

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
ADVANTA CORP., *et al.*, .
Debtors. . Case No. 09-13931 (KJC)
. (Jointly Administered)
. July 30, 2010 (10 a.m.)
. (Wilmington) (Telephonic)
.
ADVANTA BANK CORP., .
Plaintiff, .
vs. .
ADVANTA CORP. and . Adv. No. 10-50795 (KJC)
OFFICIAL COMMITTEE OF .
UNSECURED CREDITORS, .
Defendants. .
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT JUDGE

Appearances:

For the Debtors: Richard Levine, Esq.
Victoria Vron, Esq.
Weil, Gotshal & Manges LLP
For the Committee: Robert Malioneck, Esq.
Latham & Watkins
For the FDIC: Andrew B. Kratenstein, Esq.

McDermott, Will & Emery

Audio Operator: Al Lugano
Transcriber: Elaine M. Ryan
(302) 683-0221

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

1 THE COURT: Good morning. This is Judge Carey and
2 we're on the record in the Advanta Corp. Chapter 11
3 proceeding. This call was requested by counsel to hopefully
4 solve a scheduling issue that we've been back and forth on.
5 So, at this point, I'll turn the matter over to counsel.

6 MR. LEVINE (TELEPHONIC): Hi, Your Honor. This is
7 Rick Levine from Weil Gotshal. We're actually going to be
8 starting a deposition shortly so I'm in a conference room in
9 Philadelphia with counsel for the FDIC and counsel for the
10 Committee and I know there are other people who are called in
11 as well. I think we really have two issues though I hear
12 from counsel for the Committee that one of them may have been
13 resolved this morning. But the background is, when Your
14 Honor moved the hearing dates we had two problems. One was
15 that the president of Advanta who had deferred jury duty
16 several times and used up his deferrals was scheduled to be
17 in jury duty during the two days that the hearing was
18 scheduled for. We've managed, based on a letter that we
19 wrote, to free him up, so, Mr. Rosoff is available.

20 THE COURT: Okay.

21 MR. LEVINE (TELEPHONIC): The other issue we had is
22 that one of our experts, he actually is something of a
23 combined fact witness and expert but principally an expert,
24 was committed to another case that week. It's an arbitration
25 that's going from the middle of the week we're supposed to be

1 on trial through the following Monday, including over the
2 weekend. I, Weil, Gotshal, had numerous calls with counsel
3 for the party that retained him in that case to try to
4 convince them that they could make the witness available for
5 half a day on either Tuesday or Wednesday, the two days we
6 have for trial. I even suggested that we could go with him
7 as our first witness Tuesday morning, take him out of order,
8 and then he could be available for them starting that
9 afternoon because the trial's in Washington. So, obviously,
10 Wilmington to Washington is remarkably lucky and convenient.
11 They kept saying no to us though I hear that Latham had a
12 call with a more senior partner at Covington and may have by
13 invoking the fact that we were about to get on a call with
14 Your Honor have obtained some wiggle room there. The other
15 issue which we've been discussing with counsel for the FDIC
16 and ABC, the plaintiff, is a little bit of concern that two
17 days may not be enough. Now, right now, given the number of
18 witnesses, we think it's going to be hard to get it done in
19 two days. I must tell you in my experience as you get closer
20 to trial, people often reduce the number of witnesses. The
21 first deposition's going to be this morning though, so we're
22 not in a position to make those kind of judgments, but I
23 think both sides think that if we can get an additional time
24 close to the hearing dates that probably makes a lot of
25 sense, but I'll be quiet and I'll let Latham update the Court

1 and then let McDermott, Will & Emery comment.

2 MR. MALIONEK (TELEPHONIC): Your Honor, this is
3 Robert MalioneK from Latham & Watkins for the Committee. I
4 did have a call with counsel that has retained and is
5 planning on using as a testifying expert one of the experts
6 that the debtors has retained here. The arbitration that
7 that expert is set to testify and does not begin until
8 Thursday the 19th, what the lead partner told me in that case
9 this morning, is that while the timing is not ideal, of
10 course, if the morning of the 17th, for example, is the only
11 time that would then work with Your Honor's schedule in
12 connection with this case and all the parties here were
13 amenable to having this expert testify out of order in
14 essence and go on first on the 17th, then please get back to
15 him, and of course, he would need to take that into
16 consideration and would defer to Your Honor's schedule.

17 THE COURT: Well, let me ask this: As you know, from
18 our exercise, the schedule has been a tight one but it's
19 never static. It's been moving around, as it turns out, and
20 I don't know whether we discussed this date or not, Monday
21 the 16th has opened up. Would you like to begin then and does
22 that help you?

23 MR. MALIONEK (TELEPHONIC): From the Committee's
24 perspective, I think that would be a good result.

25 MR. KRATENSTEIN (TELEPHONIC): Your Honor, it's

1 Andrew Kratenstein from McDermott for the FDIC. I want to
2 confer with my client. I think that that likely will be
3 acceptable to us if that helps everybody here, and I think,
4 you know, I share Mr. Levine's concerns that it may be tight,
5 at least given the number of witnesses who have disclosed by
6 the parties as potential witnesses at the hearing to get it
7 done in two days. I also want to discuss with my client what
8 Mr. Malioneck just said. I'm not sure if we have the 16th that
9 it moots the issue because maybe we don't need to call out of
10 order now. I just heard for the first time that there was a
11 possibility of this expert coming in on the 17th and possibly
12 being called out of order. So, if we have the 16th, that may
13 resolve all of these issues. I'd like to discuss it with my
14 client if that's alright with everybody and get back to the
15 Court. I expect that we will take the Court up on that and
16 very much appreciate it.

17 MR. LEVINE (TELEPHONIC): This is Rick Levine for
18 the debtors. That's my reaction as well. It sounds like
19 it's a wonderful solution. I do need to check with my client
20 because obviously up until now that wasn't on their schedule
21 but if they were not planning on devoting that day to the
22 trial and preparing for the trial they weren't thinking. So,
23 I think it should be fine. If that's okay with Your Honor,
24 we'll get back to you on that but I think if we have Monday,
25 Tuesday, and Wednesday of that week that probably really

1 should resolve the issue. There's a separate issue that this
2 actually kind of works against it which was we were hoping to
3 get one more day to file the joint pretrial order and if any
4 party wants to file a pretrial brief - Mr. Kratenstein, when
5 are they currently due?

6 MR. KRATENSTEIN (TELEPHONIC): They're currently
7 due, Your Honor, based on a prior hearing date which was the
8 17th, I believe your rules require us to file a pretrial order
9 and any pretrial brief 3 business days before the hearing
10 which would fall on, given the weekend, August 12th. The
11 parties are taking depositions and they won't be completed
12 until, I think, August 11th. We're double tracking some of
13 them and we were hoping to file the pretrial papers on August
14 13th instead of August 12th. I don't know if Your Honor has a
15 view of that now, particularly given that you want to move up
16 the hearing date one day, but that's what we were hoping to
17 do.

18 THE COURT: Could you have them in by noon?

19 MR. KRATENSTEIN (TELEPHONIC): Your Honor, we'll
20 take whatever extension you can give us.

21 THE COURT: Okay. Let's say noon on the 13th then.

22 MR. MALIONEK (TELEPHONIC): Excellent. Your Honor,
23 we really appreciate your flexibility.

24 THE COURT: Sure. Now, let me ask this, where do
25 you stand in scheduling with Judge Drain?

1 MR. LEVINE (TELEPHONIC): As far as we know, he is
2 available next week, but we've proposed, I think - we've
3 proposed I guess Friday of this week or Monday of next week,
4 and we haven't heard back; have we?

5 MR. KRATENSTEIN (TELEPHONIC): That's correct.
6 Andrew Kratenstein, again. We have proposed August 6th or
7 August 9th and we sent Judge Drain all of the materials as
8 well as a summary of where we've been in terms of settlement
9 discussions and asked him to get back to us on whether he
10 wants to see us on the 6th or the 9th, and we have not yet
11 heard back from him. I expect if we don't hear back today,
12 we will contact his chambers and ask them if the Judge has
13 selected a day, but just for the record, we've been very
14 appreciative that he has been willing to see us and
15 appreciative that Your Honor approved his selection by the
16 parties.

17 THE COURT: Yeah, I mean, I spoke with him this
18 morning. He's been out of town. He returned to the office
19 just early today. So that may be why you haven't heard from
20 him.

21 MS. VRON (TELEPHONIC): Your Honor, this is Victoria
22 Vron from Weil, Gotshal. I did contact Judge Drain's
23 chambers this morning and that is the message I received this
24 morning, but we have not heard today because Judge Drain was
25 out of town and that we should expect to hear back later

1 today.

2 THE COURT: Yes, that doesn't surprise me. I did
3 sign an order today which, if it's not been docketed already,
4 will be soon appointing him as mediator and also gave him my
5 thanks for his willingness to do this. As I'm sure you all
6 know, you couldn't be in better hands. If there is some hope
7 of settling this, I'm sure you've reached out to the best
8 person you could have. Okay, well, let's do this. I've
9 tentatively now added the 16th as a trial day. If there's
10 some issue with that, let me know right away but that is
11 blocked off and I'll tentatively plan to begin then, but
12 hopefully, your session with Judge Drain will be productive
13 and hopefully successful. Is there anything else we need to
14 talk about today?

15 MR. LEVINE (TELEPHONIC): No, Your Honor. Thank you
16 very much again for hearing us and for being so flexible.

17 ALL (TELEPHONIC): Thank you, Your Honor.

18 THE COURT: You're welcome. Have a good weekend,
19 everyone.

20 UNIDENTIFIED SPEAKER (TELEPHONIC): Thank you, Your
21 Honor, take care.

22 (The remainder of this page is intentionally left
23 blank.)

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1 THE COURT: That concludes this hearing, Court will
2 stand adjourned.

3 (Whereupon at 10:10 a.m., the hearing in this
4 matter was concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for the
19 United States Courts, certify that the foregoing is a correct
20 transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan
Elaine M. Ryan
2801 Faulkland Road
Wilmington, DE 19808
(302) 683-0221

July 31, 2010

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Advanta Corp., et al.,
Welsh & McKean Roads
P.O. Box 844
Spring House, PA 19477

Chapter: 11

EIN: 23-1462070
Teacher Service Organization, Inc.
TSO Financial Corp.

Case No.: 09-13931-KJC

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A transcript of the proceeding held on 7/29/2010 was filed on 8/3/2010 . The following deadlines apply:

The parties have seven 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 8/24/2010 .

If a request for redaction is filed, the redacted transcript is due 9/3/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 11/1/2010 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.



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ust	United States Trustee	USTPREGION03.WL.ECF@USDOJ.GOV
aty	Mark D. Collins	collins@rlf.com, rbgroup@rlf.com
aty	Paul N. Heath	heath@rlf.com, RBGroup@rlf.com

TOTAL: 3

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Advanta Corp., et al.,	Welsh &McKean Roads	P.O. Box 844	Spring House, PA 19477
aty	Bruce S. Meyer	Weil Gotshal &Manges LLP	767 Fifth Avenue	New York, NY 10153
aty	Chun I. Jang	Richards, Layton &Finger, P.A.	920 North King Street	P.O. Box
	551	Wilmington, DE 19899		
aty	Zachary I. Shapiro	Richards Layton &Finger, P.A.	920 North King Street	Wilmington, DE 19801

TOTAL: 4