UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
Advanta Corp., et al.,	.	
Debtor(s).	.	Bankruptcy #09-13931 (KJC)

Wilmington, DE
December 16, 2010
2:33 p.m.

TRANSCRIPT OF DISCLOSURE STATEMENT HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Good afternoon, everyone.
2 UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.
3 MR. LEMONS: Good afternoon, Your Honor, Rob Lemons
4 from Weil, Gotshal & Manges on behalf of the Debtors. I
5 think, Your Honor, really the only contested matters going
6 forward on the agenda today are the Motion to Approve the
7 Disclosure Statement and Solicitation Procedures and the
8 motion and objections regarding exclusivity extensions. With
9 Your Honor's permission, I'd first like to provide what I
10 think is an important update on developments in the case over
11 the past 72 hours, before I get into the specific agenda
12 items.
13 THE COURT: All right.
14 MR. LEMONS: These developments are very important
15 to the case's progression, and I also think that they'll
16 provide a good backdrop for and shape the discussion of the
17 remaining agenda items. So with out more adieu, I'm pleased
18 to be able to tell the Court that the Debtors and Creditors
19 Committee have been able to agree on the terms of a Plan which
20 makes it a consensual Plan supported by the Committee now, as
21 well as on the terms of solicitation, and with one narrow
22 exception, which was highlighted in the agenda and which I'll
23 turn to later, on the terms of the Disclosure Statement. In
24 short, we've resolved all our issues with the Committee other
25 than this one Disclosure Statement issue, and we'll just seek

1 Your Honor's direction later on today as to how to resolve
2 that.
3 The revised terms, Your Honor, are largely reflected in
4 the Revised Plan, Disclosure Statement, and Disclosure
5 Statement Order that we filed with the Court last night. That
6 was blacklined to show changes against the version we filed
7 earlier this week.
8 I just want to give Your Honor a brief summary of the
9 principal terms of the agreement with the Committee so we can
10 make that record. With respect to exculpation, the
11 exculpation provision of the Plan has been revised to provide
12 and make clear that the estates will have the ability to
13 assert that acts that otherwise would be exculpated can still
14 be used as the basis for defenses or offset or act as
15 counterclaims to any claims asserted by any exculpated party
16 against the Debtors. And the idea here, Your Honor, is that
17 the exculpated parties shouldn't be forced to pay damages and
18 go out of pocket as a result of an exculpated act, but that
19 those acts can essentially be used in any manner to defend
20 against or reduce the claims that could be asserted by those
21 parties against the estate.
22 The next major issue, Your Honor, is Committee consent
23 rights. The Plan provides for the Committee to have the right
24 to consent to numerous things that may or that will occur
25 going forward in the Plan process, including amendments to the

1 Plan and the Form of a Confirmation Order. Most of these
2 rights have an explicit reasonableness standard, but
3 importantly, I think the Plan provides the Committee with
4 absolute consent rights over the identity of the Liquidating
5 Trustees and the Boards of the Liquidating Trusts. So we
6 expect that the Committee, as a result of that, will have an
7 active role in the process of selecting those individuals.
8 The Debtors have also agreed with the Committee, and in
9 response to several objections raised by other parties, to
10 several changes in the solicitation procedures. I'm not going
11 to go through all of them, but the highlights, I think, are
12 that the voting deadline will now be 35 days after the
13 solicitation date. The Plan Supplement will be filed at least
14 10 days before the voting and Plan objection deadline, and
15 ballots that are returned unmarked or are otherwise
16 inconclusively marked will not be counted as either
17 acceptances or rejections of the Plan.
18 One item, Your Honor, that is not in the Plan but that
19 the Debtors' management has committed to in their papers and
20 to the Committee, and I also want to put this on the record
21 today, is that the Debtors won't file the Plan Supplement
22 identifying the new proposed directors of Reorganized Advanta
23 Corporation until those new proposed directors have been
24 approved by at least ⅔ of the existing Board of Advanta
25 Corporation, which addresses some concerns the Committee had

1 about change of control being triggered.
2 Additionally, something that's not in the Plan, Mr. Alter
3 and Mr. Rosoff have executed a letter to be delivered -- or I
4 guess has been delivered to Advanta Corp.'s Board of
5 Directors, with a copy to Mr. Schwartz as counsel to the
6 Creditors Committee, consenting to the Court's post-effective
7 date jurisdiction over any claims the estates may have against
8 them, and also agreeing that they won't contest any such
9 jurisdiction.
10 THE COURT: That doesn't mean that I will have it,
11 but I understand the agreement.
12 MR. LEMONS: I'm aware and understand that point --
13 THE COURT: Okay.
14 MR. LEMONS: -- but we're trying to nail down as
15 much as we can.
16 THE COURT: Understood.
17 MR. LEMONS: As a result of these changes, the
18 Committee has agreed that it will now support the Plan and the
19 Debtors' proposed extensions of their exclusive periods to
20 file and solicit acceptances of the Chapter 11 Plan. The
21 Revised Proposed Disclosure Statement contains a
22 recommendation by the Committee, the Creditors vote in favor
23 of the Plan, and the Committee has drafted a letter from the
24 Committee to Creditors which will be included in the
25 solicitation package and recommends that Creditors vote in

1 favor of the Plan. That letter is attached as an exhibit to
2 the Revised Solicitation Procedures Order.
3 Additionally, Your Honor, it's my understanding that both
4 the Committee and the Bank of New York and Law Debenture, as
5 the Indenture Trustees for the Debtors' noteholders have
6 withdrawn their Plan objections, their objections to
7 exclusivity extensions, and their Motion to Terminate
8 Exclusivity. I also was informed a short while ago that both
9 -- that I guess neither Lapis nor Marble Arch intend to
10 prosecute or push the objections that they filed in the
11 joinders as well.
12 We do have one remaining dispute with the Committee, and
13 that's over what language must be included in the Disclosure
14 Statement to permit the Court to retain, if possible, post-
15 effective date jurisdiction over causes of action that the
16 estate might have against directors and officers. Mr.
17 Schwartz and I will go into that in more detail later, but
18 this is a dispute on which we'll seek the Court's guidance
19 today, and both the Debtors and the Committee have agreed to
20 live with whatever the Court instructs us to do and that that
21 will not affect our deal.
22 One other change to the Plan that I'd like to mention to
23 Your Honor involves post-petition interest. This was not made
24 as part of the deal with the Committee, but was made to
25 resolve an issue of one of the Committee members, Bank of New

1 York, who is the Trustee for the Retail Noteholders. We have
2 inserted into the Plan a provision that provides that if the
3 Liquidating Trust reaches a point where the Trust has paid out
4 100% of the principle and accrued pre-petition interest to the
5 Retail Noteholders, that Bank of New York or any Retail
6 Noteholder will have a window of time in which to seek a
7 determination from the Court that, under the terms of their
8 subordination arrangement with the Sub. Noteholders, they're
9 entitled to post-petition interest that would come out of the
10 distributions that otherwise would begin to be made to the
11 Subordinated Noteholders. Law Debenture, as the Trustee for
12 the Subordinated Noteholders, would have the right to oppose
13 that position. So the idea here is simply to preserve the
14 rights of both the Retail Noteholders on one hand, and the
15 Subordinated Note Holders on the other hand, on this issue
16 without wasting time and money now fighting about it when we
17 don't know whether Retail Noteholders will ultimately receive
18 distributions equal to 100% of their claims. We'll simply
19 defer that.
20 With that, Your Honor, I'd propose turning to the
21 remaining agenda items.
22 THE COURT: All right.
23 MR. LEMONS: And if Your Honor would permit, I'd
24 like to do them in reverse order and do the Exclusivity Motion
25 first, because I think it should be quicker. As reflected in

1 our motion, Your Honor, the Debtors are seeking to extend
2 until January 5th, 2001 their exclusive period to file a
3 Chapter 11 Plan, and until March 4th, 2011 -- I'm sorry, not
4 January 5th, 2001, January 5th, 2011 -- and until March 4th,
5 2001 their exclusive period to solicit acceptances of the
6 Plan. Your Honor, the Debtors need that time to prosecute
7 this consensual Plan that's currently on file with the Court.
8 Our justification for cause is set forth in the motion, and
9 now that we have a consensual Plan with the Committee, I think
10 the Debtors' case is certainly stronger. As I mentioned
11 earlier, as a result of the settlement that I described, I
12 don't believe that there is any opposition to this motion, and
13 therefore, Your Honor, I would respectfully request that Your
14 Honor enter the Order Extending the Exclusivity Periods.
15 THE COURT: Let me ask if anyone else wishes to be
16 heard in connection with this motion.
17 MR. SCHWARTZ: Your Honor, Roger Schwartz, Latham &
18 Watkins, for the Committee, just to confirm for the record,
19 the Committee, in fact, does -- no longer has opposition to
20 the Debtors' motion.
21 THE COURT: Thank you. Does anyone else wish to be
22 heard?
23 MS. EISENBERG: Yes, hi, Your Honor, this is Leah
24 Eisenberg from Arent Fox, counsel to Law Debenture. I just
25 wanted to confirm for the record that Counsel's recommended

1 changes is supported by Law Debenture and we will withdraw our
2 objection to the Disclosure Statement Motion, as well as the
3 Exclusivity Motion.
4 THE COURT: All right. Thank you very much. Does
5 anyone else wish to be heard?
6 ALL: (No verbal response).
7 THE COURT: I hear no further response, so I don't
8 have any questions.
9 MR. LEMONS: Would you -- should I hand this up now,
10 or at the end?
11 THE COURT: Yes.
12 MR. LEMONS: Okay.
13 (The Court receives document)
14 THE COURT: All right, thank you. Just give me one
15 moment to look through the blackline.
16 (Pause in proceedings)
17 MR. LEMONS: I was just told, Your Honor, by local
18 counsel that the blackline I gave you is one you had already
19 seen.
20 THE COURT: Okay.
21 MR. LEMONS: So it wasn't a test to see if you could
22 find changes.
23 THE COURT: It wouldn't be the first test, it won't
24 be the last. All right.
25 MR. LEMONS: Okay. That brings us, Your Honor, to

1 the final item on today's agenda, which is the Debtors' Motion
2 for Approval of the Plan's Disclosure Statement and the
3 Solicitation Procedures. As I mentioned a few minutes ago, we
4 filed the Revised Disclosure Statement last night. It
5 reflects the changes to the Plan agreed to with the Committee,
6 as well as the Committee's support for the Plan. It also
7 contains several other changes that were made to the version
8 originally filed on November 2nd, including changes to address
9 issues raised in the United States Trustee's objection. My
10 understanding, Your Honor, is that those changes were
11 sufficient to resolve all of the U.S. Trustee's issues with
12 the Disclosure Statement. I don't know if Mr. Klauder can
13 confirm that.
14 MR. KLAUDER: That's correct, Your Honor.
15 MR. LEMONS: Okay. As I mentioned earlier, Your
16 Honor, my understanding also is that the objections of Bank of
17 New York and Law Debenture have been resolved, and that Marble
18 Arch is not pursuing its joinder to the Committee objection.
19 So I believe, Your Honor, that that leaves the objections of
20 Eileen Winton, the Underland/Class Plaintiffs, the Western
21 Pennsylvania Electrical Employees Pension Fund, and the
22 Proposed ERISA Class Representatives.
23 Finally, Your Honor, we have this one remaining issue
24 with the Committee which goes to the language of what's needed
25 in the Disclosure Statement to reserve the Court's

1 jurisdiction. At this point I'd ask Your Honor if you have a
2 preference as to whether we start with the Committee issue or
3 the other issues?
4 THE COURT: I do not.
5 MR. LEMONS: Okay, well, I'll start with the other
6 parties' issues, then.
7 THE COURT: All right.
8 MR. LEMONS: In our responses to the other parties'
9 Disclosure Statement objection, I guess -- well, we set those
10 responses forth in the chart that we attached to our response
11 that was filed on Monday. Essentially, our responses fall
12 into three categories: First, that we made the changes to the
13 Disclosure Statement or Solicitation Procedures to address the
14 objection; second, some objections we believe are really Plan
15 Confirmation objections that are not proper Disclosure
16 Statement objections; and in some instances we believe that
17 the information requested in the Disclosure Statement is not
18 required. Because our responses are set forth in the chart, I
19 would propose that unless Your Honor has questions or would
20 like to hear from me on any of these issues, that we hear
21 argument from the objecting parties, if they'd like, and I can
22 respond if necessary.
23 THE COURT: That's fine. All right. Let me just
24 take them -- go ahead.
25 MR. REILLEY: Good afternoon, Your Honor. May it

1 please the Court, Patrick Reilley from Cole Schotz here on
2 behalf of the Underland/Class Plaintiffs. Your Honor, I'd
3 like to introduce John Drucker with me today, also from Cole
4 Schotz. Mr. Drucker's Pro Hac Order has been entered, and if
5 I can, Your Honor, I'd like to turn the podium over to Mr.
6 Drucker.
7 THE COURT: Certainly.
8 MR. REILLEY: Thank you.
9 MR. DRUCKER: Good afternoon, Your Honor.
10 THE COURT: Good afternoon.
11 MR. DRUCKER: I'm John Drucker from Cole, Schotz,
12 Meisel, Forman & Leonard, as bankruptcy counsel on behalf of
13 William E. Underland and Mark Schaller as Co-Lead Plaintiffs
14 and the Putative Class in the securities class action
15 identified in the written objection that we filed at Docket
16 #976, and to which class action -- to which we refer to as
17 being either the "class action" or the "33-act Securities
18 litigation." The class action is an action against the
19 Debtors only -- oh, I'm sorry, against non-Debtors only, and
20 I'm happy to go into more detail regarding the class action
21 itself, but I'm not sure that that's particularly relevant for
22 the purposes of today's hearing.
23 THE COURT: Not necessary.
24 MR. DRUCKER: Thank you. Focusing with respect to
25 the objections, in our objections, we raised four areas of

1 concern in connection with the approval of the Disclosure
2 Statement. In view of the changes that were made to the Plan
3 and Disclosure Statement, the language changes, there are only
4 two remaining issues that I think we need to address today;
5 one other issue, the third issue, I believe, I'll get to in a
6 moment, we can deal with by way of a reservation of rights.
7 The first issue I'd like to address is with respect to
8 the Plan injunction language that appears at Section 10.3 of
9 the Plan. We object to the extent that it may be read to
10 provide for impermissible releases of claims or rights that
11 the Class Plaintiffs have against non-Debtor third parties,
12 and the lack of disclosure as to the need or justification for
13 any third-party releases, to the extent that is indeed what
14 they are seeking.
15 Second, inadequate disclosure regarding the terms and
16 limits with respect to any available Directors and Officers
17 insurance.
18 And third, failure to provide disclosure of and
19 inadequate protocol relating to the preservation and
20 disposition of the Debtors' books and records, especially to
21 the extent those records may be necessary in connection with
22 the class action litigation.
23 Turning to the first issue with regard to the Plan
24 injunction language of Section 10.3, and the identical
25 language that appears at Article V(j)(3) at page 62, I

1 believe, of the version of the Disclosure Statement in which
2 the changes were made, we submit that there remains an
3 ambiguity in that language and significantly at this point, in
4 view of the changes to the language, an inconsistency with the
5 language in the Debtors' response as to the intent of the
6 language in the Plan and the Disclosure Statement.
7 In the chart, Exhibit A to the Debtors' response to the
8 objections to the Disclosure Statement, the Debtors state,
9 {quote} -- that the Plan injunction {quote} "is not intended
10 to release non-Debtors." Well, if that, in fact, means that
11 the Plan injunction is not going to be invoked to restrict the
12 class action litigation against non-Debtors, because the
13 action is only against non-Debtors, and language to that
14 effect can be added to the Disclosure Statement, then that
15 issue would, in fact, indeed be resolved. However, the
16 intention is not clear in the Plan and the Disclosure
17 Statement, and it needs to be harmonized with the statement in
18 the response that it will not provide for a third-party
19 release. So if we can harmonize the response with the Plan
20 and Disclosure Statement, then I do believe that this issue
21 would be resolved, and it is easily resolved. We did propose
22 language in our objection. So something to the effect of that
23 language, which would make it clear that the language in the
24 Plan injunction provision of 10.3 of the Plan will not
25 restrict in any way the continuation of the class action, then

1 problem solved. So we need hear, obviously, back from the
2 Debtors as to whether or not they will, in fact, just provide
3 that clarification that they did in their response, and just
4 harmonize it with the actual Plan and Disclosure documents.
5 I can turn to what I believe to be the concern we have
6 with the actual language that appears in 10.3, but we can
7 obviate all of that if the Debtors are willing to put in
8 language to make that clarification, so maybe I should pause
9 at this point on that issue.
10 THE COURT: Why don't you finish your presentation,
11 and then I'll ask the Debtor to respond.
12 MR. DRUCKER: Okay. The language we're concerned
13 with, Your Honor, if one would -- if the Court would look at
14 Section 10.3, and I will quote it in relevant part, parsing
15 through the language that is either irrelevant or not
16 objectionable. 10.3 states -- 10.3(a), "All Parties-In-
17 Interest are permanently enjoined from (i) commencing or
18 continuing in any manner any action or other proceeding of any
19 kind {parenthetically}(whether indirectly or otherwise),
20 against the Debtors related to a claim or equity interest."
21 The objectionable issue is the parenthetical, whether
22 indirectly or otherwise, thus notwithstanding the --
23 THE COURT: Indirectly, directly, derivatively, or
24 otherwise.
25 MR. DRUCKER: Well, I'm focusing on the language

1 that we find objectionable. We're not concerned about some of
2 the other language.
3 THE COURT: Okay.
4 MR. DRUCKER: But we are concerned about the concept
5 of something being arguably down the line saying, well, hey,
6 it was -- indirectly is a claim against the Debtor. You're
7 bringing it against non-Debtors, but it's indirectly a claim
8 against the Debtors, such as and by example only, we have our
9 actions against non-Debtor Defendants, there's an argument
10 that they're entitled to an indemnity, somebody stands up and
11 says, oh, you're violating the Plan injunction because there's
12 an indirect claim against the Debtors. Putting aside for the
13 moment, since this is a Disclosure Hearing, not a Confirmation
14 Hearing, that the Debtors have failed to disclose any of the
15 factors that would justify the extraordinary remedy or relief
16 providing for a third-party release, and for the reasons that
17 we've stated in our objection and the case law in this
18 Circuit, that it's clear that under the facts of this case, it
19 would not be permissible to provide a third-party release.
20 And putting aside for the moment that with regard to this idea
21 of this indirect claim against the Debtor, that the 3rd
22 Circuit in In Re: Continental Airlines, 203 F.3d 203, has
23 thoroughly discredited any argument that any otherwise
24 applicable indemnification obligation that a Debtor may have
25 somehow creates some form of identity of interest between a

1 Debtor and a non-Debtor, and the 3rd Circuit has said, {quote}
2 "We conclude that granting permanent injunctions to protect
3 non-Debtor parties on the basis of theoretical identity of
4 interest alone would turn bankruptcy principles on their
5 head," and went on further to say, "Nothing in the Bankruptcy
6 Code could be construed to establish such extraordinary
7 protection for non-Debtor parties." Putting that aside as a
8 legal argument, because of the concern that we have that the
9 language that exists is also inconsistent with their statement
10 that it's not intended to provide a third-party release, we
11 believe that it is appropriate for purposes of disclosure to
12 make it clear -- simply to make clear what they said in their
13 response, that it will -- notwithstanding that language, it
14 will not act as a release of the claims in the class action
15 against non-Debtor parties. That could be accomplished by a
16 general statement, or it could be specific to the class
17 action, that notwithstanding anything to the contrary, it will
18 not affect or restrict in any way the continuation of the
19 class action in the District Court.
20 So the issue is not whether injunction as the functional
21 equivalent of a release is permissible. The Debtors have
22 already said they're not seeking it. We're just asking that
23 the Debtors acknowledge what they've already acknowledged in
24 their response and put it in the papers so that the issue is
25 clear, and the Plan and Disclosure Statement say what the

1 Debtors have already committed is the fact. We're not really
2 arguing whether they're seeking it. They've already said
3 they're not. We're just saying let's make it clear and
4 harmonize the response with the Plan and Disclosure Statement.
5 That's -- do you want to pause at that issue, or should I go
6 on to the remaining other issues as well?
7 THE COURT: Go on.
8 MR. DRUCKER: Also in Section 10.3(a)(v), it refers
9 to the injunction from pursuing any claim released pursuant to
10 that Article 10. We need -- the Disclosure Statement needs
11 clarification. Nowhere in Article 10 does it discuss
12 releases. Our concern, that I expressed a moment ago, was
13 that the Plan injunction, it would be the functional
14 equivalent of a release, but there needs to be some clarity --
15 if they have a blanket statement that the Plan injunction
16 applies to things that are released in Article 10, there needs
17 to be more disclosure of what they believe is released in
18 Article 10. Arguably, the exculpation provision may effect a
19 release, and if they wanted to limited it to referring this
20 Section 10.3(a)(v) to an injunction from pursuing any claim
21 release pursuant to Section 10.7, which is the exculpation
22 provision, we would not have an objection to that. But there
23 just needs to be a clarification regarding the releases that
24 they're referring to in Section 10.3(a)(v).
25 The next item, Your Honor, is that we believe there's

1 been inadequate disclosure regarding the terms and limits with
2 respect to any available directors and officers insurance.
3 The Debtors, in their response, state that they think this is
4 just an attempt to get inappropriate discovery in the context
5 of a Disclosure Statement hearing. We submit that it is the
6 Debtors who have identified in the Plan and Disclosure
7 Statement, and properly so, in Sections 8.6 and 8.7 of the
8 Plan, and identical language in Article 5(h)(6) appears at
9 Disclosure Statement 60, that the D&O insurance shall continue
10 to be available for the payment of allowed indemnification
11 claims, and in fact have added language that reads in relevant
12 part that, {quote} "The rights and obligations of the insured,
13 the Debtors, and insurers will be determined under the
14 insurance policy documents referring to the D&O policies,
15 including all terms, conditions, limitations, and exclusions
16 thereof, which will remain in full force and effect and under
17 applicable non-bankruptcy law" {close quote}. Accordingly,
18 the Debtors themselves have opened the door, having identified
19 the D&O insurance as being important enough to confirm its
20 preservation to refer to its terms, conditions, and
21 limitations and exclusions as being preserved, they should be
22 required to provide disclosure of such terms, conditions,
23 limitations, and exclusions so that Creditors and Parties-In-
24 Interest who may be affected thereby will understand just what
25 is being preserved and may consider how such policies may

1 result in protecting the estates from the indemnification
2 claims. So we're saying that it would be appropriate for them
3 to disclose, to some extent, at least the limits of the
4 policy, the exclusions from the policy, so that can be
5 evaluated in determining how it affects the claims.
6 The third item, as I stated earlier on, is simply a
7 reservation of rights with regard to the preservation and
8 disposition of documents. The Debtors stated in their
9 response that they intend to address this in the context of
10 the Plan Supplement Disclosures. We will wait to review the
11 Plan Supplement Disclosures and reserve our rights to object,
12 if necessary, in connection with confirmation. Thank you.
13 THE COURT: Thank you. There are nearly identical
14 issues with respect to the three remaining objections, so I
15 think I'd like to hear from all of the objectors before the
16 Debtor responds.
17 MR. LEVEE: Good afternoon, Your Honor, Ira Levee,
18 Lowenstein Sandler. I'm here on behalf of the ERISA
19 Plaintiffs and the Securities Plaintiffs in the Western
20 Pennsylvania Pension Fund -- Electrical Employees Pension
21 Fund. We have the same issues that Mr. Drucker raised, and I
22 echo his concerns with respect to the clarification needed
23 with respect to the releases. And we believe the exculpation
24 provision has been addressed -- exculpation issue has been
25 addressed.

1 The one additional issue that we had was with respect to
2 the ERISA Plaintiffs, and that was on the classification of
3 their claim. And we concur with the Debtors' response that
4 it's a confirmation issue, and we reserve our rights, as we do
5 with all the other objections that we made, to assert them at
6 the time of confirmation.
7 THE COURT: All right. Thank you.
8 MR. LEVEE: Thank you.
9 THE COURT: There's one more non-Committee
10 objection.
11 ALL: (No verbal response).
12 THE COURT: All right, well, let's deal with the
13 Committee objections, then.
14 MR. LEMONS: Your Honor, do you want to do those, or
15 can I respond first?
16 THE COURT: You can respond to those, so go ahead.
17 MR. LEMONS: While it's fresh in my mind.
18 THE COURT: Yes. Gosh, your memory isn't that
19 short, is it?
20 MR. LEMONS: My mind goes stale awfully fast. A
21 product of a mis-spent youth.
22 THE COURT: Yes, I should have mis-spent more.
23 MR. LEMONS: Your Honor, I think that we can resolve
24 the first issues that were raised by the Underland Plaintiffs'
25 lawyer with respect to the injunction language. Your Honor,

1 we're fine just simply deleting the word "indirectly" from
2 that parenthetical that he read out of the Plan. I really
3 don't -- we don't have really any appetite or desire to get
4 into a protracted negotiation with them about language
5 specifically referring to their claims, and whether it does
6 more than they say it does or otherwise, but if what he
7 objects to is a concern that there's going to be some back
8 door through that word "indirectly," we think the language
9 does what we need it to do even without that word and are fine
10 excising it.
11 THE COURT: Keep going.
12 MR. LEMONS: With respect to his -- the attorney's
13 request that, I guess it's clause 5 of 10.3(a), be changed,
14 the reference to Article 10 of the Plan be changed to Section
15 10.7 of the Plan, we don't have any issue with that either --
16 THE COURT: Okay.
17 MR. LEMONS: -- and are fine with making that change
18 to the Plan.
19 THE COURT: All right.
20 MR. LEMONS: I think, Your Honor, that just leaves
21 the disclosure of the D&O insurance issue. Your Honor, I'm
22 not sure why they even have standing to raise that. They're
23 not Creditors of the estate. They admit that themselves.
24 This Disclosure Statement is about providing adequate
25 information to Creditors of the estate. Every Plan has that

1 D&O language that he read, or similar language, and I've never
2 seen a Disclosure Statement where Debtors were required to put
3 forth all their information about their D&O coverage. There
4 may be one where it has, but we don't traditionally see that,
5 and I certainly don't think that's a requirement for Creditors
6 to have adequate information to vote on a Plan. I think, Your
7 Honor, these are simply efforts by Plaintiffs' counsel, whose
8 actions are stayed against the Debtors and who are busy
9 pursuing claims against Directors and Officers and perhaps
10 others, to get some discovery about that information without
11 having to go through whatever channels they'd have to go
12 through in their existing litigation and dealing with whatever
13 the Federal Rules of Civil Procedure are for that discovery.
14 THE COURT: Okay. Meaning I acknowledge your
15 argument.
16 MR. LEMONS: I understand.
17 THE COURT: All right. I'll hear from the Committee
18 then. Unless you have more on the other objectors?
19 MR. LEMONS: No, I was -- no, that's fine.
20 MR. SCHWARTZ: Thank you, Your Honor. Roger
21 Schwartz from Latham & Watkins for the Committee. Your Honor,
22 as Mr. Lemons indicated and as the amended agenda from last
23 night suggests, we're down to one issue with respect to the
24 Disclosure Statement with the Debtors, and that relates to an
25 issue, in our mind, that's pretty simple. And that relates to

1 providing sufficient notice of potential causes of action that
2 the Trust may investigate and/or prosecute for purposes of
3 post-effective date administration of the estates. And Your
4 Honor, our goal with respect to that issue is to make certain
5 that, consistent with applicable precedent and guidance from
6 this Court and this Circuit, that the Plan and Disclosure
7 Statement describes with sufficient specificity the causes of
8 action of the estates that may be investigated and prosecuted
9 by the Trustees such that Creditors, who are being asked to
10 vote on the Plan, and potential Defendants are on sufficient
11 notice that investigation and potential prosecution of those
12 causes of action are an integral part of implementation and
13 consummation of the Plan, and are an important part of the
14 overall value and allocation of value that's going to be done
15 pursuant to the Plan and the Disclosure Statement.
16 We believe in an abundance of caution that additional
17 disclosure, as we recommended and Your Honor -- was circulated
18 to Your Honor as part of the exhibit to the Amended Agenda,
19 would be appropriate for purposes of providing that notice as
20 it identifies with particularity the potential causes of
21 action that the Debtors' estates may possess. It identifies
22 with some particularity as well the potential -- of who the
23 potential causes of action may be brought against. It advises
24 Creditors and potential Defendants that the Committee has been
25 investigating, you know, those claims. It provides notice

1 that the causes of action may be material and valuable assets
2 of the estates and may significantly enhance recoveries to
3 Creditors. And it advises Creditors and potential Defendants
4 that the investigation and potential assertion of those claims
5 are integral aspects of the implementation and consummation of
6 the Plan.
7 The point of the language, Your Honor, and the additional
8 disclosure is in no way to inflame or upset, it's merely to
9 appropriately provide the notice that we believe under, you
10 know, the precedents of this Court and the Circuit has been
11 specified as appropriate for helping to establish, later on, a
12 close nexus between the claims that are being brought by the
13 Trust -- or the potential claims that are being brought by the
14 Trust and implementation and consummation of the Plan.
15 We're not asking the Court today to prejudge jurisdiction
16 of any of those claims. All we're merely trying to do is, as
17 a notice provision and as part of the Disclosure Statement,
18 ask this Court to authorize and approve the Supplemental
19 Disclosure and endorse the Supplement Disclosure that we
20 believe would help satisfy the notice requirements that have
21 been set forth in retention of jurisdiction cases decided by
22 this Court and by the Circuit. So that's what we would
23 propose, and we hope and believe that the additional language
24 and disclosure that was added to the agenda that I hope Your
25 Honor has seen is --

1 THE COURT: I have.

2 MR. SCHWARTZ: -- is appropriate. And we'd note as
3 well that that language is less extensive than the additional
4 disclosure language that we had originally proposed in our
5 objection as a means of, you know, trying to walk the balance
6 here between additional disclosure and notice and, you know,
7 the Debtors' expressed concerns of inflaming, you know,
8 potential voters.

9 THE COURT: Thank you.

10 MR. SCHWARTZ: Thank you.

11 MR. LEMONS: Your Honor, as I mentioned before, we
12 have agreed with the Committee that we'll abide by your ruling
13 on this and go forward with whatever language you believe
14 needs to be in the Disclosure Statement, but this is a very
15 important issue for the Debtors. As I'll explain in a little
16 more detail, and I'll try to be brief, we believe that the
17 language in the Plan and the Disclosure Statement, as we
18 proposed it, is sufficient under the facts and circumstances
19 of these cases, and that inclusion of the Committee's proposed
20 language, whether the Committee intends it to be or not, and I
21 certainly take them at their word that they don't, would be
22 unnecessarily injurious and misleading. As Your Honor, of
23 course, is aware, we've seen your Insilco decision, know that
24 you're well versed in this issue. A Bankruptcy --

25 THE COURT: Well, I'm versed.

1 MR. LEMONS: Okay. A Bankruptcy Court can retain
2 jurisdiction over estate causes of action that have been
3 transferred to a Liquidating Trust if there is a close nexus
4 to the bankruptcy Plan or proceeding that's sufficient to
5 uphold that Court jurisdiction. And the 3rd Circuit has said
6 that the reason that that close nexus is required is to avoid
7 the specter of unending jurisdiction over continuing trusts.
8 And as a result of this policy and these rules, Courts,
9 including this Court, have looked at whether the Plan and the
10 context of the case provided the Creditors with sufficient
11 awareness of the importance of the claims over which
12 jurisdiction is to be retained for those claims and the
13 preservation of jurisdiction over those claims to be an
14 important part of the Chapter 11 Plan.
15 In this case, and in the Plan and Disclosure Statement in
16 the form we've proposed, have created sufficient awareness on
17 the part of the Creditors voting on the Plan, particularly in
18 light of the record in this case. First, Your Honor, the
19 retention of jurisdiction provisions in existing Section 11(b)
20 of the Plan contain a specific retention of jurisdiction of
21 claims against directors and officers. This is not a
22 provision where those claims are included among a litany of
23 claims against other individuals, and where, you know, the
24 directors and officers are sort of buried in the midst.
25 That's -- it's right out there in separate and plainly listed

1 language.

2 Second, Your Honor, the Plan contains other places where

3 it's made very clear that directors and officers are not being

4 released for any causes of action other than exculpation. The

5 last sentence of Section 10.8 of the Plan specifically makes

6 this point, again solely with respect to directors, officers,

7 and employees. And the last sentence of Section 10.7 makes

8 clear that no one is being exculpated for pre-petition

9 conduct. The Discussion Statement, of course, contains

10 similar language.

11 Fourth, Your Honor, the pleadings filed by the Committee,

12 as well as the argument that we're having here today, make

13 very clear on the public record that an essential element of

14 the deal with the Committee on the Plan is the retention of

15 the right of the Liquidating Trustee to assert causes of

16 action against directors and officers for anything other than

17 the exculpated acts and the retention of the Court's

18 jurisdiction over any suits -- over any such causes of action.

19 I think this element is important because I think it

20 distinguishes this case from others such as Insilco. In

21 Insilco, Your Honor, you rejected a Liquidating Trustee's

22 argument that the Plan had conferred post-effective date

23 jurisdiction on the Court because parties had allegedly made

24 arguments about the importance of the litigation to the

25 Committee's goals. But in that case, unlike the case here,

1 the Committee didn't object to the Disclosure Statement
2 language, and the Liquidating Trustee could not actually point
3 to any statements on the record about the importance of the
4 litigation. Here there are filed pleadings --
5 THE COURT: I don't there were any. You know,
6 here's what happened in Insilco. Early on in the case, I
7 think it was in connection with the Sale Motion but I don't
8 specifically remember, the parties struck a deal, which in
9 effect was an outline for a Plan. So I think as a way, and
10 this is just my supposition, to get to the end of the case
11 without creating problems which would stand in the way of
12 confirmation, there was very little, if any, discussion of
13 apparently the very large claims that somebody intended to
14 bring. And when I compared that with what was said in
15 Disclosure, it had -- the Disclosure Statement had just the
16 usual, general language, reserving rights to bring actions,
17 and I didn't feel, under the circumstances, that was a fair --
18 that was fair in terms of what is otherwise required for an
19 adequate Disclosure Statement. But as I think about it, it
20 probably does make sense to be, regardless of what's on the
21 public record, as you say -- because most Creditors don't look
22 at that. They look at the Disclosure Statement in deciding
23 whether to vote for or against the Plan. It's probably better
24 to be more specific in the Disclosure Statement.
25 Now, I understand -- or put it this way, it strikes me

1 that there are sensitivities to how the potential claims are
2 described. So I will tell you I think the Committee's right
3 that what the Debtor has proposed is not sufficient. But it
4 seems to me that there's another -- well, the Committee says
5 maybe it's already taken a middle ground -- maybe there's a
6 "middler" ground, along the lines of claims which are
7 described as those arising out of their conduct, meaning
8 directors, officers, employees, in their capacities as
9 directors, officers or employees. Something to that effect.
10 I think it has to be more specific. You know, I don't think
11 it's necessary to list, as the Committee has here, every
12 possible cause of action. I do -- I think it's okay, and the
13 Debtor has agreed already to list, although there's slight
14 differences, the Bankruptcy Code sections which might apply,
15 as between the two formulations, I don't think it makes much
16 of a difference there. The dispute, I'm assuming, based on
17 the blackline, centers around the specific, you know -- the
18 nasty-sounding claims against directors and officers who are
19 sensitive to this and who, I'm sure, dispute it. But, you
20 know, these claims -- many of them, while I don't know this
21 for sure, but based on the descriptions in the Disclosure
22 Statements, in essence have already been raised in putative
23 class actions. So it's not like these are surfacing for the
24 first time. But I can understand why the individuals involved
25 wouldn't want further publication. But in terms of disclosure

1 for bankruptcy purposes, there's got to be more specificity
2 than what the Debtor proposes, and I'll give you a couple
3 minutes to talk with the Committee about that. I give you my
4 concept. It was just very rough as I looked through it. You
5 can drill down a little farther, but you have to do better.
6 MR. LEMONS: Thank you, Your Honor.
7 THE COURT: Okay. Let me go back and start with the
8 Underland objection, and ask whether the Debtors' proposal is
9 sufficient?
10 MR. DRUCKER: For the record, John Drucker on behalf
11 of the Underland/Class Plaintiffs. I thank the Debtor for its
12 recommendation and proposal, and certainly deleting the word
13 "indirectly" will be helpful, but I'm not sure it adds the
14 clarity that is appropriate, especially given their
15 representation that it's not intended to be a release of
16 claims against the non-Debtors. I know that the parenthetical
17 also has the general catch all "or otherwise" language, and I
18 don't know if they would be willing to delete that, but I
19 think it's simple enough to say -- and it's not going to be a
20 whole lengthy negotiation. This is not the first class I've
21 represented, and it's not the first time we've had exclusion
22 language -- that we can have some exclusion language that we
23 can find acceptable, that nothing will release any claims
24 against non-Debtors.
25 THE COURT: Here's -- you know,you're right about

1 that, but here's what I'll say. It's not the first time Class
2 Action Plaintiffs have come in and wanted things with --
3 really to assist them in their pursuit of non-Debtor entities
4 largely in their particular actions. And on the one hand, I
5 express legitimate interest. On the other hand, you know, to
6 add an exclusion at the disclosure stage for every class
7 action, just people will line up and insist on it in every
8 Disclosure Statement, and I don't think it's necessary. And
9 I'm not sure it's necessary here. And as you likely know if
10 you've done this before, what will happen if the issue isn't
11 clarified sufficiently for your purposes by the time of
12 confirmation, you know, it usually gets worked out there; if
13 not, I'll resolve it, likely along the lines that you might
14 suggest. But for disclosure, I think the Debtors' suggestion
15 is probably sufficient, and I think with respect to the
16 Article 10 issue and (v) in 10.3(a), it sounds to me as if
17 that probably would satisfy your objection there, but correct
18 me if I'm wrong.
19 MR. DRUCKER: On that latter point, I agree, yes.
20 THE COURT: Okay.
21 MR. DRUCKER: That would resolve that issue. And I
22 understand the Court's comments, and I appreciate it with
23 respect to the first issue. What I was hoping to do is to --
24 since we only -- the only objections on this issue are the
25 ones that are presented to you in Court today, I was hoping to

1 obviate the necessity to have a round two in connection with
2 confirmation, especially since it's a very -- this is --
3 what's unusual here is the Debtor has already conceded the
4 point, and it's just a matter of having the clarification
5 language. But I will adhere to the Court's recommendations
6 and reserve my rights in connection with confirmation if
7 that's -- if the Court is not otherwise inclined to direct the
8 Debtor to come up with clarification language at this point.
9 THE COURT: I am not.
10 MR. DRUCKER: Okay.
11 THE COURT: Now, let's talk about the D&O coverage.
12 I often face these issues, and I really wonder, you know,
13 what's the big secret. And so on the practical level, I say
14 to myself it ought not to be a big deal to disclose this. On
15 the other hand, what I'm bound by is really what should be or
16 needs to be in a Disclosure Statement to have -- provide
17 adequate information, and I don't know why this is needed in
18 order to meet the standard under the Bankruptcy Code which I
19 must apply to this Disclosure Statement. So take another run
20 at it if you want.
21 MR. DRUCKER: All right, I'll do so. The -- again,
22 the Debtors, as I stated earlier, believe it was appropriate
23 to make certain disclosures regarding the directors and
24 officers insurance policies. They -- in fact, they added
25 additional language in the penultimate go-around of the re-

1 drafts as to preserving the D&O insurance, making clear that
2 it's not affecting the limits, the exclusions, the terms, but
3 really provide no meat on the bones as to that. And why is it
4 important to have that disclosure? One of the reasons is that
5 we're hearing this potential round of Debtor claims against
6 insiders, or estate claims against the insiders of the
7 Debtors, these directors and officers of the Debtors, who --
8 and there's also discussion regarding the indemnification
9 claims that they have or will be asserting. And to the extent
10 -- and I believe those claims are extensive. It's also not
11 clear as to the recoveries that the Creditors are going to
12 have, the ready reserve and investment noteholders who make up
13 members of the class, and to the extent that their claims are
14 affected by the distributions that will be available, if the
15 indemnification -- if the D&O insurance is $2 million or $5
16 million or $100 million is a significant difference that
17 Creditors could anticipate, and those who care enough to read
18 the Plan and Disclosure Statement will know, have a greater
19 feel for whether their recoveries are going to be X percentage
20 or Y percentage, knowing that there is D&O insurance of
21 certain limitations or to the extent of whatever the D&O
22 insurance is and whatever the exclusions might be. Ao they
23 can determine whether in fact it's likely that those claims,
24 if they're allowed as indemnification claims, will be covered
25 by D&O insurance.

1 THE COURT: So you didn't even have to get into the
2 discussion of will they be subordinated, given -- depending on
3 the nature of the claim for which indemnification is sought, I
4 mean, it's --
5 MR. DRUCKER: But that's -- I'm sorry to interrupt
6 you.
7 THE COURT: Go ahead.
8 MR. DRUCKER: That's easily addressed by a statement
9 that it could be subject to this, it could be subject to that.
10 It is a known fact, whatever the D&O insurance says, it's a
11 $50 million, it's a $2 million, it excludes claims for X, Y
12 and Z. I don't think it's credible to say, well, we don't
13 want to do that because we're giving too much information.
14 This is disclosure. This is a bankruptcy process, this is
15 living in a fishbowl. I agree with the Court, what's the big
16 deal? I don't know -- it's probably a big deal because you
17 want to hide the ball, so everybody wants to see the ball.
18 It's not a big deal to see the ball. Disclose what it is and,
19 you know, it almost becomes a non-issue. But I think it is
20 appropriate disclosure in the Disclosure Statement,
21 particularly if objected to, to have disclosure about the
22 extent and limitations, especially since the Debtor itself
23 opened the door and said it's important enough that we're
24 preserving it, it's going to be there, well, tell me what's
25 being preserved.

1 THE COURT: All right, thank you.
2 MR. DRUCKER: Thank you.
3 THE COURT: I'll give the Debtor the last word on
4 that.
5 MR. LEMONS: Your Honor, I don't have a huge amount
6 to say on this other than that, first of all, I'm not sure
7 that it's practically no big deal. There are -- he sounds
8 like he wants all sorts of information about limitations and
9 other things in the coverage. It sounds like it's not
10 practically no big deal. But secondly, Your Honor, his
11 clients aren't even Creditors. I mean, it's -- I think his
12 altruism is commendable, that he's up here fighting the good
13 fight for the Creditors and what they need as their
14 disclosure. But I think it's really notable that no actual
15 Creditor of the Debtors has asked for this. This is not
16 something that is typically required to be put into Disclosure
17 Statements, and I think these people are -- you know, they're
18 trying to do an end-around and get discovery that if they're
19 entitled to it, they can go get it under the Federal Rules in
20 their own litigation. That's all I have to say, Your Honor.
21 THE COURT: All right, thank you.
22 MR. LEVEE: May I?
23 THE COURT: Certainly.
24 MR. LEVEE: Ira Levee, Lowenstein Sandler, for the
25 other two class actions. Just to make a distinction with

1 Debtors' argument, the Creditors in the two other class
2 actions, the ERISA action and the Western Pennsylvania action,
3 are Creditors of the estate, have filed Proofs of Claim
4 against the Debtor, and do have claims against the Debtor. So
5 to that extent, we echo Mr. Drucker's arguments regarding the
6 disclosure about the D&O insurance.
7 THE COURT: You know, I will tell you, I've never
8 had this issue in connection with a Disclosure Statement. I
9 tend to agree with the Debtor that I typically don't see, you
10 know, much drilling down on the provisions, but, you know, at
11 this point it could be that I've approved disclosure
12 statements with, you know, overall descriptions of coverage.
13 Given the objection, I'll ask that it be put in, and if
14 there's a -- if the breakdown between parts A, B and C, add
15 that as well, but you don't have to speculate or project any
16 consequence depending on what might or might not happen or how
17 various classes or claims are classified.
18 MR. LEMONS: Your Honor, just for clarification, is
19 it sufficient that we identify each policy and put in its
20 limit?
21 THE COURT: Yes.
22 MR. LEMONS: Okay.
23 THE COURT: But if it has -- again, you have to
24 break down the parts, because just putting in the limit isn't
25 very meaningful. Okay, is that it with respect to the

1 Disclosure Statement itself? Have I addressed all of the
2 issues that have been raised?
3 ALL: (No verbal response).
4 THE COURT: Okay, let's talk about the Proposed Form
5 of Order for a moment. I have reviewed the blackline, have
6 any further changes been made or are they proposed since the
7 version I last saw?
8 MR. LEMONS: Is the one you saw the one that was
9 filed yesterday, Your Honor?
10 THE COURT: It's the one that came in the, I guess,
11 additional documents binder, so hopefully yes. It's behind
12 Tab (viv), Exhibit B in my binder.
13 MR. LEMONS: I'm told, Your Honor, that you have the
14 most recent --
15 THE COURT: Okay.
16 MR. LEMONS: -- version.
17 THE COURT: Anyone have any comments with respect to
18 the proposed revisions? I have one, but I'll hear from others
19 first.
20 ALL: (No verbal response).
21 THE COURT: Okay, here's my comment. It's with
22 respect to page 2, paragraph (d). I do not review
23 accompanying letters or what I'll call advocacy pieces, which
24 I have approved more recently than in earlier years as having
25 passed muster under the Bankruptcy Code. So I have language

1 which I've used just recently and amended it to fit this
2 situation in the nature of a disclaimer, and I'll have copies
3 for you, if you want to pass them around. It's basically the
4 Court's disclaimer that I didn't approve it, but I let it in.
5 I will say, compared to the pieces I just approved in Tribune,
6 it's blessedly short, and for that I thank the Committee.
7 MR. SCHWARTZ: Your Honor, Roger Schwartz of Latham
8 & Watkins for the Committee. Of course your language is fine,
9 Your Honor, with the order. I guess for clarification
10 purposes, our draft of the letter had already included a
11 disclaimer about the Court not approving the terms of the
12 letter.
13 THE COURT: Yes.
14 MR. SCHWARTZ: Is that disclaimer sufficient or
15 you'd like that disclaimer --
16 THE COURT: I'd like mine. I think --
17 MR. SCHWARTZ: Yours instead, okay.
18 THE COURT: Yes, I think --
19 Mr. SCHWARTZ: That's -- I just --
20 THE COURT: -- I'm going to use it --
21 MR. SCHWARTZ: That's what I wanted to confirm.
22 THE COURT: Yes, but thanks.
23 MR. SCHWARTZ: All right, thank you.
24 MR. LEMONS: That's certainly fine with us as well,
25 of course, Your Honor.

1 THE COURT: So that the order or the proposed order
2 has got to be altered in that respect.
3 MR. LEMONS: Okay.
4 MR. SCHWARTZ: As will the letter, Your Honor.
5 THE COURT: Okay. But otherwise I had no other
6 comment. Okay.
7 MR. LEMONS: Mr. Heath just reminded me, Your Honor,
8 to, I guess, inquire of you whether we need to seek agreement
9 from the Plaintiffs' attorneys that the disclosure of the
10 insurance terms is sufficient or if we follow your guidance we
11 don't have to go back to them, because if we do and we can't
12 agree with them, we may have to come back in front of Your
13 Honor quickly to be able to meet our confirmation schedule.
14 THE COURT: I have an easy way to deal with that.
15 With respect to the disclosure of the insurance coverage, it
16 really is going to be plain vanilla; just the coverages and
17 broken down by parts.
18 MR. LEMONS: Okay.
19 THE COURT: I would like to give you some time now,
20 however, to speak with the Committee about changing the
21 jurisdictional language, I'll call it. And what I would ask
22 you do to is get to me the revisions, and the only thing you
23 have to deliver to Chambers are blacklines of where any
24 changes either in the order or in the Disclosure Statement
25 appear, the most recent blacklines, under certification. I

1 would like you to send the language to all counsel involved
2 here, and if there's a dispute, I'll reach out to you by
3 conference telephone, no one will have to come back. But I
4 can't envision that once you work out with the Committee
5 language here and now I hope that there will be any reason for
6 that.
7 MR. LEMONS: All right, thank you, Your Honor.
8 THE COURT: Okay, I'll give you some time now, and
9 let me know when you're ready.
10 MR. LEMONS: Thank you.
11 THE COURT: Court will stand in recess.
12 (Court in recess)
13 THE CLERK: All rise. Please be seated.
14 THE COURT: Good afternoon. Let me hear from
15 counsel.
16 MR. LEMONS: I'm trying to find one piece of paper.
17 A-ha. I actually have two things to report to Your Honor.
18 THE COURT: Okay.
19 MR. LEMONS: The first, because it requires less
20 reading on my part, I'll start with that one. During the
21 break, after we finished talking to the Committee, we spent a
22 few minutes speaking to Plaintiffs' counsel who is here today,
23 and they have agreed that if it's acceptable to Your Honor to
24 allow us to provide to them privately the policy numbers, the
25 limits and breakdowns, and the priority of payment provision.

1 And the reason we have an interest in doing that rather than
2 just putting it in the Disclosure Statement are twofold: One,
3 the insurance carriers aren't here today, and, you know, we
4 don't know whether this is something that would upset them or
5 make them go ballistic, and they're not here to have a voice
6 in that; and two, it's not uncomplicated information to put
7 together, and we'd very much like to fast track -- not fast
8 track as in shorten the mandatory periods to do things, but
9 get this Disclosure Statement out the door and get the vote
10 started as soon as possible.
11 THE COURT: Well, as to the first reason, with
12 respect, I don't very much care. But I'm content to abide by
13 the agreement the parties have made.
14 MR. LEMONS: Thank you, Your Honor. We also were
15 able to reach agreement with the Creditors Committee on
16 language to insert into the Disclosure Statement. I'm going
17 to -- unfortunately we don't have a printed copy, but I would
18 propose that I read it to Your Honor --
19 THE COURT: Go ahead.
20 MR. LEMONS: -- answer any questions you might have,
21 and then we'll submit it later with the rest of the package.
22 THE COURT: All right.
23 MR. LEMONS: So the language would read as follows:
24 "The Creditors Committee believes that the Debtors' estates
25 may possess causes of action {defined term} against the

1 Debtors' current or former directors, officers, employees
2 and/or other persons relating to the financial condition,
3 management and/or operation of the Debtors, their businesses
4 and/or their assets prior to the commencement date and/or
5 during the Chapter 11 cases, which potential causes of action
6 are being investigated by the Creditors Committee. The
7 Creditors Committee believes that the causes of action may
8 constitute material and valuable assets of the Debtors'
9 estates. Other than any releases granted in the Plan and the
10 Confirmation Order or in a Final Order of the Bankruptcy Court
11 from and after the effective date, the Plan provides that the
12 Trustees are authorized and empowered to investigate and
13 prosecute the causes of action before the Bankruptcy Court.
14 To the extent that proceeds of such causes of action are
15 recovered by the Trustees, the Creditors Committee believes
16 that such recoveries may materially enhance the recoveries of
17 the Debtors' Creditors under the Plan. Moreover, the
18 Creditors Committee believes that the prosecution of the
19 causes of action may result in the reduction or elimination of
20 claims asserted against the Debtors' estates, thereby
21 increasing recoveries of the Debtors' Creditors under the
22 Plan. Accordingly, the Trustees' investigation and potential
23 prosecution of causes of action of the estates are integral
24 aspects of the implementation and consummation of the Plan.
25 The Debtors' current directors and officers do not believe

1 that there are any bases for such causes of action. For the
2 avoidance of doubt, nothing contained in the Plan will operate
3 as a release of any cause of action against any of the current
4 or former officers, directors, or employees of the Debtors or
5 their affiliates except as provided in Section 10.7 of the
6 Plan."
7 THE COURT: That's fine with me. Anyone else have a
8 comment?
9 ALL: (No verbal response).
10 THE COURT: I hear none.
11 MR. LEMONS: The only other item, Your Honor, is --
12 I wanted to just propose sort of the timeline towards
13 confirmation to see if it's acceptable to Your Honor.
14 THE COURT: Okay.
15 MR. LEMONS: We would propose, Your Honor, that
16 December 28th be the last day to send out solicitation
17 materials; January 22nd as the deadline to file the Plan
18 supplement; February 1st as the voting and objection deadline;
19 February 8th as the reply deadline and the date by which the
20 Confirmation Order must be filed; and February 10th for the
21 Confirmation Hearing.
22 THE COURT: Anyone have any comment with respect to
23 the proposed schedule?
24 MR. DRUCKER: John Drucker, maybe I missed it, what
25 was the objection deadline for confirmation?

1 MR. LEMONS: February 1st.
2 THE COURT: Anyone else care to be heard?
3 ALL: (No verbal response).
4 THE COURT: I hear no response. That’s fine with
5 me.
6 MR. LEMONS: Thank you, Your Honor.
7 THE COURT: When can I expect the revisions?
8 MR. LEMONS: Tomorrow morning.
9 THE COURT: Okay. And again, for Chambers copy
10 purposes, all you need send me are blacklines. I don’t need
11 clean copies. Except for the order, of course.
12 MR. LEMONS: Thank you, Your Honor.
13 THE COURT: Okay.
14 MR. DRUCKER: Your Honor, with respect to the
15 insurance information as reflected a few moments ago, we need
16 some type of -- a date by which we would obtain that
17 information.
18 MR. LEMONS: 10 calendar days, Your Honor?
19 MR. DRUCKER: That’s fine, thank you.
20 THE COURT: All right. The only other thing I’ll
21 note is just with respect to the fact if there are going to be
22 any classification/subordination issues with respect to some
23 of the ERISA based claims, I’ll direct the parties to my
24 decision in Touch America, which is reported at 381 Bankruptcy
25 Reporter 95. I don’t know -- you’re smiling, you’ve already

1 read it right? Or you think it has bad news for you? Well,
2 it might.
3 MR. LEMONS: Or maybe both.
4 THE COURT: Yes, maybe both. Okay, anything further
5 for today?
6 MR. LEMONS: No, Your Honor, thank you for your
7 time.
8 THE COURT: All right, thank you all very much, that
9 concludes this hearing. Court will stand adjourned.
10 (Court adjourned)
11
12 CERTIFICATION
13 I certify that the foregoing is a correct transcript from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.
16
17 Lewis Parham 12/22/10
18
19 Signature of Transcriber Date

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:
Advanta Corp., et al.,
Welsh & McKean Roads
P.O. Box 844
Spring House, PA 19477
EIN: 23−1462070
Teacher Service Organization, Inc.
TSO Financial Corp.

Chapter: 11

Case No.: 09−13931−KJC

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

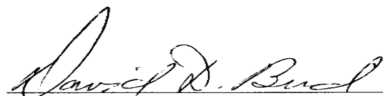
A transcript of the proceeding held on 12/16/2010 was filed on 1/20/2011 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 2/10/2011 .

If a request for redaction is filed, the redacted transcript is due 2/22/2011 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 4/20/2011 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 1/20/11

(ntc)

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