

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

In re:	:	Chapter 11
	:	
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931-KJC
	:	
Debtors.	:	(Jointly Administered)
	:	Hearing Date: February 4, 2010 at 11:00 a.m.
	:	Objection Deadline: February 2, 2010 at 4:30 p.m. (by agreement)
	:	Docket Ref No. 167
	:	

**LIMITED OBJECTION OF WESTERN PENNSYLVANIA
ELECTRICAL EMPLOYEES PENSION FUND TO DEBTORS'
MOTION PURSUANT TO SECTIONS 105(a), 363, AND 554 OF THE
BANKRUPTCY CODE APPROVING PROCEDURES TO SELL,
ABANDON OR OTHERWISE DISPOSE OF *DE MINIMIS* ASSETS FREE
AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES WITHOUT
FURTHER COURT APPROVAL**

Western Pennsylvania Electrical Employees Pension Fund (“Western Pennsylvania”), proposed lead plaintiff in the securities litigation entitled *Western Pennsylvania 449 Pension Fund, Individually and On Behalf of All Others Similarly Situated v. Advanta Corp., et al.*, (the “Securities Litigation”), Case No. 09-4730, pending in the United States District Court for the Eastern District of Pennsylvania (the “District Court”), filed on behalf of all persons or entities (the “Putative Class”) who purchased or otherwise acquired Class A and Class B common stock of Advanta Corp., one of the Debtors,¹ between October 31, 2006 and November 27, 2007 (the “Class Period”), asserts this limited objection (the “Objection”) to the Debtors’ Motion Pursuant to Sections 105(a), 363, and 554 of the Bankruptcy Code Approving Procedures to Sell, Abandon or Otherwise Dispose of *De Minimis* Assets Free and Clear of Liens, Claims and Encumbrances Without Further Court Approval (the “Motion”). In support of this Objection, Western Pennsylvania states the following:

¹ Capitalized terms shall have the meanings ascribed to them in the Motion unless defined otherwise herein.

BACKGROUND

1. On November 8, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code.

2. Prior to the Petition Date, approximately four (4) putative class actions (the “Actions”) were filed in the District Court,² primarily alleging violations by Advanta and certain of its current and former officers and directors (the “Non-Debtor Defendants”) of federal securities laws, including sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder (the “Securities Laws”). The allegations arise from, *inter alia*, false and misleading statements concerning Advanta’s financial results and business made during the Class Period. Western Pennsylvania filed a motion for the appointment of Lead Plaintiff, which is pending in the District Court.

3. Although Advanta was named as a defendant in the Actions, pursuant to the dictates of 11 U.S.C. § 362(a) the Actions are stayed as to Advanta, but are proceeding as against the Non-Debtor Defendants.³

4. Upon information and belief, the Debtors are or will be engaged in an orderly liquidation of their assets.

5. On January 19, 2010, the Debtors filed the Motion to approve the Disposition Procedures for the sale, abandonment or disposal of De Minimis Assets free and clear of liens, claims and encumbrances. The De Minimis Assets include, *inter alia*, “computers and computer accessories.” See Motion, ¶1. The “computers and computer accessories” are not described in any detail.

6. By way of the Motion, Debtor seeks to establish procedures with respect to the De Minimis Assets which would permit the Debtors to sell, dispose or abandon those assets valued at less than \$100,000, on extremely limited notice to only counsel for the Creditors Committee,

² The first such complaint was filed on October 14, 2009 by Western Pennsylvania.

³ On December 15, 2009, the District Court issued an Order to Show Cause why the Securities Litigation should not be stayed. Western Pennsylvania and plaintiff Steamfitters Local 449 Pension Trust Fund filed a response on December 23, 2009.

the U.S. Trustee and to any party holding a lien on the subject asset. No other notice will be given and no further pleading will be filed memorializing the sale, disposition or abandonment of the asset.

7. In the absence of any notice, parties, other than the Notice Parties, will have no information regarding the assets being sold or abandoned.

OBJECTION

8. Western Pennsylvania objects to the Motion because the proposed Disposition Procedures provide inadequate notice to parties in interest and to the extent the De Minimis Assets include computers and computer accessories or any other document or data information, Western Pennsylvania cannot determine if those assets include, in any format, information and/or evidence relevant to the prosecution of the Securities Litigation.

9. Computers and computer accessories and, to some extent other De Minimis Assets, may contain information that has or potentially may have, relevance as evidence in the Securities Litigation as to the claims asserted in the Securities Litigation against the Non-Debtor Defendants by Western Pennsylvania on behalf of itself and the Putative Class. It would unduly prejudice Western Pennsylvania and the Putative Class if information potentially relevant to the Securities Litigation or Western Pennsylvania's claims against Advanta was sold, abandoned or otherwise transferred out of the Debtors' possession or control.

10. Indeed, some safeguard or protocol to maintain and preserve documents and information and prevent the destruction of documents and information stored in any tangible and intangible property (computers, or any computer-related software or equipment) that may be sold, abandoned or otherwise disposed of pursuant to the Motion must be established.

11. Specifically, with respect to information and data stored on the computers and computer accessories, some backup and storage protocol must be established to ensure that the information and data is preserved and maintained and is accessible to Western Pennsylvania and other parties in interest.

12. Pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4(b)(3)(B), discovery in the Securities Litigation is stayed until motions to dismiss are denied. Therefore, Western Pennsylvania is unable to serve discovery at this time to even determine what data or information is or may be included on the computers or computer accessories.

13. The PSLRA further requires that parties to any action under the PSLRA, with knowledge of the action

shall treat all documents, data compilations (*including electronically recorded or stored data*), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(b)(3)(C)(i)(emphasis added). Therefore, Advanta is obligated under the PSLRA, to maintain and preserve the data and information maintained on the computers and computer accessories. Advanta is also prohibited under 11 U.S.C. § 554 from abandoning property of the estate or under 11 U.S.C. § 363(b)(1) from selling property of the estate outside its ordinary course of business, except upon notice and an opportunity to be heard.

14. Accordingly, Western Pennsylvania submits that the Debtors must establish a protocol to backup, protect and preserve all information that is stored in any tangible and intangible property that the Debtors propose to sell, abandon or otherwise dispose of pursuant to the procedures set forth in the Motion, and ensure that the information is accessible and available at no cost to Western Pennsylvania or any other party appointed lead plaintiff in the Securities Litigation.

15. Western Pennsylvania respectfully requests that any order granting the Motion must expressly require the Debtors, before consummating the sale, disposal or abandonment of any asset that contains information relating to the Debtors, to backup, preserve and protect such

information in accordance with such an information preservation protocol and ensure its accessibility.⁴

16. Western Pennsylvania proposes that the following language be included in any order that may be entered with respect to the Motion:

In accordance with the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, Debtors will preserve all electronic documents and data and the systems necessary to access those documents and data that are contained on any computer system sold, abandoned or otherwise disposed of pursuant to the Disposition Procedures. The Debtors further acknowledge the obligation under the Federal Rules of Civil Procedure, when responding to a request for production of electronically stored information, to produce such documents as they are kept in the usual course of business, or in a reasonably usable form and at their own cost.

17. In addition, Western Pennsylvania requests that it be given notice of each De Minimis Asset transaction contemplated by the Motion, with an opportunity to be heard.


CONCLUSION

18. Based upon the foregoing, Western Pennsylvania respectfully requests that the Court enter an Order (A) denying the Motion unless (i) the language set forth in paragraph 16, *supra* is included in the Order granting the Motion, (ii) notice is provided to Western Pennsylvania (or such other party appointed lead plaintiff in the Securities Litigation) and (B) granting such other and further relief as the Court deems necessary and just.

⁴ Western Pennsylvania is not seeking a ruling or finding with respect to the discoverability of any such information. This Objection seeks to insure that such information is preserved. Western Pennsylvania reserves the right to seek at an appropriate time discovery of all information relating to the Debtors that may be relevant in the Securities Litigation, to claims asserted against the Debtors, or otherwise.

Dated: February 2, 2010

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CERTIFICATE OF SERVICE

I, Christopher P. Simon, Esquire do hereby certify that on this 2nd day of February, 2010, I caused copies of *LIMITED OBJECTION OF WESTERN PENNSYLVANIA ELECTRICAL EMPLOYEES PENSION FUND TO DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363, AND 554 OF THE BANKRUPTCY CODE APPROVING PROCEDURES TO SELL, ABANDON OR OTHERWISE DISPOSE OF DE MINIMIS ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES WITHOUT FURTHER COURT APPROVAL* to be served upon the attached service list by First Class Mail.

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