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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DANIEL J. O'HARE,)	
MICHAEL R. STEWART)	
)	
Plaintiffs,)	
)	CIVIL NO.:
VS.)	SA:04-CV-00566-H
)	
FORD F. GRAHAM,)	
KEVIN C. DAVIS,)	
)	
Defendants.)	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE HARRY L. HUDSPETH
UNITED STATES DISTRICT JUDGE
VOLUME I

On the 16th day of February 2010, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Harry L. Hudspeth, Judge
presiding, held in San Antonio, Bexar County, Texas:

Proceedings reported by Machine Shorthand.

1 APPEARANCES

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23

24

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1 demonstrative. And would it be okay if I ask Mr. Davis
2 to step down?

3 THE COURT: Yeah. He could do that.

4 MR. FRIZZELL: Would you mind, Mr. Davis?

5 THE WITNESS: Not at all. Sure.

6 MR. FRIZZELL: Thank you.

7 THE COURT: As long as you keep your
8 voice up where we can all hear you.

9 Q. (BY MR. FRIZZELL) Now, Mr. Davis, this looks
10 like a fairly complicated structure, does it not?

11 A. Somewhat.

12 Q. But in fairness, in your career, you have
13 dealt with far more complicated structures, right?

14 A. Yes.

15 Q. Both as a lawyer as an investment banker,
16 right?

17 A. As a business person.

18 Q. And, in fact, this is a pretty simple -- once
19 you get down to it, it's a pretty simple structure for
20 your businesses, is it not?

21 A. Yes.

22 Q. Because right here is a company called Vulcan
23 Capital. And Vulcan Capital at this time was owned half
24 by yourself and half by Mr. Graham's family trust,
25 right?

1 A. That is correct.

2 Q. And to be clear, Vulcan Capital was
3 essentially run by yourself and Mr. Graham. Fair?

4 A. That is correct.

5 Q. And so y'all would make all the decisions for
6 that entity, right?

7 A. That is correct.

8 Q. Vulcan Power Group was really the company that
9 everyone was fighting about, right?

10 A. Yes.

11 Q. And that was a company that had a couple of
12 subsidiaries which were just companies that it owned,
13 right?

14 A. Correct.

15 Q. One of them was called Vulcan Advance Mobile
16 Power Systems?

17 A. Yes.

18 Q. And it was in the business of power generation
19 through turbines?

20 A. In the business of building mobile power
21 plants.

22 Q. Exactly. Such as the name Mobile Power
23 Systems, right?

24 A. Correct.

25 Q. And the other business that the folks at

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1 Q. You should, because the oddest thing is the
2 address of Intellicoat Technologies is the address of
3 Vulcan Capital. Were you aware of that?

4 A. Yes.

5 Q. And so this company that you really have very
6 little to do with and you've never looked at it, it's
7 your office?

8 A. We engaged in a transaction with a venture
9 capital group in Princeton in the early 2000s. That's
10 one of the companies that they incubated. As part of
11 our deal with them, we gave them office space. It -- to
12 my -- to my knowledge, it -- it doesn't have very many
13 revenues, and I haven't looked at that particular Web
14 site in a long -- or I have never looked at that Web
15 site. I don't have very much information on Intellicoat
16 anymore.

17 Q. Sure. Let's go back to your kind of
18 representation to the world of the business of Vulcan
19 Capital. Invests in hard assets, minimizes investment
20 risks, allows for more financial and capital markets
21 engineering. Is that true?

22 A. These were all true until recently.

23 Q. How recently?

24 A. Until Vulcan Advanced Mobile Power Systems had
25 to file for bankruptcy. **Until Vulcan Capital Management**

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1 could no longer do business. Until basically we ran out
2 of money.

3 Q. How recently?

4 A. Vulcan Capital Management has a judgment that
5 prevents it from doing anything, and that was September.

6 Q. Who won that judgment against you?

7 A. Susan Flannigan.

8 Q. Huh. Well, we'll hear from her. You settled
9 with her, too, right?

10 A. Correct.

11 Q. During this whole period, '04 to today, has
12 Vulcan Capital Management been doing poorly?

13 A. From that whole period 'til today, Vulcan
14 Capital Management at times has done okay. Has it made
15 a lot of money? No. Have some of the investments in
16 the Vulcan family made money? They have. But all of
17 that money was invested in Vulcan Power Group in order
18 to keep Vulcan Power Group from going into bankruptcy
19 and being able to pay its bank debt and being able to
20 have employees and ultimately being able to pay the
21 settlement.

22 Q. Really? Because if you continue on your Web
23 site, don't you represent that, since 1997, Vulcan has
24 completed over 35 transaction worldwide with a value
25 exceeding \$800 million?

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1 A. That's true. And this Web site is old.

2 Q. Then we turn the page, and we see that Vulcan
3 seeks partners with strong management skills. It
4 invests between \$10 million and \$300 million on selected
5 transactions in a whole list of sectors -- coal, energy,
6 energy technology.

7 I mean, if one were to read this, it
8 sounds like you're doing pretty well.

9 A. Well, that was all true. Like I said, **Vulcan**
10 **Capital Management can no longer do business.**

11 Q. So when Susan Flannigan got her \$400,000
12 settlement judgment against you, that drove you out of
13 business?

14 A. **That drove Vulcan Capital out of business.**

15 Q. Let's keep looking, then. Because what's
16 weird is the next page is milestones, right? And the
17 good news is it takes us all during the period of time
18 where there was a settlement between you and my clients,
19 right -- 2004, '05, '06, '07. Right?

20 A. Correct. Yes.

21 Q. And the Susan Flannigan judgment wasn't until
22 '09?

23 A. Correct.

24 Q. And that judgment was because you didn't pay
25 her settlement either, right?

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1 A. Correct.

2 Q. Which you settled on the eve of trial to avoid
3 a judge making a decision, right?

4 A. We settled before the trial because we thought
5 it made business sense. We believed that we would be
6 able to make the payments. We had a commitment from an
7 affiliate to loan the money to make it. And that
8 particular affiliate did not get the revenue in the time
9 period necessary to complete the settlement payments.

10 Q. You know, what's interesting is you settled
11 our case in '04; and, yet, you immediately said you
12 couldn't pay. Right?

13 A. Correct.

14 Q. And we can look, though, at the 2004
15 milestones. It's not very big, so I'll have to read it
16 aloud. You tell the world that in 2004 Vulcan's coal
17 operations ranked as the seventh largest in the
18 United States. Right?

19 A. It was sold and -- yes. Before -- before the
20 settlement, all of our coal holdings at that particular
21 time were sold. And all of the money that we made that
22 year was invested back into Vulcan Power Group.

23 Q. Well, let's go to 2006 because the good news
24 is you got right back into the coal business, right?

25 A. In 2006, yes.

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1 Q. Yeah. During the time you owed my clients
2 money, right? During the time you had no ability to
3 pay, right?

4 A. Correct.

5 Q. During the time there was no money, right? In
6 2006 Vulcan created a new coal company when it purchased
7 the assets and mining equipment in Central Appalachia,
8 right?

9 A. Correct.

10 Q. In 2006 Vulcan's Emergency Services Company
11 completed a comprehensive review of all power plants in
12 Bangladesh, right?

13 A. Correct.

14 Q. You led the acquisition of a refinery for a
15 hedge fund client, right?

16 A. Correct. But to describe those -- but to
17 describe those as Vulcan Capital made a lot of money,
18 Vulcan Capital raised from third-party investors equity
19 to buy the high-wall mining assets that you're talking
20 about. Vulcan Capital advised the hedge fund and
21 granted that acquisition but ended up with no equity in
22 that -- in that refining deal. And what was the third
23 one that you had mentioned? Oh, Bangladesh.

24 Q. Right.

25 A. Vulcan, through an affiliate was successful in

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1 negotiating a contract that would have provided for
2 sales for AMPS. The government couldn't get their
3 financing together. That was another one of the deals
4 that we had worked hard to put together that would have
5 enabled the Vulcan AMPS companies to pay off all of
6 their debt.

7 Q. You know, why are you touting this on your Web
8 site as milestones and telling the jury that somehow
9 they were all failures?

10 A. They're failures now. They weren't failures a
11 while ago.

12 Q. Well, a while ago you owed the money.

13 A. Pardon me?

14 Q. A while ago, '06, you owed us money and
15 weren't paying it. Were they failures or successes?
16 Milestones or failures?

17 A. When we raised money from third parties, the
18 assets that you purchased with, that belonged to those
19 third parties. What we made we invested in Vulcan Power
20 Group to keep Vulcan Power Group alive. Basically we
21 divested ourselves of all of our assets. I went broke.
22 I had to file for bankruptcy. **Vulcan Capital Management**
23 **is basically out of business**. All of our net worth went
24 into the businesses that are obligors on this
25 settlement.

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1 All of -- fifteen of the 17 entities that
2 we created after the settlement were all under one of
3 the obligors. And had there been windfall profits or
4 had there been serious profits, there would have been an
5 ability to make good on the settlement. Basically, we
6 spent all of our net worth trying to save Vulcan Power
7 Group.

8 THE COURT: What did you say about 15 of
9 the 17 entities? I missed the end of that.

10 THE WITNESS: Fifteen of the 17 entities
11 that we created since the settlement were all owned by
12 one of the obligors. And, thus, profits would have been
13 going up to one of the obligors, giving it the
14 ability --

15 THE COURT: Okay. Fifteen of the 17
16 entities were creditors of some other entity?

17 THE WITNESS: No. Fifteen of the 17
18 entities that were created since 2004 --

19 THE COURT: Uh-huh.

20 THE WITNESS: -- were underneath one of
21 the obligors, i.e., owned partially by one of the
22 obligors.

23 THE COURT: And what was the name of that
24 obligor?

25 THE WITNESS: Vulcan Capital, which was

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1 and I order a steak and I eat the steak knowing I have
2 no money in my pocket, did I intend to pay for the meal?

3 MR. CASTILLO: Objection, argumentative.
4 With a charge card, you could always charge and pay it
5 later.

6 Q. (BY MR. FRIZZELL) I've got no credit card.
7 I've got no ability to pay, as you've testified.

8 THE COURT: It's a hypothetical question
9 addressed to the witness; is that correct?.

10 MR. FRIZZELL: It is, Your Honor.

11 THE COURT: All right. You may answer it
12 if you can.

13 A. We didn't have the ability to pay your
14 clients, but I'm going to repeat my testimony from a few
15 minutes ago. We made arrangements to borrow enough
16 money to pay the Susan Flannigan settlement from an
17 affiliate that had money coming from a customer. That
18 affiliate didn't get the money in time. And in the
19 middle of paying, I think on the third payment -- it
20 might have been the fourth payment -- because that
21 customer had not been paid, it was not able to lend
22 Vulcan AMPS the money to complete the settlement. So
23 that case ended up going into default, and they served
24 restraining orders and **Vulcan Capital Management can no**
25 **longer do business.**