let that
4 sort of material in, it's neither here nor there.

5 Having said that, if by virtue of my disregarding
6 the general objections there's actually something that seems
7 relevant as I'm discussing the way I saw the -- the
8 analysis, let me know. I'm -- I'm skeptical that any of the
9 general objections will be -- that any of the matter to
10 which you're objecting is relevant and, therefore, will even
11 come up, but we'll see.

12 Okay. All right. So the rulings on Plaintiff's
13 evidentiary objections -- and let me talk about the first,
14 second, and, frankly, fourth declaration at the same time --
15 excuse me -- objection at the same time.

16 Those relate to the percentage of Mr. Mandelbrot's
17 practice that has been submitting claims to the Plaintiff
18 Trusts and the two other Trusts and the number of claims he
19 submitted.

20 So number one is the percentage of his practice.
21 Number two is the number of claims he has submitted. Number
22 four -- objection number four is to the testimony about how
23 much money he made from all of these as a result of
24 interposing these claims.

25 Now, my -- my ruling is that the declaration -- I

1 sustain it for lack of foundation. The declaration doesn't
2 explain where the numbers come from or how the declarant
3 could possibly have this information without referring to
4 documents that are not produced or made admissible under the
5 business records exception.

6 So he's got -- particularly, I think the most
7 glaring example of it if you look at objection number four,
8 each year he's told us how many claims and how many dollars.
9 There's no way that he walks around with that in his head.
10 You can't have that information without having looked at
11 your business records. So it's hearsay in the sense that
12 you're telling me what the business records say, and the
13 business records themselves are hearsay unless you bring
14 them in to the business records exception to the hearsay
15 rule.

16 And it's also -- you know, you could also say it's
17 a best evidence problem and that really what you're doing is
18 testifying as to the contents of a document instead of
19 giving me the document, and then you could give me the
20 documents if you gave me the right business records
21 foundation for it to get them over the hearsay rule.

22 So that's a problem. I don't know where these
23 numbers come from, and it's not explained where these
24 numbers come from. So that's -- that's one, two, and four.

25 Objection number three --

1 MR. MANDELBROT: Excuse me, your Honor. Are we
2 going to be allowed to be heard on any of these objections?

3 THE COURT: I'm going to go through them all, and
4 the answer is no. These are my rulings on the evidentiary
5 objections, but you will be able to be heard on -- on the --
6 the tentative ruling and the rest of the -- the merits of
7 it. The evidentiary rulings, no.

8 MR. MANDELBROT: Well, then --

9 THE COURT: Let me --

10 MR. MANDELBROT: -- please note that, again, we
11 reserve our right to appeal --

12 THE COURT: Yes.

13 MR. MANDELBROT: -- any of these objections which
14 you are sustaining. I mean, clearly, they are indisputably
15 relevant. If there was any impartial nature going on here,
16 you would have clearly asked me where the information came
17 from. You know, I could clearly tell you I looked at the
18 list of claims which --

19 THE COURT: Sir --

20 MR. MANDELBROT: -- I transferred --

21 THE COURT: Please --

22 MR. MANDELBROT: -- and --

23 THE COURT: Yes, you looked at stuff that you did
24 not give me and did not make admissible.

25 MR. MANDELBROT: This wasn't supposed to be an

1 evidentiary hearing, your Honor. It was a non-evidentiary
2 hearing. If I needed to bring in all of those documents, I
3 would have brought them in today and handed them to you and
4 showed them to you, your Honor.

5 THE COURT: Okay. Your declaration testimony is
6 not admissible because it's lack of foundation, hearsay, not
7 a business rule, best evidence problem. Okay. The
8 declaration is not -- your testimony -- your oral testimony
9 of that is not admissible.

10 Okay. And, in addition, there is a relevance
11 issue or a relevance problem because -- and this one's a
12 little bit more nuanced. The question is whether or not
13 this will have -- the settlement agreement will have a
14 substantial -- I keep wanting to say it -- it's a restraint
15 of his substantial character. And the issue there or the
16 extent to which this is relevant is you're telling me what
17 has happened in the past, and the argument that's being made
18 by the Plaintiffs -- and this we will talk about more. The
19 arguments that's being made by Plaintiffs is what you have
20 historically done is a different question from what you are
21 able to do, what you will be permitted to do in the future
22 and whether or not you have -- there's a substantial
23 restraint -- a character -- a restraint of his substantial
24 character on what you can do in the future, which is not
25 directly determined by what you historically did in the

1 past.

2 But, in any event, there's enough other problems
3 that I didn't get into that in the written tentative.

4 Okay. Three, the third objection is -- yeah, the
5 Thorpe Trust made rule changes that were applied
6 retroactively to claims already on file. The retroactive
7 rule changes resulted in growing delay.

8 You're starting to tell me why you really didn't
9 do anything wrong and you really -- you know, what the
10 origin of the dispute was between the parties. Nothing to
11 do with what we're dealing with here. So that's not
12 relevant.

13 Five --

14 MR. MANDELROT: Your Honor, the reason --

15 THE COURT: No, I'm not going to entertain oral
16 argument on the evidentiary objections.

17 MR. MANDELROT: The reasonableness of the Trust's
18 actions are clearly in issue, your Honor.

19 THE COURT: No, they --

20 MR. MANDELROT: They made it an issue.

21 THE COURT: -- are not. The reasonableness of the
22 Trust's actions I have ruled on. That was not reversed on
23 appeal. I have articulated what the limited issues are.
24 You have articulated what the limited issues are. The
25 question is whether or not the settlement agreement is -- is

1 in violation of the two rules that we've talked about here
2 or whether there's some other provision of federal law.

3 MR. MANDELBROT: They've raised them in their
4 papers.

5 THE COURT: That does not make it relevant. It is
6 not relevant, and I am not looking at that today. And,
7 please, I have told you I am not entertaining argument on
8 the evidentiary objections. So please remain quiet or I
9 will have to ask you to leave. Okay. I am not entertaining
10 argument on the evidentiary objections.

11 Okay. Number three, that was, as I said, not --
12 not relevant.

13 Five, six, and seven I said overrule. Eight I
14 said sustain for lack of foundation. What is eight? Eight
15 is:

16 "In my more than 20 years of
17 experience as a plaintiff's attorney
18 who's worked on more than 5,000 cases,
19 at least 50 percent of all asbestos
20 plaintiffs in Northern California have a
21 claim against Western Trust."

22 I have no idea how he knows that, and he hasn't
23 told me. So lack of foundation.

24 Nine and ten I said overrule. Eleven and twelve I
25 said sustain, lack of personal knowledge, hearsay. Eleven

1 and twelve are -- 11 is:

2 "The plant and Western companies
3 worked on similar ships with similar
4 products and at many of the same sites.
5 I have the contract records for both
6 companies which are also in the
7 possession of the Trust's fiduciary."

8 So, again, if you're telling me that the records
9 show this, that's -- that's a hearsay problem. It's a
10 double hearsay problem. The records -- you haven't made the
11 records admissible. I don't know where they come from. I
12 don't have the records. You haven't told me -- you haven't
13 laid a foundation, and you're clearly relying on records
14 that are not here.

15 And -- okay. Then 12 is:

16 "Because of these similarities, I
17 estimate the number of the claims filed
18 by my firm would have been close to the
19 number of my firm's filings with the
20 Western Trust in 2011 and 2012 but for
21 the settlement agreement and order."

22 Okay. Because of the similarities. So you're
23 relying on the testimony from 11. That's why 12 comes out
24 the same as 11, because it's -- it's based on the testimony
25 that's inadmissible in 11.

1 Thirteen is:

2 "I further estimate that based on
3 my estimates of those claim numbers, the
4 income that my firm would have derived
5 from the Plant Trust would have been at
6 least approximately 50 percent of what I
7 received from the Western Trust in 2011
8 and 2012 since Plant Trust claims pay
9 about 50 percent of Western Trust value
10 claims."

11 Again, lack of foundation. Speculative.

12 Okay. Fourteen -- but let me just say there is no
13 dispute that you've been doing a lot of asbestos claim work.
14 We all know that. That's not in dispute. So that's not --
15 that's not the issue.

16 Okay. Number 14, I said overrule. Fifteen I said
17 sustain, not relevant. Let's see. Let me get to that.

18 Fifteen is:

19 "On the morning of January 23rd,
20 2014, my former attorney placed me under
21 duress by threatening" --

22 Again, I'm not revisiting whether you entered into
23 the settlement, whether it's enforceable under some other
24 theory. So not enforced, not relevant, not admissible.

25 Okay. Sixteen is -- let's see. There's two

1 different pieces to this.

2 "As to the statements attributed to
3 Dennis Davis, sustained for lack of
4 relevance."

5 Yeah. Again, what he told you and why he told you
6 he needed to settle, not relevant. Then the second part of
7 it you go on to say:

8 "Ironically, Davis and Mandelbrot
9 were unaware that Judge Sheri Bluebond
10 had a close and personal connection to
11 the Trust's lawyers. Trust counsel, Eve
12 Karasik, was simultaneously on four
13 boards of directors with the Thorpe
14 lawyers and throughout the Thorpe cases.
15 The Thorpe lawyers were campaigning for
16 Bluebond's reappointment. Bluebond
17 should have recused herself at the
18 outset of the case."

19 Okay. Lack of personal knowledge, hearsay, lack
20 of foundation, and, in any event, also irrelevant. Okay.
21 And litigated for that matter. I believe you've also raised
22 that, the -- the notion that I should have recused myself in
23 a misconduct proceeding that was -- that was not found --
24 not resolved in your favor on those very same grounds. So
25 this is res judicata.

1 MR. MANDELBROT: I think that --

2 THE COURT: I said I'm not entertaining oral
3 argument on this.

4 In any event, lack of foundation, hearsay, lack of
5 personal knowledge, irrelevant.

6 Okay. Seventeen, okay:

7 "Immediately after leaving the
8 courthouse, I informed my lawyer he had
9 to get out of the deal. It was not
10 acceptable, not voluntary."

11 Okay. Again, not relevant.

12 Eighteen:

13 "Dennis Dow has since settled the
14 legal malpractice claim relating to" --
15 Again, not relevant. Not one of the issues we're
16 deciding today.

17 Okay. Nineteen:

18 "I believe the -- I believe the
19 restriction as applied to all four
20 Trusts is unreasonable, over-broad,
21 solely tailored.

22 Okay. That's not testimony. That's legal
23 argument. You can make the argument. You've made the
24 argument.

25 Okay. Twenty is:

1 "Of the 50 plus companies who filed
2 for bankruptcy and set up asbestos
3 trusts in the United States, only four
4 of those were California companies. I'm
5 a California lawyer," et cetera.
6 Okay. So I said sustain, lack of foundation.
7 Twenty-one, okay:

8 "The current restriction is
9 tailored to meet the TAC member firm's
10 interest by preventing Mandelbrot from
11 competing with the TAC member claims."
12 Okay. Sustained. Lack of foundation and not
13 relevant.

14 Twenty-two, yeah, now, this time it's highlighted:

15 "The restriction is also tailored
16 to meet the TAC member's interest,
17 specifically Alan Brayton (phonetic), my
18 competitor, as a plaintiff lawyer in
19 asbestos who immediately embarked on the
20 pattern and practice of actively
21 soliciting."

22 Again, not relevant, lack of foundation.

23 Okay. Twenty-three is -- okay:

24 "Disqualifying the Mandelbrot Law
25 Firm from filing claims with the four

1 Trusts is unreasonable because it's
2 designed to bolster the practice of Alan
3 Brayton."

4 Lack of foundation. Not relevant. Legal
5 argument, not -- not testimony.

6 Twenty-four, the public policy of every 524(g)
7 trust is to distribute the greatest possible share to
8 claimants without favoritism. Again, legal argument, not
9 testimony. Sustained.

10 Twenty-five, okay. Twenty-five is:

11 "I am informed and believe" --

12 Well, there's a red flag. Whenever a declaration
13 has "I am informed and believe," anything that follows is
14 not going to be admissible. So -- and it's also -- it's
15 just legal argument, but clearly lack of foundation, hearsay
16 if you were informed and believe.

17 Okay. So that's the rulings on the evidentiary
18 objections. Again, I'm not sure any of those are -- any of
19 those objections are outcome determinative here because, as
20 I said, there is no dispute that some significant percentage
21 of your practice -- I don't know what, and I don't know that
22 I need to know exactly what -- some significant portion of
23 your practice has been to submit asbestos claims to asbestos
24 trusts. Nobody is disputing that. So, in any event, I'm --
25 by sustaining those objections, I don't -- I'm not

1 overlooking that -- that acknowledged fact.

2 All right. So let me get into the legal issues
3 here. Okay. So looking at the various papers that -- spots
4 in the various different papers where Plaintiffs have raised
5 the idea that federal law governs, I do not believe that
6 Plaintiffs have waived the right to argue that federal law
7 applies.

8 Conveniently, everybody seems to agree Nevada law
9 doesn't apply. So I can cross that one out. Okay. So the
10 argument that Nevada -- excuse me -- that federal law
11 applies, it was preserved in several locations throughout
12 the papers, but I never addressed it, and the District Court
13 never addressed it because we never felt we needed to get to
14 that because why would you go looking at a preemption
15 argument in a -- in terms of applying federal common law
16 when California law and the specific statutes didn't -- we
17 were of the view that those didn't apply or do not prohibit
18 the enforcement of the agreement in the first place.

19 So we never got to those issues, but I don't think
20 that was a question of waiver by the parties or waiver by
21 the Plaintiff.

22 Okay. So, yeah, and even if -- unless there is a
23 conflict between the two, both for state and federal law,
24 but if there were a conflict, then it goes without saying,
25 but I'm going to say it anyway, federal law necessarily

1 controls.

2 All right. So under federal law, the federal
3 interest in ensuring the integrity of the Trust's
4 administration of the asbestos trusts pursuant to Section
5 524(g) would permit enforcement of the TDP approved by the
6 Court in accordance with its terms.

7 You can't have a trust that's required to accept
8 claims from somebody who's submitting fraudulent claims.
9 That doesn't make sense. Moreover, Federal Courts in
10 federal law control who may practice and who may be barred
11 from practicing in a federal forum, and these trusts were
12 created by federal law and by federal order in the context
13 of administering this bankruptcy case pursuant to 524(g).
14 It's appropriate that federal law would govern who can
15 appear and who cannot appear. So federal law seems to me
16 would govern here.

17 So to the extent that there was a conflict, I
18 would rule in the alternative that federal law applies and
19 that federal law would -- would trump and would -- would
20 make this contract -- would -- would stop the California
21 statutes from preventing the enforcement of the settlement
22 agreement here. Okay.

23 Talking about the California rule and statute,
24 we've got the -- one of the ones -- one of the two being
25 discussed is California Rule of Professional Conduct 1-

1 500(A). Okay. I agree that the decision of this Court and
2 the District Court that this Rule doesn't prohibit
3 enforcement of the settlement agreement was not reversed on
4 appeal and it's -- and is the law of the case.

5 If you read carefully, as I have, the Ninth
6 Circuit opinion, they don't -- they don't raise an issue
7 about that. But, in any event, were I to revisit it now, I
8 don't see any reason to reach a different result on the
9 issue now, and the -- the District Court had a pretty good
10 discussion of -- of that Rule and the application of that
11 Rule, which, as I say, was not reversed on appeal by the
12 Circuit, which the -- that this settlement agreement doesn't
13 deny the public access to a lawyer who prevailed against the
14 Defendant in a prior action. Instead, it protects the
15 public from one who the Court has found submitted unreliable
16 evidence that led to further scrutiny, audits, and expenses.

17 The concept of this particular Rule was it's
18 unseemly to put the lawyer in a conflict situation where the
19 client -- there's a negotiation of a settlement and the
20 client is being told, "Well, I'll pay you this amount of
21 money, but only if we put in the settlement agreement that
22 your lawyer is never going to sue me again."

23 And at that point you've pitted the interest of
24 the client against -- against that of the attorney, and
25 that's kind of what this was targeted for here, but that

1 isn't -- that bears no resemblance to what's going on here.
2 Mandelbrot was not representing a client who was a party to
3 the settlement agreement. He himself was the client. So
4 there's no question of a conflict there.

5 And, in any event, even as applied to a fact
6 pattern like that in the instant case, we still have under
7 the applicable authorities there be some rule of reason that
8 governs whether or not a given agreement is enforceable, and
9 you'd have to do a balancing between the competing
10 interests.

11 So, for the same reason as I discussed with regard
12 to 16-600, when I balance the interests, I come out with the
13 notion that the restraint in this case easily passes a rule
14 of reason and, therefore, that Rule 1-500(A) would not bar
15 enforcement of this settlement agreement.

16 Okay. Now, let's talk about Golden a bit and 16-
17 600. I said:

18 "On the undisputed admissible facts
19 of this case, applying the reasoning of
20 the standard articulated in Golden, the
21 Court remains persuaded that the
22 settlement agreement is enforceable,
23 notwithstanding Section 16-600. In
24 Golden, the Circuit reversed the holding
25 of the District Court that Section 16-

1 600 only applies in the context of
2 traditional non-compete clauses in
3 employment agreements. Nothing in the
4 case law or language of the statute
5 limits Section 16-600 in this respect."

6 Okay. And so the Circuit in Golden clarifies that
7 in the context of a traditional non-compete clause in an
8 employment agreement or an agreement in which the employee
9 is leaving the employer and is agreeing not to compete,
10 there is a settled legislative policy in favor of open
11 competition and employee mobility, leading to a strict
12 standard under which such clauses are struck down, and I
13 cited the Edwards v. Arthur Andersen case, 44 Cal.4th, 937.
14 That's not this case. Mandelbrot was never employed by the
15 Trust, and this dispute doesn't arise out of his employment
16 or the termination of his employment.

17 All right. So outside of that context, which we
18 are clearly outside of, Golden stands for the proposition
19 that the Court should apply a rule of reason to assess
20 whether the contract is enforceable and should strike down
21 the restriction only if it is the restraint of a substantial
22 character on the employee's practice. The Circuit,
23 therefore, remanded the case to -- for the District -- to
24 the District Court, not for -- to the District Court to
25 apply this standard to determine whether the agreement in

1 question was such a restraint.

2 As an aside, there's a dissent or a concurrence.
3 Judge Kozinski's opinion wouldn't even do that. But, in any
4 event, the point was they didn't make a finding even in
5 Golden itself that there was a -- a restraint of substantial
6 character that needs to be stricken under -- struck down
7 under 16-600. They remanded it for a factual finding about
8 it.

9 A key fact in Golden that led to concern that
10 there might be a substantial restraint on the employee's
11 practice was that the settlement agreement prohibited the
12 doctor not only from working for hospitals currently owned
13 or managed by CEP, which is the abbreviated name of the --
14 of the employer here, former employer here in the Golden
15 case -- yeah, that not only from working in hospitals
16 currently owned or managed by CEP but also at any facility
17 that CEP may acquire or contract to manage at some point in
18 the future.

19 "CEP was" -- and I'm quoting -- "a
20 large consortium of over 1,000
21 physicians that manages or staffs many
22 emergency rooms, inpatient clinics, and
23 other facilities in California and other
24 mostly western states. Thus, there was
25 a very real concern in Golden that as

1 CEP continued to grow and swallow up
2 hospitals and practices, there would be
3 nowhere left for the doctor to
4 practice."

5 And, in fact, that -- you can see that pretty
6 clearly in the opinion in a couple of places, one of which
7 is this whole discussion about ripeness, because -- and if
8 -- if you recall the facts of that case and the whole issue
9 about ripeness, it wasn't what was going on so much now with
10 his -- the impact on him. It was the fact that at some
11 point in the future there could be a problem through no
12 fault of the doctor's, that would -- nothing that he could
13 do anything about, as, you know, he might already be working
14 some place, and then CEP might come in and take over the
15 hospital, and then he'd find himself unable to work there.

16 So that's why they ended up with a lengthy
17 discussion on whether it's even too soon to make this -- to
18 make this argument let's say or whether it's hypothetical
19 about what would happen. Yeah. Yeah, it was the -- CEP was
20 arguing -- yeah:

21 "This appeal triggers judicial
22 concerns about ripeness because Doctor
23 Golden's argument depends in some sense
24 on a hypothetical state of future
25 affairs."

1 Yeah, but, yeah, he does -- one of the reasons
2 they decided that it is ripe is because he's saying -- he's
3 saying right now too. It's the present enforcement of the
4 settlement as well as the future interaction between -- and
5 his emergency practice, but it's exacerbated in this case by
6 the fact that it's going to get worse, and it's -- I'm
7 trying to see if I can find a nice quote for that. Let's
8 see. Yeah, there's one about through no fault of his and
9 nothing he could do about it. I can't -- can't quite find
10 that.

11 But, in any event, the facts of Golden were -- as
12 I say, it's a key fact that it is a growing -- potentially
13 growing problem here as well as whatever the impact on his
14 current employment.

15 I think it's key here that that isn't the case in
16 our fact pattern. That concern isn't here. The prohibition
17 on the submission of claims applies only to the four trusts
18 that were parties to the settlement agreement. It doesn't
19 apply to any of the trusts that may be created in the future
20 or even any other trusts in which the same parties or
21 players may be involved at some point down the road. There
22 isn't any kind of growing problem. There's no concern that
23 the scope of the limitations will continue to creep and
24 eventually consume all available practice areas or even all
25 available asbestos trusts.

1 Moreover, the scope or the type of work that
2 Mandelbrot will not be able to perform will be very limited.
3 He will remain free to perform all of the other types of
4 services that he's testified his firm performs -- and I'm
5 referring to his deposition testimony about some of the
6 other things that he does -- and will remain free to submit
7 claims to the many many other asbestos trusts, some of which
8 are listed on your website which is attached to one of the
9 declarations submitted by the Plaintiffs, and I view it as,
10 if you will, an admission of a party opponent. It's your
11 website. I'm assuming you've authorized the statements that
12 are on that website.

13 Okay. Yeah. All right. So he will remain free
14 to perform all the other types of services that he's
15 testified his firm performs and will remain free to submit
16 claims to the many many other asbestos trusts listed on his
17 website.

18 A doctor cannot effectively practice medicine if
19 there are no clinics or hospitals at which he may apply his
20 craft. An attorney can still practice law without any
21 difficulties if he's precluded from submitting asbestos
22 claims to four different asbestos trusts. Any resulting
23 impact on his ability to practice law is very limited and
24 more than outweighed by the need for the trust to be able to
25 perform their fiduciary duties and ensure the integrity of

1 the expedited claims analysis process.

2 Okay. So that's my tentative ruling. Before I
3 hear from Mr. Mandelbrot and/or his counsel, do the
4 Plaintiffs want to correct any statements that --
5 misstatements or do you want to elaborate or is there an
6 argument you were making that I missed or misunderstood or
7 anything like that?

8 MR. PATTERSON: Thank you, your Honor. Tom
9 Patterson for the Trusts.

10 Very briefly, your Honor, the -- the issue of
11 Golden and how it impacts California law I think I would
12 just like to expand a little bit on one statement in your
13 tentative and address that.

14 THE COURT: Okay.

15 MR. PATTERSON: And it's the statement that is in
16 the paragraph that begins "The Circuit in Golden clarifies
17 that."

18 THE COURT: Okay.

19 MR. PATTERSON: And the particular sentence that I
20 wanted to address is:

21 "Outside of the employment
22 contract, Golden stands for the
23 proposition that the Court should apply
24 a rule of reason to assess whether the
25 contract is enforceable and should

1 strike down the restriction only if it's
2 a restraint of the substantial character
3 on the employee's practice."

4 THE COURT: Uh-huh.

5 MR. PATTERSON: And, your Honor, the way we had
6 analyzed the case law, that somewhat combines two -- two
7 separate tests.

8 THE COURT: Okay.

9 MR. PATTERSON: And if I can just have a few
10 minutes, I wanted to address that.

11 THE COURT: Okay.

12 MR. PATTERSON: There are -- as we view the case
13 law, your Honor, there are two independent and vibrant
14 strands of California law with respect to 16-600.

15 THE COURT: Uh-huh.

16 MR. PATTERSON: One is evidenced by Chamberlain v.
17 Augustine to begin with, which is the case that gave birth
18 to the restraint of the substantial character test in the
19 context of anti-competitive restraints.

20 Other cases in that strand include Edwards, which
21 held that employee non-competition agreements are per se
22 void. And then the last case in that strand interpreting
23 California law is Golden, which says in the context of the
24 no hire -- no rehire provision there that although it is not
25 a per se provision that is void under Edwards, it

1 nevertheless has some of the characteristics of Edwards and
2 some of the characteristics of Chamberlain in that it
3 appears to affect employee mobility or competition.

4 And so, therefore, Golden remands to the District
5 Court. And, interestingly, remand to the District Court not
6 simply to do findings but in a sense to help develop
7 California law in the Ninth Circuit's view in this case
8 because the Court says it's not clear what the reach of 16-
9 600 is in this context, and, therefore, we remand for the
10 District Court to tell us to some extent.

11 And so that is the line of cases that deals with
12 in some cases per se void and in some cases restraint of the
13 substantial character.

14 The other strand of California law that is
15 independent of that is evidenced by cases like Great Western
16 Distilleries, Centennial v. Roseville, and those are cases
17 that deal with contexts in which there's a commercial
18 agreement that may to some extent impair or affect trade or
19 the exercise of a trade but do not implicate California
20 public policy with respect to competition or employee
21 mobility, and those cases are adjudicated or evaluated under
22 the rule of reason.

23 So I guess the point in a very round about way --
24 and I apologize for that, that I'm -- I'm making is that the
25 substantial restraint test in our view is applicable to the

1 first strand of case law, the Chamberlain, Edwards, Golden
2 strand, and not necessarily applicable to the Great Western
3 Distilleries case and that line of reasoning. And what the
4 rule of reason asks the Court to evaluate is whether the
5 restraint imposed or agreed to is reasonable in light of the
6 legitimate interests of the party entitled to be protected
7 thereby.

8 And so -- and the reason I'm making this point is
9 that under the Great Western Distilleries case line, it is
10 possible that a restraint could be substantial but,
11 nevertheless, if it is narrowly drawn to meet the legitimate
12 interests of the party entitled to be protected by it, it's
13 still valid under the rule of reason.

14 And so that particular sentence that I alluded to
15 at the beginning kind of combined those two tests in a way
16 that we thought --

17 THE COURT: Right.

18 MR. PATTERSON: -- could potentially confuse the
19 reader.

20 THE COURT: I understand what you're saying, and
21 let me have a look at -- have a look at Golden with an eye
22 toward that at the moment and see whether or not I agree
23 with you.

24 MR. PATTERSON: Thank you, your Honor.

25 THE COURT: All right. Because I -- I made it

1 more simple. I made it into two -- two pieces. You -- and
2 it's really -- you're telling me it's more like three --
3 sort of three pieces. It's the -- clearly within the scope
4 of Edwards. It's the something like Edwards and then
5 there's the nothing like Edwards if you will.

6 MR. PATTERSON: I think that -- I think that's
7 right.

8 THE COURT: Uh-huh. And I do, frankly, remember
9 Golden being a little more complicated the first time I read
10 it than -- a little more complicated than it was when I read
11 it last night. So maybe I did miss --

12 MR. PATTERSON: I have spent far more of my life
13 reading that case than I would care to admit.

14 THE COURT: Okay. All right. Let's see here.
15 Okay. It's true that Golden stands for the proposition that
16 it's wrong of the District Court to say 16-600 only applies
17 in traditional non-compete situation. So we know that
18 that's not right. Okay.

19 All right. All right. So Golden says:

20 "In other words, California seems
21 not to have settled whether a contract
22 can impermissibly restrain professional
23 practice within the meaning of the
24 statute if it doesn't prevent a former
25 employee from seeking work with a

1 competitor and if it does not penalize
2 him should he do so."

3 So when highest court hasn't decided the issue,
4 the Federal Court has to apply what it finds to be the state
5 law after giving proper regard to relevant rulings of other
6 courts of the state. So California Supreme Court hasn't
7 made it really clear. So the Circuit's going to try to
8 figure it out for itself.

9 Okay. All right. So then they discuss
10 Chamberlain, and that was a liquidated damages case. And in
11 Chamberlain, the Court did find that the -- the contract
12 imposed a restraint of a substantial character,
13 notwithstanding the format of a -- that the constraint was
14 of a substantial character.

15 MR. PATTERSON: Correct. That was the liquidated
16 damages provision.

17 THE COURT: Right. Okay. Okay. Then you're
18 trying to figure out, "Okay. Well, how strictly does the
19 state understand the statutory prescription on professional
20 restraints as distinguished from those that are about non-
21 competition and employee mobility.

22 MR. PATTERSON: Correct, your Honor. And for --

23 THE COURT: Okay. So that's the next question.

24 MR. PATTERSON: And for that purpose we alluded to
25 the Great Western Distillery case, which was decided by the

1 California Supreme Court.

2 THE COURT: Is that discussed in Golden?

3 MR. PATTERSON: No, it's not. And the -- the
4 Ninth Circuit does not in Golden address that stand of case
5 law that we're referring to, the pure rule of reason.

6 THE COURT: Okay.

7 MR. PATTERSON: Because the factual context in
8 that case was employee mobility and potentially competitive
9 issues, it only addressed it -- addressed the Chamberlain
10 Edwards line of cases. It did not address purely the rule
11 of reason line of cases.

12 THE COURT: Okay. Okay. And CEP talked about the
13 City of Oakland v. Hassy (phonetic), and that upheld a
14 contractual provision requiring police officers to reimburse
15 the department -- oh, that's the one about they have to
16 repay training if they leave, and they said that wasn't a
17 restraint from competition or from working some place else.
18 Okay.

19 All right. And then Golden goes on to say:

20 "The courts of California have not
21 clearly indicated the boundaries of
22 Section 16-600's stark prohibition but
23 have, nevertheless, intimated that they
24 extend to a considerable breadth. At
25 the very least, we have no reason to

1 believe that the state has drawn Section
2 16-600 simply to prohibit covenants not
3 to compete and not other contractual
4 restraints on professional practice. We
5 refrain, however, from addressing the
6 ultimate merits of this question on the
7 relatively undeveloped record. On
8 remand, the District Court should
9 determine in the first instance whether
10 the no-employment provision constitutes
11 the restraint of a substantial character
12 to his medical practice."

13 Okay. Because they don't -- this is clearly
14 something that is in the -- in that employment kind of
15 context.

16 MR. PATTERSON: Right.

17 THE COURT: Which we're not dealing with. The one
18 problem I have with your argument is that the additional --
19 did you say Great Western, was that the name of the case?

20 MR. PATTERSON: Yes, Great Western Distillery.

21 THE COURT: Yeah. The only problem I have with
22 that is it would be particularly helpful if it had been
23 discussed in the Golden case, and I realize we have -- we
24 have something where -- all Golden is saying is 16-600 is
25 not just the employee non -- employee non-compete situation,

1 that it can be broader than that. It doesn't actually tell
2 me how broad, but the implication is that I ought to be
3 looking at whether it's a substantial -- a restraint of a
4 substantial character on somebody's ability to practice.

5 And you're saying the Golden West (sic) case tells
6 me that there's yet another more lenient standard when we're
7 even farther away coming out of Chamberlain, but
8 Chamberlain, does Chamberlain articulate that standard?

9 MR. PATTERSON: No. Western was -- Western
10 followed Chamberlain by 20 years.

11 THE COURT: Right.

12 MR. PATTERSON: So Chamberlain says that in the
13 non-competition context, the Court will set aside the
14 provision if it's a restraint of a substantial character,
15 whatever its form, because in Augustine it was not written
16 as a non-compete per se. It was a liquidated damages
17 provision you have to pay \$500,000 to work for someone else.
18 So then 20 years later, in Great Western, we have someone
19 who has a -- basically a tied arrangement with respect to
20 warehouse receipts for bourbon, and one of the parties seeks
21 to set it aside, and the party seeking to set it aside
22 argues on the basis of Augustine and the cases like it,
23 that, you know, this is restraint of a substantial character
24 and should be set aside, and the California Supreme Court
25 says, "Well, not so fast. This is not a restriction that

1 affects the public interest, and it's designed only to
2 protect the respective parties in dealing with each other."

3 And so, therefore, because it didn't involve
4 employment, didn't involve anti-competition, it was a
5 commercial arrangement between the parties that didn't
6 impact the public interest, therefore, you apply the rule of
7 reason.

8 THE COURT: Uh-huh.

9 MR. PATTERSON: And the California courts have
10 subsequently endorsed that reasoning in a case called
11 Centennial v. Roseville, and so our view is that that --
12 that line of cases is vibrant and operates independent of
13 the Edwards line of cases when California public policy is
14 not implicated.

15 THE COURT: Okay. And Great Western was decided
16 in 1937?

17 MR. PATTERSON: Yes.

18 THE COURT: Okay. And Chamberlain was 1916.

19 MR. PATTERSON: Right.

20 THE COURT: Great. Got some -- nothing more
21 current than that? Okay.

22 MR. PATTERSON: Well, that's why we alluded to
23 Centennial from the late '70s.

24 THE COURT: All right. Okay. All right. Well,
25 it does seem as though Great Western is relevant as well,

1 although, if this isn't even a restraint of a substantial
2 character, it may not make a difference, but okay. And I
3 can see why Golden wouldn't have to have reached that,
4 because this is not in the nature of -- the facts in Golden
5 really did relate to the employment context and the kind of
6 thing that would potentially fall within the Edwards kind of
7 a situation.

8 MR. PATTERSON: Exactly. Those public policies
9 were directly implicated. So there was no reason for the
10 Court to allude to the separate strand of case law.

11 THE COURT: Uh-huh. All right. And we've got --
12 okay. All right. Anything else you wanted to say on that
13 point?

14 MR. PATTERSON: No. Thank you, your Honor.

15 THE COURT: All right. Well, interesting
16 argument. Like I said, I see that Great Western is -- is a
17 -- another little caveat on this, and if it comes down to it
18 and I want to, I may want to take a minute and pull that
19 case and reread that case.

20 Anyway, all right. Mr. Mandelbrot -- unless there
21 -- was there anything further, Mr. Patterson? No? Nothing
22 on this side? No.

23 Mr. Mandelbrot, or your counsel? Actually, you
24 know what? Before you start, let me make a note. Okay.
25 Got it. Go ahead.

1 MR. MANDELBROT: I think I should start off with a
2 quote, your Honor. It takes a little courage not to get
3 discouraged in this courtroom. That's a quote by Benjamin
4 Lorenz who tried the Nuremberg trials, and, you know, you
5 -- you made it sort of easy to prepare today because the
6 tentative ruling was predictable, predictable to its core.
7 You've ruled against me since the moment I stepped in this
8 courtroom, and I get it. It's predictable because I'm not
9 one of these lawyers who grew up in the Southern California
10 bankruptcy field with you or, as you said, attended the
11 meetings in Southern California. I'm not one of those
12 lawyers who was instrumental in getting you appointed to the
13 bench by providing recommendations and campaigning for your
14 appointment. I get that. I'm not one of those guys. I'm
15 that lawyer from Northern California who, before I even
16 stepped foot in this courtroom, you found a convicted felon
17 more credible than. You refused my constitutional right to
18 a jury. You have excluded all of my evidence at trial, and
19 you clearly accepted a settlement that, you know, any
20 impartial judge could see wasn't voluntary. I couldn't even
21 answer your questions.

22 And, you know, in the course of it, it is millions
23 of dollars in victims' funds misappropriated in my mind to
24 these lawyers. And, you know, I have to ask, your Honor, a
25 hypothetical because I think there's striking similarities.

1 If you were overseeing the Holocaust, the victims' funds,
2 would you allow a bunch of Nazis to oversee them? The
3 similarities are undeniable. The Nazis killed millions of
4 people. Asbestos killed millions of people. Trust funds
5 were set up with billions of dollars in them for both, and
6 in both cases, they were for the victims. They were
7 specifically designated for the victims, and in both cases
8 they were very specific rules that prohibited interested
9 parties such as the Nazis to oversee the Holocaust funds.

10 So in this case, why do we have those akin to the
11 Nazis overseeing the asbestos trust funds? Why do we have
12 the former asbestos soldiers, Gary Fergus, and Steve Snyder,
13 the essentially Holocaust or asbestos deniers, overseeing
14 these funds, misappropriating millions and millions of
15 dollars to their friends, their basic akin to their Nazi
16 buddies? Why are we allowing this to happen, your Honor?
17 Why don't -- and if you're allowing them to participate,
18 your Honor, even though the Department of Justice rules
19 prohibit interested parties from participating because they
20 are very clear -- and there's no time limit on being an --

21 THE COURT: Counsel --

22 MR. MANDELBROT: -- interested party, your Honor.

23 THE COURT: -- which of these issues is -- is --

24 MR. MANDELBROT: It goes to --

25 THE COURT: -- actually before the --

1 MR. MANDELBROT: -- credibility --

2 THE COURT: -- Court --

3 MR. MANDELBROT: -- your Honor.

4 THE COURT: -- today?

5 MR. MANDELBROT: It goes to the credibility of
6 these -- of these individuals. It goes to their
7 credibility, okay? It clearly goes to their credibility.

8 THE COURT: There are --

9 MR. MANDELBROT: The Department of Justice --

10 THE COURT: -- no issues --

11 MR. MANDELBROT: -- rules --

12 THE COURT: -- of fact as to which I am judging
13 credibility today.

14 MR. MANDELBROT: We disagree that there's genuine
15 issues of material fact, your Honor. That was something you
16 came out and said. We've disagreed from the start that
17 there's genuine issues of material fact. Okay? I mean, why
18 are you allowing those akin to the Nazis to run these
19 trusts? Why? It doesn't make any sense, your Honor. The
20 Department of Justice rules prohibit it. Okay?

21 THE COURT: Sir --

22 MR. MANDELBROT: So if you are going to allow --

23 THE COURT: Sir --

24 MR. MANDELBROT: -- them to --

25 THE COURT: Sir --

1 MR. MANDELROT: I'm about to get to the law.

2 THE COURT: Sir?

3 MR. MANDELROT: Yes?

4 THE COURT: This is not -- we had hearings a long
5 time ago about what the trust would look like, who would run
6 it, whether --

7 MR. MANDELROT: Did they tell you they were --

8 THE COURT: Excuse me.

9 MR. MANDELROT: -- were Nazis?

10 THE COURT: I'm talking.

11 MR. MANDELROT: Did they tell you that --

12 THE COURT: Excuse me.

13 MR. MANDELROT: -- in their declarations, did --
14 were they honest?

15 THE COURT: Sir, please. We already had hearings
16 on and I already made rulings on whether there would be a
17 trust, who would administer the trust, the propriety of
18 different professionals being employed, not being employed.
19 None of that -- none of that is before me now. That is all
20 water under the bridge and not relevant today, aside from
21 the fact that your imagery is -- makes me concerned for your
22 mental state, actually makes me concerned for your mental
23 state, that you are perhaps so emotionally involved that you
24 have lost all connection with what you're actually saying
25 here.

1 I -- to -- to equate this to, you know, the
2 Holocaust and Nazis is -- you know, just the imagery is way
3 way over any kind of line that ought to be drawn here. So
4 if you could possibly dial back your rhetoric a little bit
5 and try to limit yourself to the issues that we're actually
6 discussing here today. I know you feel mistreated by this
7 Court. You've taken various steps in an effort to remedy
8 that. Those are other proceedings. That's not what's
9 happening here, and I'm not going to revisit anything that
10 we've revisited and that we've already adjudicated
11 previously. What we're talking about now is whether the
12 settlement agreement is enforceable or can be rendered
13 unenforceable because of California Business and Professions
14 Code 16-600. Let's try to focus on that. Okay?

15 MR. MANDELROT: Once an asbestos soldier, always
16 an asbestos soldier. It goes to their credibility, your
17 Honor, and anything that they'd told you should be given
18 that weight. It's like a Nazi telling a Jew that he
19 doesn't have a claim, even though his great grandparents are
20 on the Holocaust Memorial. My mental state is just fine,
21 your Honor. I know very clearly what's going on here. My
22 mental state is just fine.

23 There was a big difference. You're right. The
24 Jews died very quickly. The asbestos victims died a slow
25 and painful death. You're right. You're right. There was

1 a difference. There is a difference.

2 All right. Let's get to the law. Okay. I think
3 your law is -- and your analysis of the law is absolutely
4 incorrect. In a recent profile of you, they said you can be
5 swayed to reverse your tentatives, and I firmly believe that
6 this is one of those times that you must reverse your
7 tentative, your Honor.

8 Your analysis of the law and the facts is both
9 incorrect in this situation. First off, we're dealing with
10 two issues. The Court really sent it back for two issues
11 and two issues only. One, does federal or state law apply,
12 and, two, application of Golden and the factors in Golden.

13 So why don't we start here, your Honor, with the
14 federal and state law and which one applies. Okay. At the
15 motion to enforce the settlement agreement, you agreed that
16 state law applied. We only argued that state law applied,
17 and you've only said in your tentative how the argument was
18 "preserved" in a number of places.

19 Well, that's not how you preserve an argument,
20 your Honor. That's not how it's preserved. Our brief makes
21 clear how an argument is preserved. An argument is
22 preserved if the applicable federal bankruptcy appeal rules
23 require the Trust appellate brief to contain their
24 contentions and the reasons for them and citations and
25 authority. They've never done that with regards to federal

1 law. They've never argued it. They've never applied --
2 federal law wasn't discussed because it's -- simply, your
3 Honor, it didn't apply. And you conceded that when -- at
4 the motion to enforce the settlement agreement. If it was
5 an issue that was raised and you had raised it either in
6 your tentative because supposedly it was preserved in the
7 papers or at the hearing, we clearly would have raised those
8 issues and attacked it at that point. Okay?

9 Clearly, the issue was waived, and it was waived
10 in multiple places, and the normal practice of courts is to
11 disregard issues only mentioned in passing, and that's
12 simply what it was.

13 So instead of, in essence, protecting your
14 buddies, I think you should disregard any federal law
15 argument because essentially, if you read the -- the law, it
16 was waived.

17 Next, you discuss how federal law applies and that
18 there is a direct conflict. If you remember, your Honor, it
19 wasn't a motion to enforce the Trust distribution agreement.
20 It was a motion to enforce the settlement agreement, and
21 settlement agreements are constructed according to -- or
22 interpreted according to state law which we would both agree
23 is California. And here the entire motion to enforce the
24 settlement agreement was about four trusts. It wasn't about
25 two trusts that you had no jurisdiction over, the Plant and

1 the Western Trust. It was solely about two trusts. So
2 there was no conflict at any time, your Honor, because there
3 could not have possibly been a conflict between state law
4 and federal law because there was no -- the issue of the TDP
5 of Western and Plant were never even before this Court. You
6 didn't have jurisdiction over them. We were only discussing
7 the settlement agreement. We weren't objecting to the TDP.

8 Now, if we had concluded trial and you had made a
9 finding after I testified and once you saw my evidence, of
10 course, if we had concluded trial and then you had a finding
11 of a pattern and practice of unreliable claims and I was
12 excluded from the Thorpe Trust and I then challenged that,
13 that would be challenging the TDP. But that's not what we
14 did. We challenged the settlement agreement. It was a
15 motion to enforce the settlement agreement.

16 In your own words, your Honor, you said you agreed
17 California law applies. So now we get to California law,
18 and this is the critical part of your analysis here in the
19 tentative agreement that really sort of concerns me because
20 there is an overwhelming amount of evidence. I mean,
21 whether it's the claims that I had to transfer information
22 provided by the Trusts about the \$80,000,000 in claims that
23 I had passed with these Trusts -- and, realize, they weren't
24 objecting to any of the past claims. They were just saying
25 there was a couple of claims that those akin to the Nazis

1 felt were unreliable filed by me. Okay? Snyder and Fergus,
2 okay? That's what it came down to. Okay?

3 And you don't -- and it's very clear about what my
4 background was. Okay, your Honor? I was in the asbestos
5 field for 15 or 20 years litigating against these
6 individuals. My wife had kids, and I decided, "Hey, I don't
7 want to be on the road anymore." My kids are about the same
8 age as your kids, your Honor. And I decided I don't want to
9 be on the road anymore. I want to be home with my family.
10 So I went off and started a practice exclusively filing Reno
11 claims, Western Asbestos. That was the core of my business,
12 period, the Reno claims. Okay? That's what firms sent me.
13 They didn't send me these other trusts that I could
14 purportedly file.

15 The entire core of my business was these claims,
16 and the evidence is clear that not one, not two, not three,
17 not five, 70 firms sent me these claims. And I could sit
18 and go through for hours about why it's a substantial
19 restraint, which I'll get to in a second, but I could go for
20 hours because I could go firm by firm, client by client. I
21 am restrained because I cannot file present claims for the
22 Law Firm of Jones Granjay (phonetic), who has been sending
23 me claims for -- who has sent me claims for 10 years and
24 continues to sign up clients.

25 I am restrained because I cannot file pending and

1 future claims. That doesn't even discuss the filing fees
2 which I purportedly had to forfeit \$400,000. Losing that,
3 that's not a restraint?

4 But going back to my background, your Honor, I
5 started my practice, and every single firm that I signed up,
6 they sent me claims solely with the Reno Trust. And, of
7 course, it started with Western because when I started my
8 practice, J.T. Thorpe wasn't active. And why did they send
9 them to me, your Honor. Because I had litigated against
10 them for years. I knew them so well. I mean, if you want
11 to go back to my deposition, go ahead and read about my
12 background if you want to refer to my deposition, but
13 clearly my background shows that that was the absolute core
14 of my business. Okay?

15 And so when we get to Golden, Golden clarified
16 Business and Professions Code 16-600, which is really the
17 core issue that should be decided today. The absolute core
18 issue is 16-600, and whether or not not being able to file
19 claims with the Reno Trust is a substantial restraint on my
20 practice, and it's undeniable from the evidence that you
21 haven't excluded, your Honor. It's not a restraint. It's a
22 strangulation. Okay. And every fact points to that, every
23 single one whether you excluded it or not. You go back to
24 Golden, and what did the Golden court do when it was sent
25 back down, your Honor? They looked at very specific facts

1 of Golden's practice, what happened to his income. Well, if
2 his income went down, it would have been a substantial
3 restraint, but his didn't. Okay? Mine's gone down what,
4 800 percent from looking at my business records.

5 THE COURT: We -- we didn't look at your business
6 records. You didn't give me any business records.

7 MR. MANDELBROT: Well, I'm testifying from my
8 personal knowledge here today. From looking at my tax
9 records before providing them for my declaration, your
10 Honor --

11 THE COURT: Which is a best evidence rule problem
12 if you're testifying based on what your documents say. You
13 didn't give them to me.

14 MR. MANDELBROT: Well --

15 THE COURT: Let me ask you too, what you're
16 testifying here from the podium about, I mean, I'm looking
17 at Exhibit 2 to the declaration of Sasha Gurvitz which
18 purports to be a printout from your website, and it's got
19 your picture on it, Asbestos Legal Center, and it's got, you
20 know, you -- Asbestos Legal Center, Michael J. Mandelbrot,
21 Esquire Mandelbrot Law Firm, main firm, et cetera, et
22 cetera.

23 MR. MANDELBROT: What's the address on there, your
24 Honor?

25 THE COURT: Web address or the --

1 MR. MANDELBROT: No, the -- the business address.

2 THE COURT: There's two. There's a Santa Rosa one
3 and a San Francisco one.

4 MR. MANDELBROT: Santa Rosa was closed 15 years
5 ago, and I believe the San Francisco one was closed as a
6 result of this case, your Honor.

7 THE COURT: Well, anyway, that's not why I'm
8 raising this. The point is this is your website, data that
9 you've created or created on your behalf, and no one's going
10 to post it without -- I'm sure you looked at it because it's
11 you -- it's your picture here. It's all about you. List of
12 bankruptcy claims handled by the Asbestos Legal Center, ABD
13 Lumas, Amitext, Armstrong, Babcock and Wilcox, C.E.
14 Thurston --

15 MR. MANDELBROT: Your Honor, you can read --

16 THE COURT: Can I finish, please?

17 MR. MANDELBROT: It was created --

18 THE COURT: -- Celotex --

19 MR. MANDELBROT: -- 15 years ago.

20 THE COURT: -- Combustion --

21 MR. MANDELBROT: I've got hair in that picture,
22 your Honor.

23 THE COURT: No, you don't.

24 MR. MANDELBROT: I've got hair.

25 THE COURT: No, you don't.

1 MR. MANDELBROT: I hate to tell you. Yes, I do.

2 THE COURT: Well --

3 MR. MANDELBROT: Yes, I do. I hate to tell you,
4 it's 15 years ago. So she pulled something --

5 THE COURT: Excuse me --

6 MR. MANDELBROT: -- out of my website --

7 THE COURT: I would like to finish --

8 MR. MANDELBROT: -- or link and page. Big deal.

9 THE COURT: Excuse me. Excuse me.

10 MR. MANDELBROT: Yeah.

11 THE COURT: I want to finish reading this.

12 MR. MANDELBROT: I'm trying to promote my business
13 15 years ago.

14 THE COURT: I would --

15 MR. MANDELBROT: Okay. Great, your Honor. Go
16 ahead. Read them all.

17 THE COURT: I'll wait.

18 MR. MANDELBROT: Thank you.

19 THE COURT: ABB Lumas, Amitext, Armstrong, Babcock
20 and Wilcox, C.E. Thurston, Celotex, Combustion Engineering,
21 Eagle Picture, E.J. Bartles, Fiber Bird Corporation, Fuller
22 Austin Insulation Company, Haliburton Dresser, H.K. Porter,
23 John Mansfield, J.T. Thorpe Company, J.T. Thorpe, Inc.,
24 which is -- those are actually -- well, this is only -- one
25 of those is this. The other one is a separate older case.

1 Kaiser Aluminum and Chemical, Keen, National Gypsum, Owens
2 Corning Fiberglass, Paycore, Inc., Paycore Material Supply
3 Company, Caligrico, Schuck and Fletcher Insulation Company,
4 Swan Island, UNR, USG, Utex Industries, Western Asbestos
5 Settlement Trust.

6 Okay. Go on.

7 MR. MANDELBROT: If I were to do that today, your
8 Honor, there would be a lot more trusts on there, but they
9 would still only represent maybe two percent of my filings
10 because that's what they represented at that time when I did
11 them, with the exception of Western, which represented 95
12 percent of my filings.

13 Just for point of reference, that was created 15
14 years ago. I think it's really clear those addresses are
15 old addresses of mine. The background listed would be
16 updated. The trusts would be updated. So you're right,
17 it's a -- it's an admission of what I did 15 years ago. I
18 think it's great that you read that in, and -- and it was
19 used to promote my business, and when I would go to
20 conferences, people would look at me, and they'd say, "Hey,
21 there's the Reno guy. There's the guy who files the Reno
22 claims." I would hand them this and say, "Look, there's
23 other things I can do too."

24 So I appreciate that they brought this up because
25 it -- you know, it is representative of who I was and how I

1 was promoting my business when I was first starting it.
2 That was created within the first year of me starting my
3 business. So I can appreciate that, but it doesn't
4 reference the percentage of claims filed by Western or J.T.
5 Thorpe, because if it was, it would have been about 90
6 percent, your Honor. And, like I said, the numbers are
7 already clear in the record. They've identified the number
8 of claims that I've filed and the fact that I have had filed
9 over a course of years. And, clearly, through a course of
10 performance, I would have continued to have filed those
11 claims.

12 There -- there was never a firm who had fired me,
13 never a firm who had insinuated in any way that I had filed
14 an unreliable claim. The only one who ever had were those
15 akin to the Nazis, your Honor, the only ones.

16 THE COURT: All right. Let me --

17 MR. MANDELBROT: Wait. I'm not --

18 THE COURT: Stop for a minute. Stop for a minute.
19 Let me also read from your deposition transcript, excerpt of
20 which is attached to the declaration of Sasha Gurvitz. Page
21 19 of the declaration. Okay.

22 "Q So is Mandelbrot's entire
23 asbestos litigation business the filing
24 of claims with asbestos bankruptcy
25 trusts?

1 A No, no.

2 Q What in addition do you do?

3 A In addition to that, I -- since
4 2006 I've consulted with a variety of
5 firms on third party litigation. As you
6 know, I've been in asbestos litigation
7 for, I don't know, 18 years, 17 years.
8 And so I've worked with a variety of
9 firms consulting on their cases,
10 settling certain claims with various
11 defendants. I've helped firms review
12 and work up their third party cases. I
13 obviously do -- like any business, I do
14 some marketing for my law firm. There's
15 a lot of stuff we do besides just the
16 filing of bankruptcy claims.
17 Absolutely."

18 Okay.

19 MR. MANDELROT: If they had asked the correct
20 followup questions in that deposition, they would have
21 learned that when I consult with those other firms, I
22 consulted on the Western, the J.T. Thorpe, the Thorpe
23 Insulation, and it would have been, of course, the Plant
24 Insulation claims. As a result of this --

25 THE COURT: Well, but you can still --

1 MR. MANDELBROT: -- all of those --

2 THE COURT: -- consult, though.

3 MR. MANDELBROT: -- consulting agreements have
4 terminated because they can't use me any more to consult
5 with them on the Western and J.T. Thorpe claims, your Honor.
6 any way you try and spin it for your buddies, it's wrong.
7 It's a strangulation, like I said. It's a massacre for my
8 business. It's not just a substantial restraint. And
9 that's what the Court requires, substantial restraint.

10 I look at your tentative, and it's -- well, you
11 talk about the rule of reason. I'm wondering in Golden did
12 you take a look at note four in Golden? Note four:

13 "California's stringent rule
14 departs from the more traditional
15 approach of common law, which recognized
16 a rule of reasonableness."

17 It departs from that, your Honor. It doesn't rely
18 on that. Okay. Going on in note four, it says "departs
19 from the common law which recognized a rule of
20 reasonableness." Okay. And at that time they were only
21 talking about covenants not to compete, which we've now
22 learned from subsequent case law that the statute applies to
23 more than covenants not to compete.

24 THE COURT: Wait, but footnote four is talking
25 about we don't have a rule of reason with respect to

1 covenants not to compete and other similar restraints. So I
2 see footnote four, but it doesn't -- it doesn't support your
3 point. In fact, it's not inconsistent with Mr. Patterson's
4 point, maybe support for Mr. Patterson's point as well. No
5 one is -- no one is disputing here that it's a very
6 stringent rule in California when we're talking about the
7 non-compete, the employee mobility kind of stuff. That
8 isn't this. You were not an employee. You were not in
9 competition with the Trusts. That is not -- that's not what
10 this is about, and that's not the purpose of this. You want
11 me to find that it is, but that isn't what this is about.
12 That isn't -- this was all based on -- we went through a
13 trial about the -- the filing of claims. That was the basis
14 for this.

15 So and that -- that is not being revisited here.
16 This -- so this is not a question of -- you're not -- the
17 Trust is not in the business of filing -- of filing asbestos
18 claims, and, therefore, they want to stop you from filing
19 asbestos claims. That's not the problem here.

20 MR. MANDELROT: Your Honor, let's not hide the
21 truth. They are colluding, if -- and by the Trust
22 distribution procedures, working with Al Brayton, David
23 McClain, Jack Clapper, who do file asbestos trust claims.
24 So to say they're not in the business of filing asbestos
25 trust claims, well, maybe the trusts themselves are, but --

1 THE COURT: That's what I'm saying.

2 MR. MANDELBROT: -- they clearly are --

3 THE COURT: The trusts themselves --

4 MR. MANDELBROT: -- colluding --

5 THE COURT: -- are not.

6 MR. MANDELBROT: But they are colluding and
7 corrupting with those who do. Okay. And, you know, look,
8 your Honor, you want to exclude Al Brayton's solicitation of
9 my firms. Don't tell me I'm not in competition with them.
10 You saw it. You saw exactly what he did immediately after
11 the judgment against me. He went around and started
12 soliciting my firms, implying that I'm in some way --

13 THE COURT: I don't have any evidence of that in
14 the record. I have your contention. It is not admissible.
15 You haven't laid --

16 MR. MANDELBROT: I showed you an --

17 THE COURT: -- a foundation for it.

18 MR. MANDELBROT: -- email. What do you want?

19 It's an email sent to me by another lawyer which had just
20 been sent to him by --

21 THE COURT: Which is not admissible --

22 MR. MANDELBROT: You say it's not --

23 THE COURT: -- unless you bring in the other
24 lawyer. It's not admissible.

25 MR. MANDELBROT: Your Honor, you want to exclude

1 every piece of evidence which helps my case, but a lot of
2 it's already in there. You've done every effort from the --
3 from the outset of trial to this hearing. All you're doing
4 is excluding evidence that's clearly admissible, creating
5 more money, more bills for the pseudo-Nazis. I mean, that's
6 great. Keep it up, your Honor. This is great. Because
7 I'll tell you, we'll be back in a couple of years. We'll be
8 back.

9 All right. So Golden, Golden is very clear that
10 you have to ask very specifically with an evidentiary
11 hearing, which this is a non-evidentiary hearing, whether or
12 not the settlement agreement restricts my right to practice
13 law. And as the overwhelming amount of evidence, whether
14 excluded or not, throughout the record, throughout my
15 depositions, throughout the number of claims that have been
16 filed, the overwhelming evidence shows that it's not just a
17 restriction, your Honor. It is a substantial strangulation.
18 It's been reflective in my income. It's been reflective in
19 the number of firms I work with. It's been reflective in my
20 clients, and whether you want to continue to exclude the
21 evidence and say it's not admissible, you know, look, I took
22 an oath to tell the truth when I became a lawyer. I've
23 never lied in this courtroom. So whether you like it or
24 not, I'm telling the truth. So you can continue to exclude
25 it, but I know what the truth is.

1 The correct analysis in Golden -- and why -- why
2 Golden failed when it went back down to the District Court
3 is because it was undisputed that he had been continuously
4 employed since the time of the judgment against him. That's
5 not the case here. I can't work with, what, 40, 50 firms
6 that I previously worked with.

7 So it's undisputed that I have not been
8 continuously employed. With Golden --

9 THE COURT: No, no.

10 MR. MANDELBROT: -- his income --

11 THE COURT: Excuse me. Excuse me. No, it's not.
12 There is no evidence that you haven't been employed. You've
13 told me how many claims you've filed. You've told me how
14 much you made. You're not telling me and it's not in here
15 what you are doing for a living now or whether or not you
16 can make a living practicing law in this field or in some
17 other field. None of that is in here.

18 MR. MANDELBROT: That's not the test, your Honor.
19 I'm sorry.

20 THE COURT: You are telling me --

21 MR. MANDELBROT: The mere restriction test --

22 THE COURT: Excuse me --

23 MR. MANDELBROT: -- was denied.

24 THE COURT: I --

25 MR. MANDELBROT: That --

1 THE COURT: -- raised that because you are telling
2 me that the reason Golden was on remand, the restraint was
3 not stricken, was because in Golden he had continuing
4 employment. He was still working. It wasn't a problem.
5 You haven't told me that. I'm not asking for that. I'm not
6 telling you that's the standard. You're telling me that was
7 the reason this was not a restraint. It's because he's
8 still working. If that is the standard, we don't have that.
9 I don't think that's the standard because I think the
10 standard is whether or not there is -- how -- how
11 significant is this restraint and whether the balancing of
12 the interest is -- is what the -- the extent of the
13 restraint is overcome by the competing interests about it,
14 but that's not the point. You have four trusts you can't
15 file claims for. That's it. You haven't told me the rest
16 of what you're doing.

17 MR. MANDELBROT: I'm not doing.

18 THE COURT: Okay.

19 MR. MANDELBROT: I'm not done, your Honor.

20 THE COURT: In any event, the Golden example what
21 is -- what happened to Golden on remand is not -- is not
22 what we're looking at here.

23 MR. MANDELBROT: You're absolutely right. It was
24 a strangulation here. They found essentially it wasn't a
25 substantial restriction. You're right. They are --

1 THE COURT: I don't have any evidence that it's a
2 strangulation. I do not have any evidence. Even if I
3 admitted the evidence that you gave me, I have no evidence
4 that you have been strangled or that your business has been
5 strangled.

6 MR. MANDELROT: We entirely and wholeheartedly
7 disagree. Okay. And in Golden, they went back and it looks
8 like they took his deposition. We can have those facts on
9 record. I'll be happy to take the stand. But, again, you
10 just want to continue to deny those facts, hide those facts,
11 and exclude those facts for the Appellate Court. Okay?
12 It's very clear what you're trying to do so it's not an
13 abuse of discretion. You've been doing that since the
14 start. Okay? The evidence is -- if your buddies here
15 submitted the same evidence, you wouldn't have excluded it.
16 You wouldn't have excluded it, not a chance, your Honor.

17 All right. So back to Golden. His income he had
18 earned -- and you can continue to say that you don't have
19 any evidence of that, but, again, as a lawyer in the State
20 of California, I've taken an oath to tell the truth, and the
21 truth is my income's gone down six, seven hundred percent.
22 I have had to turn down any extensive amount of business,
23 including from the law firms of Usson Phelps (phonetic) in
24 Napa, California, Jones Granjay (phonetic) in Texas, Troy
25 Chandler out in Texas, Ian Cloud in Texas, Richardson

1 Patrick in South Carolina, Casey Gary Reed and Shank in San
2 Diego --

3 THE COURT: I have not -- you're testifying from
4 the bench -- from the lectern. So please stop.

5 MR. MANDELROT: I'm supplying you with facts
6 supporting our position, your Honor. You can accept them or
7 not.

8 All right. So without question, your Honor, an
9 impartial view of the facts would clearly show that it is a
10 substantial restraint. The evidence that is -- that even --
11 that has been admitted -- all right. Next, your Honor, you
12 discuss in your tentative, again, how you don't believe it's
13 a restraint with regards to other trusts.

14 Well, let me just be very clear. And, again, I
15 can hear it coming. I don't have any evidence of it
16 because, truthfully, it wasn't really an issue, but the
17 issue was only my substantial restraint, but when we're
18 talking about other trusts only since your ruling, only
19 since your ruling I've been strangled by the other trusts
20 too, and only because of your ruling have I. And what has
21 happened, well, I've been audited by 15 other trusts, and,
22 of course, your Honor, I passed them all. I passed them
23 all, but the most -- the worst thing -- and let me be very
24 clear about this. Who's behind it all? Al Brayton. Okay.
25 The --

1 MR. PATTERSON: Your Honor, I apologize for
2 interrupting, but I don't want to object every time this
3 happens, but we do object to Mr. Mandelbrot testifying from
4 the podium, and we've move to strike all these statements
5 that are not included in the declarations by the deadline
6 that the Court set for --

7 THE COURT: Thank you. Objection sustained. That
8 will be stricken.

9 Stop testifying from the lectern, please.

10 MR. MANDELBROT: You just want to keep ignoring
11 facts, your Honor, that clearly support my side by an
12 officer --

13 THE COURT: If you don't --

14 MR. MANDELBROT: -- of the court.

15 THE COURT: -- put them in the declaration by the
16 deadline I established for that purpose, yes, I'm going to
17 exclude them. And you did not. What's in the declarations
18 we've already talked about. Enough. I've got what you gave
19 me in the declarations by the deadline I established.

20 MR. MANDELBROT: And you also have what's in the
21 record before that, your Honor, and what's in my deposition,
22 and you've got the entire record before that. You're right.
23 Maybe you narrowly looked at just those and excluded what
24 you could, but did you look back at the whole record? I --
25 I clearly doubt it because it's been, you know, four years.

1 So free to perform services that his firm
2 testified he could perform, well, that's not true, your
3 Honor. Again, I've had eight trusts that have absolutely
4 excluded me, no reason given. Eight trusts since this
5 judgment, okay? And I don't know what the reason is, but
6 I've got to assume (a) Al Brayton's behind it and --

7 THE COURT: Is this in your declaration? If it
8 is, it's redundant. If it's not in your declaration, you're
9 testifying from the lectern.

10 MR. MANDELBROT: Well, given the amount of
11 evidence you've purportedly excluded, your Honor, then I
12 guess let me request a continuance to supply now a
13 supplemental declaration where I can include all these facts
14 that you are excluding because this was supposed to be a --
15 a partial non-evidentiary hearing suggested by your buddy
16 here. And, you know, now it's turned into a hearing where
17 you basically excluded an extensive amount of --

18 THE COURT: Because it was objectionable and
19 inadmissible, and you're an attorney, and you know what
20 evidentiary objections are, and you know what hearsay is.
21 You know what business records are, and you've given me
22 evidence that's lacking in foundation, that's based on
23 hearsay, is not admissible.

24 MR. MANDELBROT: Many of --

25 THE COURT: That's why it's been stricken. I am

1 not going to continue the hearing. This hearing was set on
2 -- we were last here in December, and we set with deadlines
3 that the parties agreed to. I wasn't rushing this. I
4 wasn't eager to see you back any sooner than you were ready
5 to come back. So, no, I'm not going to continue the
6 hearing.

7 MR. MANDELBROT: Of course not.

8 THE COURT: Okay.

9 MR. MANDELBROT: Of course not. Excuse me.

10 THE COURT: Anything further?

11 MR. MANDELBROT: Oh, yeah. Lots.

12 You continue to talk about evidence that you've
13 excluded. We didn't have an opportunity to be heard on any
14 of those objections. Their objections weren't timely filed.
15 So, you know, to -- basically it's --

16 THE COURT: Did I set a deadline that they did not
17 meet?

18 MR. MANDELBROT: Many of those matters weren't for
19 the truth of the matter asserted. I had personal foundation
20 for all matters that I testified to. The evidence that I
21 turned over were the best records such as the email from Al
22 Brayton. It's -- you know, you just disagree with your
23 exclusion of the evidence. Again, it's evidence that helps
24 not your buddy's side, my side. So you got to exclude it.
25 That's what you've done since the start of this case.

1 THE COURT: Okay.

2 MR. MANDELROT: Two issues we were supposed to be
3 back here for, your Honor, federal or state law, federal or
4 state law. I think I've made clear the reasons why the
5 cases support it. State law applies. Okay. There isn't
6 any question. You've even said it. You've indicated it a
7 number of times in the motions --

8 THE COURT: You've made that point. Can you move
9 on, please.

10 MR. MANDELROT: Just want to make sure I've got
11 it clear. Okay? Just want to make sure I've got it clear.

12 THE COURT: I took it down. I've got it. You
13 said your --

14 MR. MANDELROT: And let me --

15 THE COURT: You said they didn't preserve --

16 MR. MANDELROT: -- just also make a --

17 THE COURT: Excuse me.

18 MR. MANDELROT: -- record.

19 THE COURT: Excuse me.

20 MR. MANDELROT: Oh, go ahead.

21 THE COURT: You said they didn't preserve on
22 appeal the right to argue that federal law applies. You
23 said that even there was -- that state law applies, that
24 I've said that state law applies and that this was contract
25 interpretation about a settlement agreement, it was

1 California law. And then you've been arguing about the
2 extent to which you think the standard is -- frankly, you
3 said I got the law wrong, but you articulated it the same
4 way that it's in my tentative, whether it's a restraint of
5 substantial character, and you're telling me it is. And
6 that's what I've got.

7 So is there some other point you wanted to make?

8 MR. MANDELROT: Yes, just that I've got an
9 extensive amount of additional information about how I've
10 been restrained by other trusts, but if I understand you
11 correctly, you are going to exclude that all?

12 THE COURT: Because you didn't give it to me in a
13 declaration by the deadline that I asked you to, and that's
14 what we were here today to do.

15 MR. MANDELROT: Then I will preserve my right to
16 bring those facts and issues before the Appellate Court.

17 THE COURT: Okay.

18 MR. MANDELROT: Like I said, your Honor, it takes
19 a lot of courage not to be discouraged in this courtroom.

20 THE COURT: Great.

21 MR. MANDELROT: I'm not -- I'm not quite done
22 yet, your Honor.

23 Your tentative amounts to a -- and your view of
24 Golden, it amounts to a narrow restraint exception. That's
25 what it amounts to. You're saying, "Oh, it's just a narrow

1 restraint. He can't file with these four trusts, but he can
2 file with the others."

3 Narrow restraint was rejected, your Honor. That's
4 -- that was rejected by the Courts, a narrow restraint.
5 Okay? And that is exactly what your tentative does, and so,
6 again, that is not the law that you're applying. Okay. The
7 law is whether or not it is a restraint of a substantial
8 character. And as our papers made clear, there were two
9 cases -- two cases that we could find, and there were none
10 that your buddies put forward, but there were two cases
11 which showed a restraint of a substantial character. There
12 were two cases. One of them they found a -- in Chamberlain,
13 a contractual provision that required one of the parties to
14 pay the other \$5,000, was clearly a restraint of a
15 substantial character. And in Edwards, the agreement
16 prohibiting the accountant from working or soliciting
17 clients for an 18-month period was invalid because it
18 "restrained his ability to" --

19 THE COURT: Well, that was the --

20 MR. MANDELROT: -- to --

21 THE COURT: -- non-complete employment context.

22 MR. MANDELROT: But the none -- but, again,
23 courts have rejected that this solely applies to non-
24 compete, your Honor.

25 THE COURT: I know, but don't you -- don't you

1 understand from Golden that it's a different rule when it's
2 the non-compete employment context than when it's not the
3 non-compete employment context or you think it's the same
4 strict absolute rule, completely void, no restraint, whether
5 it's the employment non-compete context or not?

6 MR. MANDELROT: No, that was already rejected,
7 your Honor. You tried to get that one past in the motion to
8 enforce settlement when you said, hey, you could tell me I
9 could not practice law --

10 THE COURT: That's --

11 MR. MANDELROT: -- anymore.

12 THE COURT: That's not what I --

13 MR. MANDELROT: That -- that --

14 THE COURT: That's what I'm --

15 MR. MANDELROT: That argument --

16 THE COURT: That's not what I'm asking.

17 MR. MANDELROT: That -- that -- that argument --
18 I know. That's --

19 THE COURT: That's not what I'm --

20 MR. MANDELROT: -- not what I'm saying.

21 THE COURT: -- asking you read --

22 MR. MANDELROT: And I'm not just saying --

23 THE COURT: -- Golden --

24 MR. MANDELROT: What I'm saying --

25 THE COURT: When you read Golden --

1 MR. MANDELBROT: What I'm --

2 THE COURT: When you read Golden --

3 MR. MANDELBROT: -- saying Golden, Golden says a
4 substantial restraint. That's the language clear,
5 substantial restation.

6 THE COURT: Okay. That's not --

7 MR. MANDELBROT: That's it.

8 THE COURT: -- my question. My question is are
9 you arguing that the standard for what makes something
10 impermissible is the same whether there is a non-compete --
11 an employment context, employee mobility issue, and when
12 it's just two parties doing business with each other? Are
13 you saying the standard is the same or do you acknowledge
14 that there's a stricter standard when it's employee mobility
15 non-compete, that -- that context?

16 MR. MANDELBROT: I'm not going to acknowledge
17 anything. I think those are issues that are up in the air,
18 but I think in both cases they go back to Business and
19 Professions Code 16-600 and -- and both cases go back to
20 what the legislature said, and what 16-600 makes very clear
21 is that a restriction of any kind, okay, and that's how they
22 clarified that rule in Golden by saying it's substantial
23 restraint.

24 And whether that applies to non-competition
25 agreements, great. You know, I'm sure it does, but -- and

1 I'm not saying there's different standards. I'm saying
2 Business and Professions Codes apply, but in -- in Edwards
3 it was clear. He couldn't solicit clients for 18 months.
4 You're saying I can't file for the rest of my life. That's
5 a substantial restraint.

6 You know, whether it's non-competition or not, it
7 -- that's a substantial restraint.

8 THE COURT: All right.

9 MR. MANDELBROT: I'm asking you to reverse your
10 tentative, your Honor. I'm asking you to go back, read the
11 cases, look at the facts, look at the entire record, all the
12 evidence that you've now excluded, and look at the evidence
13 that supports my side. Look at that evidence.

14 You know, and there's another issue that's really
15 important that we need to raise today, your Honor. Here it
16 took two years for me to get back here. You know, winning
17 an appeal that people don't typically win appeals, but here
18 I am back in this courtroom, and 72 hours before we get
19 here, the despicable, disgusting, unethical filing by your
20 buddies, a 30-page order completely violating Local
21 Bankruptcy Rule 9021-1, orders and judgments.

22 If your buddies attended these meetings, maybe
23 they'd know their own bankruptcy rules, because the rule is
24 very clear. A proposed order must -- that's not -- that's
25 must not be lodged prior to the hearing or trial on the

1 underlying matter unless it's asked for. You didn't ask for
2 a proposed order, okay. And what they did was essentially
3 ex parte communications to the judge --

4 THE COURT: It's not ex parte. You were --

5 MR. MANDELBROT: -- 30-page --

6 THE COURT: -- copied on it.

7 MR. MANDELBROT: I get to finish, your Honor -- 30
8 pages worth in an effort to influence their buddy and give
9 you a roadmap, a roadmap for how to rule against me. It's a
10 despicable display. It took me two years to get back here
11 to this day, and what do they do? You're right. You
12 ordered papers by a deadline, and we -- we complied with
13 that deadline. Yeah, you excluded some of it.

14 THE COURT: Okay.

15 MR. MANDELBROT: We complied with --

16 THE COURT: You know what?

17 MR. MANDELBROT: -- that deadline --

18 THE COURT: Take a --

19 MR. MANDELBROT: -- and what --

20 THE COURT: -- deep breath. Stop. Calm down and
21 sit down. I've heard enough. I will explain to you about
22 the Local Rule. Please sit down.

23 MR. MANDELBROT: The purpose of the Local Rule --

24 THE COURT: Please sit down.

25 MR. MANDELBROT: -- is to not --

1 THE COURT: Please --

2 MR. MANDELBROT: -- influence a judge.

3 THE COURT: -- sit down. No, it's --

4 MR. MANDELBROT: Are you going to notify --

5 THE COURT: -- not -- sit down.

6 MR. MANDELBROT: Are you going to sanction them?

7 THE COURT: Sit down.

8 I have no objection, I've never had any objection
9 to parties lodging orders before the hearing. The Local
10 Rule doesn't call for that because often it's a waste of
11 time because you get an order that's lodged ahead of the
12 hearing and we end up doing something different, and some
13 judges don't like it because we keep statistics on how long
14 you have your orders in the queue, and the longer the order
15 sits in the queue, the lower -- the higher number of days
16 you have on the average that it takes you to process your
17 order. And judges like to keep those numbers as low as
18 possible. That's why it's in the Local Rules, is don't
19 lodge the orders, don't gum up our queue early.

20 I don't mind having those orders. It gives the
21 parties a chance to look at it. It's not an improper
22 attempt to influence anybody. I don't mind having those
23 orders in the queue. If I'm ready to sign them at the
24 hearing, sometimes I sign them at the hearing. In fact, it
25 gives us an opportunity to discuss at the hearing what the

1 order ought to say. It's actually convenient -- and when --
2 especially if you're dealing with an operating Chapter 11
3 kind of case, which this isn't, but if you're dealing with
4 an operating Chapter 11 kind of case, it's convenient if the
5 order entered promptly to have the order entered ahead of
6 time so the parties can talk about what the order ought to
7 say.

8 So I have no problem with the parties uploading
9 orders early, even though it has a tendency to adversely
10 affect my statistics. I'm willing to live with the
11 adversely affected statistics because I think it's an
12 efficient way to proceed, and that's certainly something
13 that the Court can order otherwise. So, no, I'm not going
14 to sanction anyone for uploading an order early. It's not
15 an ex parte communication. It gets served on the other
16 side.

17 MR. MANDELBROT: Are there other rules --

18 THE COURT: Stop.

19 MR. MANDELBROT: -- that people can violate that
20 -- that we don't know about?

21 THE COURT: Be quiet.

22 MR. MANDELBROT: Because it says --

23 THE COURT: Be --

24 MR. MANDELBROT: -- a proposed order must not be
25 filed.

1 THE COURT: Be quiet.

2 Okay. Mr. Patterson, if you would be so kind as
3 to discuss the -- a couple of things I'd like to hear from
4 you on. I would like to hear about the reservation of the
5 -- of the federal law question. If you could address that,
6 the argument the way it was advanced by Mr. Mandelbrot that
7 it needs to be -- that it's not in the appellate brief and
8 that that's really where you needed to have raised it and
9 that your references to it in passing elsewhere are
10 insufficient?

11 MR. PATTERSON: Well, your Honor, it was addressed
12 at the end of our brief in the Ninth Circuit. So it was in
13 all of our briefs all along.

14 THE COURT: Where -- is that -- is that attached
15 to your request for judicial notice by any chance?

16 MR. PATTERSON: Yes.

17 THE COURT: All right. Which -- let's -- the
18 declaration of Steve Snyder, is that it or is it the request
19 for judicial notice? Is it in the brief?

20 MR. PATTERSON: It's in the --

21 THE COURT: It's in the reply brief? It's in the
22 reply brief?

23 MR. PATTERSON: Your Honor, we're finding it. I
24 apologize for the delay. So, your Honor, pages 16 and 17 of
25 our reply brief filed on the 25th.

1 THE COURT: Okay. All right.

2 "Plaintiff's Trust likewise raised
3 the argument on appeal before the
4 District Court. See Appellee's
5 answering brief. The Trusts are
6 creatures of federal bankruptcy law.
7 California public policy as expressed in
8 16-600 or Rule 1-500 doesn't control,
9 nor does it trump the federal public
10 policies that clearly favor enforcement
11 of the stipulation in accordance with
12 its terms, and again on appeal before
13 the Ninth Circuit. See Appellee's
14 answering brief Ninth Circuit at V(e) of
15 the same."

16 Okay. All right. Okay. I've called up on the --
17 on the screen here. I'll looking at the Great Western case.

18 MR. PATTERSON: Yes.

19 THE COURT: And, now, this was before the adoption
20 of 16-600?

21 MR. PATTERSON: No, your -- well, your Honor, 16-
22 600 had a predecessor that had the identical terms, which
23 was I think 1637.

24 THE COURT: 1673 maybe

25 MR. PATTERSON: Pardon me, 1673.

1 THE COURT: Okay.

2 MR. PATTERSON: And that's what this case is
3 decided under, as was Augustine, for example.

4 THE COURT: Okay.

5 MR. PATTERSON: So it's the same one.

6 THE COURT: Okay. All right.

7 "So the purport of the agreement as
8 interpreted by the Court disclosed the
9 contract directly within the
10 contemplation of said 1673. The
11 Defendant upon the sale of certain
12 corporate stock by him had agreed not to
13 engage in a business to compete with the
14 Corporation's business within a three-
15 year period. It was held that the sale
16 of stock" --

17 This is Chamberlain. It's Great Western's
18 discussing Chamberlain.

19 "It was held that the sale of stock was
20 not a sale of goodwill, did not bring
21 the agreement within the exception of
22 1674."

23 Okay. Then they talk about Endicot. All right.
24 And then it says:

25 "A distinction between contracts

1 tending solely to promote the business
2 of the parties to the contract and those
3 such as involved in Maury v. Palodini
4 Supra wherein a similar object is
5 designed to be accomplished by stifling
6 competition and securing a monopoly is
7 recognized in such and such a case."

8 In that case -- okay.

9 "The decisions in this state have
10 recognized and applied the distinction
11 made by authority elsewhere that if the
12 public welfare be not involved and the
13 restraint upon one party be not greater
14 than protection to the other requires,
15 the contract will be sustained though it
16 in some degree may be said to restrain
17 trade."

18 All right. So they don't -- they don't use the
19 language "rule of reason," but that's the -- seems to be the
20 operative proposition here, that there's a distinction
21 between if it's not involved in the public welfare or the
22 restraint upon -- sorry. If the public welfare be not
23 involved and the restraint upon one party be not greater
24 than protection to the other -- that it requires, the
25 contract will be sustained although it in some degree may be

1 said to restrain trade. Okay.

2 So I think it's very clear from Golden that there
3 is a difference in the standard when you're talking about a
4 situation where the public welfare, the public policy,
5 employee mobility, restraint on competition, that there's a
6 different standard in those cases. That's a stricter
7 standard than where you're talking about two parties doing
8 business with each other, not an employee of an employer,
9 not about competition, restraint of competition, and
10 notwithstanding the purported testimony from the lectern, I
11 don't have any evidence that -- and there's not -- the facts
12 of this case, frankly, go the other way. This is not about
13 restraining competition. This is about the Trust preventing
14 and exercising the provisions that enable it to preclude
15 somebody from submitting claims that are fraudulent, when it
16 is concluded are fraudulent after its audit, et cetera.

17 So that's -- this is not about an employment
18 context. This is not about competition. This is not
19 triggering that higher standard that's discussed in Golden,
20 and the lower standard Golden doesn't -- doesn't flesh it
21 out. It does say that -- the restraint of substantial
22 character, but I will grant you that Great Western talks
23 about this balancing in a different way. Now, it's an
24 earlier case than Golden, but Golden is not inconsistent
25 with Great Western because the case specifically in Golden

1 is one that does fall within that heightened standard a bit.
2 It's in that penumbra, if you will. Our case is not. So it
3 is a lower standard than would be applicable to the kind of
4 contract where it was affecting employment mobility and a --
5 restraining competition.

6 So, anyway, okay. Was there any other point that
7 you wanted to make by way of reply to anything that had been
8 said by Mr. Mandelbrot at this point?

9 MR. PATTERSON: Just three points very briefly,
10 your Honor. First, I draw the Court's attention to
11 paragraph 75 of Mr. Mandelbrot's declaration filed on
12 January 25th.

13 THE COURT: Let me get it. 25th, 25th, okay.
14 Paragraph what?

15 MR. PATTERSON: Seventy-five, your Honor, page 15.

16 THE COURT: Okay.

17 MR. PATTERSON: So I know we're -- we've stricken
18 Mr. Mandelbrot's podium testimony today, but I note that the
19 second sentence of that paragraph says:

20 "I also represent" -- in the
21 present tense -- "thousands of
22 individuals who filed claims under
23 50524(g) asbestos trusts."

24 THE COURT: Uh-huh.

25 MR. PATTERSON: Your Honor, the -- a lot of this

1 case resolves itself on burden of proof. Under California
2 law, as we described, the burden of proof to show that there
3 is a restraint of the substantial character is on Mr.
4 Mandelbrot, and since he has failed to make that showing and
5 there is contrary evidence with respect to the position of
6 these trusts in the trust world and the availability of
7 other asbestos litigation and so forth, that there is a
8 record upon which this Court can find that there's no
9 genuine issue of material disputed fact with respect to
10 whether or not in the alternative the restraint constitutes
11 a restraint of the substantial character such that would
12 trigger Golden. And in the findings of fact that we have
13 lodged for the Court, we requested alternative findings if
14 the Court is comfortable, one, with respect to the rule of
15 reason under the Great Western Distillery case and, second,
16 even if Golden were to apply, that on this record, Mr.
17 Mandelbrot has failed to show that there's a restraint of
18 his substantial character that would violate the Golden
19 standard.

20 THE COURT: Uh-huh. Okay.

21 MR. PATTERSON: Finally, I would note that Mr.
22 Mandelbrot's argument that competition considerations are
23 implicated because of the presence of the Trust Advisory
24 Committee and the extravagant accusations that he makes in
25 that regard, I wanted to make two comments.

1 First, anticipating that argument is the reason
2 why we set forth in the declaration of Steven Snyder that
3 through this process he was very careful not to involve the
4 TAC with respect to critical decisions regarding Mr.
5 Mandelbrot. The TAC was not involved with respect to this
6 settlement. The decision to file the action against Mr.
7 Mandelbrot, it was involved only in two -- at two points,
8 one, because the TDP requires it in the decision to audit
9 Mr. Mandelbrot at the front end, and then, secondly, they
10 were consulted with respect to a letter, and he didn't take
11 their advice.

12 So there is simply no basis to believe that if Mr.
13 Brayton is a competitor of Mr. Mandelbrot, that he or other
14 members of the TAC had any involvement in this process
15 whatsoever. And, as the Court said, these are the Trusts
16 who acted, and I just wanted to emphasize that testimony
17 that showed that these were the Trusts that were acting.

18 THE COURT: Thank you.

19 MR. PATTERSON: Unless the Court has any other
20 questions, that's all I wanted to address.

21 THE COURT: Okay. All right. No. No, I don't.

22 Okay. Well, I go back to my -- let me go back to
23 my tentative ruling here. On the subject of waiver of
24 federal law, I -- I stand by the tentative that there has
25 been no waiver, and it is in the appellate brief. Is it in

1 passing, is it not in passing? It's never been the focus
2 particularly here, but I don't believe it's been waived.
3 Again, it wasn't the focus because there was no perceived
4 conflict, and that's why it didn't get discussed, but it was
5 -- it was preserved.

6 And I think that here I disagree with Mr.
7 Mandelbrot's characterization of this as solely being an
8 issue governed by state law. We are still in a federal
9 jurisdiction in a context in which the policies and
10 considerations of federal law do continue to apply. We are
11 dealing with asbestos trusts created pursuant to 524(g) of
12 the Bankruptcy Code and the way of implementing and
13 providing for the payment of asbestos claims that was
14 created by Congress and provisions in the TDP that are being
15 enforced that have been approved by the District Court and
16 this Court. So -- and I do think it's appropriate in the
17 Federal Court, even though, for example -- this is a bit of
18 an analogy, but even though in -- in Bankruptcy Court, for
19 example, when there is an employment agreement between -- or
20 a retention agreement between a lawyer and his client that's
21 -- generally the provisions would be dealt with under
22 California law, and push comes to shove and if there's some
23 kind of a conflict, we're here in -- in Bankruptcy Court,
24 and the Bankruptcy Court is going to apply federal law to
25 the extent there's a conflict and the federal policy needs

1 to be maintained, California law is going to need to give
2 way.

3 So the -- I will find in the alternative that to
4 the extent that federal law does apply here, that it would
5 nevertheless govern and would -- would override the
6 enforceability of the California Rule of Professional
7 Conduct and Code of -- Business and Professions Code
8 sections -- if they -- if there had been a conflict. I
9 don't believe there's a conflict here, however, but that in
10 the alternative, that this -- the settlement would be
11 enforceable by virtue of federal common law.

12 All right. And, again, we really haven't talked
13 about 1-500-A, Rule of Professional Conduct. That -- again,
14 there's already law of the case on the subject. I agree
15 with what the District Court has previously said on it. I
16 don't see that as being a problem, and I'm not going to
17 depart from that now, and let's talk about 16-600.

18 I think that my discussion in the tentative ruling
19 is a little bit truncated. I think it's a little more fuzzy
20 than my standing would -- my description in the tentative
21 would make it seem. I -- that when we are dealing with --
22 that there's a strict standard under 16-600 when you're
23 dealing with contracts that implicate employee mobility and
24 non-competition of employees leaving -- leaving their firms
25 in the non-compete kind of situation. That's a fairly

1 strict standard under Edwards and Chamberlain, and that's --
2 but that's not the limit of 16-600. 16-600 does apply in
3 other contexts, and we've got both the Golden case talking
4 about whether there's a substantial -- a restraint of a
5 substantial character, and then I also have the -- the Great
6 Western case, which has been cited in the briefs that I'm
7 looking at that I read from here which talks about it. When
8 we don't have the public welfare involved or we don't have
9 those additional policies concerning employees' mobility and
10 restraints on competition, that it -- it's more of a
11 balancing situation, and I think even in -- even if the
12 standard is is there a substantial -- excuse me -- a
13 restraint of a substantial character, even if that's the
14 standard, there's, nevertheless, a balancing that we need to
15 look at of this -- of whether it's substantial -- restraint
16 of a substantial character in light of what's going on here.
17 And, in any event, whether there's a balancing or not a
18 balancing, I find that this settlement agreement does not
19 violate Rule -- Section 16-600.

20 And here, on the undisputed facts of the case,
21 there is no evidence to -- to show what has happened to --
22 strike that.

23 There is no evidence in this record that he is --
24 that Mr. Mandelbrot is prohibited from practicing. The
25 evidence that's admissible in the record is that he does

1 other things with other trusts and can do other things with
2 other trusts. We only have four trusts, four asbestos
3 trusts, that he is precluded from filing claims with.
4 That's it, not any other claims that -- asbestos trusts that
5 may be set up in the future, not any other asbestos trusts
6 involving the same players or the same parties here, just
7 four trusts that he can't file asbestos claims for. He is
8 free to practice in other -- submit claims to other trusts.
9 he's free to do other things concerning asbestos. He's free
10 to practice in whatever areas he wants to practice. The
11 only restraint is that he can't file in front of these four
12 trusts. And, regardless of which of the standards that I
13 apply there, that restraint is not of a sufficiently
14 substantial character as to make this settlement agreement
15 unenforceable under Rule 16-600. And, again, I just want to
16 underscore that there isn't the kind of creep that we were
17 looking at as being a risk in Golden and that apparently
18 even on remand, Golden was not stricken under 16 -- the
19 agreement was not stricken under 16-600 says Mr. Mandelbrot.

20 But, in any event, Golden was a situation where
21 there was a substantial risk of this becoming a broader
22 problem. We don't have that problem here. It isn't going
23 to be a broader problem. In fact, at some point it will
24 cease to be a problem at all because these trusts will
25 finish what they're doing and will go away, and there won't

1 be any remaining restraint in that sense. Of course, we
2 should all live so long I suppose.

3 Anyway, all right. So I don't see any of the
4 concerns that would lead to 16-600 meaning -- I can't -- I
5 can't form a sentence. On the facts of this case, there's
6 nothing that would cause 16-600 to say that this settlement
7 agreement wasn't enforceable. So I am going to affirm my
8 earlier ruling that the settlement agreement should be
9 enforceable.

10 So the real question is whether or not I should
11 deal with the form of the orders now, which is one of the
12 benefits of having the order lodged at the hearing is that
13 we can simply deal with it now.

14 The order itself is pretty straightforward. The
15 order that you've lodged itself really just reaffirms my
16 earlier order.

17 MR. MANDELBROT: Your Honor, we haven't had an
18 opportunity to review or even object to that order. I mean,
19 really? A 30-page order, looks like what you just ruled,
20 how do you know that? I mean, clearly you read their order
21 before you made your ruling, which is the whole point of not
22 allowing them to submit an order before a --

23 THE COURT: I don't think --

24 MR. MANDELBROT: -- ruling is done.

25 THE COURT: -- you heard what I said. I said

1 we're going to look at them, and I'm going to see whether or
2 not I want to do that now or not. That's what we're doing.

3 The -- the order itself doesn't quite work because
4 I didn't sustain all of the evidentiary objections. So you
5 may want to preserve those in a different way. I'm going to
6 look through -- I think that the -- and I'm looking through
7 the findings now. I think the findings when I -- I did read
8 them last night, but I can't say I've, you know, got them
9 memorized. So I'm going to have a look at them now to see
10 whether they're consistent with what I am ruling. And if
11 this is too much for me right now, I may not want to do it
12 right now, but let me have a look.

13 (Pause.)

14 MR. MANDELBROT: Your Honor, we can go through.
15 There's a number of things that you haven't done that they
16 said you have in this order. I mean, one by one by one in
17 almost every single paragraph that I certified, I -- none of
18 that is true. They -- they've said that -- let's see here.
19 I mean, how many different provisions? I mean, how can you
20 allow them to submit an order? I mean, literally -- let
21 alone even consider this order that was so unethical.

22 THE COURT: Well, it's nice for me to be -- it's
23 not unethical at all. It's -- it's convenient --

24 MR. MANDELBROT: Your own rules, your Honor.

25 THE COURT: -- for me to be -- stop. It's

1 convenient for me to be able to go through this now to tell
2 them what issues I have with the form of the order, so that
3 we don't have to have a second hearing about it. We might
4 have to have a second hearing about it, but I -- this way I
5 can see what they're asking, and I can see whether I'm okay
6 with it.

7 I don't know about 24. I'm not really crazy about
8 24. I really didn't go through, and I'm not sure I'm
9 satisfied with the evidence or that I need any of this
10 business about what the claims were worth. I know I -- I
11 get why you want it in there, but --

12 MR. PATTERSON: We put at the end of 24, your
13 Honor, that the Court is not in a position to resolve the
14 factual dispute as the value or the ability to file these
15 claims, but we completely understand. I think 24 can be --

16 THE COURT: Yeah, let's take 24 out.

17 MR. MANDELBROT: I mean, what is this, your Honor,
18 an example of working with your buddies to create an order
19 that doesn't get overturned on appeal? I mean, this is a
20 joke. You've been conspiring with them to try and get an
21 order that's not --

22 THE COURT: Be quiet.

23 MR. MANDELBROT: -- an abuse of discretion from
24 the start.

25 THE COURT: Be quiet. At a hearing where I'm

1 making factual findings, I frequently will go through the
2 findings to say "I found this. I didn't find this. I'm
3 okay with this finding. I'm not okay with that finding."
4 The point of this exercise that we're doing right now is for
5 me to determine whether or not this is an accurate
6 description of the findings I'm making, and if it's not, I'm
7 not going to sign it. That's what I'm doing now.

8 MR. MANDELROT: Well, shouldn't we get an
9 opportunity to object?

10 THE COURT: Well, you may. Let's see. I'm going
11 to express my objections first. All right.

12 (Pause.)

13 MR. MANDELROT: Your Honor, I'm going to renew my
14 request to reserve a ruling today until you can review the
15 complete record. You're making findings not based on the
16 complete record, and I'd ask that you review the complete
17 record. You'll find it's a substantial restraint.

18 THE COURT: I've reviewed the complete record
19 insofar as it relates to that issue because I've asked the
20 parties to give me that -- everything that I need in
21 connection with that for this hearing. That's what the
22 filing deadlines were about. I've reviewed that record
23 completely, and I am making my findings based on that.

24 I don't know about 26. I'm not sure how -- I
25 mean, can I rely on asbestos bankruptcy trusts and tort

1 compensation, Lloyd Dixon, Jeffrey Rand Corporation 2011 as
2 to how much is actually assets in the aggregate of the
3 Trust? Is that really admissible here? Yeah, I don't think
4 I want 26.

5 What's 25? National market, yeah. Yeah, why
6 don't we for 25 leave in "The asbestos market is a national
7 market. The Trust represents only a small fraction of the
8 overall asbestos litigation market."

9 MR. PATTERSON: And then delete the rest?

10 THE COURT: Yeah, just delete the rest. Okay.
11 Mandelbrot -- 27, submitted -- okay.

12 Okay. Now, the conclusions of law, I think
13 they're really not -- they're starting to sound redundant.
14 Let's see. All right. So you've got it in the alternative.

15 Okay. All right. Well, here's what I'll do. It
16 is -- it is lengthy. So what I will do is I will give you
17 -- you can go ahead and reodge it with the revision and
18 give me a new order with the evidentiary objections, and
19 I'll give you the -- normally, what the Local Rules provide
20 is if an order is presented at the hearing, that there is no
21 lodging period, but I'll give you a lodging period of seven
22 days to pose objections to the form of the order, and then
23 I'll resolve the form -- I'll review the objections, and
24 I'll resolve the order on the -- you know, in the papers. I
25 don't -- if I feel the need to have a further hearing about

1 the form of the order, I'll let you know, but usually when I
2 have objections to the form of an order, I read them, and I
3 say, well, okay, that's -- I'll put this part over here, and
4 then I --I kind of edit. That's what's nice about having
5 our uploaded program where I can actually make changes to
6 the text of the order.

7 So -- all right. So this is not really the right
8 -- the order on remand, do we have a judgment? It's an
9 adversary. Do we -- what piece of paper -- I mean, I want a
10 piece of paper that ultimately is the final piece of paper.
11 Maybe there's yet a -- maybe I need a third piece of paper
12 that's --

13 MR. PATTERSON: Well, we -- we have a judgment,
14 and I think --

15 THE COURT: Right.

16 MR. PATTERSON: -- what this order is saying is
17 that that judgment remains in effect. So I think that
18 constitutes the final order. We're happy to -- I mean, if
19 the -- I'm a little out of my lane here quite frankly --

20 THE COURT: Yeah.

21 MR. PATTERSON: -- the procedural niceties.

22 THE COURT: Maybe it should be judgment on remand,
23 and then if -- maybe you can say the same things and
24 incorporate the other one by reference and something like
25 that.

1 MR. PATTERSON: That's what we'll do.

2 THE COURT: Because once I have something called
3 judgment, then we know we're done here.

4 Yeah?

5 MR. MANDELROT: Doesn't that imply that there's
6 like a trial with a jury when you've got a judgment?

7 THE COURT: No.

8 MR. MANDELROT: How about a ruling?

9 THE COURT: No. No, it doesn't.

10 MR. MANDELROT: It's not a judgment. I mean --

11 THE COURT: Yeah, it is. It's the final -- it's
12 the conclusion of the adversary proceeding.

13 MR. MANDELROT: Okay. Let's call it that then.

14 THE COURT: Okay. So Plaintiffs to lodge revised
15 order -- we're calling it a judgment -- plus findings of
16 fact, and since you know what the findings are going to look
17 like -- they're going to look like exactly what we've got
18 here except for what I said is stricken. I'll give you
19 seven days from now to object to the form of that order.

20 MR. MANDELROT: Wait a minute. You mean once we
21 get their form of order or this -- this one that was
22 improperly filed, now you're giving us seven days to file --

23 THE COURT: Object to -- object to the form of
24 this one. I want to give you -- normally you have no time
25 at all because it's lodged at or before the hearing. You

1 wouldn't have an objection because we'd just talk about it
2 here, but I want to give you an opportunity to object to the
3 form of the order.

4 So what I want to do is you know what the order's
5 going to say. I want you to go ahead and object to the form
6 of the order they lodged yesterday. Okay.

7 MR. MANDELROT: No, we don't know what the
8 order's going to say. Are they saying that this is the
9 order they're lodging?

10 THE COURT: I am telling you what it's going to
11 say. It's going to look exactly like the one they have
12 except that they're going to strike paragraph 24. They're
13 going to strike all but the first part of 25, "The asbestos
14 litigation market is a national market. The Trusts
15 represent only a small fraction of the overall asbestos
16 litigation market." They're going to strike the rest of 25.
17 They're going to strike 26. That's what the order's going
18 to say, and you --

19 MR. MANDELROT: You mean the facts that you think
20 help your buddies. Got it.

21 THE COURT: What?

22 MR. MANDELROT: The facts we're striking are the
23 ones you think would assist your buddies. I -- we
24 understand. We -- you've been striking all of those since
25 day one I walked in this courtroom.

1 THE COURT: I think you said that backwards, sir.
2 I think you want to accuse me of bias, but you've done it
3 exactly backwards. Why would I -- if I were bias, why would
4 I be striking facts that help my buddies? I think you just
5 said it wrong. But, anyway --

6 MR. MANDELROT: Yeah, maybe you're right. I
7 probably did.

8 THE COURT: Yeah.

9 MR. MANDELROT: You are biased.

10 THE COURT: In any event, the point is go ahead
11 and object to this form of order. You can use the paragraph
12 numbers that are in this form of order to avoid confusion.
13 And I'll know what you're talking about. And any objections
14 to the form of the order -- any objections to the form of
15 the order should be lodged with a notice of lodgment -- no,
16 no, no, excuse me. That's not what the Local Rules say.
17 You've got to file the objection, and if you're lodging an
18 alternate proposed form of order, then you need to attach
19 that, in which case you lodge it and -- well, have a look at
20 the Local Rules, because when you lodge an order, you need
21 to file a notice of lodgment and then lodge the order, and
22 objections to the form of the order actually talk about
23 attaching the -- the original order and any alternate
24 proposed form of order. So have a look at the Local Rules
25 on that. But any objections to the form of the order need

1 to be filed and lodged -- filed and lodged by -- and I'll
2 give you a week from today to do that. So that's the 7th,
3 February 7 -- by February 7. Okay.

4 MR. PATTERSON: Pardon me, your Honor. Would that
5 be the 8th? Today's Thursday.

6 THE COURT: Oh, today's Thursday. Thank you. I
7 can't -- I thought today was Wednesday. Felt like
8 Wednesday. You're right, the 8th.

9 MR. MANDELROT: Your Honor, could we get an
10 electronic copy of their order. It would sure make the
11 changes -- we could just redline the changes and make it --
12 it would make it much easier, your Honor. You've given us a
13 seven-day window. It's a very lengthy document that they've
14 clearly billed the Trust for. So --

15 MR. PATTERSON: We'll email one to them.

16 THE COURT: Okay.

17 MR. MANDELROT: Thanks. We appreciate that.

18 THE COURT: All right. Okay.

19 MR. MANDELROT: And so, if I understand you
20 correctly, we weren't following the Local Rules before but
21 now you're telling us to follow the Local Rules on order?

22 THE COURT: The procedure about how you do and
23 what it looks like, what an objection to a -- to a form of
24 an order should look like, yes.

25 MR. MANDELROT: Got it.

1 THE COURT: That I want. Okay. All right. I
2 Think that's it. So then I'm going to watch for two
3 documents from Plaintiffs. I'm going to watch for
4 objections from the Defendant, and then I will just resolve
5 it on the papers unless I need to have a further hearing,
6 and I'll let you know.

7 Okay. All right. Thank you very much. That
8 concludes the matters on calendar for February 1st. We are
9 off the record.

10 (Proceedings concluded.)

11
12 I certify that the foregoing is a correct
13 transcript from the electronic sound recording of the
14 proceedings in the above-entitled matter.

15
16 /s/Jordan Keilty 2/14/2018
Transcriber Date

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