

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

\_\_\_\_\_  
In re: )  
 )  
 )  
PHOENIX HELIPARTS INC. CH: 11 ) 2:15-BK-12003-DPC  
 )  
TKC AEROSPACE, INC. vs PHOENIX HELI ) ADV: 2-16-00013  
SUPPORT, LLC & LOUIE MUKAI & PHOENIX )  
HELIPARTS INC. )  
 )  
RULING ON THE RECORD IN RE: MOTION TO )  
SUBSTANTIVELY CONSOLIDATE THE DEBTOR )  
WITH PHOENIX HELI SUPPORT, LLC FILED BY )  
SCOTT B. COHEN of ENGELMAN BERGER, P.C. )  
ON BEHALF OF TKC AEROSPACE, INC. )  
\_\_\_\_\_ )

U.S. Bankruptcy Court  
230 N. First Avenue, Suite 101  
Phoenix, AZ 85003-1706

March 11, 2016  
1:34 p.m.

BEFORE THE HONORABLE DANIEL P. COLLINS, Judge

APPEARANCES:

For the Chapter 11 Trustee: James E. Cross  
CROSS LAW FIRM, PLC  
1850 N. Central Avenue  
Suite 1150  
Phoenix, AZ 85004

For TKC Aerospace, Inc.: Scott B. Cohen  
ENGELMAN BERGER, P.C.  
3636 N. Central Avenue Suite 700  
Phoenix, AZ 85012

For Phoenix Heliparts Inc.: Michael W. Carmel  
MICHAEL W. CARMEL, LTD.  
80 E. Columbus Avenue  
Phoenix, AZ 85012-4965

Proceedings recorded by electronic sound technician, Selvina  
Bennink; transcript produced by AVTranz.

**AVTranz**

www.avtranz.com · (800) 257-0885

1 THE CLERK: In the case 12-12003, Phoenix Heliparts,  
2 Incorporated.

3 THE COURT: Appearances on the Phoenix Heliparts  
4 case, please.

5 MR. CROSS: Good afternoon, Judge. I'm Jim Cross on  
6 behalf of the Chapter 11 Trustee, Mr. Louie Mukai. And  
7 Mr. Mukai is here with me in the courtroom.

8 THE COURT: Thank you.

9 MR. COHEN: Good afternoon, Your Honor. Scott Cohen,  
10 Damien Myer, Steve Berger on behalf of TKC Aerospace. We  
11 believe Sam Boyle and Race McCleery are on the phone.

12 THE COURT: Mr. Boyle, Mr. McCleery, are you on the  
13 phone?

14 UNIDENTIFIED SPEAKER: Yes, Your Honor, we are.

15 THE COURT: Thank you.

16 MR. CARMEL: Your Honor, Michael Carmel for Phoenix  
17 Heli Support, and Tina Cannon, Georgia Summers and Don Nichols.  
18 Ms. Cannon could not make it because she -- her daughter's  
19 getting married a week from tomorrow and they're in the final  
20 wedding dress fittings or whatever it is that women do. A  
21 confusing and busy time. Thank you.

22 THE COURT: All right. We are here today on TKCA's  
23 motion to substantively consolidate the debtor, debtor being  
24 Phoenix Heliparts. I'm going to sometimes refer to the debtor  
25 as PHP or the debtor or just simply P. The trustee for PHP,

1 Mr. Mukai, initially opposed TKCA's motion and he has  
2 subsequently joined that motion. Also joining in the motion  
3 for PHP is the secure creditor Chase Bank and the trade  
4 creditor Precision Aviation. Opposing the motion are Darin and  
5 Tina Cannon, principals of both P and S, and by the way I'm  
6 calling Phoenix Heli Support either PHS or S, or perhaps even  
7 the target. But Tina and Cannon -- excuse me. Tina and Darin  
8 Cannon are both principals of S and P. Also opposed to the  
9 motion of TKCA for substantive consolidation is Don Nichols and  
10 Georgia Summers. They, too, are equity holders of both P and  
11 S. The percentages differ in each entity between who holds the  
12 equity between Darin, Tina, Mr. Nichols and Ms. Summers, but  
13 all of them are equity holders in both entities. The only  
14 outlier to that arrangement is John Castrogiovanni who is  
15 listed as a five percent member of PHS. He is not a  
16 shareholder of PHP.

17 A three-day trial was concluded yesterday afternoon  
18 at which point this Court took the matter under advisement.  
19 Mr. Mukai, trustee for PH, has strongly impressed upon this  
20 Court the need to resolve the TKCA motion immediately. He's on  
21 the verge of running out of cash. He's on the verge of a  
22 conversion to a Chapter 7 in PH. And win or lose the motion to  
23 consolidate, Mr. Mukai has I think rightfully indicated that a  
24 decision has to be made and has to be made right now. And so  
25 that's what the Court is prepared to do.

1           So let's first start with the discussion about when  
2 it's appropriate to have substantive consolidation. Under the  
3 Ninth Circuit's 2000 decision in the Bonham case, which is  
4 found at 229 F.3d 750, the Court noted that substantive  
5 consolidation is not a concept defined under the code but has  
6 been a part of a bankruptcy court's equitable powers since the  
7 Bankruptcy Act of 1898. Those equitable powers, of course, are  
8 now found at § 105 of the Bankruptcy Code. And this Court  
9 finds today that it has both the authority and jurisdiction to  
10 either grant or deny a motion for a substantive consolidation.

11           So what is substantive consolidation? Well,  
12 according to the Bonham case and the citing of other precedents  
13 in the Bonham case, it is essentially a disregarding of the  
14 separateness of two entities and a combination of the assets  
15 and liabilities of both those entities. Substantive  
16 consolidation is, therefore, tantamount to a piercing the  
17 corporate veil. That is, in this case, bringing the target  
18 entity S into the bankruptcy of P. The purpose of  
19 consolidation is, according to the Bonham case, and I believe  
20 it's citing another case when it says this, is to ensure the  
21 equitable treatment of all creditors. Meaning creditors of the  
22 target and of the debtor who's looking to bring the target into  
23 its bankruptcy. See the Bonham case, it's 763.

24           The Court also notes that substantive consolidation  
25 is an extreme measure and that it may profoundly affect the

1 rights and recoveries of creditors in one or both of the  
2 entities. It is an imprecise and often rough justice when a  
3 consolidation occurs and this remedy, according to the Ninth  
4 Circuit, should be used rarely and in the event to only after a  
5 last resort, after considering all the remedies.

6 In the Owens Corning case from 2005 there are a  
7 number of elements discussed on substantive consolidation and  
8 the Court has looked at that. The Court has also looked at the  
9 Augie Restivo Baking case from the Second Circuit from 1988 and  
10 the In re: Ryder case from the Eleventh Circuit in 1994. I've  
11 also looked at the Stevenson case which is -- which predates  
12 the Bonham case and that's found at 153 B.R. 52. It's from the  
13 Bankruptcy Court in Idaho in 1993. But they do offer a number  
14 of guideposts that I'm going to talk about and that I think are  
15 important to think about in consideration of the motion.

16 So let's get to the Bonham case. And it really says  
17 that there are two prongs and they are in the, this junctive.  
18 The first prong is whether creditors dealt with the entities as  
19 a single economic unit, and we'll be talking about what it  
20 means to be a single economic unit, and did those creditors not  
21 rely on the separateness of those entities or the identify of  
22 those entities when determining whether to extend credit to one  
23 or both of them.

24 The second prong is whether the affairs of the debtor  
25 are so entangled that consolidation will benefit all creditors,

1 meaning the creditors of the target as well as the debtor in  
2 bankruptcy. Judge Marlar looked at the Bonham test and  
3 essentially he said do not take this as a Pavlovian approach  
4 that you look at prong one and prong two and that's the end of  
5 the story. He instead not only did that, but went a bit  
6 further and talked about how it's appropriate to consolidate  
7 after you look at all the facts, weigh all the equities and, as  
8 he would say, this all emanates from one guiding light, and  
9 that is the reasonableness under the circumstances. And this  
10 is his Basha's decision.

11           So let's talk first about the first prong of Bonham,  
12 and that is whether the creditors of either or both of these  
13 entities dealt with them as a single economic unit and did not  
14 rely on their separate identity in extending credit. What we  
15 have here is a case where P had been in business for some  
16 period of time. There was an opportunity to acquire a series  
17 of I would call it hard assets from Vertical Aviation. I might  
18 call that VA at some point along the way.

19           And really the heart of this matter comes to a focus  
20 on should this business opportunity have been something that  
21 PHP took or was there some good business justification for  
22 creating a new entity, and that new entity was PHS and it was  
23 created in June of 2014 at the time of this opportunity. Of  
24 course, also at the time of this opportunity we have an awful  
25 lot of history about what was going on with the litigation

1 between TKCA and PHP. By the time of June 2014 they were well  
2 into that litigation. There was, my recollection is that the  
3 trial in fact had concluded at that point and that Judge Duncan  
4 in the state court had taken the matter under advisement.  
5 There was good reason for ownership of PHP to be concerned  
6 about the result in that litigation because, in fact, in  
7 January of 2015 Judge Duncan comes out with a very extensive,  
8 very detailed set of findings and holdings that I'll just  
9 simply say was extremely unflattering to PHP and resolved the  
10 matter in favor of P -- excuse me -- in favor of TKCA with a  
11 judgment, if memory serves, in the neighborhood of \$25 million.

12           So let's talk about the single economic unit. When  
13 PHS was created, of course, it was a brand new entity and it  
14 was funded with \$75,000 that Tina Cannon borrowed from PHP. It  
15 was also funded with \$100,000 of Tina's own money. But very  
16 purely, it was using the same e-mail address. It used the same  
17 phone number until just very recently when the Trustee came in  
18 and tried to push these two entities apart.

19           The initial communications between Tina and John  
20 Castrogiovanni, the owner of Vertical Aviation, talked about,  
21 and Mr. Castrogiovanni's testimony was clear on the point that  
22 it was originally going to be a PHP acquisition of these assets  
23 of Vertical Aviation. It later morphed into being a PHS deal,  
24 but that's how it started. And so the opportunity was there  
25 for P and it's the Court's findings that that opportunity was

1 appropriated by PHS, even though it was a PHP opportunity.

2           When PHP -- excuse me. When PHS made application  
3 shortly after the acquisition of the, or maybe even before the  
4 acquisition of Vertical Aviation assets, it applied for credit  
5 with Airbus because it was going to be acquiring materials from  
6 Airbus and maybe even services, and applied to Turbomeca also  
7 for materials and maybe even services. And in doing so the  
8 name PHP was used. The credit of PHP was used. The 145, Part  
9 145 that we've heard much discussion about, which is necessary  
10 to do the type of work that PHS was going to want to do on  
11 Airbus equipment, the 145 had to be issued. And, of course,  
12 PHS did not have a 145, but instead PHP had that 145. And it's  
13 that PHP 145 that is referenced in these applications by PHP to  
14 Airbus and Turbomeca.

15           They used the training manuals, the certification of  
16 the employees of PHP. They used virtually everything that PHP  
17 had to set PHS up in business. Without PHP PHS did not exist,  
18 could not exist, would not exist. And telling in that regard,  
19 there were never any employees of PHS. Until very, very  
20 recently when Mr. Mukai terminated the employment agreement  
21 that had been entered into between PHP and PHS, all of the work  
22 done by any human for PHS was always done until extremely  
23 recently, like maybe two weeks ago, it was done by PHP people.  
24 Yes, under this lease agreement of employee leasing, but it was  
25 PHP people who had the ability, the knowhow, the technical

1 certification to do all of what PHS wanted to go into business  
2 to do.

3           When you look at Exhibit 68, the logo eventually used  
4 by PHS is exactly the same logo as PHP, the same fanciful  
5 design, the same artwork. The only difference is the  
6 lettering, Phoenix Heli Parts versus Phoenix Heli Support.  
7 Exhibit 20 is a demonstration of the very same letterhead,  
8 regardless of which entity is proposing to do something under a  
9 communications contained in that letterhead.

10           Creditors of PHS, that is people who were -- excuse  
11 me. Vendors of PHS who were sent invoices from PHS often paid  
12 PHP. For example, there is an Oceania wire, and this is in  
13 Mr. Davis' report at page 8, Exhibit 44. There's also a PCS  
14 aero wire in Mr. Davis' report, Exhibit 38 and his Exhibit 45,  
15 and an H-5 wire at his Exhibit 38 and 46 within that report of  
16 his. These were payments that went to PHP despite invoices  
17 from PHS and later there were -- there was confusion on the  
18 books and records of both PHP and PHS.

19           Now it's true that Mr. Andy Gutierrez Patrick  
20 testified before me that he did his level best to try to keep  
21 them separate. And Mr. Mukai even agreed that while there were  
22 plenty of errors and there was plenty of confusion between the  
23 books and records of the two, that Mr. Gutierrez seemed to have  
24 done his level best to try to separate and segregate the books  
25 and records.

1           Now, PHS argues to the court that the Airbus  
2 relationship and the Turbomeca relationship were PHS  
3 relationships. The Turbomeca contract as I understand it has  
4 now expired. And there has been some testimony from Ms. Cannon  
5 that if there's a consolidation Airbus will terminate its  
6 agreement as well. Whether it can or not is not for this Court  
7 to decide at this point. But it is something that Ms. Cannon  
8 fears.

9           The documents establishing a relationship between  
10 Airbus and Turbomeca reflect that the supporting documents come  
11 from PHP. That is financial documents, documents related to  
12 the operating manuals, documents of any sort that either  
13 Turbomeca or Airbus were requesting to establish the  
14 relationship. Either a credit relationship or a service center  
15 relationship, these documents all came from PHP. They were  
16 PHP's documents. See Davis' report at Section 4.1 and Section  
17 4.2. To get the credit history of PHS off the ground the  
18 credit history of PHP was supplied.

19           So, for example, when we look at Exhibit 16 it's an  
20 e-mail between Krystal Sixberry at Chase Bank on September 11,  
21 2014 asking if it's okay to communicate with Airbus about the  
22 credit history of PHP. It's clear that Airbus is looking for  
23 the PHP credit history, the PHP credit strength. And, of  
24 course, that's natural enough because PHS had no strength, had  
25 no prior dealings and anything that Airbus was to rely upon

1 necessarily had to be the financial background and strength of  
2 PHP. And the Court is finding that PHP's credit history and  
3 credit strength is what established a relationship with Airbus,  
4 be that relationship under the name PHP or PHS. But for the  
5 financial strength of PHP and the representations to Airbus by  
6 PHP and or PHS, there was no relationship that Airbus would  
7 have ever instituted in the first place.

8           In an e-mail that Darin Cannon sent, this is Exhibit  
9 17, it's an e-mail internally with Mr. Landry. He states that  
10 PHS has no credit history. I think that's obvious. And that  
11 e-mail simply confirms that. And Mr. Cannon says that because  
12 of that, again, Exhibit 17, because PHS has no credit history  
13 Airbus is requiring the credit history of PHP. This is an  
14 e-mail on October 20, 2014. In Mr. Mukai's testimony, and he  
15 is himself a CPA and has served as a Chapter 11 Trustee on  
16 numerous occasions in this district, his testimony was to the  
17 effect that PHS and PHP operated as a single economic unit. I  
18 agree with Mr. Mukai.

19           I think the first prong of the Bonham test has been  
20 satisfied and I am finding that these two entities acted as a  
21 single economic unit and that the creditors of both S and P did  
22 not rely upon the separate nature. In fact, if anything, they  
23 relied on the strength of P to do anything with S. They are a  
24 single economic unit. That first prong of Bonham has been  
25 satisfied. Of course, Bonham tells us you only need to satisfy

1 one prong and it's been satisfied.

2 But I'm going to talk about the second prong now.  
3 And the second prong of the Bonham test is whether the affairs  
4 of the debtor and the target, in this case PHS, are so  
5 entangled that consolidation will benefit all creditors. That  
6 is the creditors of both S and P. Let's talk about the  
7 entanglement seen by Andy Gutierrez Patrick. He tried mightily  
8 to keep the books and records separately but there were very  
9 regular confusion -- there was very regular confusion in the  
10 entries on the books of both S and P.

11 But at the end of the day, even if the records today  
12 are all shaped up and all the corrections have been made to the  
13 books and records so that they truly are separate and accurate,  
14 I don't think the bookkeeping alone is a measure of whether the  
15 entanglement exists. PHS or PHP periodically invoiced from the  
16 wrong entity and Mr. Gutierrez testified to that effect.  
17 Receipts from their customers, that is S's customers, sometimes  
18 went straight to PHP. He made these correcting journal entries  
19 but the confusion persisted.

20 One of the things that Mr. Gutierrez testified to  
21 was, and this is in a communication that he had with, I believe  
22 it was Chase Bank and I want to say it was Mr. Wes -- I forget  
23 his last name. Let me see if I can find that. Wes Biesen, he  
24 testified that this has really been a nightmare. And this was  
25 literally a year after P and S were supposedly engaged in

1 separate business. Mr. Gutierrez testified that his e-mail to  
2 Mr. Biesen was accurate, and that it was a nightmare. And  
3 that -- rather that he sent an e-mail indicating that the  
4 separate accounting was a nightmare for him to keep track of  
5 and keep separate.

6           When I look at Exhibit 48, it is Tina Cannon's July  
7 28, 2014 e-mail to Mr. Kincaid at Airbus, and that Exhibit,  
8 I'll pull it up. I don't think this is going to be able to be  
9 seen by counsel in the courtroom, but everybody's familiar with  
10 this e-mail I know. Her e-mail says,

11           "We will be operating the company as Phoenix  
12 Heli Support. The facility in Scottsdale will  
13 operate as a support center just for the Airbus  
14 market. The name PHS is just to define the  
15 facility. The people, the procedures, QA, and  
16 the policies are the same. All the financials  
17 and documentation that you will receive will be  
18 in Phoenix Heli Part's name, as PHS is just a  
19 name. If this is a problem we could operate it  
20 as Phoenix Heli Parts."

21           I think that is one of the most telling facts that  
22 this Court has seen that Tina, the very person who is on behalf  
23 of the objectors testifying that they were separate, that it  
24 was important they remain separate, that there's good business  
25 reasons that S and P were separate, she knew it was just a

1 name. They were one in the same. She treated them that way  
2 from the beginning. And she, more importantly, represented to  
3 the creditors of P and S that they were one and the same.

4           When Tina applies, Tina Cannon that is, applies with  
5 Turbomeca to establish a relationship, Exhibit 6, which is an  
6 August 4, 2014 document, reflects that the application is a P  
7 application, not an S application. Paragraph 5 of the  
8 application showed that there is a P lawsuit with TKCA. It  
9 doesn't say anything about S and, of course, S was not a party  
10 to that lawsuit. Exhibit 7 is essentially the very same set of  
11 facts, only involving Tina's efforts to try and establish a  
12 relationship with Airbus. And she makes the same  
13 representations. It is an application by Phoenix Heli Parts,  
14 not Phoenix Heli Support.

15           There's even confusion by, or maybe especially  
16 confusion, by the employees of PHP and PHS. But, of course,  
17 those employees of PHS were never anything other than leased  
18 employees from PHP. And to this I point to Exhibit 24 which is  
19 a purchase order discussion by Tom Morefield at PHP. He does  
20 not know whether the invoice ought to be an invoice coming from  
21 S or P. In short, the confusion between S and P was internal  
22 with the line and staff. It was internal with management and  
23 it was externalized with the creditors and the relationships  
24 that S and P were establishing outside the confines of S or P.  
25 The confusion was rampant and the confusion was frankly

1 intentional as well. And I am finding that Tina specifically  
2 was the one that spearheaded that confusion.

3           When I look at Exhibit 52 that confusion is further  
4 manifested when on August 15, 2014 the trade account that PHP  
5 is trying to establish with Airbus speaks of PHP only and not  
6 PHS. Interestingly Exhibit 60, which is a 12-19-14, that is  
7 December 19, 2014, service center agreement with Airbus by PHS,  
8 in paragraph 2B of that agreement it is warranted by PHS that  
9 it has a Part 145. It did not. We know that it did not have a  
10 Part 145 until many months later. And then my understanding is  
11 it did not acquire a Part 145 of any nature and, of course, had  
12 no employees with a Part 65 who can sign off on the work until  
13 May of 2015. Instead, what PHS did in connection with its  
14 relationship with the Airbus trade account agreement, it used  
15 P's series or Part 145, and that number was X8HR308Y, and  
16 really treated as if it was S's Part 145. And, of course, it  
17 is not.

18           Further evidence of the entanglement I think is  
19 demonstrated by the experience Mr. Mukai has had as trustee in  
20 this matter. When it became clear to him that the employee  
21 leasing arrangement needed to be terminated, and he did that a  
22 few weeks ago. The determination seems to have been made when  
23 he tried to get a PHP employee to do PHP work and the response  
24 was I'm doing PHS work and I can't get to the PHP work for a  
25 period of time. Then, of course, when the employment agreement

1 was terminated, first thing that Mr. Mukai came to realize is  
2 he couldn't even untangle the mess at that point because PHS  
3 would die on the vine if it was literally 100 percent cut off  
4 in its entirety from relationships and connections that it had  
5 with PHP. For example, the computer works, the phone works and  
6 so forth.

7           Mr. Mukai found, and still, as his testimony occurred  
8 the other day, was still in the midst of trying to untangle the  
9 relationship because there were ongoing ties that if they flat  
10 out were denied, if S was flat out denied access to P's server,  
11 for example, that S would simply die right on the spot and  
12 Mr. Mukai I think rightfully felt that that couldn't be done,  
13 that he needed to try to preserve the business operations of  
14 this single economic unit, and to step on one element of the  
15 single economic unit, that is the PHS division, would very  
16 likely be the death knell of anything PHS was involved in. So  
17 Mr. Mukai couldn't control the PHP employees that were under  
18 his charge as trustee. He couldn't control the ongoing ties  
19 between the relationship that S and P had. And I think that is  
20 very telling and in support of his testimony that PHP and PHS  
21 truly are and always have been a single economic unit.

22           One wonders why PHP would, if it was truly acting in  
23 its own self-interest, would allow, and apparently according to  
24 Ms. Cannon's testimony, have a board action that would  
25 authorize not only the occurrence of business by this new

1 entity, division if you will, into a territory that PHP  
2 certainly was in a position to have taken advantage of itself,  
3 why would PHP allow that to happen? Why would it allow all of  
4 its employees to be leased to then compete against PHP in the  
5 very business that that PHP was involved in, that is selling  
6 parts and doing service in the aerospace business? But it's  
7 exactly what they did. They provided their repair manual.  
8 They provided access to their customers. They provided access  
9 for PHS to the vendors of PHP. They marketed together and  
10 shared trade booths. The PHP side of the equation bore all the  
11 marketing expenses, and so PHS got a free ride off of that.  
12 The knowhow that everybody seems to agree Darin Cannon has, the  
13 great expertise he has was simply offered to for essentially  
14 free, or if you want, maybe a ten percent piece of Mr. Cannon's  
15 salary. But he had acquired tremendous knowhow, ingenuity and  
16 integrity apparently in this sector of the economy. And yet,  
17 PHP offers it on a plate to PHS for little or no consideration.

18           The credit of PHP was used to start the relationship  
19 that PHS would have with people who eventually became or  
20 entities that eventually became its creditors. Even the  
21 insurance policies of PHP were shared insurance policies. And  
22 look at Mr. Davis' report at Exhibit 78 where it shows that  
23 both S and P were jointly insured principals. And this is as  
24 of May 27, 2015. The software license for the computer use,  
25 strictly owned by PH, continually used by PHS and without any

1 payments by PHS to PHP. Storage in PHP's facilities was  
2 utilized apparently with no compensation by S to P. The phones  
3 were used apparently for no consideration by S to P. And when  
4 S actually has to go out and acquire a phone line, and does so  
5 in Exhibit 4, Darin, in his e-mail with the IT guy, Mr. Jones,  
6 it's demonstrated that the acquired communications line, that  
7 is I believe both a phone line and an Internet line, it was  
8 something that I understand the landlord was insisting upon and  
9 was just the very base minimal acquisition of this  
10 communication technology because S already had everything that  
11 it needed to engage in its business via what already was in  
12 place at PHP and for no compensation.

13           The e-mail traffic is an interesting thing because  
14 well after people would say that I'm doing this or I'm sending  
15 that on behalf of PHP, they're doing so on PHP e-mail  
16 addresses. And it's readily apparent from many, many exhibits  
17 that it was and always was a PHP e-mail line until, as I  
18 understand it, about two weeks ago when Mr. Jones was asked to  
19 disentangle that entanglement.

20           There was a fair amount of discussion about the below  
21 market rates that Mr. Davis was contending was being paid by  
22 PHS in the lease of employees from PHP. And then the work that  
23 PHS employees were engaged in is actually something that PHP  
24 could have itself done and charged out for a decent premium and  
25 a profit margin but instead, and this quote we'll find, that

1 Mr. Davis is correct, the rates that PHS was charged for the  
2 use of PHP employees, when you count all of the expense  
3 associated with those PHP employees, the rate that PHS paid for  
4 those people was actually less than the actual cost that PHP  
5 had to employ those people. Not exactly something an  
6 arm's-length business arrangement would ever engage in.

7           The PHS payables on the books of PHS reflect that 93  
8 percent of PHP -- 93 percent of those payables are owed to PHP  
9 and that 7 percent is for everyone else. And of that everyone  
10 else, the testimony of Mr. Davis would reflect, and I will  
11 agree that his testimony is accurate, that only \$6,500 of  
12 current account payables on the books of PHS are accounts  
13 payable to creditors other than creditors who have  
14 relationships with PHP. In other words, only \$6,500 worth of  
15 creditors have claims against S, and only S and not P, fairly  
16 nominal and this Court will find in connection with all the  
17 other liabilities that are on the books and records of PHS.

18           Significantly, PHS does not reflect anything for the  
19 contingent liability, which is in this Court's estimation a  
20 potentially massive, despite Mr. Carmelo's objection to my use  
21 of the word massive, a potentially massive liability, a  
22 contingent liability that PHS is facing, is that in the Court  
23 does not consolidate these two entities and, according to  
24 Mr. Mukai, PHP is going to need to convert to a Chapter 7, all  
25 that's going to essentially be left with is claims, I'll call

1 them litigation claims, against PHS for such things as PHS's  
2 usurpation of corporate opportunities, for such things as alter  
3 ego, piercing the corporate veil, using one as the  
4 instrumentality of the other for fraudulent transfers.

5 I'm not going to name the entire list of the causes  
6 of action it might have, but these at least were suggested to  
7 me by Mr. Davis and Mr. Mukai as claims that, while PHP doesn't  
8 at this point want to nor has it brought such claims, would  
9 essentially be left with no choice but to bring against PHS and  
10 perhaps others. That liability in the Court's estimation is  
11 considerable, even massive. And while I am not finding the  
12 validity of those claims, in other words I'm not ruling on such  
13 claims, the Court is finding that there is a substantial  
14 likelihood that PHP would prevail if litigation is brought on  
15 such causes of action against S and others.

16 I mentioned earlier the payment that PHS was making  
17 to PHP for the use of PHP management, specifically Tina Cannon,  
18 Darin Cannon and Andy Gutierrez. It is, as I understand it,  
19 ten percent of their gross salary is picked up by PHS. I will  
20 agree that it was just a rough justice. There was no real  
21 quantification of how many hours one spends on one bucket of  
22 work versus another bucket of work. It, frankly, I'm going to  
23 find was simply an arbitrary split. It might be fair to P, it  
24 might be fair to S, but it might be unfair to one or the other,  
25 but it was arbitrary in any event.

1           Let's turn to the line of credit, the \$500,000 line  
2 of credit that PHP issues to PHS. My understanding is that  
3 line of credit never really did exceed a draw of more than of  
4 about \$270,000 and that the, if memory serves, line of credit  
5 balance today is something out of the order of \$55,000. What's  
6 important about that line of credit is why in the world would  
7 PHP offer a line of credit to an entity that's going to be a  
8 startup entity that will compete directly against the line of  
9 business that PHP could and frankly should have taken advantage  
10 of? And what's worse is that line of credit called for zero  
11 interest for the first six months, no security whatsoever, and  
12 a four percent interest rate which according to Mr. Davis, and  
13 I think he has the expertise to opine on this, would be a below  
14 market rate in any event. It made no sense business wise for  
15 PHP to do this unless one simply views PHP as no more than a  
16 division of, an offshoot of an alter ego of PHS and PHP.

17           I told you I would speak a little bit to the  
18 Stevenson decision from 1993 from Idaho. Some of the elements  
19 that they look to in this case was whether there was a presence  
20 or absence of consolidated financial statements. Well, there  
21 wasn't. And that's understood. But was there a unity of  
22 interest and ownership between the two entities? No doubt  
23 about it. Interestingly, the Castrogiovanni ownership interest  
24 is the only variable on the equity side. And the testimony  
25 from Mr. Giovani is in direct conflict from what we heard from

1 Ms. Cannon. Mr. Giovani said I didn't ask for five percent. I  
2 didn't know I got five percent in PHS. I didn't want it. I've  
3 never seen documents pertaining to it. And he could care less  
4 whether that five percent is essentially obliterated if there  
5 was a consolidation. He had no opposition to the consolidation  
6 of these two entities.

7           Now Ms. Cannon's testimony was to the effect that  
8 Mr. Castrogiovanni wanted five percent. In fact, he wanted  
9 five percent of PHS. She isn't about to give five percent of  
10 PHP to Mr. Castrogiovanni. She tried to talk him down to three  
11 percent of PHS. It didn't happen. And so she just gave him  
12 five percent of the newly formed PHS entity in connection with  
13 the Vertical Aviation transaction in the summer of 2014. I'm  
14 going to find Ms. Cannon's testimony in this regard to not be  
15 credible, but rather I believe Mr. Castrogiovanni's testimony  
16 and it is directly contrary to what Ms. Cannon told me.

17           Turning back to Stevenson, one of the elements that  
18 the Court looked to was whether there was the existence of a  
19 parent and intercorporate guarantees and loans. Yes, we  
20 definitely had that. Not only do we have the \$500,000 line of  
21 credit, there is a current receivable on the books of PHS of  
22 \$410,000 owed to PHP. Now there is some suggestion that well,  
23 why wouldn't PHS simply have its business sold now and from  
24 those proceeds pay that \$414 -- \$410,000 to PHS. All will be  
25 well and then the buyer of PHS's assets can go forward and

1 prosper. Well, I think it ignores an extremely important  
2 element to that and that is what I've called the litigation  
3 claims. Any buyer who fully understands the contingent  
4 liability that PHS owes to PHP in connection with these  
5 litigation claims is not about to enter in such a transaction.  
6 And so I think it's illusory to believe that PHS could  
7 successfully do this and that a buyer could successfully side  
8 step any successor liability for the PHP litigation claims  
9 against PHS. That actually guarantees PHP cash, hard cash was  
10 used to acquire the Vertical Aviation assets. We talked about  
11 that already. PHP credit was used to start the business with  
12 Airbus and Turbomeca, and frankly done so by Tina Cannon in a  
13 deceptive way to both Airbus and to Turbomeca.

14           Next, Stevenson looks to the degree of difficulty of  
15 segregating individual assets and liabilities. And while  
16 again, the books, even if we accept them as accurate today, the  
17 books have been a mess along the way, have had confusion along  
18 the way. But more importantly the books alone are not the  
19 be-all and end-all about the degree of difficulty in  
20 segregating these two. I've talked about it. Mr. Mukai, even  
21 to this day after trying to segregate the two and terminate the  
22 employment agreement, still hasn't been successful in pushing  
23 the two apart. There's connections between people. There's  
24 connection between the work force, between customers, between  
25 vendors, between intellectual property, and that's a broad

1 category that Mr. Davis talked about, intellectual property  
2 including everything from the logo and the license to the name  
3 and so forth.

4           Next, Stevenson looks to the transfer of assets  
5 without the observance of corporate formalities. Frankly, we  
6 had that in states and we've talked about this already on the  
7 record today. The commingling of assets and business functions  
8 is reviewed by Stevenson. PHS, in my view, never had its own  
9 assets. It had PHP's assets and that's how it operated through  
10 human assets, through material assets, through financial  
11 assets. Even the lease that PHS signs when it acquires the  
12 Vertical Aviation assets, that lease is a lease that is signed  
13 by PHS as the tenant and apparently got Mr. Castrogiovanni off  
14 his lease obligation, which frankly even if there was a  
15 discussion between Castrogiovanni and Ms. Cannon about an  
16 ownership interest in the entity that he was selling to, it was  
17 in the Court's view likely in connection with his continued  
18 liability on the lease. He was afraid that if he didn't have  
19 some hook into the new entity that was buying the VA assets  
20 that he would be left without recourse if he didn't have some  
21 ownership interest because he still had liability on the lease.

22           But when it was successfully separated and  
23 Mr. Castrogiovanni had no further liability on the lease, then  
24 any interest, if he ever had it, in acquiring an ownership  
25 interest in PHS would have, in this Court's estimation would

1 have evaporated. And that is somewhat borne out by the e-mail  
2 exchange that is between Mr. Landry and Darin Cannon. The  
3 exact number of that e-mail exhibit I don't recall off the top  
4 of my head. But at bottom, I don't think Mr. Castrogiovanni's  
5 testimony is false. I think he did not ever ask for ownership  
6 interest in PHS. It was simply given to him.

7           Interestingly, Tina Cannon wanted the blessing of  
8 Mr. Nichol to form this new entity PHS and engage in a line of  
9 business, obviously competing with PHP. And Mr. Nichol,  
10 perhaps a financier, but certainly an equity holder in PHP  
11 apparently blessed that transaction and apparently didn't even  
12 ask for an ownership interest in PHS but was given an ownership  
13 interest by Tina Cannon. Not exactly clear to me why that  
14 happened.

15           So, at bottom, with respect to the second element or  
16 second prong of the Bonham test, I am going to find the TKCA  
17 and the Trustee have carried their burden of proof and that the  
18 affairs, this Court is finding that the affairs of PHP are so  
19 entangled with PHS that consolidation will benefit all  
20 creditors.

21           So let's focus now a bit more to harms and benefits.  
22 There was a fair amount of discussion about that and I want to  
23 talk about what I see as the harms and the benefits. This is  
24 what would essentially be Judge Marlar's weighing of the  
25 equities, which I think is appropriate. And I think it's

1 appropriate that we look to harms and benefits to creditors,  
2 equity holders and whether they appear in the PHP or the PHS  
3 entity. In Mr. Davis' words there is synergistic value between  
4 the combination, or if there is a combination of PHP and PHS.  
5 So let's take a hypothetical. Let's say that the true fair  
6 market value today of PHP and the true fair market value of  
7 PHS, let's say they're both negative. And effectively this is  
8 what Mr. Carmel was getting at when I think at the end of Day 2  
9 he was talking about combining a negative with a negative will  
10 only deepen the insolvency of the combined operation.  
11 Mr. Davis would say, no, that's not the case because the two  
12 standing alone have a lesser value together or to put it a  
13 different way, a greater negative than if you combine the two.  
14 They may still have, in the combined form, a negative value but  
15 it would be a lesser negative value. And that's by the way of  
16 saying that the creditors of both put together will have a  
17 greater return in the collective if these two are combined.  
18 And I'm finding that Mr. Davis' testimony is credible in this  
19 regard and not only plausible but the Court is finding that  
20 together they have greater synergistic value. Albeit perhaps  
21 still maybe negative fair market value.

22           And, of course, Mr. Carmel pointed to the financial  
23 statements that the Court reviewed and that is in evidence.  
24 These financial evidence are book value and that is not fair  
25 market value. And I think that's an important distinction.

1 But whether they're negative fair market value, I think that  
2 synergistically combining S and P in a consolidation is for the  
3 benefit of all creditors in the collective. For one, the  
4 litigation threats that are out there will go away. The  
5 intercorporate liabilities will go away. The confusion by  
6 employees in handling the affairs of these two entities, or two  
7 operations I think is the better way to talk about it, that  
8 confusion will go away. The confusion in the marketplace, be  
9 it the vendors of S or P and the customers of S or P, that  
10 confusion will go away. There's some significant positives  
11 that will happen in the marketplace and with all parties  
12 concerned if those two entities are consolidated. Mr. Mukai  
13 pointed to potential 363 sales and virtually everybody wanted  
14 to see S and P on the sale block at the same time. Of course,  
15 they also wanted employment agreements with Darin and Tina.  
16 And I'll talk about that in a little bit.

17           So what harm would befall the equity holders of PHP?  
18 Well, the equity holders of PHP effectively have nothing of  
19 value at this point. Whether it's book value or determination  
20 on fair market value, everybody agrees that PHP is upside down.  
21 It is underwater. It has negative equity. And frankly, the  
22 shareholders of PHP, in my view, don't have standing to raise  
23 the question of the harm that would befall them if you  
24 eliminate or I should say buddy up the exists of (sic) the S  
25 and P ownership interest. It's of no value now and it will be

1 of no value in an equity position if you consolidated the two.  
2 And of course the same is true on the other side. When you  
3 consolidate, the S members will hold nothing before  
4 consolidation of value, and they'll hold nothing of value after  
5 the consolidation. Their equity in S, the Court is finding  
6 whether measured by book value or fair market value, has no  
7 equity value. There's a negative equity in PHS. Particularly  
8 when you turn to what I think are the very significant, the  
9 very real threats of these litigation claims PHP has against  
10 PHS.

11           It doesn't really matter, in my view, much whether  
12 the percentages of ownership by Darin, Tina, Mr. Nichols, I'm  
13 missing the name of the last individual, whether they had X  
14 percent in P versus Y percent in S. If they're of negative  
15 value today it doesn't really matter if they continue to have  
16 negative value post consolidation. What I am going to find,  
17 though, is that if there is no consolidation, P according to  
18 Mr. Mukai, and I believe he's right, is a Chapter 7 debtor.  
19 And S, I think also, may die a slower death, but will die,  
20 without a doubt, an eventual death because it can't afford the  
21 litigation costs that is going to necessarily incur when the  
22 Chapter 7 estate begins its legal action against S. So in  
23 short, the failure to consolidate I think will be a certain  
24 death to both entities. A consolidation of the two I think  
25 results in a maximizing of the value and the reduction of the

1 negative that creditors are going to experience here. So the  
2 percentage of return that they will get, absent of  
3 consolidation, will I think be much lower than if you did  
4 consolidate. The return the Court is finding will be higher to  
5 creditors in the collective when a consolidation occurs.

6 I think it's important to note that it is only the  
7 insiders of PHP and PHS who are before this Court, or the  
8 insiders of, I'm sorry of both PHP and PHS. It's those  
9 insiders who are opposing the consolidation. No creditor of  
10 claims against either entity is standing forward saying that  
11 they oppose consolidation. It's important that Chase Bank, the  
12 major secured creditor of PHP, wants to see consolidation  
13 occur. It's important that Precision Avionics, or whatever  
14 their name is, too, has supported the consolidation. And I put  
15 great credence in the business judgment of the Trustee that  
16 acting for the benefit of P creditors and S creditors it's in  
17 their collective best interest if consolidation occurs. And I  
18 am not going to second guess Mr. Mukai's business judgment in  
19 this regard.

20 Turning back to the credit group, the 6500 that  
21 Mr. Davis identified as having claims against S but not against  
22 P, frankly I think of, based on the evidence I've seen, they,  
23 too, will be better served by a consolidation of the assets and  
24 liabilities of P and S. The likelihood of return to them, it  
25 may not be 100 percent, in fact, it virtually is a certainty

1 they won't get 100 percent, and no creditor will get 100  
2 percent here, perhaps excluding Chase Bank. But that \$6500  
3 creditor pool I think is more likely to receive a higher return  
4 if a consolidation occurs than if you do not consolidate these  
5 two entities. So to use Judge Marlar's verbiage if you will,  
6 does this make sense? Does it make sense? Is it fair? Is it  
7 equitable? Is it reasonable under the circumstances to  
8 consolidate these two entities and the Court's finding in this  
9 matter is yes.

10           So let's turn to what I think is perhaps the single  
11 most crucial question in this litigation. And that is why is  
12 it that Tina Cannon, and she, make no mistake, the Court is  
13 finding, is the driving force to create a PHS and to create a  
14 PHS business model. Why did she do that when she's the  
15 president of and a major shareholder of PHP? She would say  
16 that number one, John Castrogiovanni wanted five percent. I've  
17 already dealt with that. I don't think John Castrogiovanni  
18 wanted five percent. He testified exactly to the contrary. I  
19 think that is something that simply is not credible under the  
20 circumstances.

21           Her next indication was that acquiring the Vertical  
22 Aviation business had a level of liability that PHP should not  
23 bear and should try to side step by creating a new entity that  
24 itself would bear that liability. Well, this was an asset  
25 purchase. It wasn't a stock purchase, for example. It did not

1 acquire the liabilities of Vertical Aviation, minus a few.  
2 There were some I think utilities, maybe Salt River Project and  
3 a lease liability. It did have to need a facility. That  
4 Scottsdale facility had to be leased by the buyer and that is a  
5 liability that was picked up and it was a liability that got  
6 Mr. Castrogiovanni off of. But, you know, interestingly, what  
7 happened here is the PHS lease for that Scottsdale facility was  
8 guaranteed by PHP. But for PHP there is no lease. And the  
9 original discussions, according to the e-mail traffic, seem to  
10 suggest that PHP was going to be the landlord and even Darin's  
11 e-mails, I want to say that's in Exhibit 80, suggest that, you  
12 know, why can't we just do this under PHP? Well, we saw some  
13 more e-mail traffic between e-mails with Ms. Urias and  
14 Mr. Onley (sic) if I'm pronouncing the name correctly, that  
15 there was some discussion about creating this separate entity  
16 and gee, it really doesn't help that separateness if we have a  
17 guarantee by PHP of a PHS lease. But it happened nevertheless.

18           And in my view of Ms. Cannon's explanation as to  
19 trying to side step Vertical Aviation's liability for work it  
20 had done in the past is not a credible argument, and it was  
21 just an asset purchase and the liabilities it did incur were  
22 essentially novations (sic). A brand-new lease, a new  
23 arrangement with the power company, the few liabilities that it  
24 did pick up were what was discussed in Exhibit 80, the due  
25 diligence list. And the way I read Exhibit 80, this due

1 diligence list, and I think it was an e-mail from Darin to a  
2 handful of employees within PHP, this due diligence list didn't  
3 seem to suggest at all that he was concerned about past  
4 liabilities from past activities and business transaction that  
5 Vertical Aviation had. It was only concerned about those  
6 liabilities that it was overtly picking up, the lease, the  
7 power and so forth. I think that is essentially a fiction in  
8 the rationale that Ms. Cannon was suggesting to the Court as  
9 one of the four elements as to why she created PHS and why this  
10 business opportunity was taken over by PHS when it should have  
11 been PHP's.

12 She then points to the third factor which is PHP was  
13 involved in the parts and repair business for MD, McDonnell  
14 Douglas helicopters, and in the business of doing work on and  
15 selling product related to the Dash 8, the fixed wing business.  
16 But in her view this was a whole new line of business. It was  
17 an Airbus business, different type of equipment, different set  
18 of vendors and customers. And in her words it was the human  
19 factor that ought to lead PHS as an entity separate and apart  
20 from PHP.

21 Well, that's interesting. But, in fact, it's not how  
22 it played out because all of the people who did all of the PHP  
23 work were PHP employees. Yes, they were leased to PHS, but  
24 there was no separation of the human factor. They continued to  
25 be entangled and the whole human factor in a red herring.

1 These people continued to be mistaken, confused, bollixed up in  
2 the process of trying to decide who they're working for and who  
3 they're billing and why they're doing it this way or that way.  
4 There was no segregation of the human factor.

5 In the Airbus line of business, be it through Airbus  
6 itself, or through Turbomeca, or there was a group called H-5 I  
7 think it was and then Pima County, for example, all of this  
8 work was initially fronted by and was communicated to those  
9 parties as an -- as a PHP operation and transaction, and not as  
10 a Heli Supports transaction. So the human factor Ms. Cannon  
11 points to I think is a nonfactor altogether.

12 So the one factor that she raises that gave me some  
13 pause was the question of the fuel tank liability that PHS  
14 might incur if it were to take over the Scottsdale facility  
15 lease. Now, facially that seems like a reasonable concern  
16 because if there is a long-term use of the property by the  
17 seller of the VA assets and there's a new lease that is  
18 occurring here, is PHS or PHP stepping into that liability by  
19 taking over that facility and becoming the tenant.

20 I think that is really an excuse that is made up well  
21 after the fact, because when you look at Exhibit 80, the due  
22 diligence list that Darin was putting together, there's no  
23 discussion about liability for fuel tanks. I think this is a  
24 convenient excuse, well after the fact, dreamt up in the  
25 context of this litigation, or perhaps even before this

1 litigation in bankruptcy court and more in connection with the  
2 bond litigation in state court after the judgment had been  
3 entered against PHP. This is a made-up excuse after the fact.

4           And while tempting and puzzling at the outset, and  
5 maybe looking as if something was really a concern to the  
6 principals of PHP such that they ought to have a separate  
7 entity to take on that business opportunity, I don't think they  
8 thought about the fuel tank liability at all and the due  
9 diligence didn't at all touch on the sort of things that  
10 somebody concerned about such liability might do. Did they ask  
11 for a Phase 1? Did they get a Phase 2? Was there any thought  
12 or discussion in e-mail Exhibit 80 about this type of thing?  
13 Did they get any kind of opinion at all about the leaky tanks  
14 or any reports from ADEQ? There was no evidence whatsoever to  
15 support the contention now that Ms. Cannon is making, that she  
16 was concerned about fuel tank liability. I frankly find her  
17 testimony, once again, to be not credible in that regard.

18           Now there was a fair amount of discussion originally  
19 in the papers filed by the parties, and to some degree in the  
20 evidentiary hearing, about this Court adopting Judge Duncan's  
21 finding at the bond hearing that PHS was in the business of  
22 dissipating the assets of PHP. I don't disagree with her  
23 findings. I'm not adopting her findings. But I am finding  
24 today that in the evidence I have seen in this trial before  
25 this Court, that is exactly what happened. PHS appropriated

1 these opportunities, dissipated the assets of PHP, all to the  
2 harm of and to the single economic unit factor that this Court  
3 is finding to occur here.

4           One of the things that Ms. Cannon has pointed to  
5 about a consolidation and the troubling effect that may have on  
6 the business of PHS is that PHS now does have a Part 145 and  
7 has since apparently May of 2015. Her contention is that if we  
8 consolidate these entities there will be a need for the  
9 consolidated entity to go out and get the 145, the Part 145  
10 necessary to do the work that is being done in the name of S at  
11 this point. Of course, P has a Part 145. P has all the  
12 employees that did all the work and always did all the work for  
13 PHS. It's true apparently that there are different levels of  
14 145 and that S perhaps has a higher level of the Part 145 than  
15 does P, but I simply am not going to bite on Ms. Cannon's scare  
16 tactic on this element. I think it's something that the  
17 parties absolutely can and will work around.

18           No matter what I do here today, in consolidation or  
19 no consolidation, if there is a future hope for any return to  
20 creditors it seems to me that there is going to be a necessary  
21 cooperation between Tina and Darin, because whoever wants to  
22 buy these assets of P or S, or the combination of P and S,  
23 Darin and Tina apparently are important players for that  
24 potential buyer. So there's not much Mr. Mukai as trustee can  
25 do in this matter to change that fact. But he nevertheless has

1 to press on and try to maximize the value to creditors and I do  
2 believe that the maximum value to creditors, the biggest return  
3 creditors are collectively going to receive is a consolidation  
4 here.

5           Mr. Mukai is still going to be left with a tough  
6 puzzle, and that is how to get these assets to the finish line  
7 on what seems to be, what all parties seem to agree, has to be  
8 a sale. You're going to need some cooperation from Tina and  
9 Darin. I took some consolation in the belief that Tina and  
10 Darin understand that their own self-interest is going to be  
11 served if they sign an employment agreement. Tina herself  
12 indicated, under the right circumstances, which I assume to  
13 mean dollars primarily, she would sign an employment agreement  
14 even if that employment agreement had a non-compete.

15           Mr. Mukai's got his hands full in trying to still  
16 monetize a consolidated PHP and PHS. And it seems to me that  
17 Mr. Mukai has done his level best up to this point in this case  
18 to try to maintain a relationship with Darin. He has spoken  
19 very highly of Darin and his abilities in connection with this  
20 trial. He's, as Mr. Mukai has tried his level best to maintain  
21 a relationship with Tina, albeit under really hard  
22 circumstances where Tina seems to have done everything she can  
23 to try to undercut the ability of PHP to go forward and  
24 reorganize in this case.

25           But Mr. Mukai you're left where you're left. But I

1 do believe that the best interest of all creditors of both PHP  
2 and PHS are served by this Court issuing its consolidation  
3 order.

4           Mr. Cohen, I'm going to turn to you. First of all,  
5 I'd like you to prepare a very brief order that bases the  
6 Court's findings on the record today as the basis for the  
7 consolidation motion grant and the denial of the objections  
8 that have been raised before me.

9           MR. COHEN: Will do.

10           THE COURT: Please run that by Mr. Carmel before you  
11 send it off to me. Mr. Cross, do you have a question?

12           MR. CROSS: I do, Judge. Thinking about that form  
13 of order, there are going to be I think some necessary  
14 challenges that Mr. Mukai is going to face that we should  
15 probably address and if you want to do it by a separate form of  
16 order that would be fine. But, for instance, just dealing with  
17 these two entities, he's going to have to go out and take  
18 control of the PHS property. He's going to have to go out and  
19 get those bank accounts changed over. He's going to need an  
20 order that basically says he can do that, as you know, these  
21 days representing trustees, you just don't walk into a bank and  
22 say I'm the trustee. Usually it helps if you got a court  
23 order.

24           I think it would also be helpful to have in an order  
25 that the Cannons will cooperate and they're ordered by you to

1 do that. I think they will but, again, it'd be nice to have  
2 that in an order. I think there's some things about, you know,  
3 again, just kind of knocking this through my head, probably  
4 there needs to be something on file with the Secretary of State  
5 that says this entity no longer exists. We probably need to  
6 file something with the IRS. There's probably got to be a  
7 notification to the FAA.

8 THE COURT: Are you saying there ought to be a filing  
9 for dissolution of that LLC?

10 MR. CROSS: Exactly. Basically saying --

11 THE COURT: So do you want an order from me directing  
12 Mr. Mukai to file the dissolution papers and that I've given  
13 him the authority to do so?

14 MR. CROSS: Giving him the authority to do so, right.  
15 Again, giving him the authority to enter the premises, change  
16 the locks, take possession of property, things like that. So,  
17 again, it's just more, in dealing with third parties having  
18 that authority in the form of an order, since that entity, you  
19 can't go show it that its filed bankruptcy. You can't show a  
20 voluntary petition. All you can show is an order of  
21 substantive consolidation which I don't think to the general  
22 lay person they're going to get it. Is that unreasonable?

23 THE COURT: Let's hear what Mr. Carmel says.

24 MR. CROSS: Okay.

25 MR. CARMEL: Your Honor, I haven't thought about it

1 until the last 30 seconds when it was raised. The first part  
2 about it, the first part of what Mr. Cross suggests I think is  
3 probably appropriate. I'm a little perplexed why he would want  
4 to get an order saying dissolution. I'm not so sure that  
5 that's necessary. Just because an entity is consolidated does  
6 not mean that it is therefore dissolved.

7 THE COURT: Is it more a function of who has the  
8 control capacity and should the Court's order of consolidation  
9 make it crystal clear that Mr. Mukai as PHP trustee likewise  
10 has complete control authority over all business of PHS?

11 MR. CARMEL: Well, I think that's the effect of your  
12 ruling.

13 THE COURT: I agree. But should we spell it out in  
14 the order?

15 MR. CARMEL: It's -- I don't want to be flippant  
16 about this, but it's your order and if that's your decision,  
17 that's your decision.

18 THE COURT: Tell me what you think is the negative in  
19 doing so.

20 MR. CARMEL: I think, Judge, that there should be  
21 some pause before you go through a quote-unquote dissolution.  
22 If you rule substantive consolidation, dissolution as I recall  
23 was never sought in the motion.

24 THE COURT: Here's what the conclusion of the motion  
25 to consolidate says. "For the reasons set forth herein, TKCA

1 requests that the Court enter an order, one, granting  
2 substantive consolidation of the debtor's bankruptcy estate  
3 with PHS." I've done that and I will sign that kind of order.  
4 "Number two, granting nunc pro tunc substantive consolidation  
5 of the filing date." I haven't addressed that and I'd like to  
6 speak to that issue in a second. "Number three, preserving any  
7 avoidance actions for the benefit of the bankruptcy estate."  
8 I'd like to talk about that. And then "Number 4, merging PHP  
9 and PHS," which in effect is what a consolidation is, but in a  
10 legal sense, at the Corporation Commission. I think that's  
11 really what the Trustee is looking for and not so much of an  
12 official death of PHS at the Corporation Commission. And then  
13 finally Number 5 was "For such other and further relief as the  
14 Court may deem just and appropriate under the circumstances."

15 MR. CARMEL: Your Honor, you've asked me for my view.  
16 I've expressed my view. I'm not in a position to stipulate to  
17 anything. If you order it, you order it.

18 THE COURT: Okay. So Mr. Cross, in light of the  
19 wherefore clause contained in TKCA's motion, is your request  
20 for the death sentence to PHS really more a merger that  
21 Mr. Mukai may sign off on?

22 MR. CROSS: Yeah, and again, I wasn't really trying  
23 to -- what I was trying to show is that if someone goes down  
24 and checks the Corporation Commission and it shows this is  
25 still a viable entity with these other people, I think there

1 needs to be some public record to show, no, that entity now has  
2 merged with PHP and is legally the same as PHP. That's all I'm  
3 saying.

4 THE COURT: So it sounds like you are agreeing with  
5 the wherefore clause, the merger language, not the end of life  
6 issue?

7 MR. CROSS: Yeah, I mean essentially what I want to  
8 do is have a public record that says PHS and PHP are now an  
9 entity.

10 THE COURT: Okay. I think it's appropriate to  
11 include in the order granting the motion to consolidate that  
12 the Trustee's empowered to sign any and all documents necessary  
13 to merge PHP with PHS and to do so as quickly as he decides is  
14 appropriate.

15 MR. CROSS: Okay. And, again, that he would have all  
16 powers over PHS that he has as a trustee over PHP.

17 THE COURT: I think that goes hand in hand with that  
18 merger request.

19 MR. CROSS: Okay.

20 THE COURT: So let's talk about preserving avoidance  
21 actions for the benefit of the bankruptcy estate. Tell me,  
22 Mr. Cohen, this is your motion, what you're driving at there.  
23 PHP still has its avoidance actions, although if some of those  
24 avoidance actions are against PHS, of course, they evaporate  
25 and they merge into the merged entities.

1 MR. COHEN: Right.

2 THE COURT: Are there other avoidance actions that  
3 you're afraid PHP might lose by consolidation?

4 MR. COHEN: I've not done any investigation. I think  
5 your testimony from Mr. Mukai that he has not yet fully  
6 investigated those types of claims, that --

7 THE COURT: But that was a discussion about whether  
8 he's fully investigated the claims against PHS and its actors.

9 MR. COHEN: Correct. And so that's what we're going  
10 at here. That conclusion section is modeled, other than the  
11 merger language that I inserted in there, that conclusion  
12 section's modeled after Bonham. There's two other provisions  
13 that are in there. Nunc pro tunc relief back to the filing  
14 date and the preservation of avoidance actions are both found  
15 in Bonham and I think that's proper authority for that.

16 And the thinking is, Your Honor, first of all we want  
17 to give Mr. Mukai the ability to preserve -- to pursue other  
18 actions, preferences, fraudulent transfers back to the filing  
19 date. I think that's a more accurate scenario. These were  
20 never two entities, as the Court just ruled, and so the reality  
21 is that when PHP filed bankruptcy PHS should have been in that  
22 mix.

23 And so Mr. Mukai should have the ability to then go  
24 back and pursue actions after investigation and if appropriate.  
25 And then the other is that some courts I think find that in the

1 event that two estates merge, the avoidance actions are  
2 extinguished.

3 THE COURT: Between the two.

4 MR. COHEN: Between the two, certainly. And --

5 THE COURT: But not extinguished beyond that.

6 MR. COHEN: Correct, Your Honor. Right. But I want  
7 to make sure that if there is some piece of that that Mr. Mukai  
8 wants to pursue, that he has the right to do that. And that on  
9 this issue I will defer to the Trustee because we filed this  
10 motion and we did not have the original support of Mr. Mukai.  
11 Now we're walking hand in hand forward with this relief that  
12 the Court's granted and so it's -- I will defer again to  
13 Mr. Mukai if he wants that authority, if merger and  
14 extinguishment takes care of those issues, as the Court said,  
15 fully, then that's fine if Mr. Mukai's okay doing that. He  
16 could always release or waive or admit that those are now been  
17 extinguished and they're relinquished. But to the extent they  
18 were of any value to the estate, I wanted them preserved as  
19 they did in Bonham.

20 THE COURT: It sounds like what you're more concerned  
21 about is any avoidance actions that PHP and PHS may have at  
22 this moment before consolidation other than those intercompany  
23 avoidance actions.

24 MR. COHEN: That was more artfully, but thank you,  
25 Your Honor.

1 THE COURT: Okay. I'm willing to sign an order to  
2 that effect.

3 MR. COHEN: Thank you.

4 THE COURT: And then finally the nunc pro tunc aspect  
5 of this. Mr. Cross, will you speak to that or did you want to  
6 go back to the avoidance action?

7 MR. CROSS: No, no, no. I want to talk about that  
8 because that's problematic to me for this reason. If it's nunc  
9 pro tunc does that mean the Trustee has to go back and file  
10 monthly operating reports for PHS as if it filed bankruptcy on  
11 the same date as PHP? Because that could be a nightmare.

12 Secondly, that means it's going to be another  
13 administrative liability for the quarterly fees that were under  
14 the U.S. Trustee for any disbursements that were made by PHS.  
15 So I'm not sure as far as from the administrative --

16 THE COURT: In other words, the trustee is not joined  
17 into that element of the TKCA motion?

18 MR. COHEN: Exactly. In other words, if we -- I  
19 don't think Mr. Mukai wants the headache of having to go back  
20 and prepare monthly operating reports for an entity that hasn't  
21 been in bankruptcy that he had no control of.

22 THE COURT: Well, entry of nunc pro tunc orders in  
23 all kinds of different context require extraordinary  
24 circumstances. I have not seen any evidence that would suggest  
25 there's an extraordinary circumstance justifying today the

1 entry of an order granting this motion nunc pro tunc to the day  
2 of the filing. If TKCA believes that is still a crucial  
3 element of this motion, I'm going to deny the relief requested  
4 without prejudice. But, frankly, I don't think I've got a  
5 record upon which I could do it on a nunc pro tunc basis today  
6 in any event.

7 MR. COHEN: Very good.

8 MR. CROSS: Mr. Mukai asked me a question as we are  
9 sitting there. How quickly can he get an order so that he can  
10 get to the bank and make sure that whatever monies in there is  
11 still there when he gets there.

12 THE COURT: I can sign it today

13 MR. CROSS: Very good. I will of course, run it by  
14 Mr. Carmel just --

15 THE COURT: Okay. Mr. Carmel is waiving the  
16 opportunity to look at it, it sounds like. I don't want a lot  
17 of larding on of things that later I'm going to hear from  
18 Mr. Carmel about how it wasn't part of the record.

19 MR. CARMEL: Just say the motion is granted and the  
20 other thing that you stated.

21 THE COURT: This is going to be a very simple order  
22 that I'm want to sign here.

23 MR. CARMEL: Very good.

24 THE COURT: Mr. Cohen, other questions about the  
25 Court's order?

1           MR. COHEN: I don't have any questions, Your Honor.  
2 We will pen the order and run it by Trustee and Trustee's  
3 counsel and then lodge it with you as soon as we get back to  
4 the office.

5           THE COURT: Okay. And then Mr. Carmel, anything  
6 you'd like to add, discuss, question at this moment?

7           MR. CARMEL: I don't believe so, Your Honor.

8           THE COURT: Okay. It was a hard-fought piece of  
9 litigation. I know there's been some bad blood that's occurred  
10 here. But at the end of the day, even though the parties  
11 didn't stipulate to the entry of any documents, which I find a  
12 little puzzling, I think that it was a fight well fought and I  
13 credit the lawyers for, at least before the Court, conducted  
14 themselves in a civil manner. It's a tough case and there's  
15 going to be a winner and a loser and I understand that.

16           But, frankly, I think that at the end of the day  
17 Ms. Cannon, in particular, made the harm, made her bed. And  
18 I'm not going to reward her activity by keeping these separate  
19 entities. And that's one of the factors that weighs on me,  
20 because I think if I were not to consolidate these entities it  
21 would encourage people to do exactly what she did, and strip  
22 the value out of an entity that she's trying to strip out  
23 because she's trying to avoid, I think, the whole reason she  
24 did what she did in forming PHS was, to try to have a business  
25 opportunity preserved that would be separate and apart from

1 what apparently was going to be a very big judgment liability  
2 to the TKCA. I'm not going to condone that. I'm not going to  
3 help advance that cause.

4 All right. This Court is adjourned.

5 (Proceedings Concluded)

6

7

8

9 I certify that the foregoing is a correct transcript from  
10 the record of proceedings in the above-entitled matter.

11

12 Dated: April 20, 2016

13

14

15

16

17

18

19

20

21

22

23

24

25

  
AVTranz, Inc.  
7227 N. 16<sup>th</sup> Street #207  
Phoenix, AZ 85020