UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
ADVANTA CORP., *et al.*,	:	Case No. 09-13931 (KJC)
Debtors.[1]	:	(Jointly Administered)
	:	**Re: Docket No. 911**

OBJECTION TO EXPEDITED MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO CONDUCT EXAMINATION OF THE DEBTORS PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Advanta Corp. and its affiliated debtors (the "***Debtors***"), as debtors and debtors in possession in the above-referenced jointly administered chapter 11 cases, as and for their objection (the "***Objection***") to the emergency motion (the "***Motion***") of the Official Committee of Unsecured Creditors ("***Committee***") for an order compelling the Debtors and their

[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 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 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***").

representatives to produce documents and appear for deposition upon oral examination [Docket No. 911], respectfully represents as follows:

SUMMARY

1. The Debtors respectfully submit that the Motion should denied. As the Debtors show below, the disputes regarding the Debtors' chapter 11 plan (the "***Plan***")[2] and disclosure statement thereto (the "***Disclosure Statement***")[3] are minor, and the discovery sought will not help the Court resolve them. Instead, the proposed discovery is likely to result in a wasteful expense of estate resources and potential significant delay.

2. Since the commencement of these chapter 11 cases in November of 2009, the Debtors' management and counsel have worked together tirelessly to maximize the recovery for unsecured creditors. Their efforts have proved very successful, overcoming very substantial obstacles. As reflected in the proposed Disclosure Statement, holders of Investment Notes and the RediReserve Certificates (both as defined in the Plan, and together, the "***Retail Noteholders***") will be expected to receive between 64% and 100% of their claims under the proposed Plan. The Retail Noteholders, many of whom are older individuals, will benefit from prompt approval of the Plan, so that they may begin receiving payments. Delay and increased costs hurt them.[4]

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[2] Debtors' Joint Plan Under Chapter 11 of the Bankruptcy Code, dated November 2, 2010 [Docket No. 895].

[3] Disclosure Statement for the Debtors' Joint Plan Under Chapter 11 of the Bankruptcy Code, dated November 2, 2010 [Docket No. 896].

[4] In contrast to the Retail Noteholders, holders of the Subordinated Notes (as defined in the Plan), which are owned by hedge funds and other financial institutions, will not receive any recovery unless the Alter & Rosoff Claims (as defined below) are disallowed. Thus the impetus of holders of Subordinated Notes to focus on the Alter & Rosoff Claims, without regard to the interests of all creditors, is self evident. Two of the five members of the Committee, including the chairperson, represent holders of Subordinated Notes.

3. During the negotiations of the Plan with the Committee, the Committee demanded that the Debtors prevail on Dennis Alter, the Debtors' chief executive officer, and William Rosoff, the Debtors' president, to waive all or part of their filed claims (the "***Alter & Rosoff Claims***"). The Debtors viewed this request as inappropriate. Like claims of other creditors, the claims of Messrs. Alter and Rosoff will be reviewed and resolved in due course—independent of the Plan process. In their Motion, the Committee does not overtly mention their demand that Messrs. Alter and Rosoff waive part of their claims; but the issues of dispute that the Committee does raise in the Motion are relatively minor, and have been satisfactorily addressed by the Debtors, thus leaving open the question as to the underlying purpose of the discovery requested by the Committee.

4. The three issues raised by the Committee in the Motion are:

(a) *Post Confirmation Bankruptcy Court Jurisdiction to Adjudicate Estate Claims.* It is the Debtors' position that the language in the proposed Plan and Disclosure Statement adequately preserves the jurisdiction of the Court to adjudicate potential causes of action that may be brought by the estates or the liquidating trustees against Messrs. Alter or Rosoff. And Messrs. Alter and Rosoff have agreed to the Court's jurisdiction over such causes of action. In addition, if the Court nonetheless determines that additional language in the Disclosure Statement is required, the Debtors have stated that they will revise the Disclosure Statement accordingly. There is, consequently, no discovery needed on this issue.

(b) *Exculpation of Officers and Directors for Postpetition Conduct*.[5] It is customary that a chapter 11 plan contain a provision exculpating officers and directors of the debtor for postpetition conduct. Yet, during negotiations over the Plan, the Committee has requested that the Debtors give the Committee 180 days after the effective date of the Plan to decide whether to bring causes of actions against the Debtors' officers and directors. As discussed further below, with one exception, the Committee has pointed to no postpetition conduct to which they object, other than their complaint about preservation of jurisdiction discussed immediately above, and their inappropriate request that the Debtors refused to cause Messrs. Alter and Rosoff to waive all or part of their claims. Whether to approve the Debtors' exculpation provision in full, or modify it as will likely be requested by the Committee, is something that can be decided by the Court without discovery at the confirmation hearing. As such, the issue of exculpation it totally irrelevant to either the hearing on the Disclosure Statement or the Debtors' motion to extend exclusive periods to file a chapter 11 plan and solicit acceptances thereof (the "***Exclusivity Motion***").

(c) *The Debtor's Failure to Prevail on Messrs. Alter and Rosoff to "Mitigate" their Claims Against the Estates*. The Committee raised a concern during the negotiations over the Plan and Disclosure Statement that the approval of the Plan by the Debtors' board of directors – without more – might result in a "change of

[5] The Committee incorrectly asserts that the exculpation provision in the Plan is ambiguous and may be read to exculpate officers and directors for prepetition conduct. Not only has the Committee never raised this issue before in plan negotiations, but Section 10.7 of the Plan is clear that it only applies to postpetition conduct. In addition, Section 10.7 of the Plan explicitly carves-out from the exculpation of postpetition conduct liability of any person for any act or omission that constitutes, among other things, willful misconduct or gross negligence.

control", thereby irrevocably entitling Messrs. Alter and Rosoff to a significant portion of their filed claims, whereas if the Debtors first terminated Messrs. Alter and Rosoff for cause their claims would be denied in their entirety. As discussed further below, the Debtors resolved this concern by procuring from Messrs. Alter and Rosoff an agreement i) to treat the board's approval of the Plan as having no such effect, and ii) agreeing that Messrs. Alter and Rosoff would be deemed to have been terminated for cause, as of October 31, 2010, if it is later finally determined by a court that they could properly have been terminated for cause on or before that date. *See* **Exhibit A**. The Committee informed Debtors' counsel that the agreement procured from Messrs. Alter and Rosoff was inadequate, and demanded that the Debtors require Messrs. Alter and Rosoff to waive a portion of their claims. *See* **Exhibit B**.

5. As the Debtors show below, the discovery sought by the Committee is designed to probe the Debtors' consideration of the issues discussed immediately above during the deliberations on the proposed Plan and Disclosure Statement. The Committee asserts that discovery of these issues is necessary for their analysis of the Exclusivity Motion and the Disclosure Statement. The Committee's discovery requests (the "***Discovery Requests***") concerning the Debtors' considerations of the three issues discussed above are not likely to produce anything useful to either the Exclusivity Motion or the hearing to approve the Disclosure Statement.[6] Moreover a significant portion of the documents requested by the Committee either

[6] Contrary to the Committee's implication, the Debtors first received copies of the Discovery Requests in the afternoon of November 9, 2010 – approximately 24 hours before the Motion was filed. The Disclosure Statement was filed on November 2, 2010 and the Exclusivity Motion on November 4, 2010. As discussed below, however, the Committee knew well in advance of

do not exist, are privileged, or have already been voluntarily provided to the Committee during the course of these chapter 11 cases. As such, there is nothing to be gained by the Committee from pursuing the Discovery Requests, other than incurrence of extra professionals' fees and potential significant delay. These costs include the significant time and expense to identify, log and resolve disputes relating to privileged documents. Such delay and expense will be to the detriment of the creditors that the Committee represents. The Motion should therefore be denied in its entirety.

DISCUSSION

Background

6. Contrary to the Committee's implication in the Motion that the Committee first heard of the terms of the Plan and the Disclosure Statement on August 31, 2010, the Debtors have been meeting with and negotiating the terms of the chapter 11 plan with the Committee since at least April 2010. The Debtors originally intended to file the Plan in September 2010, but delayed filing the Plan for several months to give the Committee an opportunity to review and comment on drafts of the Plan and the Disclosure Statement. The Debtors have gone above and beyond what is required by law to work with the Committee and to incorporate the Committee's comments into the Plan and the Disclosure Statement. Although the Debtors and the Committee were able to agree on virtually all provisions of the Plan and Disclosure Statement, including the most important provisions such as the plan structure and the mechanism for distribution of assets to creditors, unfortunately, they were unable to reach agreement on the following two discrete issues (the "***Plan Issues***") relating to the Alter & Rosoff Claims:

November 2, 2010 that both of these documents would be filed. The "emergency" in filing the Motion is therefore of the Committee's own making.

(a) whether to exculpate current and former directors and officers from postpetition conduct; and

(b) whether additional disclosure about certain potential causes of action is needed in the Disclosure Statement under prevailing case law to preserve the Court's post-confirmation jurisdiction over such causes of action.

7. The Alter & Rosoff Claims assert claims under certain prepetition benefit programs, including claims relating to a "change in control" or a "change of control." The Committee believes that the estates may have affirmative causes of action against Messrs. Alter and Rosoff that may mitigate the Alter & Rosoff Claims. Other than potential causes of action relating to the board of directors' December 10, 2009 decision to liquidate the Debtors (the "***December 2009 Decision***"), which is already excluded from the exculpation provision in the Plan, the Committee has been unable to articulate any additional specific postpetition causes of actions that the estates may have against Messrs. Alter and Rosoff. Instead, the Committee requested that the Plan give the Committee 180 days after the effective date of the Plan to determine whether any causes of action against officers and directors exist. Because the Committee has not provided any justification for not exculpating the Debtors' officers and directors for postpetition conduct (other than with respect to the December 2009 Decision), the Debtors determined that it was appropriate to exculpate the Debtors' officers and directors for postpetition conduct.

8. With respect to the first Plan Issue, the Committee makes a number of inaccurate and misleading statements in the Motion that form the basis for much of their Discovery Requests. Specifically, the Committee asserts that the Debtors have refused to investigate or contest the validity of the Alter & Rosoff Claims. This is simply not true. The Debtors determined that because Messrs. Alter and Rosoff are still officers and directors of the Debtors, it would be more prudent for Committee's counsel or the liquidating trustee under a

chapter 11 plan to analyze and investigate the Alter & Rosoff Claims. The Debtors thus asked Committee's counsel to analyze and investigate the Alter & Rosoff Claims, a task which the Committee's counsel has eagerly embarked on. Committee's counsel has had numerous meetings to date with Dechert LLP, counsel for Messrs. Alter and Rosoff, to negotiate the Alter & Rosoff Claims. To assist the Committee in its investigation, review, and negotiation of the Alter & Rosoff Claims, the Debtors have voluntarily provided since at least June 2010 – and continue to provide – the Committee's professionals with documents concerning the Alter & Rosoff Claims. The Disclosure Statement makes clear that the Alter & Rosoff Claims are Unresolved Claims (as defined in the Plan). Contrary to the Committee's implication, there is nothing inappropriate about a debtor's deferral of the analysis of its current directors', employees' or officers' claims to the creditors' committee or a liquidating trustee. Instead, it is the Committee's filing of the Motion that is suspect. According to Committee's counsel, counsel for the Committee and Messrs. Alter and Rosoff met on November 8, 2010 to discuss the Alter & Rosoff Claims, but failed to reach a settlement of the Alter & Rosoff Claims at that meeting. The Document Requests, which seek production of substantially the same information as has already been provided to the Committee voluntarily, were sent to the Debtors the next day and the Motion was filed 24 hours thereafter.

9. With respect to the second Plan Issue, the Debtors are in agreement with the Committee that the Plan should preserve the Court's post-confirmation jurisdiction over certain causes of action. The Debtors disagree with the Committee, however, over the degree of disclosure that is required regarding these potential causes of action in order for the Court to retain jurisdiction under the current case law. The Debtors believe that the disclosures currently contained in the Plan and the Disclosure Statement regarding these potential causes of action are

sufficient to confer jurisdiction on the Court, and that the additional disclosures that the Committee requested are unnecessary and inflammatory. In addition, Messrs. Alter and Rosoff have agreed to the Courts' jurisdiction over such causes of action.

10. In addition to the Plan Issues, the Committee raised several other issues noted in the Summary relating to the Alter & Rosoff Claims that the Debtors fully accommodated. Specifically, the Committee raised a concern that the approval of the Plan by the Debtors' board of directors may result in a "change in control" that would potentially entitle Messrs. Alter and Rosoff to a significant portion of the Alter & Rosoff Claims (the "***COC Issue***"). As reflected in the letter from Debtors' counsel to Committee's counsel, dated October 27, 2010, which is attached hereto as ***Exhibit A***, the Debtors gave the Committee exactly what they were asking for by procuring from Messrs. Alter and Rosoff an agreement (i) to treat the board's approval of the Plan and authorization of the filing of the Plan (and any amendments or substitutions thereto) as having no different effect than if such Plan, amendments, and substitutions thereto had been approved and filed by the Committee without the board's approval of such plan or authorization of filing such plan, and (ii) deeming Messrs. Alter and/or Rosoff to be treated as if terminated "For Cause" on October 31, 2010, prior to the board's approval of the Plan, if a court of competent jurisdiction enters a final, nonappealable order including a finding that Messrs. Alter and/or Rosoff, as applicable, could have been properly terminated on October 31, 2010 "For Cause," as such term is used in the applicable benefit plans. In a letter dated November 1, 2010, which is attached hereto as ***Exhibit B*****,** counsel for the Committee informed Debtors' counsel that the agreement the Debtors procured from Messrs. Alter and Rosoff was insufficient, and requested instead that the Debtors either require Messrs. Alter and Rosoff to waive a portion of their claims –an act that is outside the Debtors' control – or indefinitely delay

the approval and the filing of the Plan, which delay would be open ended and not in the interests of the estates and their creditors.

11. By late October 2010, it became clear that further negotiation to resolve the Plan Issues and the COC Issue would be futile and a delay in the filing of the Plan would only result in the incurrence of additional professionals' fees, to the detriment of creditors. As reflected in the letter from Debtors' counsel to Committee's counsel, dated November 4, 2010, which is attached hereto as ***Exhibit C***, the Debtors have no way to comply with the Committee's unreasonable request to force Messrs. Alter and Rosoff to waive all or a portion of their claims. Neither the board of directors nor the Debtors can force any creditor to waive their claims as a condition to filing a chapter 11 plan, regardless of whether such creditor happens to be a member of the board or an officer of the Debtors. Because the Debtors structured the approval of the Plan in such as way as to mitigate the COC Issue, and because the only remaining disputes with the Committee are legal in nature and can be resolved by the Court, the Debtors determined that the filing of the Plan, even without the Committee's support, was in the best interests of the estates. Accordingly, on November 2, 2010, after months of negotiations with the Committee over a consensual chapter 11 plan, the Debtors filed the Plan and Disclosure Statement. On November 4, 2010, the Debtors filed the Exclusivity Motion seeking to extend their exclusive periods for filing and soliciting votes on a chapter 11 plan by an additional 60 days.

12. The Committee implies that there was something nefarious about the changes that the Debtors made to the Plan from the version of the Plan that was under negotiation with the Committee. Specifically, in the negotiated draft of the Plan, the Debtors had agreed to give the Committee certain consent rights over the confirmation order and the appointment of Trustees (as defined in the Plan), among other things. Such consent rights,

however, were in the context of a fully consensual chapter 11 plan, which was not achieved. The Committee cannot feign surprise over the deletion of these consent rights in a non-consensual chapter 11 plan. Nor was such deletion in retaliation for the Committee's withdrawal of its support of the Plan. It was clear from the start of negotiations that support of the Plan was a condition to the consent rights – a condition that is typical in plan negotiations. Moreover, it would be incongruous to seek consent from the Committee for a chapter 11 plan or a confirmation order thereto when the Committee already do not support the current version of the Plan. The Debtors tried to find a middle ground with the Committee by proposing to file a Plan and Disclosure Statement that would have garnered a qualified support of the Committee – specifically, one in which the Committee would support most of the Plan, other than the exculpation provision. In this quasi-consensual version of the Plan, the Debtors proposed to still give the Committee the same consent rights as in a fully consensual plan if the Committee were to agree to support the Plan other than the exculpation provision set forth in Section 10.7 of the Plan, with respect to which the Committee would reserve the right to seek a modification of the exculpation provision to allow the Trustees (as defined in the Plan) to assert causes of action against persons exculpated in section 10.7 within 90 days after the effective date of the Plan. The Committee, unfortunately, rejected this compromise.

Objection

13. While the scope of an examination under Rule 2004 is "broad and unfettered," *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002), Rule 2004 examinations are not boundless. Indeed, there are well-established limits to the scope of Rule 2004 examinations. *See In re Washington Mut., Inc.*, 408 B.R. 45, 49 -51 (Bankr. D. Del. 2009) ("There are, however, limits to the use of Rule 2004 examinations."); *In re Kelton*, 389 B.R. 812,

820 (Bankr. S.D. Ga. 2008) (enumerating examples where courts have denied Rule 2004 examinations). For example, "the examination should not be so broad as to be more disruptive and costly to the debtor than beneficial to the creditor." *In re Texaco Inc.*, 79 B.R. 551, 553 (Bankr. S.D.N.Y. 1987). In addition, "Rule 2004 examinations cannot be used for the purpose of abuse or harassment and the examination cannot go beyond the bounds of what is, or may be, relevant to the inquiry." *In re Strecker*, 251 B.R. 878, 882-83 (Bankr. D. Colo. 2000) (*citing In re Symington,* 209 B.R. 678, 684-85 (Bankr. D. Md. 1997); *In re Table Talk,* 51 B.R. 143, 145 (Bankr. D. Mass. 1985); *In re Mittco, Inc.,* 44 B.R. 35, 36 (Bankr. E. D. Wis. 1984)). Likewise, Rule 2004 examinations may not be used to annoy, embarrass, or oppress the debtor. *In re Coffee Cupboard, Inc.,* 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991).

14. Rule 2004(c) provides that the production of documents "may be compelled as provided in Rule 9016." Fed. R. Bankr. P. 2004(c). Rule 9016, in turn, incorporates Fed. R. Civ. P. 45 into "cases under the Code." Fed. R. Bankr. P. 9016. Under Rule 45, the court may quash or modify the request for the production of documents if it fails to provide a reasonable time to comply or if it is unduly burdensome. Fed. R. Civ. P. 45(c)(3)(A); *see also Texaco*, 79 B.R. at 553. Importantly, Rule 2004 may not be used to frivolously waste the assets of the estates. *See In re Duratch Indus*, 241 B.R. 291, 296-99 (E.D.N.Y. 1999); *see also In re Hammond*, 140 B.R. 197, 201 (S.D. Ohio 1992) ("[T]he bankruptcy court must balance the examiners interests against the debtor's interest in avoiding the cost and burden of disclosure. . . . The debtor's interest may in some cases warrant a limitation of the scope of the proposed examination. In rare cases, the debtor's interest may so greatly outweigh those of the examiner that the examination should be quashed."). For the reasons discussed below, the Rule 2004 examination sought by the Committee here would be disruptive and would result in a

frivolous waste of estate assets without any meaningful benefit to the Committee, other than harassment of the Debtors and their representatives. Therefore, good cause for the requested Rule 2004 examination has not been shown.

(a) ***The Discovery Requests Are Not Relevant to Either the Disclosure Statement or the Exclusivity Motion***

15. Although the breadth of Rule 2004 is wide, a party seeking a Rule 2004 examination must show "good cause" for the examination requested and the examination cannot be beyond what is relevant to the inquiry. *See*, *e.g.*, Fed. R. Bankr. P. 2004(a) ("the court *may* order the examination of any entity") (emphasis added); *In re Enron Corp.*, 281 B.R. at 840 ("the Court has the discretion to grant a request for a 2004 examination"); *In re Eagle-Picher Indus., Inc.*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994) ("the one seeking to conduct a 2004 examination has the burden of showing good cause" (citations omitted)); *In re Bd. of Dirs. of Hopewell Int'l Ins., Ltd.*, 258 B.R. 580, 587 (Bankr. S.D.N.Y. 2001) (stating Rule 2004 "give[s] the Court significant discretion").

16. The Committee has failed to show good cause to support its Rule 2004 Discovery Requests. The Committee asserts that discovery is needed to permit full assessment of the issues involved in connection with the relief sought by the Debtors in the motion to approve the Disclosure Statement and the Exclusivity Motion. (*See* Motion at 21.) The Debtors believe that much of the information the Committee requests in the Discovery Requests has already been voluntarily provided to the Committee's professionals in connection with their review of the Alter & Rosoff Claims and their review of the Debtors' initial drafts of the Plan and the Disclosure Statement, and thus should not have to be provided again. *See Texaco*, 790 B.R. at 553 (holding that "the requested examination should not encompass matters that will be . . . duplicative of previously furnished information"). In addition, the Debtors are willing to

provide to the Committee certain additional information and to stipulate to the non-existence of certain other information. Specifically, the Debtors have agreed to produce to the Committee all available board minutes and any documents the Debtors shared with board members, to the extent such documents have not already been provided. In addition, the Debtors are willing to stipulate that neither the board nor the Debtors (i) have conducted any investigation into the Alter & Rosoff Claims or any causes of action against same, nor (ii) considered terminating either Mr. Alter or Mr. Rosoff "For Cause," as defined in the relevant benefit plan (the "***Stipulated Facts***"). However, the Debtors believe that the remaining information sought by the Committee is irrelevant to either the Disclosure Statement or the Exclusivity Motion. As discussed above, there is only one open issue between the Debtors and the Committee as it relates to the adequacy of the Disclosure Statement: the degree of disclosure that is required by prevailing case law to preserve the Court's jurisdiction over potential claims against officers and directors. This is purely a legal question that can be decided by the Court at the hearing to approve the Disclosure Statement. If the Court determines that additional disclosure is required, the Debtors will revise the Disclosure Statement accordingly. No discovery on this point is, therefore, necessary.

17. With respect to the Exclusivity Motion, it is unclear what additional discovery the Committee would need to evaluate the Exclusivity Motion. The Committee and the Debtors have been working closely together during these chapter 11 cases, and the Debtors have closely involved the Committee in the formulation of the Plan. It is particularly difficult to fathom how the following Discovery Requests, for example, are at all relevant to the Debtors' request to extend exclusivity:

- Request No. 1: All Documents and Communications Concerning the Alter & Rosoff Claims.

- Request No. 9(a): Any and all draft Plans and Disclosure Statements.

- Request No. 9(k): All Documents and Communications Concerning potential liability and potential or actual Estates' Claims against the Debtors' current and/or former officers and/or directors in connection with the Board's alleged approval of liquidation on or about December 10, 2009.

- Request No. 9(p): All Documents and Communications Concerning terms or provisions of the Plan Concerning appointment of the Trustee or Trustees.

- Request No. 9(q): All Documents and Communications Concerning indemnification of any Person by the Debtors.

- Request No. 9(r): All Documents and Communications Concerning liability insurance of the Debtors and/or any other Person.

- Request No. 9(s): All Documents and Communications Concerning Schedule 8.7 of the Plan or treatment of the Compensation and Benefit Programs under the Plan or Claims in connection with the Compensation and Benefit Programs.

- Request No. 15: All Board & Committee Materials, Documents and Communications Concerning whether any creditors, equity interest holders or classes of creditors or equity holders under the Plan will accept or reject the Plan.

18. These and other Discovery Requests are also overly broad and are unlikely to lead to any responsive documents that are relevant to either the Committee's assessments of the Disclosure Statement or the Exclusivity Motion. *See In re Wilcher*, 56 B.R. at 434-35 (denying examination where requested production was not relevant to establishing claim). In fact, many of the Discovery Requests appear to be an attempt by the Committee to obtain information regarding the Alter & Rosoff Claims and potential defenses thereto. Such discovery is not appropriate at this time because the Alter & Rosoff Claims are not at issue in connection with this Court's consideration of the Disclosure Statement or the Exclusivity Motion. The Committee's persistence in linking the Alter & Rosoff Claims to the filing of the Plan appears to be an attempt to pressure Messrs. Alter and Rosoff to waive a portion of their claims, or to force the Debtors to accede to the Committee's demands with respect to the Plan Issues. The use of Rule 2004 examination for these purposes is inappropriate.

(b) ***Cost of Compliance with Discovery Requests Outweighs any Benefits to Committee***

19. In addition, the Discovery Requests themselves are unduly burdensome and would have the effect of draining estate resources without a countervailing benefit to the Committee. The Committee's Discovery Requests seeks production by November 16, 2010 of "all documents and communications" on a number of topics, many with a multitude of subtopics, and are so overbroad as to require the Debtors to engage in unduly burdensome email and file searches of all employees and the Debtors' professionals -- even those believed to have no involvement with the Alter & Rosoff Claims, the Plan, and/or the Disclosure Statement, just to assure that the Debtors have produced "all documents."[7] In addition, many of the Document Requests are so open ended that it would be impossible for the Debtors to tailor their searches of employees' and professionals' files and emails. The Document Requests as written would require the Debtors to review essentially all of the Debtors' documents since January 1, 2008. This would be very costly, and certainly impossible to accomplish within the time frame requested by the Committee. Moreover, a vast majority of these documents are likely privileged, *see* Fed. R. Evid. 501, or have already been provided by the Debtors to the Committee in connection with the Committee's investigation of the Alter & Rosoff Claims and its review of the drafts of the Plan and the Disclosure Statement. Furthermore, as discussed above, the vast majority of the Discovery Requests are not even relevant to either the Disclosure Statement or the Exclusivity Motion.

20. The Committee also seeks to depose Messrs. Alter, Rosoff, and Max Botel, another member of the Debtors' board of directors, among others – all by no later than

[7] The Committee also seeks documents in the possession of board members. Any documents in the possession of board members, however, are not the Debtors' documents, and therefore cannot be produced by the Debtors.

November 22, 2010. Not only is it unclear what the purpose of these depositions would be, but the proposed time frame for depositions is unreasonable because it does not afford the Debtors an adequate opportunity to prepare Messrs. Alter, Rosoff and Botel for depositions.

21. Because the cost of complying with the overly broad Discovery Requests outweighs any benefit the Committee may derive from such discovery, and because of the burdensome nature of the requested depositions, the Motion should be denied. Instead, the Debtors propose to provide to Committee's counsel (and will do so shortly) all board materials that have not yet been provided to the Committee and to stipulate to the Stipulated Facts. The Debtors submit that this would afford the Committee sufficient information to enable them to perform a meaningful assessment of the Disclosure Statement and the Exclusivity Motion.

CONCLUSION

22. Based upon the foregoing, the Debtors submit that the relief requested in the Motion is not warranted by the facts, circumstances, or applicable law, and that to compel the Debtors to expend precious estate resources to produce documents that are either privileged, irrelevant or have already been provided to the Committee would be a frivolous waste of estate resources and should not be allowed.

WHEREFORE the Debtors respectfully request that the Court deny the Motion in all respects, and grant such other and further relief as it deems just and proper.

Dated: November 15, 2010
Wilmington, Delaware

/s/ Zachary I. Shapiro

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BY E-MAIL

October 27, 2010

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Re: *In re Advanta Corp. et al.* (Bankr. D. Del. No. 09-13931 (KJC))

Dear Roger:

I have shared the letter that you sent me on October 25, 2010 (the "Letter") with the Board[1] and senior management of Advanta Corp. ("Advanta"). The Board has considered the Letter in the context of the current state of the Debtors' chapter 11 cases.

The Debtors do not agree with the Committee's assertion that approval of a chapter 11 plan for Advanta and the other Debtors at this time "would benefit only Alter and Rosoff." To the contrary, approval of a chapter 11 plan now is in the best interests of *all* of the Debtors' creditors. As you know, the Debtors have accomplished their goals in these cases by, among other things, mitigating claims of the FDIC against Advanta, securing the servicing and collection of credit card receivables owned by the Debtors, liquidating many of the Debtors' assets, and taking the steps necessary to liquidate and/or preserve the remaining assets while minimizing the chances of creating additional liabilities. Having accomplished these goals, it is incumbent on the Debtors to propose and implement a chapter 11 plan in order to begin distributions to their creditors, who have already been waiting for nearly a year. Additionally, implementation of a plan will increase distributions to creditors by conserving the Debtors' resources through reducing professional fees and further streamlining the Debtors' staffs.

The Board has carefully considered the Letter's request that the Board take action to mitigate claims asserted by Messrs. Alter and Rosoff. The Letter has requested that rather than approve a chapter 11 plan, the Board should consider, among other things, (i) waiving the Debtors' exclusive right to file a chapter 11 plan to allow the Committee to propose its own chapter 11 plan and (ii) investigating terminating Alter and Rosoff "for cause" prior to approving a chapter 11 plan. The Debtors do not believe that they should forego their statutory right to propose a chapter 11 plan or that there is any basis

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Letter.

for the Board to conclude that cause exists to terminate the employment of Messrs. Alter or Rosoff. Nonetheless, the Debtors have obtained delivery from Messrs. Alter and Rosoff of the letter attached as Exhibit A to this letter (the "Alter/Rosoff Letter"), which achieves the effect of the Committee's suggestions. The Alter/Rosoff Letter has the effect, for purposes of claims Messrs. Alter and Rosoff assert under the Supplemental Plans, of (i) treating the Board's anticipated approval of the chapter 11 plan and authorization of the filing of such plan and any subsequent amendments or substitutions as having no different effect than if such chapter 11 plan, amendments, and substitutions thereto had been approved and filed by the Committee without the Board's approval of such chapter 11 plan or authorization of the filing of such chapter 11 plan and any subsequent amendments or substitutions thereto, and (ii) deeming Messrs. Alter and/or Rosoff to be treated as if terminated "For Cause" on October 31, 2010, prior to the Board's anticipated approval of the chapter 11 plan, if a court of competent jurisdiction enters a final, nonappealable order including a finding that Messrs. Alter and/or Rosoff, as applicable, could have been properly terminated on October 31, 2010 "For Cause," as such term is used in the SERP or the SEIP, as applicable. While the Debtors are not aware of any basis for the Board to discharge Messrs. Alter and/or Rosoff "For Cause" or to conduct an investigation as to whether such grounds exist, given the terms of the Alter/Rosoff Letter such investigation is further unwarranted and would only be a distraction resulting in unnecessary cost and delay, which would only be detrimental to creditors.

Implementation of the chapter 11 plan should proceed independently of resolution of any claims of Messrs. Alter or Rosoff. As with all unresolved claims against the Debtors, the chapter 11 plan will preserve the ability of the liquidating trustees appointed pursuant to its terms to object to any claims of Messrs. Alter or Rosoff. Additionally, the Alter/Rosoff Letter preserves the ability of the liquidating trustees to investigate and pursue any claims that Messrs. Alter and/or Rosoff should have been terminated for cause prior to the chapter 11 plan's approval. There is no legitimate reason to delay proposing a chapter 11 plan. Any delay at this point would just be an inappropriate tactic against Messrs. Alter and Rosoff to the detriment of all of the Debtors' creditors.

In light of the foregoing and the impending expiration on November 5, 2010 of the Debtors' exclusive period to file a chapter 11 plan, the Board has scheduled a meeting to consider approval of Advanta's chapter 11 plan on November 1, 2010. The Debtors' preference, of course, is to file a chapter 11 plan that is supported by the Committee. The Debtors have agreed to nearly all of the Committee's comments to the plan to date and we believe that the draft of the plan most recently shared with the Committee accommodates all of its concerns that can legitimately be accommodated in the plan. To the extent that the Debtors and the Committee are unable to reach agreement on a consensual plan prior to the Board's upcoming meeting, the Board must nevertheless consider approval of a chapter 11 plan at the meeting to fulfill its fiduciary duties. The Debtors urge the Committee (and we invite you, of course to share this letter and its exhibit with the Committee) to work cooperatively with the Debtors towards this goal consistent with the Committee's fiduciary duty to all of its constituents to promote expeditious distributions to the creditors at the minimum cost to the Debtors' estates.

Consistent with its actions to date, the Board has and will continue to address all matters appropriately and to meet its fiduciary duties.

Yours truly,

Robert J. Lemons (vv)

Robert J. Lemons

Exhibit A

Dennis Alter
William Rosoff

November 1, 2010

To: Max Botel
Thomas Costello
Dana Becker Dunn
Ronald Lubner
Michael A. Stolper

Dear fellow Board members:

By this letter, each of us hereby confirms that (x) the approval by the Board of Directors (the "Board") of Advanta Corporation ("Advanta") of the chapter 11 plan for Advanta on November 1, 2010 and (y) the authorization by the Board on November 1, 2010 of the filing of a chapter 11 plan by Advanta and any subsequent amendments or substitutions thereto shall, for purposes of any claims that either of us has asserted or may assert as a result of the occurrence of a "Change of Control," including, without limitation, claims under the Advanta Corp. Supplemental Executive Retirement Plan for the Benefit of Dennis Alter (the "SERP") and the Advanta Corp. Supplemental Executive Insurance Program (the "SEIP") as a result of a "Change of Control" (as such term is used in each of the SERP and SEIP, respectively), have no different effect than if such chapter 11 plan, amendments, and substitutions thereto had been approved and filed by the official committee of unsecured creditors appointed in Advanta's chapter 11 case (the "Creditors' Committee") without the Board's approval of such chapter 11 plan or authorization of the filing of such chapter 11 plan and any subsequent amendments or substitutions thereto.

Additionally, although any possible assertion that cause exists for the termination by Advanta of either of our employments would be completely spurious:

(1) Dennis Alter hereby confirms that if a court of competent jurisdiction enters a final, nonappealable order including a finding that he could have been properly terminated on October 31, 2010 "For Cause" as such term is used in the SERP, Dennis Alter shall for purposes of any claims he has asserted or may assert in respect of the SERP be treated as if he had been terminated "For Cause" on October 31, 20~~01~~10; and

(2) each of us hereby confirms that if a court of competent jurisdiction enters a final, nonappealable order including a finding that either of us could have been properly terminated on October 31, 2010 for "Cause," as such term is used in the SEIP, whichever of us such finding is applicable to shall for purposes of any claims he has asserted or may assert in respect of the SEIP be treated as if he had been terminated for "Cause" on October 31, 2010. The appropriate courts will act in lieu of the "Committee," as defined in the SEIP, for this purpose.

Finally, each of us confirms that (i) this letter may be enforced by Advanta, its chapter 11 estate, the Creditors' Committee, or any liquidating trustee appointed under the terms of the chapter 11 plan and (ii) the order confirming the chapter 11 plan may incorporate the terms of this letter.

Sincerely,

Dennis Alter

William Rosoff

cc: Jay Dubow, Esq.
Marcia Goldstein, Esq.
Robert Lemons, Esq.
Roger Schwartz, Esq.

EXHIBIT B

Roger G. Schwartz
Direct Dial: 212-906-1766

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LATHAM & WATKINS LLP

November 1, 2010

Robert J. Lemons, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Re: *In re Advanta Corp., et al.* (Bankr. D. Del. No. 09-13931 (KJC))

Dear Rob:

As you are aware, from the outset of Plan[1] discussions, the Committee has expressed serious concerns with respect to a discrete number of issues concerning the Debtors' proposed Plan. In particular, and as we have discussed, the Committee believes that the Debtors' draft Plan puts at risk both (1) potentially valuable claims of the Debtors' estates by providing immediate exculpation to the Debtors' current and former directors and officers upon Plan effectiveness, while a short delay in exculpation – as the Committee has proposed – will enable the Committee and Liquidating Trusts time to investigate further and conduct further negotiations to determine whether they should initiate proceedings to bring any such claims; and (2) post-confirmation Bankruptcy Court jurisdiction to adjudicate such, by failing to include the Committee's straightforward language in the Plan and Disclosure Statement preserving such jurisdiction.

In light of your October 27 Letter and our subsequent discussions, however, we understand that the Debtors currently intend to move forward with the approval and filing of the Plan without addressing the Committee's concerns.[2] The Debtors have ignored the

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in my letter to you dated October 25, 2010 (my "October 25 Letter") or your response to me dated October 27, 2010 (your "October 27 Letter"), as applicable.

[2] The Committee disagrees with several of the characterizations and representations made in the October 27 Letter and the agreement submitted by Alter and Rosoff attached to that Letter (the "Alter/Rosoff Agreement"), though we do not intend to respond in detail here to every assertion made in your October 27 Letter and the Alter/Rosoff Agreement. The Committee appreciates that the Board considered my October 25 Letter, and understands that, for the benefit of, among others, the Committee and the Liquidation Trusts and Trustees, the Alter/Rosoff Agreement represents their agreement that they (1) will treat the Board's action with respect to authorization and filing of a chapter 11 plan, amendments, and substitutions thereto as if they had been approved and filed by the Committee without the Board's

Committee's requests, as expressed in the October 25, 2010 Letter and in discussions, including that any action by the Board with respect to authorization or filing of a plan be conditioned upon a written agreement by Alter and Rosoff either to waive the portion of their claims that they would argue arises upon a COC under the Supplemental Plans; or to waive any claim or argument that such Board action, or the filing or confirmation of the Plan, constitutes a COC. It now appears that the Debtors are inclined to continue to take actions that favor the Debtors' current and former directors and officers by refusing to adopt the Committee's proposed Plan language pertaining to exculpation and retention of Bankruptcy Court jurisdiction. We urge the Debtors to modify their actions and approach in order to avoid the substantial and unnecessay delay and expense their decisions will create for the Debtors, their estates and their creditors.

If the Debtors continue to ignore the Committee's concerns, the Debtors and the Board should understand that the Committee cannot support the proposed Plan as currently drafted, and in order to protect and preserve potentially valuable assets of the Debtors' estates will advocate against permitting solicitation of the Plan, will contest confirmation of the Plan and will move expeditiously for relief from the Bankruptcy Court for permission to file its own chapter 11 plan. Moreover, if the Debtors insist upon moving forward with the Plan in a form that appears to favor the interests of the Debtors' directors and officers at the expense of the estates, this may well force the Committee to accelerate its investigation and pursuit of the potential claims and causes of action on behalf of the estates against the Debtors' directors, officers and others.

Rather than undertake a course of action that invites unnecessary litigation, cost and delay, the Committee continues to believe that the Debtors can avoid precipitating such an outcome by agreeing to adopt the Committee's reasonable proposals with respect to exculpation and retention of jurisdiction as noted above and previously discussed in detail with the Debtors. The Debtors' refusal to agree to the Committee's requests on these points stands in direct conflict with the articulated goal set forth in your October 27 Letter of "promot[ing] expeditious distributions to the creditors at the minimum cost to the Debtors' estates." Instead, it will have exactly the opposite effect – namely, it will lead to needless but significant expense and delay related to exclusivity and plan litigation solely for purposes of conferring a benefit on the Debtors' officers and directors. Moreover, the Debtors' intransigence on these points lends further support to the conclusion that the Debtors are improperly using the chapter 11 plan process as leverage to attempt to pressure concessions from the Committee that would have the effect of diminishing the potential value of assets of

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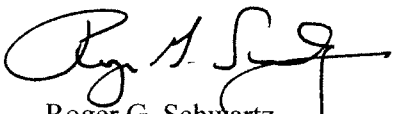
approval for purposes of any of their claims under the Supplemental Plans and (2) will be deemed to be treated as if terminated "For Cause", as defined under the relevant Supplemental Plans, on or before October 31, 2010 prior to the Board's anticipated action with respect to authorization and filing of the chapter 11 plan, if a court enters a final order including a finding that Alter or Rosoff could have been properly terminated "For Cause" on or before October 31, 2010. Nonetheless, neither your October 27 Letter nor the Alter/Rosoff Agreement fully and satisfactorily alleviates the concerns expressed in my October 25 Letter and the Committee expressly reserves all of its claims, rights and remedies with respect to the matters raised in my October 25 Letter.

the estates before such assets can be fully assessed and, if appropriate, pursued.[3] As such, we urge the Debtors to reconsider their decision, and thus avoid the substantial time and expense that moving forward with the Plan on a nonconsensual basis will entail.

The Committee remains ready to work with the Debtors and their professionals in order to ensure that the Plan addresses these issues in a manner that is in the best interests of the Debtors' creditors and their estates. If the Debtors are unwilling to do the same, the Committee requests that the Debtors stipulate to termination of the Debtors' exclusivity as to the Committee, and thereby avoid the extensive litigation costs that will be incurred in connection with the Committee's motion to terminate exclusivity. At a minimum, creditors of the Debtors' estates should be given the opportunity to vote on a chapter 11 plan that is supported by the Committee and that does not release or impair potentially valuable assets of the estates prematurely and unnecessarily.

Respectfully yours,



Roger G. Schwartz
of LATHAM & WATKINS LLP

[3] The Debtors' positions on these Plan issues are even more troubling given their admission that they have not, and have no intention to, conduct any independent investigation of the potential claims and causes of action from which they are seeking to exculpate their officers and directors and to deprive the Bankruptcy Court of its ability to adjudicate any claims against them.

EXHIBIT C

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November 4, 2010

BY E-MAIL

Roger G. Schwartz, Esq.
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885 Third Avenue
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Re: *In re Advanta Corp., et al.* (Bankr. D. Del. No. 09-13931 (KJC)

Dear Roger:

As you know, after consideration of the current state of the Debtors' chapter 11 cases, and taking into account the letter that you sent me on November 1, 2010 (the "November 1, 2010 Letter"),[1] Advanta's Board approved a chapter 11 plan for Advanta on November 1, 2010, and the Debtors filed a proposed chapter 11 plan (the "Plan") and disclosure statement (the "Disclosure Statement") with the Court on November 2, 2010. Regardless, the Debtors are compelled to respond to points raised in the November 1, 2010 Letter and I invite you to share this letter with the Committee.[2]

Contrary to the assertions in the November Letter, the Debtors have not ignored the Committee's requests as expressed in discussions and in the October 25, 2010 Letter. The primary request in the October 25, 2010 Letter was that the Board delay approval of a chapter 11 plan to provide time to consider factors to potentially mitigate COC claims of Messrs. Alter and Rosoff. The October 25, 2010 Letter proposed a number of alternative options, including that the Committee be permitted to file a chapter 11 plan and that the Board conduct an investigation of whether cause exists to terminate the employment of Messrs. Alter and Rosoff. As I detailed in the October 27, 2010 Letter, the Board has addressed those concerns by procuring from Messrs. Alter and Rosoff the letter attached as an exhibit to the October 27, 2010 Letter. As discussed in more detail in the October 27, 2010 Letter, the letter from Messrs. Alter and Rosoff gives the Committee the equivalent of what it sought and obviates any

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in your letter to me dated October 25, 2010 (the "October 25, 2010 Letter"), my letter in response dated October 27, 2010 (the "October 27, 2010 Letter"), or the November 1, 2010 Letter, as applicable.

[2] Of course, the failure of the Debtors to respond in this letter to any specific point in the November 1, 2010 Letter should not be construed as the Debtors' agreement to any aspects of the November 1, 2010 Letter.

arguments that the Board should conduct an investigation of Messrs. Alter and Rosoff.[3] The approval of the Plan did nothing to prejudice any ability of the Committee or, after the effectiveness of the Plan, the liquidating trustees to investigate and pursue any claims that cause existed to terminate the employment of Messrs. Alter and Rosoff prior to the Board's approval of the Plan. Any investigation by the Board would be redundant and would create wasteful costs and distractions at a time when the Debtors are trying to emerge for the benefit of their creditors. Accordingly, such an investigation by the Board would have no purpose other than to harass Messrs. Alter and Rosoff as an inappropriate tactic to gain leverage over them in discussions over the claims they have filed against Advanta.

Based on the foregoing and discussions with you, the Debtors are aware of only two points of disagreement between the Debtors and the Committee with respect to the Plan and Disclosure Statement. The first point is the Committee's insistence that the Debtors' directors' and officers' customary plan exculpation effectively be eliminated by being subject to claims asserted by the Committee or liquidating trustees for a period after the Plan's effective date. The Debtors do not believe that there is any legitimate basis to deny their directors and officers the exculpation protection provided to virtually every director and officer under a chapter 11 plan. In this case, the Debtors' directors and officers have earned exculpation by successfully guiding the Debtors through their chapter 11 cases. Creditor recoveries have been maximized by the Debtors' careful stewardship of their assets and successful and aggressive handling of critical issues with the FDIC. The Debtors have voluntarily excepted from the exculpation the Board's approval of Advanta's liquidation in December 2009, and the Committee has not identified any other postpetition action of any of the Debtors' directors or officers with which it takes issue. Regardless, the entitlement of the directors and officers to exculpation is purely a legal issue that should not create a disagreement between the Debtors and the Committee. The Debtors offered the Creditors Committee the opportunity to support the Plan with the Disclosure Statement indicating that the Committee reserved the right to ask the court for a substitute exculpation provision. The Committee will still have the right to object to the Plan's exculpation provisions and the Court will decide the extent to which the directors and officers are entitled to exculpation.

The second material point of disagreement is over what language in the Plan and Disclosure Statement is necessary to retain jurisdiction by the Court over any claims that the Debtors' estates may have against directors and officers. The Debtors believe that the Plan and Disclosure Statement contain sufficient language to preserve jurisdiction and that adding additional language would be unnecessarily inflammatory. Additionally, as I mentioned to you, Messrs. Alter and Rosoff have agreed that they would deliver a letter to the Debtors waiving arguments that the Court does not have jurisdiction over

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[3] Contrary to the assertion in the November 1, 2010 Letter, the Board cannot delay approval of a chapter 11 plan until Messrs. Alter and Rosoff waive COC claims. As you know, neither the Board nor the Debtors can force such a waiver, and continued delays in the plan process only hurt the creditors. It would not be appropriate for the Debtors to insist on *any* creditor waiving its rights as a condition to going forward with a chapter 11 plan for the benefit of all creditors. Messrs. Alter and Rosoff have whatever rights to which their agreements and any applicable facts entitle them, the liquidating trustees will have the ability to challenge those rights, and, absent a settlement, the Court will ultimately decide whether to allow or disallow their claims.

any claims of the Debtors' estates against them. But, like the exculpation issue, this is purely a legal issue that can be resolved by the Court. The Debtors will, of course, include any additional language on this issue if required by the Court.

The Debtors' chapter 11 cases are more than a year old and the Debtors have successfully accomplished all of their goals in chapter 11. All that remains is the claims resolution process, the stewardship and liquidation of remaining assets, and distributions, all of which will be most effectively done (as in most liquidating chapter 11 cases) by a liquidating trustee after the Plan's effectiveness. By any measure, it is time for the Debtors to pursue their exit from chapter 11. Delaying the Debtors' emergence will only increase costs to the detriment of the vast majority of the Debtors' creditors, and in particular the retail note holders who stand to get most of their money back and who are most damaged by delay and incremental losses. Only the trust preferred note holders, who have contractually agreed to subordinate their claims to claims of the retail note holders, potentially materially benefit.

Accordingly, while the Debtors of course would prefer that the Committee support the Plan, the Debtors believe it is incumbent on them to pursue the Plan's confirmation with or without the Committee's support. Additionally, the Debtors cannot agree to the Committee's request that the Debtors agree to terminate exclusivity to allow the Committee to file a competing chapter 11 plan. The Debtors believe that the Plan provides the best mechanism for the maximum and earliest distributions to creditors and that competing plans will create additional costs and delays that will not benefit the creditors. The Debtors and the Committee do not even appear to have any disputes over the Plan's economics. If the Committee continues to take issue with aspects of the Plan or Disclosure Statement, the Debtors believe that the creditors would be better served by the Committee pursuing any objections through the normal Court processes.

Yours truly,

Robert Lemons