

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

In re:	:	Chapter 11
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931-KJC
	:	(Jointly Administered)
Debtors.	:	Hearing Date: April 7, 2010 at 3:00 p.m. Objection Deadline: March 31, 2010 at 4:00 p.m.
	:	Docket Ref. No. 343

**LIMITED OBJECTION OF WESTERN PENNSYLVANIA
ELECTRICAL EMPLOYEES PENSION FUND TO DEBTORS'
MOTION FOR ORDER MODIFYING AUTOMATIC STAY TO
ALLOW ADVANCEMENT UNDER INSURANCE POLICIES**

Western Pennsylvania Electrical Employees Pension Fund (“Western Pennsylvania”), proposed lead plaintiff in the securities litigation entitled *Steamfitters Local 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 asserts this limited objection (the “Objection”) to the Debtors’ Motion for an Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies (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.

PRELIMINARY STATEMENT

1. Western Pennsylvania does not object to the relief sought in the Motion to advance costs and fees (the “Defense Costs”) that the Debtors’ and their affiliates’ current and former officers, directors and employees (the “Covered Individuals”) have incurred and are incurring as defendants in the Securities Litigation and an ongoing ERISA action. However, Western Pennsylvania respectfully requests that any Order granting the relief, in whole or in part, be clarified to avoid any confusion or prejudice with respect to the necessity for stay relief and issues relating to the proceeds of the D&O Policy.

BACKGROUND

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

3. The Securities Litigation primarily alleges violations by Advanta Corp. (“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. Western Pennsylvania’s motion for appointment as Lead Plaintiff is currently pending in the District Court.

4. Although Advanta was named as a defendant in the Securities Litigation, 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.

THE MOTION

5. On March 19, 2010, the Debtors filed the Motion for 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. See Motion, ¶3.

6. As set forth in the Motion, Axis issued the D&O Policy to the Debtors providing coverage to Covered Individuals for, *inter alia*, the claims asserted against them in the Securities Litigation.² See Motion, ¶5.

7. Upon information and belief, the D&O Policy (a copy of the D&O Policy was not provided with the Motion) contains a priority of payments provision establishing that the Debtors' right to payment, if any, under the D&O Policy is subordinate to that of the Covered Individuals, including the Non-Debtor Defendants. See Motion, ¶6. In other words, the Debtors are not entitled to any of the proceeds of the D&O Policy unless and until the claims against the Non-Debtor Defendants, as well as their Defense Costs, are paid in full from the proceeds.

8. Upon information and belief, the Non-Debtor Defendants have made (or will make) demands upon Axis under and in accordance with the terms of the D&O Policy for payment of the Defense Costs incurred in connection with the Securities Litigation. Prior to making any such payments or advancing any funds pursuant to the D&O Policy, however, Axis apparently requires entry of an Order clarifying that the automatic stay does not restrict its ability to make payments to or for the benefit of the Covered Individuals. See Motion, ¶¶1, 12.

9. It is not clear from the Motion whether Debtors seek relief from the automatic stay only to the extent the stay may be applicable. Indeed, only in the introductory paragraph of the proposed Order do the Debtors state that the requested relief is "for an order modifying the automatic stay, *to the extent applicable*." See proposed Order, p.1 (emphasis added). Such language does not appear in the Motion or in the Ordered paragraphs of the proposed Order.

² Subject to any reservation of rights of Axis to deny or limit coverage consistent with the terms of the D&O Policy, Western Pennsylvania's claims in the Securities Litigation against the Debtors and the Non-Debtor Defendants are covered by the D&O Policy. Accordingly, Western Pennsylvania has an interest in the proceeds of the D&O Policy.

OBJECTION

10. As previously stated, Western Pennsylvania does not object to the relief requested to permit Axis, through the issuance of what amounts to a comfort order, to advance or pay the Defense Costs in accordance with the terms of the D&O Policy. However, Western Pennsylvania does object to the entry of an order that may find, infer or imply (i) that court approval, *i.e.*, stay relief, for the advance is necessary and/or (ii) that the proceeds of the D&O Policy are property of the Debtors' estates.

11. The proceeds of the D&O Policy are not property of the estate. *See Miller v. McDonald (In re World Health Alternatives, Inc.)*, 369 B.R. 805, 811 (Bankr. D. Del. 2007); *Allied Digital Tech. Corp.*, 306 B.R. 505, 509-11 (Bankr. D. Del. 2004); *In re In re Louisiana World Exposition, Inc.*, 832 F. 2d 1391 (5th Cir. 1989); *see also Santa Fe Minerals, Inc. v. BEP Co. (In re 15375 Memorial Corp.)*, 382 B.R. 652, 687 (finding with respect to a general liability policy that the threshold question is "whether the Debtors have a significant interest . . . in the proceeds of the liability insurance policies" (emphasis in original)), *rev'd and remanded on other grounds*, 400 B.R. 420 (D. Del. 2009). Because the proceeds are not property of the estate, relief from the automatic stay is not necessary. Furthermore, were there any doubt as to the estates' entitlement to the proceeds of the D&O Policy, the priority of payments provision in the D&O Policy (Motion, ¶6) mandates that the claims by directors and officers are to be paid first in connection with the Defense Costs before the Debtors are entitled to access any of the proceeds of the D&O Policy.

12. No such determination regarding the proceeds of the D&O Policy is necessary at this time. Indeed, Debtors are not affirmatively seeking a determination that the proceeds of the D&O Policy are or are not property of the estate, and are, in essence, only requesting a comfort order from this Court to satisfy Axis' condition for payment. However, the proposed order and the very nature of the relief sought by the Motion, at the very least, implies or infers that stay

relief may be necessary and therefore that the proceeds of the D&O Policy are property of the estate.³

13. Consequently, the entry of the proposed Order may be interpreted as implying that the proceeds of the D&O Policy are property of the estate, despite that the Court is not being asked to make such determination.

14. Accordingly, Western Pennsylvania objects to the entry of an order authorizing payment by Axis of Defense Costs to the extent it (the Order or the entry of the Order) sets forth, implies, infers or may be interpreted as providing that the proceeds of the D&O Policy constitute property of the Debtors' estates and/or that stay relief is required.

15. In order to avoid any confusion or prejudice resulting from the entry of an order herein, to the extent any order entered references the automatic stay and/or modifies the automatic stay to permit the payments requested in the Motion, or may infer, imply or be interpreted as granting relief from the automatic stay, then the order should affirmatively provide that such relief is granted *only to the extent necessary* and that the Order is not intended to be a determination that the proceeds of the D&O Policy are property of the Debtors' estates. The following language should be included to the Order:

Nothing in this Order shall constitute a determination that the proceeds of the D&O Policy are property of the Debtors' estates.

CONCLUSION

16. Based upon the foregoing, Western Pennsylvania respectfully requests that the Court enter an Order (A) denying the Motion unless the language set forth in paragraph 15, *supra* is included in the Order granting the Motion, and (B) granting such other and further relief as the Court deems necessary and just.

³ As previously stated, Western Pennsylvania maintains that the proceeds of the D&O Policy are not property of the estate and reserves its right to address this issue at a later date, to the extent necessary.

Dated: March 31, 2010
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Christopher P. Simon, hereby certify that on this 31st day of March, 2010, I caused copies of the *Limited Objection of Western Pennsylvania Electrical Employees Pension Fund to Debtors' Motion for Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies* to be served on the parties listed below in the manner indicated.

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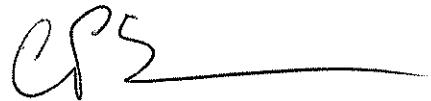
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