

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
ADVANTA CORP., *et al.*, .  
Debtors. . Case No. 09-13931 (KJC)  
. (Jointly Administered)  
. July 30, 2010 (10 a.m.)  
. (Wilmington) (Telephonic)  
. . . . .  
ADVANTA BANK CORP., .  
Plaintiff, .  
vs. .  
ADVANTA CORP. and . Adv. No. 10-50795 (KJC)  
OFFICIAL COMMITTEE OF .  
UNSECURED CREDITORS, .  
Defendants. .  
. . . . .

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY COURT JUDGE

Appearances:

For the Debtors: Richard Levine, Esq.  
Victoria Vron, Esq.  
Weil, Gotshal & Manges LLP  
For the Committee: Robert Malioneck, Esq.  
Latham & Watkins  
For the FDIC: Andrew B. Kratenstein, Esq.  

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McDermott, Will & Emery

Audio Operator: Al Lugano  
Transcriber: Elaine M. Ryan  
(302) 683-0221

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1           THE COURT: Good morning. This is Judge Carey and  
2 we're on the record in the Advanta Corp. Chapter 11  
3 proceeding. This call was requested by counsel to hopefully  
4 solve a scheduling issue that we've been back and forth on.  
5 So, at this point, I'll turn the matter over to counsel.

6           MR. LEVINE (TELEPHONIC): Hi, Your Honor. This is  
7 Rick Levine from Weil Gotshal. We're actually going to be  
8 starting a deposition shortly so I'm in a conference room in  
9 Philadelphia with counsel for the FDIC and counsel for the  
10 Committee and I know there are other people who are called in  
11 as well. I think we really have two issues though I hear  
12 from counsel for the Committee that one of them may have been  
13 resolved this morning. But the background is, when Your  
14 Honor moved the hearing dates we had two problems. One was  
15 that the president of Advanta who had deferred jury duty  
16 several times and used up his deferrals was scheduled to be  
17 in jury duty during the two days that the hearing was  
18 scheduled for. We've managed, based on a letter that we  
19 wrote, to free him up, so, Mr. Rosoff is available.

20           THE COURT: Okay.

21           MR. LEVINE (TELEPHONIC): The other issue we had is  
22 that one of our experts, he actually is something of a  
23 combined fact witness and expert but principally an expert,  
24 was committed to another case that week. It's an arbitration  
25 that's going from the middle of the week we're supposed to be

1 on trial through the following Monday, including over the  
2 weekend. I, Weil, Gotshal, had numerous calls with counsel  
3 for the party that retained him in that case to try to  
4 convince them that they could make the witness available for  
5 half a day on either Tuesday or Wednesday, the two days we  
6 have for trial. I even suggested that we could go with him  
7 as our first witness Tuesday morning, take him out of order,  
8 and then he could be available for them starting that  
9 afternoon because the trial's in Washington. So, obviously,  
10 Wilmington to Washington is remarkably lucky and convenient.  
11 They kept saying no to us though I hear that Latham had a  
12 call with a more senior partner at Covington and may have by  
13 invoking the fact that we were about to get on a call with  
14 Your Honor have obtained some wiggle room there. The other  
15 issue which we've been discussing with counsel for the FDIC  
16 and ABC, the plaintiff, is a little bit of concern that two  
17 days may not be enough. Now, right now, given the number of  
18 witnesses, we think it's going to be hard to get it done in  
19 two days. I must tell you in my experience as you get closer  
20 to trial, people often reduce the number of witnesses. The  
21 first deposition's going to be this morning though, so we're  
22 not in a position to make those kind of judgments, but I  
23 think both sides think that if we can get an additional time  
24 close to the hearing dates that probably makes a lot of  
25 sense, but I'll be quiet and I'll let Latham update the Court

1 and then let McDermott, Will & Emery comment.

2 MR. MALIONEK (TELEPHONIC): Your Honor, this is  
3 Robert MalioneK from Latham & Watkins for the Committee. I  
4 did have a call with counsel that has retained and is  
5 planning on using as a testifying expert one of the experts  
6 that the debtors has retained here. The arbitration that  
7 that expert is set to testify and does not begin until  
8 Thursday the 19<sup>th</sup>, what the lead partner told me in that case  
9 this morning, is that while the timing is not ideal, of  
10 course, if the morning of the 17<sup>th</sup>, for example, is the only  
11 time that would then work with Your Honor's schedule in  
12 connection with this case and all the parties here were  
13 amenable to having this expert testify out of order in  
14 essence and go on first on the 17<sup>th</sup>, then please get back to  
15 him, and of course, he would need to take that into  
16 consideration and would defer to Your Honor's schedule.

17 THE COURT: Well, let me ask this: As you know, from  
18 our exercise, the schedule has been a tight one but it's  
19 never static. It's been moving around, as it turns out, and  
20 I don't know whether we discussed this date or not, Monday  
21 the 16<sup>th</sup> has opened up. Would you like to begin then and does  
22 that help you?

23 MR. MALIONEK (TELEPHONIC): From the Committee's  
24 perspective, I think that would be a good result.

25 MR. KRATENSTEIN (TELEPHONIC): Your Honor, it's

1 Andrew Kratenstein from McDermott for the FDIC. I want to  
2 confer with my client. I think that that likely will be  
3 acceptable to us if that helps everybody here, and I think,  
4 you know, I share Mr. Levine's concerns that it may be tight,  
5 at least given the number of witnesses who have disclosed by  
6 the parties as potential witnesses at the hearing to get it  
7 done in two days. I also want to discuss with my client what  
8 Mr. Malioneck just said. I'm not sure if we have the 16<sup>th</sup> that  
9 it moots the issue because maybe we don't need to call out of  
10 order now. I just heard for the first time that there was a  
11 possibility of this expert coming in on the 17<sup>th</sup> and possibly  
12 being called out of order. So, if we have the 16<sup>th</sup>, that may  
13 resolve all of these issues. I'd like to discuss it with my  
14 client if that's alright with everybody and get back to the  
15 Court. I expect that we will take the Court up on that and  
16 very much appreciate it.

17 MR. LEVINE (TELEPHONIC): This is Rick Levine for  
18 the debtors. That's my reaction as well. It sounds like  
19 it's a wonderful solution. I do need to check with my client  
20 because obviously up until now that wasn't on their schedule  
21 but if they were not planning on devoting that day to the  
22 trial and preparing for the trial they weren't thinking. So,  
23 I think it should be fine. If that's okay with Your Honor,  
24 we'll get back to you on that but I think if we have Monday,  
25 Tuesday, and Wednesday of that week that probably really

1 should resolve the issue. There's a separate issue that this  
2 actually kind of works against it which was we were hoping to  
3 get one more day to file the joint pretrial order and if any  
4 party wants to file a pretrial brief - Mr. Kratenstein, when  
5 are they currently due?

6 MR. KRATENSTEIN (TELEPHONIC): They're currently  
7 due, Your Honor, based on a prior hearing date which was the  
8 17<sup>th</sup>, I believe your rules require us to file a pretrial order  
9 and any pretrial brief 3 business days before the hearing  
10 which would fall on, given the weekend, August 12<sup>th</sup>. The  
11 parties are taking depositions and they won't be completed  
12 until, I think, August 11<sup>th</sup>. We're double tracking some of  
13 them and we were hoping to file the pretrial papers on August  
14 13<sup>th</sup> instead of August 12<sup>th</sup>. I don't know if Your Honor has a  
15 view of that now, particularly given that you want to move up  
16 the hearing date one day, but that's what we were hoping to  
17 do.

18 THE COURT: Could you have them in by noon?

19 MR. KRATENSTEIN (TELEPHONIC): Your Honor, we'll  
20 take whatever extension you can give us.

21 THE COURT: Okay. Let's say noon on the 13<sup>th</sup> then.

22 MR. MALIONEK (TELEPHONIC): Excellent. Your Honor,  
23 we really appreciate your flexibility.

24 THE COURT: Sure. Now, let me ask this, where do  
25 you stand in scheduling with Judge Drain?

1           MR. LEVINE (TELEPHONIC): As far as we know, he is  
2 available next week, but we've proposed, I think - we've  
3 proposed I guess Friday of this week or Monday of next week,  
4 and we haven't heard back; have we?

5           MR. KRATENSTEIN (TELEPHONIC): That's correct.  
6 Andrew Kratenstein, again. We have proposed August 6<sup>th</sup> or  
7 August 9<sup>th</sup> and we sent Judge Drain all of the materials as  
8 well as a summary of where we've been in terms of settlement  
9 discussions and asked him to get back to us on whether he  
10 wants to see us on the 6<sup>th</sup> or the 9<sup>th</sup>, and we have not yet  
11 heard back from him. I expect if we don't hear back today,  
12 we will contact his chambers and ask them if the Judge has  
13 selected a day, but just for the record, we've been very  
14 appreciative that he has been willing to see us and  
15 appreciative that Your Honor approved his selection by the  
16 parties.

17           THE COURT: Yeah, I mean, I spoke with him this  
18 morning. He's been out of town. He returned to the office  
19 just early today. So that may be why you haven't heard from  
20 him.

21           MS. VRON (TELEPHONIC): Your Honor, this is Victoria  
22 Vron from Weil, Gotshal. I did contact Judge Drain's  
23 chambers this morning and that is the message I received this  
24 morning, but we have not heard today because Judge Drain was  
25 out of town and that we should expect to hear back later

1 today.

2 THE COURT: Yes, that doesn't surprise me. I did  
3 sign an order today which, if it's not been docketed already,  
4 will be soon appointing him as mediator and also gave him my  
5 thanks for his willingness to do this. As I'm sure you all  
6 know, you couldn't be in better hands. If there is some hope  
7 of settling this, I'm sure you've reached out to the best  
8 person you could have. Okay, well, let's do this. I've  
9 tentatively now added the 16<sup>th</sup> as a trial day. If there's  
10 some issue with that, let me know right away but that is  
11 blocked off and I'll tentatively plan to begin then, but  
12 hopefully, your session with Judge Drain will be productive  
13 and hopefully successful. Is there anything else we need to  
14 talk about today?

15 MR. LEVINE (TELEPHONIC): No, Your Honor. Thank you  
16 very much again for hearing us and for being so flexible.

17 ALL (TELEPHONIC): Thank you, Your Honor.

18 THE COURT: You're welcome. Have a good weekend,  
19 everyone.

20 UNIDENTIFIED SPEAKER (TELEPHONIC): Thank you, Your  
21 Honor, take care.

22 (The remainder of this page is intentionally left  
23 blank.)

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1           THE COURT: That concludes this hearing, Court will  
2 stand adjourned.

3           (Whereupon at 10:10 a.m., the hearing in this  
4 matter was concluded for this date.)

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18           I, Elaine M. Ryan, approved transcriber for the  
19 United States Courts, certify that the foregoing is a correct  
20 transcript from the electronic sound recording of the  
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan  
Elaine M. Ryan  
2801 Faulkland Road  
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July 31, 2010

**UNITED STATES BANKRUPTCY COURT  
District of Delaware**

**In Re:**

**Chapter: 0**

*Case No.:* 10-50795-KJC

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Clerk of Court

Date: 8/3/10

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