

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

(Exhibit UST-1 Admitted Under Seal- Page 44)

IN RE: . Chapter 11
Advanta Corp., et al., .
Debtor(s) . Bankruptcy #09-13931 (KJC)
.....
Advanta Bank Corp., .
Plaintiff, .
v. .
Advanta Corp., .
Defendant. . Adversary #10-50795 (KJC)
.....

Wilmington, DE
May 10, 2010
1:30 p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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	Index				
	Direct	Cross	Redirect	Recross	Further Redirect

Witnesses For The
U.S. Trustee:

Mr. Rosoff	15	33	37	40
Mr. Rosoff (Cont'd)			41	
Mr. West	44	49	58	60

EXHIBITS:

		<u>Marked</u>	<u>Received</u>
UST-1	Schedules - Staffing Chart*	42	44

* Admitted Under Seal

SUMMATION BY:

Mr. Meyer	62
Mr. Lemons	67
Mr. Singer	74
Mr. Schepacarter	75

1 THE CLERK: All rise. Be seated, please.

2 THE COURT: Good afternoon.

3 MR. HEATH: Good afternoon, Your Honor, Paul Heath of
4 Richards Layton & Finger on behalf of the Debtors. Your Honor,
5 turning to our agenda dated May 6th, Items 1 through 6 have
6 either been continued or resolved. Your Honor has already
7 entered orders with respect to Items 7 and 9. Your Honor, if I
8 may address Item 10 out of order. That was the Debtor's Motion
9 to File under seal, certain of the schedules that were attached
10 to the supplemental declaration in support of the Debtor's
11 severance motion. There were no objections, Your Honor. We
12 didn't submit an order under Certification of Counsel. I
13 didn't know if the Court had any questions, but we believe that
14 the information contained therein, Your Honor, should be
15 sealed. It contains, you know, the personal identification of
16 the employees, compensation information, and the severance
17 amounts to be paid.

18 THE COURT: I've read it. Does anyone care to be
19 heard on that issue?

20 ALL: (No verbal response).

21 THE COURT: I don't have any questions.

22 MR. HEATH: Your Honor, I don't have a Form of Order
23 as I stand here, but I will have one before the end of the
24 hearing to submit to the Court.

25 THE COURT: Very well.

1 MR. HEATH: The other item, Your Honor, is Number 8,
2 and that's the Debtor's Motion for Authority to sell stock of
3 Advanta Life Insurance Company. Your Honor, we did submit --
4 I'm sorry, I should say initially that the Court did enter an
5 order shortening the notice period with respect to that motion,
6 and we did submit a revised Form of Order under Certification
7 of Counsel, but we haven't seen an order yet with respect to
8 that motion, so I wanted to bring it to Your Honor's attention
9 in case you had any questions.

10 THE COURT: I do.

11 MR. HEATH: Okay.

12 THE COURT: Bear with me for a moment.

13 MR. HEATH: Mr. Lemons from Weil Gotshal, Your Honor,
14 will address any questions that you have.

15 THE COURT: Very well.

16 MR. LEMONS: Good afternoon, Your Honor.

17 THE COURT: Good afternoon. I don't have any
18 questions with respect to the proposed changes, but here what
19 is proposed is an auction process, but I -- well, the
20 submissions tell me you're likely to end up with the one party
21 that you have already.

22 MR. LEMONS: Well, yes, Your Honor, actually I
23 wouldn't characterize it as an auction process, as much as it
24 was done as a private sale where it was -- the asset was so
25 heavily and lengthily marketed, that we didn't think it would

1 be cost efficient for the estate to hold a formal auction. The
2 -- there's a fiduciary out that allows the board of directors
3 if a better offer comes to terminate the agreement and accept
4 it.

5 THE COURT: Okay. That was a more precise
6 description. My question, though, relates to that, and that
7 is, the proposed Form of Order asks for a finding of good
8 faith. I don't know who the buyer will be ultimately. How can
9 I enter such an order?

10 MR. LEMONS: Well, Your Honor, in the event that the
11 buyer is the currently proposed buyer --

12 THE COURT: Based on the declaration that's been
13 submitted, the finding of good faith would be supported, as far
14 as I'm concerned.

15 MR. LEMONS: Okay.

16 THE COURT: So we need to work it so that the Form of
17 Order provides if it's the current buyer, I'll make that
18 finding, but to the extent it's somebody else, there needs to
19 be a declaration offered in support of that, or some other form
20 of evidence upon which I can make a finding of good faith.

21 MR. LEMONS: We'll amend the order and submit it to
22 Your Honor --

23 THE COURT: Okay.

24 MR. LEMONS: -- with those changes made.

25 THE COURT: Thank you.

1 MR. LEMONS: Thank you.

2 MR. HEATH: Thank you, Your Honor. The only other
3 item on for today is the Debtor's Motion to Implement a post-
4 petition severance plan. Your Honor, Bruce Meyer from Weil
5 Gotshal will be handling that matter on behalf of the Debtors.
6 He has been admitted pro hoc vitae.

7 THE COURT: Okay. I would like first to address,
8 just so that I'm clear from the Debtor's standpoint and the
9 U.S. Trustee's, what the remaining U.S. Trustee objections are.

10 MR. MEYER: Would you like to hear from them or I
11 can --

12 THE COURT: Well --

13 MR. MEYER: -- characterize for you my understanding,
14 Your Honor.

15 THE COURT: I'd like to hear from each of you, so it
16 doesn't matter who goes first.

17 MR. MEYER: Okay.

18 THE COURT: Preliminary.

19 MR. MEYER: It's our understanding, Your Honor, that
20 as a general matter, first of all, they have a different view
21 as to who should be considered non-management versus management
22 for the purposes of 503(c)(2), Your Honor. It's my
23 understanding, we heard this morning, that they intend to put
24 on some testimony about an alternative calculation they have,
25 using a different criterion. We disagree with this. We think

1 the law is clear that there's no automatic treatment of someone
2 as management or non-management, depending on what their title
3 is. We -- Mr. Rosoff discussed this in his reply declaration
4 and he's also in court today, Your Honor, for cross examination
5 and to respond to any questions from Your Honor. So that's --
6 my understanding is that that's their main objection. Oh, and
7 it's not clear to me, Your Honor, but I believe they've
8 indicated to Mr. Lemons, to some extent, that they have a
9 general broader objection to whether or not any such plan, any
10 such severance plan is warranted in this case. We obviously
11 strongly disagree with that.

12 THE COURT: Because the company's liquidated?

13 MR. MEYER: Yes, Your Honor, for all the reasons in
14 Mr. Rosoff's declaration. So that's my understanding as to
15 what they're objecting to.

16 THE COURT: Okay. Mr. Schepacarter.

17 MR. SCHEPACARTER: Thank you, Your Honor. For the
18 record, Richard Schepacarter for the United States Trustee.
19 Mr. Meyer fairly accurately stated our position, but I just
20 wanted to go over a couple of other things that I wanted the
21 Court to sort of know about and sort of highlight a little bit
22 for Your Honor. And Your Honor's correct, we do have an
23 overriding, I recall a 503(c)(3) objection, based on the fact
24 that the case is liquidating. That would go to pretty much the
25 entire severance package, along with the bonus, the one person

1 who was receiving a bonus, that would also be part of that
2 objection. A lot of it deals with the fact that in this case,
3 there is a liquidation going forward, but it's not just a
4 liquidation, and hopefully some of the testimony, some of the
5 cross examination will bring this out. But we also object on
6 the grounds that in this case, and again, this is not a unique
7 case, because I don't want to toss that term around, I think it
8 gets tossed around a little bit too frequently among us on this
9 side of the bench, but this is a little different than your
10 usual going out of business, GOB-type-sale case. The duties
11 that the people will be undertaking, the current employees that
12 will be undertaking, are a little different than the usual
13 going out of business, where they sort of run the business, to
14 a certain extent, and then they also do the bankruptcy stuff.
15 In this case, this is really just a collection of accounts
16 receivable, a collection of monies. And a lot of the business
17 that went on for Advanta ceases to exist. And there are some
18 bankruptcy things to do be done, but it doesn't justify facts
19 and circumstances, justify going forward with this type of
20 severance plan in this case, under these facts and
21 circumstances.

22 THE COURT: All right. So that I'm clear, the U.S.
23 Trustee here is not taking the position that because it's a
24 liquidating case, these types of plans are inappropriate --

25 MR. SCHEPACARTER: No.

1 THE COURT: -- it's because --

2 MR. SCHEPACARTER: No per se --

3 THE COURT: -- under the individual circumstances of
4 this liquidation, which is, you know, I'll use words, not
5 yours, plain vanilla, it's not needed to keep all these high
6 priced individuals in place, sort of offer them severance?

7 MR. SCHEPACARTER: Correct. It's not sort of --
8 we're not taking a per se rule to say liquidation cases get no
9 severance. There may be the case out there, this isn't the
10 case. We also have a number of, and I hate to say this term,
11 because it's a colloquy term, but the mom and pop investors who
12 invested in this company and put a lot of money into this
13 Debtor, through their investments, through their investment
14 portfolios, and who are, frankly, should be ahead of the people
15 who were running this company in this case, given the facts and
16 circumstances of this business model that just didn't pan out
17 in this case.

18 THE COURT: Well, you're not suggesting that the
19 Debtor here is proposing something that's outside of the
20 priority scheme of the Bankruptcy Code?

21 MR. SCHEPACARTER: No, not at all.

22 THE COURT: Okay.

23 MR. SCHEPACARTER: Not at all. But I want Your Honor
24 to be aware that there are those persons out there, and those
25 investors who did invest money, and who frankly are entitled to

1 the same monies that -- especially the pre-petition severance
2 type persons, who have claims against the Debtor, should be
3 sharing with.

4 THE COURT: Well, are you talking about parties who
5 are equity investors or General Unsecured Creditors --

6 MR. SCHEPACARTER: No, it's the --

7 THE COURT: -- as a result of unpaid notes?

8 MR. SCHEPACARTER: -- noteholders. The noteholders,
9 the ones that my recollection and -- well, I shouldn't say
10 recollection, my understanding from first day affidavit were
11 the people who had the investment notes, those people. That's
12 -- those are the people I'm referring to.

13 THE COURT: Okay. And those would be in our parlance
14 General Unsecured Creditors?

15 MR. SCHEPACARTER: Correct, Your Honor.

16 THE COURT: Whose representatives are in support of
17 the plan.

18 MR. SCHEPACARTER: The Committee is in support of the
19 plan. I'll leave it at that.

20 THE COURT: Well, you would concede that the
21 Committee, by statute, is the representative of Unsecured
22 Creditors.

23 MR. SCHEPACARTER: Of a constituency of General
24 Unsecured Creditors, that's correct, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. SCHEPACARTER: With that said, we're ready to
2 proceed.

3 THE COURT: All right. Does anyone else wish to be
4 heard preliminary? All right. Let's begin then.

5 MR. MEYER: May I respond briefly, Your Honor?

6 THE COURT: Briefly.

7 MR. MEYER: Your Honor -- as Your Honor pointed out,
8 the interest of the creditors, including the noteholders are
9 represented by the Committee. In fact, it's my understanding
10 that the Indentured Trustee for the noteholders is actually a
11 member of the Committee. And I think, Your Honor, the fact
12 that the Committee who is the -- represent the constituency
13 that is directly affected in this case by the expenditures of
14 these monies, the fact that they have agreed is obviously
15 extremely compelling. They obviously believe that it's worth
16 the commitment of these resources to maximize the recovery of
17 the estate. The only other thing --

18 THE COURT: It is important, but not dispositive.

19 MR. MEYER: You're right. I wouldn't suggest
20 otherwise, Your Honor. That's exactly right.

21 THE COURT: Okay.

22 MR. MEYER: The only other thing I wanted to say
23 briefly, Your Honor, is that in terms of the complexity of the
24 tasks at issue here, first of all, it is a bare bones staff
25 remaining. It's 32 employees, soon to be 31. And as Mr.

1 Rosoff testified in his declaration, and can testify orally
2 today, there are numerous complex issues involving the tax
3 treatment of various assets, various different entities. They
4 have entities in which assets are intertwined, assets of the
5 estate with non-Debtor assets. They have administrative
6 complexities arising from that fact, the fact that the non-
7 Debtor, primarily the bank, has intellectual property. They
8 have assets that are commingled with that of the Debtor. There
9 are regulatory issues having to do with the FDIC's control of
10 the bank. There are issues relating to claims, or there will
11 be issues relating to claims when the claims come in, issues
12 related to the sales of at least two insurance companies that
13 transfer various facilities. Sale of personal property, Your
14 Honor, preparation of ongoing cash flow forecasts and reports
15 to the Creditor's Committee, and pursuant to the plan, all of
16 these things, Your Honor, are set forth in our reply brief.
17 But I think I would respectfully ask that if Your Honor has any
18 doubt as to the complexity and the sensitivity of these various
19 tasks, Mr. Rosoff can speak very eloquently to that point.

20 THE COURT: Well, the Debtor can put on whatever case
21 it wishes.

22 MR. MEYER: Yes, Your Honor. And so having said
23 that, we would with Your Honor's agreement, we would propose to
24 proceed by tendering the two declarations of Mr. Rosoff as his
25 direct testimony in this case. We've spoken to the Trustee and

1 it's my understanding they have no objection to that, obviously
2 subject to Your Honor's preference. And if that's acceptable,
3 then we would tender Mr. Rosoff for cross examination.

4 THE COURT: All right. Let me -- please identify the
5 declaration and the supplemental declaration by docket number,
6 if you would.

7 MR. MEYER: Somebody -- one of my colleagues will
8 have to tell me that, Your Honor. The declaration of William
9 Rosoff in support, Your Honor, is Docket No. 357, and the
10 supplemental declaration, which contains various schedules is
11 Docket No. 468. Your Honor, we've agreed, consistent with the
12 motion to seal, which Your Honor has approved, I think there's
13 a general agreement that we're not going to be referring to any
14 particular individuals by name. Rather, Your Honor, and if you
15 don't have this, we can provide you with another one, but in
16 the schedules attached to Mr. Rosoff's supplemental
17 declaration, all of the people at issue are listed. So, for
18 example, in Schedule A, it contains the names of those who are
19 participating in the post-petition severance plan, and if
20 necessary for cross examination, we could refer to the page
21 number, and you know, the second name on the page, for example.

22 THE COURT: I have it and I've reviewed it.

23 MR. MEYER: Okay. Thank you, Your Honor.

24 THE COURT: Let's proceed.

25 MR. MEYER: So is that acceptable to Your Honor to

1 proceed by way of proffer of the affidavits?

2 THE COURT: Yes. Did I ask, is there any objection
3 to that?

4 ALL: (No verbal response).

5 THE COURT: I hear none. Okay. Does anyone wish to
6 cross examine Mr. Rosoff?

7 MR. SCHEPACARTER: Yes, Your Honor.

8 THE COURT: All right.

9 MR. MEYER: Thank you.

10 MR. SCHEPACARTER: Mr. Rosoff.

11 THE CLERK: Please remain standing.

12 WILLIAM ROSOFF, DEBTOR'S WITNESS, SWORN

13 THE CLERK: Please state your full name for the
14 record and spell it.

15 MR. ROSOFF: William A. Rosoff, R-O-S-O-F-F.

16 THE COURT: You may be seated.

17 MR. SCHEPACARTER: Your Honor, just waiting for a
18 book of the exhibits, the declarations and exhibits to be given
19 to Mr. Rosoff.

20 THE COURT: Okay.

21 (Pause in proceedings)

22 MR. MEYER: May I approach, Your Honor?

23 THE COURT: You may.

24 CROSS EXAMINATION

25 BY MR. SCHEPACARTER:

1 Q. Good afternoon, Mr. Rosoff. My name is Richard
2 Schepacarter with the United States Department of Justice, the
3 Office of the United States Trustee. You gave a declaration in
4 the -- with respect to the first day of this case, correct?

5 A. Yes.

6 Q. And you went through pretty detailed information with
7 respect to the Debtor's pre-petition history and pre-petition
8 operations, correct?

9 A. I think it speaks for itself. It was -- I would call it a
10 general description.

11 Q. Okay. And that those pre-petition activities, have they
12 continued post-petition?

13 A. Some have and some have not.

14 Q. Okay. The business model that Advanta has and the business
15 operations, would you term that it's pretty much, at this
16 point, a liquidation case now?

17 A. It's principally a liquidation, although there is likely to
18 technically be a reorganization proposed, involving certain
19 assets.

20 Q. Okay. And the various banking activities and credit card
21 activities, are they continuing post-petition?

22 A. Insofar as the parent and the Debtors go, there are some --
23 in excess of \$30 million of credit card receivables that are to
24 be collected out over time.

25 Q. Okay. So it's basically a collection case at this point,

1 you would say?

2 A. It's --

3 Q. Collection of --

4 A. -- customer service, collections, billing, operational
5 things relating to the credit card customers, where the
6 receivables are owned by the Debtors.

7 Q. Okay. What type of activities are going on now with
8 respect to this -- these Debtors?

9 A. A lot of different activities. If you like, I can
10 elaborate.

11 Q. Yes, please.

12 A. They fall into different categories. There are operational
13 activities relating to the collection of the credit card
14 receivables I just mentioned, and the servicing of them. There
15 are activities involving the FDIC, that fall into a variety of
16 categories. There's been litigation relating to Advanta Bank,
17 which is a smaller bank that was resolved recently that has the
18 effect of protecting important assets of the Debtor. There are
19 a variety of potential claims back and forth between Advanta
20 Bank Corp. and the Debtor, Debtor entities, involving the FDIC.
21 There are serious operational issues that have both an
22 operational, important operational effects on the Debtors, and
23 the amount of proceeds that will be collected, as well as
24 regulatory aspects involving the FDIC.

25 To be more specific, I think it was eluded to earlier that

1 the systems, in most simple terms I can think of, are of
2 greatly integrated between Advanta Bank Corp. and the Debtor
3 entities, so the simplest things, like e-mail, being able to
4 answer the telephones, all -- a separation activity has to take
5 place.

6 There's activities going on right now where the FDIC is
7 trying to transfer the servicing of the Advanta Bank Corp.'s
8 credit card accounts to a new servicer, but the accounts are --
9 FDR, which is the processor for -- does the billing and has all
10 the information relating to both the Debtor's accounts and the
11 bank's accounts, our role at FDR and the way the systems are
12 set up, there's no way to transfer the parent, the Debtor's
13 receivables to a new servicer, without in the -- for some
14 months going through the bank -- the FDR system that includes
15 the bank's accounts.

16 So if we cannot work something out satisfactorily with the
17 servicer and with the FDIC, the some \$40 million we expect to
18 collect on the credit card receivables will be in jeopardy. We
19 won't be able to bill customers, we won't be able to answer
20 their questions, we won't be able to collect -- to call to
21 collect money, because we won't have access to the information
22 on the accounts.

23 The FDIC has recently said as recently as last week, that
24 they're washing their hands of it, it's up to the servicer.
25 The servicer has really no reason to cooperate with us, without

1 the FDIC trying to get them to do it. So I've personally and I
2 know of some other people in the room, had a lot of heartburn
3 last week worrying about what are we going to do here, it was
4 on a very short fuse. So that's another operational aspect.

5 Getting documents that we need for the bankruptcy process
6 for various litigation is all commingled with the bank, and we
7 don't have control over it, so there's been an enormous effort
8 to separate on that score, and to work with the FDIC.

9 Q. And the separation -- not to interrupt, but the separation
10 that you speak of between the FDIC and the Debtors, that goes
11 to the collection of these receivables, correct?

12 A. Goes to everything that the parent does. So, for example,
13 the Creditors' Committee wants reports, and we have to file
14 with the Bankruptcy Court reports every month. The financial
15 systems are integrated with the bank financial systems, and the
16 parent owns the intellectual property, but other licenses are
17 owned by the bank, and we simply cannot produce those reports
18 if we can't work something out with the FDIC or have some way
19 of affecting our rights. Or we won't be able to do any of the
20 things we're required to do --

21 Q. Right. And you stated --

22 A. -- in the bankruptcy process.

23 Q. Okay. So with respect to the bankruptcy process that you
24 speak of, that has to do with information gathering for reports
25 for the Committee, the monthly operating reports that come to

1 our office, and --

2 A. That's correct.

3 Q. -- is that correct?

4 A. Yes, that's one aspect.

5 Q. Okay.

6 A. But to go on in what the activities consist of, we've spent
7 an enormous amount of time on important tax related issues, and
8 we continue to spend time, some of them were postponed for a
9 hearing today, relating to a net operating loss that the
10 consolidated group has, and where the parent filed a tax
11 return, waiving certain carry-backs. There's enormous, some
12 \$170 million of swing, as to how much money might be available
13 for what we believe should be the Creditors. The terms on that
14 issue, and a lot of attention of the personnel at the Debtors
15 to that issue. There is a lot of work being done on protecting
16 and structuring certain assets which are -- if not handled in a
17 particular prescribed way, can result in a large tax liability
18 that's unattended, or other liabilities of some \$200 million,
19 where people at the company, and I use the company to mean the
20 Debtors, are spending a great deal of time on that. And then
21 all of -- there's a lot of personnel related issues, a myriad
22 of so many insurance companies selling the art, there's a lot
23 of other activities going on. So while I know I sound long-
24 winded, I'm only hitting the highlights of what I think are
25 major swings, critical things to producing the most money for

1 the Creditors, which is what our goal is.

2 Q. Okay. Thank you, Mr. Rosoff. Do you know today, and can
3 you tell me what the total cash, sort of a total cash
4 investments, maybe the accounts receivable, that have been
5 collected to date?

6 A. I don't know what you're referring to as account -- as the
7 amount invested. I can tell you that there are, in the area of
8 \$33 million of accounts receivable today, credit card
9 receivables. We have a projection that expects to collect from
10 beginning of the bankruptcy of something in the area of \$40
11 million of principal and interest is our hope to collect, and
12 we've collected about 8 million of that so far.

13 Q. Okay.

14 A. I hope that's responsive.

15 Q. And who exactly is working on that collection?

16 MR. MEYER: Again, remind the witness that we've
17 agreed to preserve the confidentiality of the identities. So
18 if you want specific individuals identified, I would ask that
19 we do it by pointing to a name on one of the pages of the
20 schedules, if that's acceptable.

21 THE COURT: All right.

22 MR. SCHEPACARTER: Let me -- I think I can phrase the
23 question in a way where nobody has to disclose anything.

24 THE COURT: Okay.

25 BY MR. SCHEPACARTER:

1 Q. With respect to the work that's being done to collect those
2 receivables, is it more than one person doing the collection?

3 A. Yes.

4 Q. Would -- it would be more than ten people doing a
5 collection?

6 A. If I may, I think I could -- if I describe how the --
7 what's being done with respect to the collections and who does
8 it generically --

9 Q. Generically, okay.

10 A. -- I'll be able to be more responsive than talking about
11 numbers.

12 Q. That's fine. You can go ahead with that.

13 A. I have to answer this way. There's an answer in the
14 shorter run and the longer run. Today, the servicing of those
15 receivables is still being done by Advanta Bank Corp., and
16 personnel at Advanta Bank Corp. are the ones who supervise who
17 calls who to collect the money, and does the servicing when
18 somebody calls to ask a question about their account, and sends
19 out the bills, and gets a servicing fee for that. And there
20 are people at the Debtor, in that connection, who oversee it,
21 insofar as it relates to the Debtor's receivables. We get
22 regular reports, we ask questions, we meet with people to make
23 sure that the Debtor's assets are being properly handled.
24 However, at a different level, there's far more activity going
25 on over the last months and now, over the issue that I referred

1 to as the separation before. So there are people who are
2 making arrangements with the new servicers. There's four
3 different servicers required to service the accounts in
4 different areas. So working those arrangements out, working
5 out how the separation's going to work with the FDIC, which I
6 alluded to earlier, putting our finger in the dyke when various
7 emergencies happen in that regard, or things that are in danger
8 of setting it off track, what I referred to as giving me
9 heartburn last week are the -- so getting us ready to both
10 service the accounts without the bank in a relatively short
11 run, and then having a more permanent solution, because some of
12 these things can't be done instantly. You can't instantly say,
13 FDR will give access to only the parent for the parent's
14 account and the bank for the bank's account, over a course of
15 months that can be achieved with the FDIC's cooperation, but it
16 can't be done in the short run. So there's a sizeable number
17 of people who are working on that today.

18 Q. Okay. Thank you for that answer. In your first day
19 affidavit, paragraph 28, you stated that -- and I'll just read
20 right from the affidavit, "Although Advanta has close to a
21 million dollars in cash and equivalence on hand, over time it
22 would not be able to meet all of its existing obligations."

23 A. With all due respect, I think it said a hundred million.

24 Q. A hundred million. Did I say --

25 A. A million.

1 Q. Did I say a million?

2 A. A million. The number's are (indiscern.).

3 Q. My bad. I'm sorry. I apologize. I meant to say a hundred
4 million, and I'm glad you clarified that. So at the start of
5 this case, the Debtor had a hundred million dollars in cash,
6 correct?

7 A. Approximately.

8 Q. Okay. All right. And on top of that hundred million
9 dollars in cash, your testimony was that the Debtor collected
10 another 40 million or 33 million?

11 A. No. My testimony was that over the course of the next
12 several years, we expect to collect approximately \$40 million
13 on the credit card receivables. About eight million of that's
14 been collected to date.

15 Q. Okay. If you might turn to -- it's called Schedule D that
16 was attached to your supplemental declaration.

17 A. I'm not sure I have that here, sir, just --

18 Q. Should be the last page to your supplemental.

19 A. Things that are filed -- just says filed under seal, it
20 doesn't have the actual declaration on my copy.

21 Q. Okay. I think we're going to get that for you in a second.

22 THE COURT: You may approach the witness to assist
23 him if you like, to find the document.

24 MR. SCHEPACARTER: Thank you, Your Honor.

25 (Pause in proceedings)

1 MR. SCHEPACARTER: Here's where I am.

2 A. Oh, I'm sorry. I'm sorry. Yes.

3 MR. SCHEPACARTER: Okay.

4 BY MR. SCHEPACARTER:

5 Q. If you would, turn to the very last page of that Schedule

6 D, and let me know when you're there. Are you there? Okay.

7 There's -- at the top of the page there's two columns. It says

8 "adjusted proceeds" and then "bonus." What is adjusted

9 proceeds?

10 A. I believe the adjusted proceeds are the -- in simple terms,

11 it's the money projected to be available for the benefit of

12 creditors.

13 Q. All right.

14 A. Which includes cash, money in hand, assets, proceeds of

15 assets to be sold, collections on credit card receivables minus

16 the various costs of the bankruptcy.

17 Q. Okay

18 A. And running the company.

19 Q. Okay. Do you know how much adjusted proceeds are on hand

20 right now, as we speak?

21 A. The only way -- if I may, the only way I can answer that is

22 to say this, the adjusted proceeds are a combination of actual

23 cash in hand and a projection of what's expected to be

24 collected minus expenses or expenditures expected to be

25 incurred. So that there's -- I can tell you that there's

1 approximately \$110 million of cash on hand. But I can't tell
2 you everything else is no different than if I did it in
3 February of this year. It's all a projection. You start with
4 what do you have and then what do you expect to collect and how
5 much do you have to spend. So that the -- I would say that the
6 numbers today of the range of what we might expect is not
7 substantially different than what it would've been early in the
8 year, or probably at the beginning of the proceeding.

9 Q. Okay. Now, with respect to the Schedule D, without naming
10 any names in there, with respect to the bonus person we'll call
11 them, has the bonus person received, to the best of your
12 knowledge, received any bona fide offers of employment outside
13 of the Debtors?

14 A. It depends on what you mean by bona fide offer. That is if
15 you mean by a --

16 Q. I can explain it for you, if you'd like.

17 A. Sure, absolutely.

18 Q. Bona fide offer would mean a written job offer from another
19 company, let's say the Debtor competes with or another company
20 in this type of business.

21 A. He is not to my knowledge. He or she is not to my
22 knowledge, but I know that the person involved has been
23 approached by a number of different parties about employment,
24 and is somebody in high demand.

25 Q. Understood. Okay. Mr. Rosoff, if you could turn to

1 Schedule A, that's the one that looks like a spreadsheet.

2 A. Yes.

3 Q. Okay. And again, without naming any names, Schedule A
4 talks about participants in the post-petition severance plan,
5 correct?

6 A. Yes.

7 Q. Okay. And it segregates, separates out those participants
8 in reporting levels, correct?

9 A. I'm not -- yes, yes.

10 Q. Okay. So generally, people who are reporting level one are
11 sort of at the top of the pyramid?

12 A. Yes.

13 Q. And then it drops down to level two, and then level three,
14 and then level four.

15 A. With one exception. This chart starts with the second tier
16 in the company. That is, it excludes what we call the office
17 of the chair. So it excludes Dennis Alter and myself.

18 Q. Right, understood. Okay. Now, with respect to the
19 participants, isn't it true generally that the level two
20 employees report to the level one employees?

21 A. I believe that's the case, although I'd have to go through
22 it again in more detail --

23 Q. All right.

24 A. -- to be sure.

25 Q. The document is part of the record, so it generally

1 indicates that. I think you would agree, though, that it
2 generally indicates that the twos report up to the ones,
3 correct?

4 A. Yeah. My only hesitation is while I read all of this a
5 number of times, I didn't really focus hard on what was called
6 a one or a two or a three.

7 Q. Okay.

8 A. So if you asks me who reports to who, I could in general,
9 address that.

10 Q. Okay.

11 A. I certainly don't object to the statement it makes, for the
12 little I've looked through just now, it's consistent.

13 Q. Right. But you would agree that it's level and the level
14 sort of cascade one, two, three, four.

15 A. I believe, yes.

16 Q. The fours report up, the threes report to the twos.

17 A. Again, sir, not to -- I believe that's the case. If I were
18 going to verify that, I would want to go through that in
19 detail, because I couldn't swear right now that there's not
20 somebody marked a four who reports to a two, I just -- I didn't
21 pay much attention to that, and again, except to be sure that
22 the central things were accurate.

23 Q. Okay. At to the extent that you know of this document and
24 have reviewed it, it's accurate that there are no three level
25 employees who report to any ones?

1 A. As far as I know that's true, with the caveat that I just
2 described.

3 Q. All right. So generally, the level two employees are the
4 ones, to a certain extent, manage, supervise the threes and the
5 fours, and then it goes up from there. It goes up to the twos,
6 to the ones.

7 A. Again, from my perspective, I don't know that manager
8 supervisors is necessarily an accurate term. That is,
9 typically in the organization there's a reporting
10 relationship but whether they are -- it depends on what that
11 person is doing and who they spend most of their time doing it
12 with. Has more to do with who may be supervising them or
13 managing them. So what's on an organization chart may not also
14 always comport with what somebody -- who they're really taking
15 direction from, especially as the organization has shrunk to a
16 relatively few people.

17 Q. Okay. And the calculation of who is included in the
18 management portion of the severance package, based upon the
19 formula set forth in the statute, who came up with that
20 calculation?

21 A. I'd have to -- to be responsive, let me try to answer this
22 way. Hopefully, I'll be responsive. There were discussions
23 that I participated in, as to who was management and who had
24 control, and decision-making authority, which was (indiscern.)
25 Dennis Alter, myself and the two people reporting to us. The

1 actual calculation of what that meant, I was presented with
2 different things. I believe that the head of HR was involved
3 in that. The general counsel was involved and the Chief
4 Administrative Officer. I believe there were people at our
5 financial advisors and counsel involved in those calculations.

6 Q. Okay. And do you know how that calculation was arrived at?

7 A. I know there was a formula, I believe there was a formula
8 set out and whether it's statute or regulation, I couldn't
9 answer. As -- they set parameters of what could be paid in
10 severance under some circumstance, and the effort was to make
11 sure that whatever we were proposing was complying with that.

12 Q. Okay. And the calculation is based upon, it cannot be
13 greater than ten times the amount of the mean severance pay
14 given to non-management employees. Do you know how the
15 determination was arrived at to figure out who's a non-
16 management employee versus a management employee?

17 A. I think it was the way I just described. It was described
18 to me, I know, what the criteria was, that should be used --
19 that I believe was described to me, both by the people I
20 mentioned internally, and I believe was done in conjunction
21 with counsel and the financial advisors as to what was
22 required. And then folks went out and did the arithmetic. But
23 the issue of who was management, and who would be -- if that's
24 the right terminology used for this, was pretty cut and dry
25 from my perspective. Because there were only the four people

1 who have any decision-making authority, or control.

2 Q. But wouldn't you agree that some of the two employees have
3 some, I'll call it, responsibility over the three employees?

4 A. They have no authority to make decisions for the company.
5 For example, they could not terminate one of those people, they
6 could not increase their salary. They couldn't do that outside
7 of a bankruptcy process or inside of a bankruptcy process. And
8 without -- one of the four people or more than one, in most
9 cases, of the four people I mentioned approving.

10 Q. Right. But wouldn't you agree that the three employees,
11 the number three level employees who report to the level two
12 employees, they do report to them, correct?

13 A. It's all -- yes. But it's a question of what -- reporting
14 to -- what it means to report to someone. A reporting means
15 more than just a flow of information going on.

16 A. I'll give you an example of what reporting means. If
17 somebody works for the CFO, and the CFO wants a report that he
18 has to submit, he'll ask that person to prepare it for him, and
19 that person is responsible to prepare it for him. If there
20 were discretion about that report, what could go into it, or
21 not go into it, or how to characterize something, that would
22 not be done by that employee, nor would it be done by anybody
23 except the four people I mentioned. There would be a
24 discussion of what's the right way to handle that, and it would
25 be decided ultimately by one or more of the four people.

1 BY THE COURT:

2 Q. So that I'm clear, Mr. Rosoff, about the four people within
3 the company who have decision-making authority, that includes
4 yourself and Mr. Alter.

5 A. Right.

6 Q. And the two people listed on Schedule A as reporting level
7 one?

8 A. Yes.

9 THE COURT: All right.

10 BY MR. SCHEPACARTER:

11 Q. Okay. Just for example, if you could turn to Page 9 of
12 Schedule A. And if you look at the last person there again
13 without naming any names --

14 A. Right.

15 Q. -- that person reports to one of the level two employees,
16 correct?

17 A. Yes.

18 Q. Okay. And then underneath of that, there is a number of
19 tasks that -- and responsibilities that that person has;
20 responsible for certain things, correct?

21 A. Yes.

22 Q. So then if you turn to Page 5 of that same exhibit, and you
23 look at the bottom of that page, you'll see the name of the
24 person to whom the level three Page 9 employee reports to,
25 correct?

1 A. Right, yes.

2 Q. Okay. And then underneath of that, listed there the job
3 description, there's a number of seven or eight items that go
4 along with that. And then that person reports to the number --
5 level one type person, correct?

6 A. Yes.

7 Q. Okay. All right.

8 MR. SCHEPACARTER: Your Honor, I don't have -- at
9 this time, I don't have any further questions. I do reserve
10 recross, if necessary. Thank you.

11 THE COURT: All right. Is there any other cross
12 examination of this witness? Any redirect?

13 MR. MEYER: Just very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MEYER:

16 Q. Mr. Rosoff, looking at Schedule A, do you believe all of
17 the reporting level two people should be considered to be
18 management, or would you consider them as management?

19 A. No.

20 Q. Okay. Why not?

21 A. They don't have either decision-making authority or control
22 -- important influence on the control of the company or
23 influence on the control of the company.

24 Q. If we just take a couple of examples of the people who are
25 included as reporting level two. If you look at Page 5, for

1 example, of Schedule A. The second name, the name in the
2 middle, is that person essentially a secretary?

3 A. Yes.

4 Q. Do you consider her to be part of management?

5 A. No.

6 Q. And taking --

7 MR. SCHEPACARTER: Your Honor, I will just object to
8 that one question only from the standpoint of the fact that our
9 witness, who will testify to that, that's not in the
10 calculation, but there's three people left off of Schedule 2,
11 level two, and that's one of them.

12 THE COURT: All right. Well, okay. We'll hear it
13 then.

14 MR. MEYER: Your Honor, it was at one point in the
15 calculation, Your Honor, and they took it out.

16 BY MR. MEYER:

17 Q. Let me ask you about some people who aren't secretaries
18 then, really just two people. On Page 7, the second name, and
19 is -- do you consider this person to be management?

20 A. No.

21 Q. Can you generically describe what this person's function is
22 within the company?

23 A. This person is an IT person and they're the sole employee
24 who's an IT person within the company. We have some
25 consultants, and they don't do -- they have no discretion about

1 anything.

2 Q. And to --

3 A. No discretion whatsoever.

4 Q. -- look at another example, I apologize for skipping
5 around. If we go back to Page 3, the second name on Page 3,
6 can you describe generically what this person does?

7 A. Yes. This person prepares tax returns, and does certain
8 tax analyses. Again, they will provide information that's
9 either carrying out a decision or will analyze different
10 choices to provide financial choices that are requested by
11 management.

12 Q. Do you consider him to be either management or an insider
13 of the company?

14 A. Not remotely.

15 Q. Okay. Now, Mr. Rosoff, I just wanted to ask you, do you
16 believe that the post-petition severance plan that's been
17 presented today before the Court, is necessary to maximize the
18 recovery for creditors in this case?

19 A. Yes, I believe that it's essential. There's only one
20 important issue as far as I'm concerned.

21 Q. Can you explain why?

22 A. And that is to get the most possible money for the
23 creditors. And without this plan, we are going to jeopardize
24 that. We have a company where the people are demoralized.
25 They're in a situation, they're partly demoralized because of

1 the overall circumstances, they're demoralized because of the
2 delay for whatever reason in getting this approved, and they
3 are people who are worried about -- it's a bad circumstance to
4 begin with, and they're worried about paying their bills. So
5 if they don't have confidence that they have some cushion, they
6 have to go out and -- the most loyal person has to go out and
7 look for a job today, because otherwise, they're stuck with
8 losing their job, and they don't have a job tomorrow and they
9 can't pay their mortgage tomorrow. So you're taking people and
10 you're forcing them to look for other jobs, and you're putting
11 them into a terribly emotional state when you're asking them
12 to, in bad circumstances, make heroic efforts to try to do
13 things. And it's a very bad idea.

14 We've had a company with terrific esprit de corps, I walk
15 around to talk to people now, and the best people, the -- it's
16 palpable how upset they are, depressed, don't know what to do,
17 torn between their loyalty to the company, and stressed about
18 themselves and their family. And we need -- if -- in my book,
19 it is my firm belief if we don't do something, if we don't
20 approve this, we are going to jeopardize hundreds of millions
21 of dollars potentially for the creditors, because we have huge
22 issues of the type that I tried to outline. And the very
23 people who we need to do that are stressed out and worried
24 about their families and themselves.

25 And it's not that this is a panacea and this is going to

1 do it. They're going to be worried no matter what, and it's
2 unpleasant no matter what. But if we don't do it, we're going
3 to lose people left and right. We've already lost a handful of
4 critical people out of, you know, forty or something, where
5 I've seen a CFO tearing his hair out, because he doesn't know
6 what he's going to do because a critical person left. I really
7 think it's essential for the welfare of the creditors, and
8 that's all that matters in this.

9 MR. MEYER: Thank you. I have no further questions.

10 THE COURT: Any recross?

11 MR. SCHEPACARTER: Thank you, Your Honor, just a
12 couple.

13 RECCROSS EXAMINATION

14 BY MR. SCHEPACARTER:

15 Q. Mr. Rosoff, you referenced one of the employees on redirect
16 who prepares tax returns, correct?

17 A. Yes. I don't know if it was on redirect, but there was an
18 employee I was asked about.

19 Q. Counsel just maybe a few minutes ago just asked that
20 question --

21 A. Okay.

22 Q. -- with respect to that. And does that employee, in
23 preparing those tax returns, make decisions with respect to
24 what taxable items may be included or deductions may be taken
25 with respect to those tax returns?

1 A. No. He drafts the tax returns under -- after decisions are
2 made about critical issues in consultation with management, in
3 consultation with outside professionals, and then his work is
4 reviewed by outside professionals. So he's -- I mean, I don't
5 want to demean it, because it's technically important work, but
6 he's a mechanic.

7 Q. Okay. And not to disclose anything, but what's listed
8 there on Schedule 3 for his current base salary, that is an
9 accurate number for his current base salary, correct?

10 A. I'm sure if it's here, it is.

11 Q. Okay. And let me direct you to Page 5 as well.

12 A. Okay, yes.

13 Q. And the person at the bottom of the page, that's her
14 salary?

15 A. Yes.

16 Q. Okay. And --

17 A. If I could just add something about the one person we
18 talked about a minute ago.

19 Q. Sure.

20 A. That person is in these -- in this motion to get a small
21 bonus at the request of the Creditor's Committee, because of
22 the importance of the tax issues and the need for him in
23 carrying them out. While I can call him a mechanic and he is,
24 if I want to turn -- if I want to fix my sink if it's leaking,
25 I need the mechanic, and we need him to file the tax return

1 with all the supervision in the world.

2 Q. Okay. And one last question for you. With respect to the
3 level three and four employees, who prepares their employee
4 evaluations?

5 A. They are typically -- where there are evaluations and
6 they're not always evaluations. And historically, before the
7 bankruptcy, they would typically, not always, but typically be
8 evaluations. Those evaluations were then submitted -- the
9 person who they report to submits them. Ultimately, all salary
10 increases have to be proved by Dennis Alter or myself.

11 Q. Okay. Understood. But --

12 A. The custom when the company had a thousand employees, and
13 the now particularly, there are no salary increases except
14 right here.

15 Q. But the person who -- I think your testimony was with
16 respect to level three and four employees, the person who they
17 report to prepares their employee evaluation.

18 A. Well, in the --

19 Q. If any.

20 A. -- bankruptcy, I don't know if there are any evaluations
21 being made. I'd have to check. I would say in -- before the
22 bankruptcy, and certainly afterward, when we had evaluations
23 and we had salary increases, many times Dennis Alter or myself,
24 or one of the people listed as number ones here, would reverse
25 the decision of the recommendation made, when compensation

1 issues by the supervisor -- the nominal supervisor of that
2 person.

3 Q. Okay, understood.

4 MR. SCHEPACARTER: All right. No further questions,
5 Your Honor.

6 MR. MEYER: Just one follow-up on something that he
7 asked about?

8 THE COURT: Very quickly.

9 MR. MEYER: Okay.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. MEYER:

12 Q. Mr. Rosoff, Mr. Schepacarter --

13 MR. SCHEPACARTER: Schepacarter.

14 MR. MEYER: Almost. Schepacarter, I apologize.

15 MR. SCHEPACARTER: Common mistake.

16 Q. Mr. Schepacarter asked you specifically about an individual
17 on the bottom of Page 5, and I believe asked you whether her
18 base salary was accurate. Do you see that?

19 A. Yes.

20 Q. Can you explain to the Court -- we can agree that that
21 person's base salary is a fairly significant number. Can you
22 explain to the Court without identifying the individual why
23 that person's base salary is relatively high compared to some
24 of the other people?

25 A. Yes. Can I refer to the category or should I avoid that?

1 Q. Yeah, generally, yes.

2 A. Okay. This person's the head of HR. They were -- we had
3 tried to hire this person over a course of years and were
4 unable to do so. We were finally able to hire them, but the
5 condition of being able to induce them to come, which was in
6 early 2009 when there were difficulties at the company, but we
7 did not expect to be in bankruptcy, was to both pay this salary
8 and to provide a one-year severance, by contract to the person,
9 as well as a guaranteed bonus, I believe, of \$50,000. And we
10 were not able -- and we needed her, and we couldn't get her
11 otherwise. It is an unusual arrangement.

12 Q. This person actually has a pre-petition contract?

13 A. Contract.

14 MR. MEYER: Okay. Thank you. Nothing further.

15 THE COURT: Anything further, Mr. Schepacarter?

16 MR. SCHEPACARTER: Just one question and I'm about to
17 call my other witness, Your Honor, but.

18 FURTHER RECROSS EXAMINATION

19 BY MR. SCHEPACARTER:

20 Q. Is your testimony that you said she was the head of HR?

21 A. Yes.

22 MR. SCHEPACARTER: Okay. That's my question. Thank
23 you.

24 THE COURT: Thank you. Thank you, sir. You may step
25 down.

1 (Witness excused)

2 THE COURT: All right. Does the Debtor have any
3 further witnesses?

4 MR. MEYER: No, Your Honor. Any other evidence in
5 support of the motion?

6 MR. MEYER: No, Your Honor.

7 THE COURT: All right. Mr. Schepacarter.

8 MR. SCHEPACARTER: Thank you, Your Honor. Your
9 Honor, may I call Mr. Michael West to the stand.

10 THE COURT: You may.

11 THE CLERK: Please remain standing.

12 MICHAEL WEST, TRUSTEE'S WITNESS, SWORN

13 THE CLERK: Please state your full name for the
14 record and spell it.

15 MR. WEST: Michael C. West. Last name is spelled W-
16 E-S-T.

17 THE CLERK: Thank you. You may be seated.

18 MR. SCHEPACARTER: Your Honor, before I begin, I have
19 an exhibit that I want Mr. West to testify on. May I approach
20 both the witness and Your Honor with a copy of this exhibit?

21 THE COURT: Okay. Has it been marked?

22 MR. SCHEPACARTER: Well, I've marked it myself as
23 U.S. or T-1.

24 (U.S. Trustee's Exhibit No. 1 marked for
25 identification.)

1 THE COURT: Okay. Has it been supplied to opposing
2 counsel?

3 MR. SCHEPACARTER: And it's been supplied to both
4 counsel for the Committee and counsel for the Debtors.

5 THE COURT: You may proceed.

6 MR. SCHEPACARTER: Thank you.

7 MR. MEYER: Your Honor, just for the record, we would
8 ask that this also be admitted under seal, since it contains
9 information -- it doesn't have names, but it has the person's
10 title and the amounts. So one could easily figure out the name
11 of the person from that information.

12 THE COURT: Do you have a copy for my law clerk, Mr.
13 Schepacarter?

14 MR. SCHEPACARTER: Yes.

15 THE COURT: Okay. And while we're at that, is there
16 an extra copy of the schedules to the supplemental
17 declaration --

18 MR. MEYER: I believe there is, Your Honor.

19 THE COURT: -- that could be supplied to my law
20 clerk? Thank you. Okay. Well, let me ask this. It's been
21 marked for identification. Mr. Schepacarter, is it going to be
22 offered into evidence?

23 MR. SCHEPACARTER: Yes, Your Honor.

24 THE COURT: Okay. Is there -- will there be any
25 objection to that?

1 MR. MEYER: No, Your Honor --

2 THE COURT: Okay.

3 MR. MEYER: -- other than the request for
4 confidential treatment.

5 THE COURT: Okay. Any comment about that?

6 MR. SCHEPACARTER: No, it can be part of the other
7 exhibits. It comes from the other exhibits.

8 THE COURT: All right.

9 MR. SCHEPACARTER: So it's --

10 THE COURT: T-1 will be admitted under seal.

11 (U.S. Trustee's Exhibit-1 admitted into evidence - under
12 seal)

13 MR. SCHEPACARTER: Okay. Thank you, Your Honor.

14 THE COURT: Okay.

15 DIRECT EXAMINATION

16 BY MR. SCHEPACARTER:

17 Q. Mr. West, if you can, just give us a short background with
18 respect to your qualifications. Where did you attend college
19 and some of your post secondary education?

20 A. I received a bachelor's degree in accounting from
21 Philadelphia University. I also have a juris doctrate from
22 Temple University. I've been a licensed CPA in the
23 Commonwealth of Pennsylvania since 1995, and a licensed
24 attorney since 2002 in Pennsylvania.

25 Q. Okay. And how long have you been with the U.S. Trustee's

1 office, number of years?

2 A. Off-and-on for approximately eight years.

3 Q. Okay. And with respect to your duties, you are -- your job
4 title is bankruptcy analyst, correct?

5 A. That's correct.

6 Q. Okay. And if you can, just sort of generally describe some
7 of your sort of general duties and then your specific duties
8 with respect to this case.

9 A. Generally, in the Chapter 11 cases, I'll meet with each of
10 the debtors and conduct an initial debtor interview, discuss
11 their monthly reporting obligations. I also review the monthly
12 reports as they're submitted to the office, and contact
13 debtor's counsel if there are any issues that need to be
14 resolved. Specifically, in this case, in addition to the
15 normal duties, I reviewed the Debtor's documents, which were
16 submitted under seal and participated in some discussions with
17 the Debtors over the severance plan.

18 Q. Okay. And if you could, explain to the Court the
19 calculation that you undertook with respect to the document
20 which we are offering into evidence.

21 A. Okay. With respect to the document marked T-1, the
22 Debtor's supplied information of the various employees and kind
23 of redacted it to take out the employees' names and payroll and
24 just limit it to the severance information. This first page
25 are of the current employees, and basically is the level three

1 and level four employees --

2 Q. Okay.

3 A. -- along with three level two employees that were, in
4 looking at the chart and the duties that were supplied as
5 Exhibit A, it did not appear that they were -- had any type of
6 management role. So this list of employees is essentially what
7 I would consider to be the non-management using the information
8 supplied by the Debtors.

9 Q. Okay. And how did you determine which employees were
10 management and non-management?

11 A. Well, we were looking at the duties and whether or not they
12 were corporate officers or insiders, and all of the level one
13 employees were insiders. All the level two employees reported
14 to the level one employees. Some of the level twos were
15 insiders and/or corporate officers as well.

16 Q. Okay. All right. And with respect to your calculation, if
17 we could turn to page, I believe at Page 3 of the document.
18 Can you explain what that -- how that calculation was arrived
19 at?

20 A. Yes. On the first line it has the ratification employees,
21 which is basically the sum of the severance payments on the
22 second page of the document, and the number of employees that
23 are entitled to receive those payments. The second line is the
24 current employees from Page 1, and the total amount of
25 severance to be paid to those individuals, and the total of the

1 ratification and the current employees, which are identified as
2 go forward. And from that, I was able to calculate the mean
3 severance pay.

4 Q. Okay. So the number there or the total is the total amount
5 of severance to be paid, correct?

6 A. To be paid to those employees that are included on Schedule
7 1 and 2.

8 Q. Correct, okay. And then the number under that the mean
9 severance pay is the mean of that calculation?

10 A. Of the -- yeah, that's the mean severance pay of the group
11 that we identified from the Debtor's materials as being not
12 management.

13 Q. Right. And then the number under that, where it says 10X
14 rule?

15 A. That would be simply multiplying that number by ten to
16 determine the cap under the -- to be calculated under, I think
17 503(c)(2).

18 Q. Okay. And then on --

19 THE COURT: For my benefit, I'm sorry to interrupt,
20 Mr. Schepacarter.

21 MR. SCHEPACARTER: I'm sorry, Your Honor.

22 THE COURT: Do you have the schedules that are
23 attached to Mr. Rosoff's supplemental declaration at the
24 witness stand? Are they there somewhere? If not, can the
25 witness be handed that?

1 BY THE COURT:

2 Q. Okay. Mr. West, without naming names --

3 A. Okay.

4 Q. -- turn to Schedule A, beginning at Page 3.

5 A. Okay. I'm with you.

6 Q. Without naming names, can you identify for me who the three
7 employees were designated as level two employees, who you
8 excluded from your calculation?

9 A. Yes. If you can -- the first it appears on Page 4, it's
10 the second one on Page 4.

11 Q. Okay.

12 A. And the next two appear on Page 5, the first and second
13 individual on Page 5.

14 Q. Thank you.

15 THE COURT: You may proceed, Mr. Schepacarter.

16 MR. SCHEPACARTER: Thank you, Your Honor.

17 BY MR. SCHEPACARTER:

18 Q. Now, Mr. West, with respect to the third page of your
19 calculation where it indicated the 10X rule, and then it came
20 up with a number, and that is ten times the means severance pay
21 number, correct?

22 A. That is correct.

23 Q. Okay. And then there's a number there that says "maximum
24 severance", what does that represent?

25 A. That represents the maximum amount proposed to be paid

1 under the plan.

2 Q. Okay. And then the number under that says "amount in
3 excess of cap."

4 A. Yes. If you -- it's simply a subtraction of the maximum
5 severance subtracting the amount determined under the ten times
6 rule, and that's the difference.

7 Q. Okay.

8 A. And the maximum is in excess of the ten times rule, so it's
9 a negative number in that case.

10 Q. Okay. And the calculation which you have just described
11 and is described in this document, is it consistent with the
12 calculation required under Section 503(c)(2)?

13 A. To my understanding, it is.

14 Q. Okay. All right.

15 MR. SCHEPACARTER: Your Honor, I have no further
16 questions. Reserve for redirect. Thank you.

17 CROSS EXAMINATION

18 BY MR. MEYER:

19 Q. Good afternoon, Mr. West.

20 A. Good afternoon.

21 Q. This Exhibit T-1 that you testified about, is it your
22 testimony that this is information taken just from the
23 information provided by the Debtors and their various
24 schedules?

25 A. Yes. Basically, it was e-mailed to me --

1 Q. Okay.

2 A. -- by counsel and basically I just hid the names in some of
3 the other various columns and.

4 Q. And basically what you attempted to do here was include
5 just the non-insiders or rather the non-management personnel on
6 Schedule A and Schedule B; is that right?

7 A. That's correct.

8 Q. Okay. And basically what you did was, you took everybody
9 other than tier one and tier two people, correct?

10 A. With the three exceptions, but correct.

11 Q. Okay. But you prepared an earlier version of this which
12 you sent to us, didn't you?

13 A. Yes, I did.

14 Q. Okay. And on that earlier version, you simply assumed that
15 everyone who was a level two employee --

16 MR. SCHEPACARTER: Your Honor, object. That document
17 is not in evidence.

18 THE COURT: Well --

19 MR. SCHEPACARTER: And the one that we're offering
20 into evidence is the one that we have here.

21 THE COURT: I understand. But I'm trying to
22 understand the evidentiary basis under the rules for your
23 objection.

24 MR. SCHEPACARTER: Well, it's -- one, it's to a
25 certain extent, I guess we may even call it a settlement. We

1 were talking back and forth of what the calculation would be,
2 and we refined the calculation down to what the calculation is
3 with respect to what --

4 THE COURT: Okay. So it's a 408 objection.

5 MR. SCHEPACARTER: -- is being offered.

6 THE COURT: Any response to that?

7 MR. MEYER: Your Honor, I think it goes to how this
8 list came to be in its present form. It -- basically they
9 tried to take a mechanistic approach to this issue and then
10 realized that it led to absurd results, so they changed it to
11 what it is now.

12 MR. SCHEPACARTER: I don't think you can assume that
13 from what we've submitted.

14 THE COURT: Well, I guess that'll be up to me
15 ultimately. The objection is overruled.

16 MR. MEYER: Thank you.

17 THE COURT: You may proceed.

18 BY MR. MEYER:

19 Q. Mr. West, initially when you prepared your analysis, you
20 assumed that all level two people were management for this
21 purpose, correct?

22 A. I don't know if they were all. I didn't go back and look
23 at the past results. I can tell you what I did for the initial
24 thing, and basically it was everybody that had a title of
25 either vice-president, director, or manager in their title, I

1 assumed that they were all management, composed a list of all
2 the individuals that didn't fall into the particular
3 categories, and did the calculations based on that.

4 Q. But you also included when you did your initial analysis
5 three people who were essentially performing the role of
6 secretaries, right?

7 A. Excuse me?

8 Q. When you initially did your analysis in the first document
9 you created for this purpose, you included as insiders,
10 management people, three people who were secretaries?

11 A. No, because --

12 MR. SCHEPACARTER: Objection, Your Honor. It's not
13 been established that they are secretaries, if that's a term.

14 THE COURT: Overruled. You may respond.

15 BY MR. MEYER:

16 Q. Isn't that right?

17 THE COURT: If you're able.

18 A. If you're saying secretaries, are you referring to the
19 three individuals that were excluded from the current list?

20 Q. Yeah, the three people with the title "executive
21 assistant".

22 A. I did not include them, because their title did not involve
23 VP, director or manager, so they were considered rank and file
24 in the initial calculation.

25 Q. Okay. And you're assuming now in your present calculation

1 that anyone with the title of VP, manager or director is
2 management for the purposes of Section 503©, regardless of
3 their actual function; isn't that right?

4 A. I'm sorry, I'm not sure if I understand what you're saying.

5 Q. Are there any people with the title of vice-president, who
6 you include as a non-management person?

7 A. Yes.

8 Q. Who, without naming the names?

9 A. It's on Page 2 of the T-1 exhibit.

10 Q. Okay. Is that the terminated vice-president of marketing?

11 A. That's correct.

12 Q. Okay.

13 A. Because based on the Schedule B, the person was a level
14 three employee.

15 Q. So are you basing who you include based on the levels, or
16 based on the titles, or based on something else?

17 A. This particular document that's marked T-1 --

18 Q. Yes.

19 A. -- is based upon the levels that were assigned to each of
20 the employees by the Debtors, again with the three exceptions.

21 Q. Okay. And so you assume that anyone who is level two was
22 management, with the exception of the three people; is that
23 correct?

24 A. Yes. Because basically all the level twos reported to a
25 level one. All the level threes reported to a level two. So

1 they kind of seemed that the level twos were an intermediary
2 between senior management and the rank and file.

3 Q. All right. So it was based on the fact that somebody
4 reports to somebody else, that's how you determine who was
5 management and who was not management?

6 A. Essentially because --

7 Q. Okay.

8 A. -- level three and four were (indiscern.) management.

9 Q. So you include as management then, somebody that Mr. Rosoff
10 was asked about, for example, on Page 7 of Schedule A, a person
11 who Mr. Rosoff testified was, and I believe this is a term used
12 in every company in America, including our law firm, the IT
13 guy, correct?

14 A. Essentially, he was designated as a level two employee.

15 Q. So therefore, you assumed that he was management for the
16 purposes of this analysis, right?

17 A. He reports in to the CFO or CEO, so, yes.

18 Q. So based on that, that was the sum total of your analysis
19 in deciding that that person was management, right?

20 A. Yes.

21 Q. Okay. Now, let me ask you about a couple of entries on
22 here, Mr. West. If you look at the first page of your
23 analysis, now these are people who you say are non-management
24 employees, right?

25 A. Based upon that hierarchy, correct.

1 Q. Okay. And the last person there, number 17, it says
2 accountant for, and it has a severance number there. Do you
3 see that?

4 A. Yes, I do.

5 Q. Okay. Isn't it true, sir, that that person is not in the
6 Debtor's calculation of severance because they gave notice that
7 they're leaving the company and they're not going to receive
8 any severance?

9 A. I'm not aware of that, but.

10 Q. Is that person included in the Debtor's calculation at all
11 on Schedule C to Mr. Rosoff's declaration?

12 A. I don't have Schedule C.

13 Q. It's in the package you have, has all the schedules stapled
14 together.

15 (Pause in proceedings)

16 A. I don't see the accountant four on this particular
17 schedule.

18 Q. Sir, I'm going to read to you from footnote 11 of the reply
19 brief in this case that was submitted by the Debtors. It says,
20 that "the calculation" -- now the revised calculation --
21 "excluded the eligible employee who provided two weeks notice
22 of her resignation on May 3rd, 2010."

23 A. What --

24 Q. Did you take account of that information? I'm sorry. I
25 don't think you have this in front of you. It's from a reply

1 brief, not the reply declaration. I'll just -- I'll represent
2 to you that the Debtor told the Court the calculation excluded
3 one eligible employee who had provided two weeks notice. Were
4 you made aware of that fact?

5 A. Does it state who that employee was in the footnote?

6 Q. That footnote does not identify the person by name.

7 A. So it'd be impossible for me to know --

8 Q. Okay.

9 A. -- who did they take off the list.

10 Q. Do you know whether that was accountant four listed on the
11 front page?

12 A. I still don't know that.

13 Q. Okay.

14 A. Other than your representation.

15 Q. Let me just ask you one more series of questions, sir. On
16 the next page of your analysis, Exhibit T-1, this now again is
17 purportedly a list of the non-insiders or non-management
18 people, correct?

19 A. Yes.

20 Q. With respect to people number two, five and six, that's
21 accountant four, executive aide, and another executive aide,
22 isn't it true, sir, that they received only payments in 2009,
23 and therefore under the statutory provision, they should not be
24 included for this purpose?

25 A. This was included in your calculation, I just modified it

1 to remove out the mentioned individuals.

2 Q. If you look at -- I apologize. If you look at our
3 calculation on Schedule C, can you find any of those three
4 people there, and again we're not going to use names, but --

5 A. Sure.

6 Q. -- it has the position and the severance amount, so.

7 A. The numbers were three, five and six; is that correct?

8 Q. Yes. I'm sorry, two, five and six.

9 A. Two, five -- well, I do see one of the individuals that
10 appears is included, and that's the date of 11/30 of '09 that
11 has the same title about midway down the page.

12 Q. But that doesn't have the same severance amount, does it?

13 A. No, but it's the same time period, is it not?

14 Q. Okay. Do you know whether that's the same person that
15 you've included on your list?

16 A. The severance amount's different, but the time period is
17 the same.

18 Q. My question is, do you know, sir, whether or not that
19 person is either number two, five, or six on your list?

20 A. Not without seeing the unredacted version of my list, I
21 can't say for sure. It appears to be different based on the
22 severance amount.

23 Q. Okay. Sir, just a last question. I'm going to read from
24 the Debtor's reply brief in this case from footnote 11. It
25 says that "the Debtor's calculations, Schedule C, excluded

1 three former employees, who only received severance pay in the
2 2009 calendar year." Do you know whether those three employees
3 were nevertheless included in your calculation as numbers two,
4 five, and six?

5 A. Well, I don't think it identified them in the footnote, so
6 therefore, I wouldn't be able to know which employees to
7 exclude, and your Schedule C does have numerous employees that
8 were terminated back in '09. I'm not sure when the severance
9 payments were made.

10 Q. Do you know whether or not those three employees that were
11 excluded from the calculation were nevertheless included by you
12 as numbers, two, five and six?

13 A. I couldn't identify them if we're sitting here at this
14 point in time.

15 MR. MEYER: Okay. I have no further questions, Your
16 Honor.

17 THE COURT: Is there any other cross examination?
18 All right. Redirect.

19 MR. SCHEPACARTER: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SCHEPACARTER:

22 Q. Mr. West, I'll direct you to Exhibit A again.

23 A. Okay.

24 Q. And have you turn to Page 8.

25 THE COURT: You mean Schedule A?

1 MR. SCHEPACARTER: Schedule A but Page 8.

2 THE WITNESS: Okay. I'm on Page 8.

3 BY MR. SCHEPACARTER:

4 Q. Okay. Do you see that? Okay. The two names at the
5 bottom, there's three names on that list, and the two names at
6 the bottom, the last two names, were they included in your
7 calculation on page one of three?

8 A. Page -- I see the employee identified in the -- as the
9 second employee on that page. That employee is included. And
10 so is the one on -- the third employee is also included on the
11 list.

12 Q. Okay. And they were included on Schedule A?

13 A. Yes. Oh were they? Yes, they're on Schedule A.

14 Q. All right. And also on Page 9, the top name on that list,
15 that was also included on your -- in your calculation, correct?

16 A. That's correct.

17 Q. Okay. And it talks about for each of those three people
18 identified, it lists a number for severance payment under post-
19 petition plan, correct?

20 A. Yes, it does.

21 Q. Okay. And the footnote that was referenced by counsel, it
22 says, "the calculation excluded three former employees who only
23 received severance pay in the 2009 calendar year, and excluded
24 the eligible employee who provided two weeks notice of her
25 resignation on May 3, 2010." From that description, would you

1 be able to determine who those employees were, from any
2 schedule, A, B, or C?

3 A. No, I would not.

4 MR. SCHEPACARTER: Okay. No further questions, Your
5 Honor. Thank you.

6 MR. MEYER: One question.

7 RECCROSS EXAMINATION

8 BY MR. MEYER:

9 Q. Did you ask anybody or make any attempt to find out who
10 those employees were?

11 A. I just finished up -- I was out of the office Friday. I
12 finished up the -- we redid the calculations this morning based
13 on the some -- we made some adjustments with those three
14 employees based on further refining of our -- the -- I'm sorry,
15 the three level two employees that were excluded, I excluded
16 those this morning.

17 Q. And I'm sorry, the footnote that both I and your counsel
18 read to you --

19 A. Yes.

20 Q. -- he just asked you were you able to tell who they were.
21 I'm just simply asking did you make any attempt to find out who
22 they were?

23 A. No, I did not.

24 Q. Okay. And by the way, you just mentioned the three
25 executive assistants who you excluded from the calculation.

1 You considered them to be non-management. You did,
2 nevertheless, continue to include one executive assistant as
3 management, correct?

4 A. Not that I'm aware of.

5 Q. On Page --

6 A. Would you bring it to my attention?

7 Q. Page 6 of Schedule A, the second name. Is that person, in
8 your calculation, considered to be management or non-
9 management?

10 A. Page 6?

11 Q. Yes; the second name, with the title executive assistant
12 two.

13 A. Perhaps she is included in the management, yes. I only
14 (indiscern.).

15 Q. So there were four executive assistants and you excluded
16 three from management, but you kept one in management, correct?

17 A. That appears to be the case.

18 MR. MEYER: Okay. Thank you. Nothing further, Your
19 Honor.

20 THE COURT: Thank you, sir. You may step down. Any
21 other witnesses, Mr. Schepacarter?

22 (Witness is excused)

23 MR. SCHEPACARTER: None, Your Honor.

24 THE COURT: Any other evidence?

25 MR. SCHEPACARTER: None, Your Honor.

1 THE COURT: Okay. I'll hear closing, but let me
2 start by trying to construct a framework here for the standard
3 by which I'm to evaluate the request, which is in several
4 parts. I've said before that given how 503© is worded, and I'm
5 thinking we are under 503, but just assuming that for the
6 moment without deciding. I've said that in 503©
7 notwithstanding Subsection B means, that I'm not applying a
8 strict administrative expense standard. I know the U.S.
9 Trustee, at least in the past, has disagreed with me about
10 that, but I haven't written on the issue, I've only made oral
11 rulings. But assuming for the moment that's the case, (c)(1)
12 is pretty clear to me on the standard that is to be applied in
13 retention matters, and (c)(3) has the -- justified by the facts
14 and circumstances standard, which I consider to be a -- kind of
15 a business judgment standard plus. I know not everyone agrees
16 with me on that, but I look at severance, and there's no
17 separate normative statement of what it is the Court should
18 look to. It either -- it has two elements; one, generally
19 applicable program, and two, payment not greater than ten
20 times. How do I evaluate whether a severance program should be
21 approved under that subsection?

22 MR. MEYER: Your Honor, I think, you know, as we say
23 in the brief, we believe -- it's a question of whether the
24 transaction is or is not in the ordinary course of business.
25 Under 363(b), the -- it's, if it's in the ordinary course of

1 business then it's essentially a business judgment standard.

2 503 --

3 THE COURT: Well if it's the ordinary course of
4 business, you don't need my approval, do you?

5 MR. MEYER: Well, I think again as we say in the
6 papers, Your Honor, in an exercise of caution, we elected to
7 seek Court approval.

8 THE COURT: I understand.

9 MR. MEYER: But technically, of course, you're
10 correct. 503(c)(3) says other transfers or obligations that
11 are outside the ordinary course of business, and not justified
12 by the facts and circumstances. So to me that suggests that if
13 it's not within 363; namely, in the ordinary course of
14 business, then it has to meet the standard in a 503(c)(3). I
15 don't know if that answers Your Honor's question. I mean, we
16 obviously believe that we meet the standard under either 363 or
17 503©. We also believe 503(c)(1) doesn't apply because although
18 some aspects of the plan may incidentally have a retention
19 benefit, the primary purpose is to incentivize the employees.
20 But whether or not you're looking at the normal business
21 judgment rule or a business judgment plus rule, we think on
22 this record, it's very clear that these plans are justified.
23 And again, Your Honor, although you've correctly stated that it
24 is not determinative, it is certainly highly probative, the
25 fact that the Creditor's Committee, the people who have the

1 direct stake in the outcome of this case, and the amounts of
2 the recovery have agreed to and authorized the payment of these
3 amounts after significant negotiation. So it's certainly not a
4 rubberstamp, not that this Creditor's Committee or any other
5 Creditor's Committee has been known to rubberstamp anything.
6 But through a process of fairly lengthy negotiation, they have
7 agreed to the amounts, they've agreed to the criteria, with
8 respect to the incentive payment being given to the one
9 insider, that was negotiated, and actually has been revised
10 during the course of this procedure. So --

11 THE COURT: And what, in this record, supports
12 approval of that relief?

13 MR. MEYER: Well, Your Honor, I think in Mr. Rosoff's
14 supplemental declaration he states that, you know, this
15 particular individual really has his fingers in almost every
16 one of these pies. The various tasks that you've heard from
17 Mr. Rosoff directly, and that you've also read about in the
18 papers, by virtue of his position, Your Honor, he really is
19 involved in virtually every aspect of the recovery. And that
20 includes, you know, complex matters, legal matters, obviously
21 when claims come in, evaluating, analyzing claims, the various
22 complex tax issues which Mr. Rosoff has testified about. He's
23 directly responsible for disposing of the personal property;
24 namely, a very valuable art collection that's in the possession
25 of the Debtors. You know, that person simply by virtue of his

1 role, his background, his expertise, is really involved in just
2 about every aspect of winding up this bankruptcy and insuring a
3 recovery for the Debtors. The amounts of the incentive bonus
4 have been negotiated with the Creditor's Committee. There is
5 no guaranteed payment of any particular amount. It depends on
6 the amount of the recovery, and we think under the
7 circumstances, Your Honor, it's warranted. And basically, Your
8 Honor, not to repeat what you've heard and read from Mr.
9 Rosoff, but this is a company now operating with 32 employees,
10 one employee's been given -- has given notice, it's soon going
11 to be 31. They're in a wind down mode, but the
12 characterization of what needs to be done here by the Trustee's
13 office, as simply, you know, recovering receivables some simple
14 task, is just completely belied by any understanding of the
15 facts.

16 As Mr. Rosoff testified, there are extremely complicated
17 regulatory issues, tax issues, litigation issues that are being
18 dealt with. And basically, Your Honor, the Trustee has seemed
19 to indicate, although they deny it today that they were taking
20 the position that simply because it was a liquidation, that a
21 post-petition severance plan wasn't warranted. But you know,
22 we would submit, Your Honor, that it's in circumstances like
23 these that is particularly necessary. I mean here not only is
24 the ice cube melting, but the job of these employees is to melt
25 the ice cube and ultimately put themselves out of a job.

1 Therefore, you know, the moral considerations that Mr. Rosoff
2 testified about are particularly acute in this situation, where
3 the employees know that they're working for an entity which is
4 not going to be around forever, and it's their job to maximize
5 the recovery for the creditors.

6 THE COURT: What was the pre-petition annual revenue
7 of the Debtors in the year prior to the filing? Do you know?

8 MR. MEYER: I don't, but I'm sure someone in the room
9 does, Your Honor.

10 (Pause in proceedings)

11 MR. MEYER: Your Honor, I'm informed in the year
12 prior to the filing, it was actually technically negative
13 revenue, but in a typical year prior to that, prior to '09, it
14 would've been approximately \$500 million. You know, I think,
15 Your Honor, again the amounts that we're talking about to be
16 paid out pursuant to both the incentive plan and the post-
17 petition severance plan are while no one minimizes that amount
18 of money in the context of any bankruptcy, are relatively
19 modest given the size of the estate, and the amounts that are
20 at risk for the creditors in this case.

21 THE COURT: Let's talk about. I'll ask the same --
22 I'll ask for the Committee's view, but in the Debtor's view,
23 while I've heard the testimony concerning what the cash on hand
24 is, what is within some estimation expected to be available for
25 distribution of unsecured creditors?

1 MR. MEYER: Your Honor, I mean I would defer to my
2 partner, Mr. Lemons on that, but my understanding is that it's,
3 at this point, you know, obviously very speculative, premature.
4 But if Your Honor -- if it's okay with Your Honor, I would
5 defer to Mr. Lemons, who's the bankruptcy partner.

6 MR. LEMONS: Good afternoon, Your Honor. Excuse me.
7 Obviously, none of that information has been made public yet,
8 and the notes are trading actively, so I'm trying to be
9 circumspect in what I say. But we are anticipating substantial
10 recoveries for the creditors. The -- what that means is going
11 to vary directly depending on what happens with the tax return
12 claim with the motions that were scheduled -- originally
13 scheduled to be heard today, are sort of the tip of the iceberg
14 on that. Will depend on the ability to structure around some
15 assets in the plan that Mr. Rosoff eluded to, that if aren't
16 done correctly could, you know, more than double the
17 liabilities of the estate. And will also depend, Your Honor,
18 on the ability to, among other things, collect the receivables,
19 which is difficult right now because of the transition and the
20 problems with the FDIC controlled information, and will also
21 depend on the ability to sell some of the remaining assets,
22 such as the art collection. I feel that that may not have been
23 as robust an answer as Your Honor was looking for, but I'm --

24 THE COURT: I guess, you know, at bottom when I hear
25 the Debtor's comment that the amount is modest, I mean, as an

1 absolute figure, I mean, I can't disagree with that, it's less
2 than \$3 million. So, you know, the other way I would ask the
3 question is well if I were to deny the Debtor's relief, how
4 much more does that put in the Unsecured Creditor's pocket, and
5 you're basically telling me you can't say yet or you're not
6 prepared to say yet, and that's not a criticism.

7 MR. LEMONS: Well, I think if you denied the relief,
8 certainly our belief is that it would take money out of the
9 creditor's pocket.

10 THE COURT: I mean, apart from the mass exodus that
11 would occur immediately and everything would fall apart. Apart
12 from that notion, which I don't discount, I'm just trying to
13 figure out what it means at the end of the day. And it just --
14 typically, this amount usually in the cases I see, doesn't mean
15 much at the end of the day, and I know that it's a lot to
16 people who've invested and who may not get paid.

17 MR. LEMONS: Well, Your Honor, we have, I guess, \$110
18 million of cash on hand today. I think what -- 30 million of
19 accounts receivable that haven't yet been collected, so that
20 would be \$140 million. There are other smaller amounts, such
21 as the life insurance company that we talked about earlier
22 today, an art collection that has yet to be sold. So this is
23 -- in terms of the potential proceeds available, I think it's
24 -- as a percentage, it's a relatively modest amount.

25 THE COURT: Okay. Thank you.

1 MR. LEMONS: You're welcome.

2 MR. MEYER: Your Honor, just quickly to wrap up. The
3 only other thing I wanted to address is the calculation under
4 503(c)(2)(b), namely the ten times. And I don't if Your Honor
5 was able to follow some of the back and forth on this --

6 THE COURT: It's actually difficult for me. It's a
7 little bit like comparing apples and oranges. I've tried to
8 follow along, which is why I interrupted the testimony, which I
9 don't normally like to do.

10 MR. MEYER: Right. I mean, the bottom line, Your
11 Honor, is that we have considered to be management for the
12 purpose of doing this calculation, to be the four people that
13 Mr. Rosoff testified about, as being the only four people
14 within the company with decision-making authority, with true
15 management responsibility, control over corporate affairs, the
16 ability to bind the company. In addition --

17 THE COURT: Well, I will say though that what strikes
18 me is that when you look at the schedules --

19 MR. MEYER: Yes.

20 THE COURT: -- and I'm looking at Page 4 of Schedule
21 A, Page 5 and the following Page 6, who presumably are the
22 individuals who Mr. Rosoff characterized as basically
23 secretaries, which I do not consider to be a disparaging
24 characterization.

25 MR. MEYER: Right.

1 THE COURT: But -- so is it easy for me to say, yeah,
2 they shouldn't be considered management employees, sure. But
3 the issue there is those rates of compensation are high. I
4 mean, that's one of the reasons I asked what the company's
5 annual revenue was before the filing.

6 So when you look at the severance payment in relation to
7 that, I don't know, it seems high to me. And then on the other
8 side, you look on Page 5 at the last individual, and I heard
9 the testimony that Mr. Rosoff gave, but you know, for someone
10 at that level of compensation to say is not management, it's
11 hard for me to accept that view. You understand?

12 MR. MEYER: I understand, Your Honor. You know, I
13 think what we would say is first of all, I think the law is
14 clear, that it is not a mechanical process of simply saying,
15 you know, every person with a title of vice-president must be
16 an insider. There's --

17 THE COURT: Listen, I had --

18 MR. MEYER: -- many cases --

19 THE COURT: -- New Century and Raceme (phonetic) and
20 Home Bank, big mortgage cases, everyone there was a vice-
21 president.

22 MR. MEYER: Right.

23 THE COURT: So I understand the argument you're
24 making.

25 MR. MEYER: Okay. And the same is true, you know, I

1 would suggest with respect to the amount of compensation, the
2 person on the bottom of Page 5 clearly stands out, not a
3 surprise that, you know, it came up in the testimony today. As
4 Mr. Rosoff explained, that person actually had a fairly, you
5 know, valuable contract pre-petition. You know, there are
6 people within any organization who are extremely valuable to
7 the organization, who are not management, who are not decision-
8 makers. At my law firm, we have a managing clerk who's been
9 with the firm for, you know, 35 years, who knows his way around
10 the courts better than anybody in New York. We pay that person
11 extremely well, and value his services extremely highly. He is
12 not, by any stretch of the imagination, part of management.

13 So, you know, there are people whose skills, for whatever
14 reason, are highly valued, and highly necessary to a company
15 who do not fall within any definition of management or insider.
16 So I mean that's the best I can respond to that, Your Honor.
17 I do want to make clear on the calculation. We included the
18 four people as management that Mr. Rosoff testified about, the
19 four decision-makers. There were four additional people that
20 we included, we think in an exercise of conservatism, who would
21 be considered insiders by virtue of their having been a
22 director of one or more of the various entities at issue in
23 this case. And so we included those people as management as
24 well. Although, based on their day-to-day responsibilities,
25 arguably they were not. So there are eight people who are

1 considered to be management and everybody else is not.

2 And as Your Honor pointed out, I mean, there's, you know,
3 title inflation in this industry, that's just a fact, that's a
4 reality. So to take the position that the Trustee has, which
5 is sort of a knee-jerk type reaction, well everybody in level
6 two must be an insider, must be management or anybody who
7 reports to somebody in level one, you know, again, the
8 secretary who works for Mr. Rosoff, reports to Mr. Rosoff, that
9 doesn't make her management.

10 So we think, Your Honor, the calculation, the correct
11 calculation is the one that's in Schedule C to Mr. Rosoff's
12 declaration. By the way, Mr. West did make some mistakes in
13 his calculation. Even assuming you adopt their view of the
14 world as to who is or is not management, I tried to point out
15 through cross, there are four people included in his
16 calculation, who we did not take into account. One of whom,
17 accountant four on the first page, number 17 because they gave
18 notice they're leaving, and they will not be around to collect
19 the severance payment. And then the three people on the next
20 page of their exhibits, numbers two, five, and six who only
21 received payments in '09, and under the language of
22 503(c)(2)(b), which talks about payments during the calendar
23 year in which the payment is made, they properly should not be
24 included, and we did not include them, so.

25 THE COURT: All right. Now, if assuming that you're

1 right that the U.S. Trustee was wrong in making that
2 calculation --

3 MR. MEYER: Right.

4 THE COURT: -- would that then match -- would that
5 then put the U.S. Trustee's calculation in harmony with yours
6 or would there still be a difference?

7 MR. MEYER: I was afraid Your Honor was going to ask
8 that question. The answer is, I don't know, but I doubt it.
9 We just received this this morning, late morning, and actually
10 have not had the time to do the math. That's certainly
11 something we could get back to Your Honor on, but I believe --
12 well, it still wouldn't put it in harmony with our calculation
13 because again our calculation is based on considering as non-
14 management all of these miscellaneous level two people who they
15 consider to be management. So clearly, that would not
16 harmonize our calculations. So -- and I apologize, I
17 misunderstood your question.

18 THE COURT: Let's put it this way, it would change
19 them to some extent.

20 MR. MEYER: It would -- we believe it would have the
21 results of getting closer to our number. By exactly how much,
22 Your Honor, we'd literally have to do the math.

23 THE COURT: Okay.

24 MR. MEYER: Okay. Thank you for your time, Your
25 Honor.

1 THE COURT: Thank you. Before I get to the U.S.
2 Trustee let me ask if anyone else wishes to speak in favor of
3 the Debtor's motion.

4 MR. SINGER: Thank you, Your Honor. My name's Aaron
5 Singer. I'm of Latham & Watkins. On behalf of the Official
6 Committee of unsecured creditors, and just quickly we'd like to
7 represent that the Committee determined that the post-petition
8 severance plan, incentive bonus, the ratification of the
9 interim severance payments, and all other related relief as
10 proposed by the motion are appropriate under the circumstances
11 of the bankruptcy cases. The manner in which we arrived at
12 this conclusion, is that for I'd say probably a little bit more
13 than a month before the motion was even filed, the financial
14 advisors for the Debtors and the financial advisors of the
15 Committee, on several occasions, had engaged in communications,
16 fact analysis, and things to the like centered around both the
17 pre-petition and the post-petition plans. One determination
18 that was central, was that the pre-petition and the post-
19 petition plans were of similar economic value.

20 As everyone has stated today, the primary objective of the
21 Committee is to maximize the recovery for the creditors. Based
22 on the information that was presented to us by the Debtors, we
23 are of the opinion that the severance order, as presented,
24 would ensure the highest value to the creditors. And the
25 reason that we came to that conclusion is that the -- it's hard

1 to underscore the complexities of this liquidation process, and
2 given the amount of information that the Creditor's Committee
3 has been requesting, the amount of involvement that the
4 Committee has taken, we understand that there's a lot to the
5 liquidation. And so that is how we pretty much arrived at the
6 decision for two plans that are basically economically
7 equivalent, it makes sense to -- that the proposed post-
8 petition plan is appropriate.

9 THE COURT: Thank you.

10 MR. SINGER: Thank you.

11 MR. SCHEPACARTER: Thank you, Your Honor. Bruce
12 Schepacarter for the United States Trustee. Mr. Rosoff
13 testified that the work that's being done is the necessary work
14 that basically needs to be done, sort of to bring this case to
15 fruition. But if you look at his testimony, read his
16 testimony, and listen to his testimony, all of the aspects of
17 whatever was being done, whether it be dealing with the claims,
18 dealing with the FDIC, dealing with the litigation and the
19 like, all revolves around the collection of the accounts
20 receivable. All of that is to liquidate this case. Now, with
21 respect to the cash on hand --

22 THE COURT: Well, you wouldn't mean to oversimplify
23 anything involving the FDIC would you?

24 MR. SCHEPACARTER: I'm not sure how to answer that,
25 but I can answer it by this, that it has to deal with

1 collections of -- there's accounts receivable, unwinding
2 whatever needs to be unwound, still deals with the collection
3 of cash in this case. Which the testimony was, started at
4 least at \$100 million. Now, if you look at Exhibit D for that
5 bonus person's bonus, that bonus clicks in around 125 million.
6 So he has already started this race to collection of his bonus,
7 sort of at the end. And I think that that is material to the
8 facts and circumstances of the case as to why that bonus is not
9 permissible in this case.

10 With respect to who's management and who's not management.
11 Those would want you to believe that our determination, that
12 the determination that we made, with respect to who's
13 management, and who's not management, and who should be
14 included in the calculation, and who should not, was made sort
15 of willy nilly, as I think counsel said, knee-jerk. But theirs
16 is what's knee-jerk, and what's knee-jerk is they just said,
17 all the level ones are managers and everybody else isn't. The
18 testimony was to the person who was pointed out on Page 5 with
19 the large amount of base salary, that that person is the head
20 of human resources. The head of human resources to me is a
21 manager. I mean, the plain meaning of that is if you're the
22 head of something, you're a manager. Those people also have
23 the responsibility of dealing with the employment aspects of
24 the people under them, of giving the evaluations. They are the
25 people who have people reporting to them, and then those people

1 report up to number ones. So --

2 THE COURT: Well, let me ask you to Pause for a
3 minute.

4 MR. SCHEPACARTER: Sure.

5 THE COURT: And assume for a moment that Mr. Rosoff
6 testified truthfully, and I think he did, that there are only
7 four people in the company that were decision-makers. I will
8 tell you from the evidence, the management of this company
9 strikes me, and this is not meant to be disparaging in any way,
10 but like a closely held company that's run by, you know, a very
11 couple of people at the top. And if that's true, it seems to
12 me that that weighs in favor of the Debtor's position that, you
13 know, there may be people who are highly compensated, there may
14 be people who we've scheduled as level two, but they're not
15 really management, and that's why. Can you respond to that?

16 MR. SCHEPACARTER: I think, Your Honor, that that's
17 -- I think the Debtor is taking a simplistic view of it, to
18 just to say that these four people, that they basically say are
19 the insiders are the managers. They are the ones that
20 ultimately -- well, the board of directors are the ones who
21 ultimately make decisions in these cases as well.

22 THE COURT: Yeah.

23 MR. SCHEPACARTER: But the people under them,
24 somebody who's the head of HR is a manager. They have somebody
25 under them that they manage. Just like counsel pointed out

1 that in his office, somebody who's a managing clerk, isn't
2 really a manager. Maybe if it was a clerk manager, maybe it
3 would be a manager. Maybe if they had somebody other than that
4 that did some type of work. But if you have somebody, for
5 example, in our office, somebody who's the Assistant United
6 States Trustee manages the office, they are a manager. They
7 have people under them who they -- who are their, who they
8 supervise. And in this case, you have somebody who -- the
9 level two type employees, sans the one that we excluded, are
10 the ones who have people reporting to them, and then they
11 filter up information up to the ones.

12 So I think it's a very simplistic view if you just say
13 well the ones, the people who are ones, the people who are the
14 top of the pyramid are the only people who are the ultimate
15 decision-makers who are the managers in this case, and I don't
16 think that that is accurate. Again, Your Honor, I think what
17 we've stated is that the incentive plan and the severance is
18 not justified by the facts and circumstances, as I indicated
19 previously, and I think Your Honor hit upon it to a certain
20 extent is where is this case going. They have investors who
21 are 3400 in number, invested \$128 million in this case, and
22 where is their severance, where is their incentive bonus in
23 this case. Again, I would urge Your Honor to look --

24 THE COURT: Well, hold on, let me stop you there.

25 MR. SCHEPACARTER: Okay, sure.

1 THE COURT: The general unsecured creditors, but for
2 equity, they're always at the bottom of the priority scheme,
3 and that's what the Bankruptcy Code says.

4 MR. SCHEPACARTER: Understood.

5 THE COURT: So, I mean, the issue is -- isn't you
6 know, should they have an incentive bonus rather than the
7 employees who are working the company, you know -- on one level
8 the issue is, are those above them on the priority scheme,
9 particularly here those administering the estate, unfairly
10 taking more than their share before what's ever left over gets
11 to the unsecureds. On one level, that's the question, it's not
12 the one that you asked. I know, you're not going to disagree
13 with me, are you? It's okay.

14 MR. SCHEPACARTER: Thank you, Your Honor. Again,
15 with the calculation, if there were some errors and I'm not
16 conceding that there were, but with respect to the number that
17 was ultimately done, with -- under Section (c)(2), that number
18 I would say is accurate. Maybe there were some people who may
19 have been left off, but that information was set forth in a
20 brief, not evidence, that was submitted just days before,
21 without anybody being identified. So very difficult to try to
22 go through a screen and try to filter out those facts.

23 THE COURT: Well, I'm going to ask the parties to do
24 that post-hearing.

25 MR. SCHEPACARTER: Okay.

1 THE COURT: Because I have that same difficulty.

2 MR. SCHEPACARTER: Understood. Understood, Your
3 Honor. But to a certain extent, I think that if you look at
4 the descriptions and again, I'm not going to name names or go
5 through the descriptions of it, but if you look at the
6 descriptions of the people who are set forth in the exhibits,
7 especially the Schedule A, I think it bears out that our
8 calculation along with our determination as to who is
9 management, not insider, it's not the test, but who is
10 management and who is not management, I think is much more
11 accurate than what the Debtors have set forth. And we will do
12 that calculation. I will submit that whenever Your Honor wants
13 that. That's fine.

14 THE COURT: Well, let me ask you this question, back
15 to the same question I asked Debtor's Counsel, and that is with
16 respect to the standard to be applied under (c)(2). What
17 standard am I applying? Let's assume for the moment that they
18 meet the calculation.

19 MR. SCHEPACARTER: I think that the severance payment
20 is not allowed to an insider of the Debtor, unless the payment
21 is part of a program or the payment is not greater than ten
22 times. Now, from our calculation, I don't know if this came
23 out, but there's three people who are affected by that number.

24 THE COURT: Okay. And is it only those three?

25 MR. SCHEPACARTER: I believe it's only those three.

1 THE COURT: No, no, to whom the U.S. Trustee is
2 objecting, or is it the entire program that -- to which you're
3 objecting?

4 MR. SCHEPACARTER: Under (c)(2), perhaps I wasn't
5 clear enough, and I apologize for that. Under the (c)(2)
6 portion of it, the three people at the top are the people that
7 we object to.

8 THE COURT: Okay.

9 MR. SCHEPACARTER: So we did a lot of testimony and a
10 lot of work just to defect three people, and I apologize for
11 that.

12 THE COURT: Okay. That's all right.

13 MR. SCHEPACARTER: The (c)(3) portion of our
14 objection goes to everything else. I did bring out on one
15 question, with respect to the bona fide offer, as to the
16 (c)(1), I don't think (c)(1) applies in this case. If it does,
17 that bonus person wouldn't qualify under (c)(1), so I think it
18 defaults under, by default goes to (c)(3), and that's where it
19 sort of catches everything else at the bottom. Hopefully, that
20 was the -- that helps Your Honor.

21 THE COURT: Well, I'll give you a chance to reiterate
22 that in your post-hearing submission.

23 MR. SCHEPACARTER: Thank you, Your Honor.

24 THE COURT: Okay. I'm going to reserve decision on
25 this, but it's my intention to set up a post hearing submission

1 schedule in letter form, don't want anything extensive, but
2 just so that I'm clear, I'd like at least two things. One is a
3 -- see if the parties can reconcile the differences in how
4 they've calculated who should be included in the severance
5 calculation. I don't mean -- well, if you want to include some
6 discussion about the management, non-management, you're welcome
7 to, but I think I understand your positions on that. It's more
8 the, who would you both agree should be in or not in, to follow
9 up on the discussion and the testimony that was here today.
10 And then secondly, just from the U.S. Trustee's standpoint,
11 clarify what payments you're objecting to at this point. And
12 let me ask how much time -- my intention would be to deliver
13 either a bench or written ruling no later than the omnibus set
14 for June 8th. So if I haven't issued anything in writing, I'd
15 intend to issue a bench ruling by then.

16 So in light of that, let me ask, and I would anticipate
17 simultaneous filings. So tell me how much time the parties
18 need to get me something?

19 MR. MEYER: Your Honor, we're obviously very anxious
20 to get this approved for the reasons that Mr. Rosoff stated.
21 The employees are watching this, you know, intently, obviously,
22 so we can do it as fast as, you know, as necessary. I mean
23 certainly this week. You know, we could do it by Wednesday.

24 THE COURT: Well, I will tell you my court calendar
25 is full. So I would -- I will need to pace myself, being a

1 finite resource to fit within my deadline. So I mean, I'll
2 give you till to the 21st of May. Is that sufficient, Mr.
3 Schepacarter?

4 MR. SCHEPACARTER: 21st to submit that submission
5 that Your Honor -- that's fine, Your Honor.

6 THE COURT: Okay.

7 MR. SCHEPACARTER: That works.

8 THE COURT: All right. Now, there may be in letter
9 form, I don't know, five-page limit. You may not need that
10 many pages. Because -- and because they will necessarily, for
11 my own benefit need to refer to possibly the individual
12 employees, let's just say you may submit them directly to
13 Chambers, as opposed to E-filing them. Although they should be
14 exchanged with the Committee, obviously.

15 MR. MEYER: Thank you.

16 THE COURT: Are there any questions?

17 MR. HEATH: Your Honor, just a couple of housekeeping
18 matters. Your Honor, I do have the seal order for item number
19 ten, if I may approach.

20 THE COURT: You may.

21 MR. HEATH: Thank you.

22 THE COURT: Thank you.

23 MR. SCHEPACARTER: Just as a point of clarification,
24 Your Honor. With respect to the second part of Your Honor's,
25 the clarification of the calculation, I think that's fairly

1 easy.

2 With the reconciliation, if we're not able to reconcile
3 who's in and who's out, hopefully we can, based on what they've
4 submitted, but if we're not, there's a possibility that there
5 may be competing information submitted on that issue.

6 THE COURT: It wouldn't be the first time.

7 MR. SCHEPACARTER: And won't be the last.

8 MR. HEATH: The last item, Your Honor, deals with the
9 motion to sell the stock of Advanta Life Insurance. Your
10 Honor, I took a look at the Form of Order, it does provide that
11 the good faith finding is only applicable to the buyer, as
12 defined in the motion. That buyer being Prosperity Life
13 Insurance Corporation, but we can --

14 THE COURT: You know, I saw that, and I did not go
15 back and check the definition.

16 MR. HEATH: And we can rest on that, Your Honor, or
17 we can revise the Form of Order to make it more clear, and
18 state that in the event the Debtors consummate a transaction
19 for a sale of the assets to someone other than buyer, the good
20 faith finding set forth herein shall -- you know, shall not be
21 applicable except upon further order.

22 THE COURT: I would prefer that.

23 MR. HEATH: We'll do that and we'll submit it under
24 certification of counsel.

25 THE COURT: Okay. Thank you.

1 MR. HEATH: Thank you, Your Honor.

2 THE COURT: Is there anything further for today?

3 MR. MEYER: No, Your Honor.

4 THE COURT: All right. Thank you all very much.

5 That concludes this hearing. Court will stand adjourned.

6 (Court adjourned)

7

8 CERTIFICATION
9 I certify that the foregoing is a correct transcript from the
10 electronic sound recording of the proceedings in the above-
11 entitled matter.
12

13 *Lewis Parham*

5/17/10

14 _____
15 Signature of Transcriber

Date

**UNITED STATES BANKRUPTCY COURT
District of Delaware**

In Re:

Advanta Corp., et al.,
Welsh & McKean Roads
P.O. Box 844
Spring House, PA 19477

Chapter: 11

EIN: 23-1462070
Teacher Service Organization, Inc.
TSO Financial Corp.

Case No.: 09-13931-KJC

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND
REDACTION***

A transcript of the proceeding held on 5/10/2010 was filed on 5/24/2010 . The following deadlines apply:

The parties have seven days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 6/14/2010 .

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