

**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: April 7, 2010 at 3:00 p.m.**
-----X **Obj. Deadline: March 31, 2010 at 4:00 p.m.**

**MOTION FOR AN ORDER MODIFYING AUTOMATIC
STAY TO ALLOW ADVANCEMENT UNDER INSURANCE POLICIES**

Advanta Corp. (“Advanta”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”) respectfully represent:

Preliminary Statement

1. As detailed more fully below, the Debtors file this motion (the “*Motion*”) out of an abundance of caution to induce the Debtors’ third party insurer, Axis Insurance

¹ The Debtors in these 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), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Each of the Debtors (other than Advanta Credit Card Receivables Corp. and the Great Expectations entities) maintains its principal corporate office at Welsh & McKean Roads, P.O. Box 844, Spring House, Pennsylvania 19477-0844. Advanta Credit Card Receivables Corp. maintains its principal corporate office at 2215 B. Renaissance Drive, Suite 5. Las Vegas, NV 89119, and the Great Expectations entities maintain their principal corporate office at 1209 Orange Street, Wilmington, Delaware 19801. Additional information regarding the Debtors’ business and the background relating to events leading up to these chapter 11 cases can be found in 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 Debtors filed their petitions (the “*Commencement Date*”) under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”). 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. 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*”).

Company (“*Axis*”), to immediately commence payment pursuant to certain of the Debtors’ insurance policies of the outstanding and ongoing defense costs and fees that the Debtors’ and their affiliates’ current or former directors, officers, and employees (the “*Covered Individuals*”) have incurred and are incurring as defendants in the ongoing federal securities and Employee Retirement Income Security Act (“*ERISA*”) class action lawsuits described below. Axis has expressed a willingness to pay previously incurred defense costs and fees and advance defense costs and fees to the Covered Individuals consistent with the terms of the relevant insurance policies, but only upon the entry of the order (the “*Order*”) attached hereto as *Exhibit A*, which clarifies that the automatic stay imposed in the Debtors’ chapter 11 cases pursuant to section 362 of the Bankruptcy Code does not restrict Axis’s ability to make payments to or for the benefit of the Covered Individuals under the insurance policies.

2. Confirming Axis’s ability to pay such defense costs and fees is in the best interests of the Debtors’ estate and creditors because, *inter alia*, it will relieve the Debtors’ estates of the potentially significant burden of claims that may otherwise be made by the Covered Individuals against the Debtors’ estates in the absence of such relief. Furthermore, granting the relief requested by this Motion is unlikely to have any adverse effect on the Debtors’ estates and creditors because the insurance policies provide that the Debtors have a right to the insurance proceeds only after the Covered Individuals are fully reimbursed for any costs, including defense costs (collectively, the “*Losses*”).

Relief Requested

3. The Debtors seek entry of the Order granting relief from the automatic stay to allow payments and/or advancements by Axis of defense costs that are, or will become, owing to or for the benefit of the Covered Individuals under the Axis Policies (as defined below). In addition, the Debtors further request that the Court waive the requirements of Bankruptcy Rule 4001(a)(3) and direct that the Order be effective immediately.²

Directors and Officers Liability Insurance Policies

4. Under the Debtors' bylaws and certificates of incorporation, the Debtors are required to indemnify or offer advancement to certain of the Covered Individuals under certain circumstances for, among other things, claims and costs incurred defending themselves from lawsuits alleging liability arising from their roles as directors, officers, and/or employees of the Debtors or their affiliates. Accordingly, to manage their risk and to induce the Covered Individuals to agree to their responsibilities for the Debtors or their affiliates, the Debtors obtained certain insurance policies to provide coverage to the Covered Individuals in the event they become defendants in litigation.

5. Specifically, the Debtors obtained from Axis the Directors, Officers and Corporate Liability Insurance Policy No. MNN714089/01/2008 (the "***D&O Policy***"). The D&O Policy contains five insuring agreements (the "***Insuring Agreements***"). *D&O Policy, Section I, as amended by Endorsement No. 5*. For purposes of this Motion, Insuring Agreement A in the D&O Policy ("***D&O Insuring Agreement A***") is the relevant Insuring Agreement. Subject to the

² The Debtors are not asking this Court for a determination of Axis's obligation to pay any particular expense or claim of the Covered Individuals. The Debtors seek only the entry of the Order clarifying that the automatic stay does not prevent, or alternatively modifying the automatic stay to allow, Axis's fulfillment of its obligations, whatever they may be, to pay claims and expenses of the Covered Individuals under the terms of the Axis Policies, including amounts incurred both pre- and postpetition. The submission of this Motion does not constitute a waiver of the rights of the Debtors, Axis or any of the Covered Individuals in respect of claims made against the Covered Individuals.

D&O Policy's terms and conditions, D&O Insuring Agreement A provides specified coverage directly to the Covered Individuals for Losses arising from securities claims first made against the Covered Individuals for acts they allegedly committed in their respective capacities as directors, officers, or employees of Advanta and its direct and indirect subsidiaries (the "***Alleged Wrongful Acts***") during the period from June 1, 2008 to June 1, 2010 (the "***Policy Period***") that is not indemnified by the Debtors. *D&O Policy, Section I.A, as amended by Endorsement No. 5.*

6. The D&O Policy also contains a priority of payments provision (the "***Priority of Payments Provision***"), which provides that when competing claims are made under the D&O Policy, Axis must pay for Losses on behalf of the Covered Individuals for alleged Wrongful Acts before any other claims asserted under the D&O Policy. *D&O Policy, Section V.E.* Then, only after the Covered Individuals are reimbursed for any Losses and, only if proceeds remain under the D&O Policy after payment of such defense costs, will the Debtors' estate be reimbursed for any Losses incurred covered by the D&O Policy. *Id.* Thus the D&O Policy, by virtue of Section I Insuring Agreement A and the Priority of Payments Provision allows for the immediate payment of the Covered Individuals' defense costs and expenses given the insolvency of the Debtors' chapter 11 cases.

7. Additionally, the Debtors obtained from Axis the Fiduciary Liability Insurance Policy No. MNN714088/01/2008 (the "***Fiduciary Policy***" and together with the D&O Policy, the "***Axis Policies***") for the Policy Period. *Fiduciary Policy, Declarations, Items 1-2, as amended by Endorsement Nos. 17 & 18.* The Fiduciary Policy contains one insuring agreement (the "***Fiduciary Insuring Agreement***"). *Fiduciary Policy, Section I, as amended by Endorsement No. 3.* Subject to the Fiduciary Policy's terms and conditions, the Fiduciary Insuring Agreement provides specified coverage to the Covered Individuals for Losses arising

from ERISA claims first made against the Covered Individuals during the Policy Period for alleged Wrongful Acts. *Fiduciary Policy, Section I, as amended by Endorsement No. 3.*

Pending Litigation

8. In October 2009, a number of the Covered Individuals and the Debtors were named as defendants (the “*Securities Defendants*”) in a putative class action securities lawsuit filed in the United States District Court for the Eastern District of Pennsylvania (the “*District Court*”). See *Steamfitters Local 449 Pension Fund v. Advanta Corp., et al.*, No. 09-4730 (E.D. Pa.) (the “*Securities Litigation*”).

9. Similarly, beginning in October 2009, several putative class actions alleging violations of ERISA were filed in the District Court asserting claims against several of the Covered Individuals and, in some cases, the Debtors (collectively, the “*ERISA Litigation*” and, together with the Securities Litigation, the “*Class Actions*”). See *Ragan v. Advanta Corp., et al.*, No. 09-cv-4974 (E.D. Pa.) (the “*Ragan Action*”); *Hiatt v. Advanta Corp., et al.*, No. 09-5467 (E.D. Pa.) (the “*Hiatt Action*”); and *Yates, et al. v. Rosoff, et al.*, No. 09-5746 (E.D. Pa.) (the “*Yates Action*”). The Covered Individuals named as defendants in the ERISA Litigation (the “*ERISA Defendants*” and, together with the Securities Defendants, the “*Defendants*”) served as officers and directors of Advanta or its direct or indirect subsidiaries, or as fiduciaries or administrators of various Advanta-sponsored employee benefit plans.

10. The Debtors filed a Notice of Suggestion of Bankruptcy in the Securities Litigation and the Ragan Action on November 9, 2009 and in the Hiatt Action on November 20, 2009.³ On December 15, 2009, the plaintiff in the Hiatt Action voluntarily dismissed her claims against the Debtors without prejudice. See *Hiatt v. Advanta Corp., et al.*, No. 09-5467 (E.D.

³ The Yates Action was filed after the Commencement Date and does not name the Debtor as a defendant.

Pa.), Notice of Voluntary Dismissal by Paula Hiatt as to Defendant Advanta Corporation [DE 13]. On December 29, 2009, the plaintiff in the Ragan Action agreed not to oppose a stay as to the Debtors. *See Ragan v. Advanta Corp., et al.*, No. 09-cv-4974 (E.D. Pa.), Plaintiff Matthew A. Ragan's Memorandum of Law Showing Cause Why This Case Should Not be Stayed As a Result of Advanta Corp. Filing for Bankruptcy, at 2 [DE 22].

11. The Defendants are generally entitled to the payment of Loss (including defense costs and indemnity amounts) incurred in connection with the Class Actions under the Axis Policies. The Class Actions against the Defendants is not automatically stayed and is proceeding. The Defendants have incurred, and will continue to incur, significant defense costs and the Debtors are unable to advance defense costs to the Defendants. Therefore, the Defendants are urgently seeking payment or advancement of defense costs by Axis pursuant to the Axis Policies.

12. Axis has expressed a willingness to immediately commence payment of the outstanding and ongoing fees and expenses to and for the benefit of the Covered Individuals, but only upon entry of the Order.

Cause Exists to Grant the Relief Requested

13. Cause exists under section 362(d)(1) of the Bankruptcy Code to modify the automatic stay to allow the payment of defense costs under the Axis Policies. It is not uncommon for courts to grant stay relief to allow payment of defense costs or settlement costs to directors and officers, especially when there is no evidence that direct coverage of the debtor will be necessary. *See Allied Digital*, 306 B.R. at 513.

14. Allowing the insurers to advance defense costs and fees to the Covered Individuals will, in fact, benefit the Debtors' estates. The Class Actions are highly complex. If

the Covered Individuals are not adequately represented, it is foreseeable that a finding of wrongdoing or liability against the Covered Individuals may be used, or attempted to be used, to judicially prejudice or prosecute claims against the Debtors. Granting the requested relief will also alleviate the Covered Individuals' concern that they will personally be liable for their own defense costs. Relieved of this concern, directors and officers that remain with the Debtors during their chapter 11 cases will be able to focus fully on the task of administering the cases for the benefit of the Debtors' creditors.

15. On the other hand, modifying the automatic stay will not harm the Debtors' estates. As explained above, the Debtors only have a contingent right to the proceeds and, at this time, such right is speculative.

16. Accordingly, cause exists to modify the automatic stay pursuant to section 362(d) of the Bankruptcy Code to allow Axis to immediately commence and continue payment of outstanding and ongoing defense costs incurred by the Covered Individuals.

Jurisdiction

17. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This 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

18. 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 official committee of general 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) Axis; and (v) those parties who have requested notice pursuant to Bankruptcy

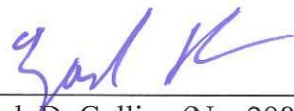
Rule 2002 (collectively, the “*Notice Parties*”). The Debtors respectfully submit that no further notice of this Motion is required.

No Previous Request

No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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

Dated: March 19, 2010
Wilmington, Delaware



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ATTORNEYS FOR
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POSSESSION

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

-----x
: Chapter 11
In re :
: Case No. 09-13931 (KJC)
ADVANTA CORP., *et al.*, :
: (Jointly Administered)
Debtors.¹ :
: **Hearing: April 7, 2010 at 3:00 p.m. (EDT)**
-----x **Obj. Deadline: March 31, 2010 at 4:00 p.m. (EDT)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on March 19, 2010, Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion for an Order Modifying Automatic Stay to Allow Advancement Under 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 **March 31, 2010 at 4:00 p.m. (Eastern Daylight Time)**.

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), BizEquity 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). Each of the Debtors (other than Advanta Credit Card Receivables Corp. and the Great Expectations entities) maintains its principal corporate office at Welsh & McKean Roads, P.O. Box 844, Spring House, Pennsylvania 19477-0844. Advanta Credit Card Receivables Corp. maintains its principal corporate office at 2215 B. Renaissance Drive, Suite 5, Las Vegas, Nevada 89119, and the Great Expectations entities maintain their principal corporate office at 1209 Orange Street, Wilmington, Delaware 19801.

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 Court, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **April 7, 2010 at 3:00 p.m. (Eastern Daylight Time)**.

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

Dated: March 19, 2010
Wilmington, Delaware



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ATTORNEYS FOR DEBTORS AND
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Exhibit A
Proposed Order

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

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

**ORDER PURSUANT TO SECTION 362 OF THE
BANKRUPTCY CODE, MODIFYING AUTOMATIC STAY TO
ALLOW AXIS TO MAKE ADVANCEMENT UNDER INSURANCE POLICIES**

Upon the motion, dated March 19, 2010 (the “*Motion*”), of Advanta Corp. (“*Advanta*”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”), pursuant to section 362(d) of title 11 to the United States Code (the “*Bankruptcy Code*”) and Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), for an order modifying the automatic stay, to the extent applicable, to allow the Debtors’ third party insurance provider, Axis Insurance Company (“*Axis*”), to pay and/ or advance pursuant to the Axis Policies² covered defense costs incurred by the Covered Individuals as defendants in the Class Actions, all as more fully

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), BizEquity 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). Each of the Debtors (other than Advanta Credit Card Receivables Corp. and the Great Expectations entities) maintains its principal corporate office at Welsh & McKean Roads, P.O. Box 844, Spring House, Pennsylvania 19477-0844. Advanta Credit Card Receivables Corp. maintains its principal corporate office at 2215 B. Renaissance Drive, Suite 5, Las Vegas, Nevada 89119, and the Great Expectations entities maintain their principal corporate office at 1209 Orange Street, Wilmington, Delaware 19801.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

described in the Motion; 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 the Debtors, their creditors and their estates; 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 upon the record of the hearing on the Motion, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that pursuant to sections 105(a) and 362(d) of the Bankruptcy Code, the automatic stay is hereby modified, without further order of this Court, to allow payment by Axis to or for the benefit of the Covered Individuals under the Axis Policies of covered defense costs and/or advancement of covered defense costs incurred in the Class Actions; and it is further

ORDERED that the Debtors are authorized to execute all the documentation necessary to allow Axis to pay covered defense costs, and/or advance covered defense costs, or both incurred by the Individual Defendants in the Class Actions; and it is further

ORDERED that nothing in this Order shall modify or alter the rights and obligations of any parties provided for under the terms and conditions of the Axis Policies; and it is further

ORDERED that all parties to the Axis Policies reserve all rights and defenses that they would otherwise have; and it is further

ORDERED that the fourteen day stay provided by Bankruptcy Rule 4001(a)(3) is waived; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: April _____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE