

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
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Hearing: November 24, 2010 at 10:00 a.m.
Objection Deadline: November 17, 2010 at 4:00 p.m.

**MOTION FOR AUTHORITY TO EXERCISE
OWNERSHIP RIGHTS OVER CERTAIN INSURANCE POLICIES**

Advanta Corp. (“*Advanta*”), as debtor and debtor in possession, respectfully represents:

Relief Requested

1. By this motion (the “*Motion*”), Advanta requests, pursuant to sections 105(a) and 363 of the Bankruptcy Code, entry of an order substantially in the form attached hereto as *Exhibit A* (the “*Proposed Order*”) authorizing (i) Advanta, in its sole discretion, to exercise its right to surrender certain life insurance policies issued by Pacific Mutual Life

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BE Corp. (8960), ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Information regarding the Debtors’ businesses and the background relating to events leading up to these chapter 11 cases can be found in (i) the Declaration of William A. Rosoff in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions, filed on November 8, 2009, (the “*Rosoff Declaration*”), the date the majority of Debtors filed their petitions (the “*Commencement Date*”) under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and (ii) that certain supplement thereto, filed on November 20, 2009, the date Advanta Ventures Inc., BE Corp., ideablob Corp. and Advanta Credit Card Receivables Corp. filed their chapter 11 cases (the “*Second Commencement Date*”, and together with the Commencement Date, the “*Commencement Dates*”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

Insurance Company (“*PacLife*”), and (ii) PacLife to remit the proceeds of the surrender of such policies to the Trust (as defined herein). PacLife acknowledges Advanta’s ownership rights with respect to the Policies (as defined herein), but has requested that the Court approve any exercise of such ownership rights. While Advanta asserts that it may initiate the foregoing processes in the ordinary course of business in accordance with the terms and conditions of the Policies and the Trust Agreement (as defined herein), it nevertheless seeks entry of the Proposed Order out of an abundance of caution.

The Non-Employee Directors Deferral Plan

2. On December 16, 1993, Advanta adopted that certain Non-Employee Directors Deferral Plan (as amended from time to time), to provide certain non-employee directors of Advanta with benefits upon retirement, death or other termination of service.

3. Advanta subsequently obtained, among others, the following insurance policies with PacLife on the life of Dennis J. Alter, Advanta’s Chairman of the Board and Chief Executive Officer, with Advanta as the beneficiary (the “*Policies*”):

Date	Policy	Policy No.	Maturity Date
January 1, 1993	Whole Life – VI	0122635230	January 1, 2043
January 1, 1993	Whole Life - VI	0122645180	January 1, 2043
January 1, 1994	Whole Life – VI	0122777590	January 1, 2043

4. On or around February 23, 1994, a trust (the “*Trust*”) was formed following the execution of that certain Non-Employee Directors Deferral Plan Trust Agreement (the “*Trust Agreement*”) between Advanta and Wachovia Bank, a division of Wells Fargo Bank, N.A. (f/k/a Wachovia Bank of North Carolina, N.A.), as trustee (the “*Trustee*”), and Advanta subsequently transferred certain assets, including the Policies, to the Trust.

5. Pursuant to the terms and conditions of each of the Policies, upon written request while an insured is living, Advanta may elect to surrender the Policies for their Cash

Surrender Value², with such request terminating the Policies in turn. In the event the insured passes away prior to the surrender of a Policy, Advanta would no longer have any right to receive the Cash Surrender Value for the applicable Policy covering the insured, but instead, would be entitled to the death benefit under such Policy. In either instance, PacLife is obligated to remit any applicable Policy proceeds to the Trust.

6. Advanta expects to terminate the Trust and distribute its assets pursuant to its chapter 11 plan for the benefit of creditors. In anticipation of termination of the Trust, Advanta has determined that surrendering the Policies at the current time will maximize value to Advanta's estate and its creditors. Although Advanta believes that surrendering the Policies to the Trust is an ordinary course action, PacLife has requested an Order of this Court confirming Advanta's ability to surrender the Policies to the Trust.

**The Relief Requested Is Appropriate Under
Sections 105(a) and 363 of the Bankruptcy Code**

7. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In determining whether to authorize the use of property outside the ordinary course of business, courts require a debtor to show that a sound business purpose justifies such actions. *See, e.g., In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.* and requiring good

² Pursuant to each of the Policies, the Cash Surrender Value is the Cash Value (as defined in the applicable Policy) less any policy loan debt.

faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (same); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale). Section 105(a) of the Bankruptcy Code, in turn, authorizes this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

8. In light of the expected termination of the Trust, Advanta has determined to surrender the Policies in exchange for their Cash Surrender Value, and thus terminate such Policies. Advanta’s decision to exercise its ownership rights under the Policies at this time is an exercise of sound business judgment, is undertaken in good faith, and is in the best interests of Advanta’s estates and creditors. Advanta’s election to surrender the Policies will result in the Trust receiving the Cash Surrender Value for the Policies, which it will hold for the benefit of Advanta’s estate and its creditors. Taking action to surrender the Policies falls squarely within Advanta’s rights under the Policies and constitutes an efficient and cost-effective means of realizing the value of the Policies. By pursuing these rights, Advanta is not affecting the interests of any other party.

9. In sum, the relief requested will lead to the monetization of the Policies, and ensure that these valuable assets are available for distribution to Advanta’s creditors once the Trust is terminated. Accordingly, the relief requested is in the best interests of Advanta, its estate, and its creditors, and the Court should approve the Motion.

Jurisdiction

10. This Court has jurisdiction to consider this matter and grant the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. A proceeding to consider and grant such relief is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Notice

11. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the statutory committee of unsecured creditors; (iii) Bank of New York Mellon, as trustee under the Investment Note Indenture, and Law Debenture Trust Company of New York, as trustee under the 8.99% Indenture (both as defined in the Rosoff Declaration); (iv) PacLife; (v) the Trustee; and (vi) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “*Notice Parties*”). Advanta respectfully submits that no further notice of this Motion is required.

No Prior Request

12. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, Advanta respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: November 3, 2010
Wilmington, Delaware

/s/ Zachary I. Shapiro

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Paul N. Heath (No. 3704)
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ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
:
: **Hearing: November 24, 2010 at 10:00 a.m. (EST)**
: **Obj. Deadline: November 17, 2010 at 4:00 p.m. (EST)**
-----X

NOTICE OF MOTION AND HEARING

Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”), today, filed the **Motion for Authority to Exercise Ownership Rights Over Certain Insurance Policies** (the “*Motion*”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for the Debtors on or before **November 17, 2010 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the Bankruptcy

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Court, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **November 24, 2010 at 10:00 a.m. (Eastern Standard Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 3, 2010
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro

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Paul N. Heath (No. 3704)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

The Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
<i>In re</i>	:	Chapter 11
	:	
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	X	Re: Docket No. ____

**ORDER AUTHORIZING EXERCISE
OF OWNERSHIP RIGHTS OVER CERTAIN INSURANCE POLICIES**

Upon the motion, dated November 3, 2010 (the “*Motion*”), of Advanta Corp. (“*Advanta*”), as debtor and debtor in possession, for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “*Bankruptcy Code*”),² authorizing, (i) Advanta, in its sole discretion, to exercise ownership rights over the Policies listed on *Exhibit I* attached hereto, and (ii) PacLife to remit any proceeds of the Policies to the Trust; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and the relief requested in the Motion being in the best interests of Advanta,

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² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

its estate and its creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that Advanta is authorized, but not directed, to exercise any and all ownership rights under the Policies listed on *Exhibit 1* including, without limitation, surrendering the Policies; and it is further

ORDERED that Advanta is authorized to provide PacLife and the Trustee any and all documentation necessary to effectuate the exercise of such rights under the Policies; and it is further

ORDERED that, if directed by Advanta, PacLife shall surrender the Policies within a commercially reasonable amount of time, terminate such Policies, and in accordance with the terms thereof, transfer any and all amounts constituting the Cash Surrender Value of the Policies to the Trust; and it is further

ORDERED that, in the event that the insured under the Policies passes away prior to Advanta's notice to surrender the Policies being delivered, PacLife shall convey the death benefit under the applicable Policy to the Trust instead of the Cash Surrender Value; and it is further

ORDERED that, in the event that PacLife has surrendered the Cash Surrender Value to the Trust with respect to the insured, and the parties subsequently determine that the insured died prior to the surrender of the relevant Policy, PacLife shall pay to the Trust the

difference between the Cash Surrender Value and the applicable death benefit under such Policy in accordance with the terms of the applicable Policy; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: November _____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Schedule of Policies

Date	Policy	Policy No.	Maturity Date
January 1, 1993	Whole Life – VI	0122635230	January 1, 2043
January 1, 1993	Whole Life - VI	0122645180	January 1, 2043
January 1, 1994	Whole Life – VI	0122777590	January 1, 2043