UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re: ADVANTA CORP., *et al.*, Debtors.	Chapter 11 Case No. 09-13931 (KJC) (Jointly Administered) **Hearing Date: December 16, 2010 at 3:30 p.m.** **Objection Deadline: December 7, 2010 at 5:00 p.m.**

OBJECTION OF LEAD PLAINTIFF, WESTERN PENNSYLVANIA ELECTRICAL EMPLOYEES PENSION FUND, TO DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Lead Plaintiff, Western Pennsylvania Electrical Employees Pension Fund ("Western Pennsylvania" or the "Lead Plaintiff"), in the securities class action entitled *Steamfitters Local 449 Pension Fund, Individually and On Behalf of All Others Similarly Situated v. Dennis Alter, et al.*, Civil Action No. 2:09-cv-4730-CMR (the "Securities Litigation"), filed in the United States District Court for the Eastern District of Pennsylvania (the "District Court"), on behalf of all persons (the "Securities Class") who purchased or otherwise acquired the Class A and/or Class B common stock of Advanta Corp. ("Advanta" or the "Debtor") between October 16, 2006 and January 30, 2008, inclusive (the "Class Period"), hereby submits this objection (the "Objection") to the Disclosure Statement for Debtors' Joint Plan under Chapter 11 of the Bankruptcy Code (the "Disclosure Statement")[1], and states the following:

BACKGROUND

1. On October 14, 2009, Steamfitters Local 449 Pension Fund ("Steamfitters") filed a class action complaint (the "Initial Complaint") in the District Court against Advanta and certain officers and directors of Advanta (the "Non-Debtor Defendants").[2]

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[1] Capitalized terms shall have the meanings ascribed to them in the Disclosure Statement, unless defined otherwise herein.

[2] Thereafter, three (3) additional class actions premised upon violations of ERISA (collectively, the "ERISA Litigation") were filed against Advanta and some of the Non-Debtor Defendants. In January 2010, those Non-Debtor Defendants in the Securities Litigation and the ERISA Litigation moved in the District Court to consolidate the Securities Litigation and the ERISA Litigation. On March 19, 2010, the consolidation motion was withdrawn.

2. On November 8, 2009 and November 20, 2009 (the "Petition Dates"), the Debtor and certain affiliated entities (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case").

3. On December 14, 2009, Western Pennsylvania filed a Motion seeking to be appointed Lead Plaintiff in the Securities Litigation.

4. On December 23, 2009, by virtue of the automatic stay, and in response to the District Court's Order to Show Cause Why Case Should Not Be Stayed, Steamfitters and Western Pennsylvania filed a Notice of Voluntary Dismissal dismissing the Securities Litigation as against Advanta without prejudice. The Securities Litigation is proceeding as against the Non-Debtor Defendants.

5. On May 11, 2010, Western Pennsylvania, as proposed Lead Plaintiff, filed a class proof of claim in the Bankruptcy Case in an amount not yet determined.

6. On June 4, 2010, the District Court entered an Order appointing Western Pennsylvania as Lead Plaintiff in the Securities Litigation.

7. On August 3, 2010, Lead Plaintiff filed an Amended Complaint for Violation of the Federal Securities Laws (the "Amended Complaint") in the Securities Litigation, alleging violations of §§10(b), 20(a) and 20A of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (the "Securities Laws"), against certain officers and directors of Advanta (the "Current Non-Debtor Defendants"), including the Non-Debtor Defendants named in the Initial Complaint. Motions to dismiss are currently pending in the District Court.

8. On November 2, 2010, the Debtors filed the Disclosure Statement for Debtors' Joint Plan [Doc. No. 896] under Chapter 11 of the Bankruptcy Code (the "Plan") [Doc. No. 895] and the Motion for an Order Approving the Disclosure Statement and other relief [Doc. No. 899]. The hearing on the approval of the Disclosure Statement is scheduled for December 16, 2010.

OBJECTION

9. A disclosure statement may be approved as adequate only if it contains "information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a); *see also In re Zenith Electronics Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999) (the disclosure statement must contain information that is "reasonably practicable [to permit an] informed judgment" by holders of claims or interests to vote on the plan). Courts have ample discretion to determine what constitutes adequate information. *See, e.g., Abel v. Shugrue (In re Ionosphere Clubs, Inc.)*, 179 B.R. 24, 29 (S.D.N.Y. 1995), *appeal dismissed by, in part, affirmed by, in part*, 184 B.R. 648 (S.D. N.Y. 1995)(citing, *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988)). Although adequacy is determined on a case-by-case basis under a fact-specific flexible standard, *id.*, a disclosure statement must contain "simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible [Bankruptcy] Code alternatives so that [creditors] can intelligently accept or reject the Plan." *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988). A disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

10. Lead Plaintiff believes that in certain material respects, the Disclosure Statement does not contain sufficient information to enable a reasonable person to make an "informed judgment about the Plan." Indeed, the Disclosure Statement and the Plan contain broad and ambiguous provisions and/or omit material facts that (i) may mislead holders of claims or interests or (ii) should be available to holders of claims or interests.

11. ***To the extent any objection, in whole or in part, contained herein is deemed to be an objection to confirmation of the Plan rather than, or in addition to, an objection to the adequacy of the Disclosure Statement, Lead Plaintiff reserves its right to assert such objection, as well as any other objections, to confirmation of the Plan. Furthermore, to the extent Lead Plaintiff or any member of the Securities Class is impacted in any way by the contents of any supplements or amendments to the Disclosure Statement or the Plan, which may be filed after any Disclosure Statement or Plan confirmation objection deadline, Lead Plaintiff reserves its right to object thereto.***

12. Lead Plaintiff objects to the adequacy of the Disclosure Statement and to the Plan (subject to the above reservation of rights) on the following grounds:

(a) the Disclosure Statement fails to describe, and the Plan fails to provide, an adequate protocol for the preservation and/or destruction of the Debtors' books, records or documents whether transferred to the Liquidating Trusts or others or retained by Reorganized Advanta;

(b) the Disclosure Statement fails to adequately describe available insurance as it relates to the claims of Lead Plaintiff and the Securities Class asserted in the Bankruptcy Proceeding and in the Securities Litigation, or disclose whether the Plan intends to deny Lead Plaintiff or the Securities Class the right to proceed with their claims against the Debtors to the extent of available insurance coverage, irrespective of any injunctions, discharge or distribution under the Plan; and

(c) the Plan Injunction, Stay and Exculpation provisions are ambiguous and improper, and must affirmatively exclude any claims of Lead Plaintiff and the Securities Class against the Non-Debtor Defendants and any other non-Debtors.

13. In order to bring the Disclosure Statement into compliance with 11 U.S.C. § 1125(a) and to make the Plan confirmable under the Bankruptcy Code, the Disclosure Statement

and Plan must be modified. Unless and until the Plan and Disclosure Statement are revised, the Disclosure Statement should not be approved.

A. The Disclosure Statement Fails to Describe and the Plan Fails to Provide an Appropriate Mechanism for the Preservation of Documents.

14. The Disclosure Statement states that the Plan provides for the establishment of various Liquidating Trusts pursuant to the respective Liquidating Trust Agreements (the "LTAs"). Disclosure Statement ("D.S."), Art. V. E.4(a); Plan, §5.4. Copies of the LTAs are to be furnished as part of the Plan Supplement (Plan, §1.145) at least five (5) days prior to the deadline for voting on confirmation of the Plan.[3] *See* Plan, §12.7.

15. The Plan defines Liquidating Trust Assets as all of Advanta's rights and assets, including Causes of Action and Books and Privileges relating to the Assets, Plan, §1.11, and provides for the Debtors to transfer those Assets to the Liquidating Trusts to be administered by the Liquidation Trustee (D.S., Art. V. E.4(c) and (g); Plan, §5.4(c) and (g)). Title to all Assets will vest in the Liquidating Trusts. D.S., Art. V. E.4(c); Plan, §5.4(c). Books and Privileges include the Debtor's books, records, all documents and communications of any kind, whether physical or electronic and all privileges attendant thereto. *See* Plan, §1.88.

16. Although the Debtors are compelled to maintain and preserve their Assets during the chapter 11 proceeding, the Plan fails to provide for the preservation of the Debtors' Assets, including the Debtors' books, records and other documents, in any format (*e.g.*, electronic or hard-copy) (collectively, the "Documents") by Reorganized Advanta post-confirmation. Therefore, a document preservation protocol must be established to prevent the destruction or abandonment of the Documents post-confirmation, especially because the Documents may include critical information relevant to the Securities Litigation and certain other information relevant to the Class Claim.

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3 Lead Plaintiff reserves its right to object to the LTAs and such other documents that may be included in the Plan Supplement.

17. To the extent Documents are transferred to the Liquidating Trusts or other Entities, the Liquidating Trust, the Liquidating Trustees and the transferee must also be bound by any document preservation protocol approved by the Bankruptcy Court.

18. Indeed, whether the Documents are retained by Reorganized Advanta or transferred to the Liquidating Trusts or to some other estate representative or third party, the Documents must be preserved or maintained so as to be available to parties in interest, especially if the Documents are not available elsewhere. To do otherwise prejudices the rights of the Lead Plaintiff, members of the Securities Class and other parties in interest. At the very least, some mechanism for providing notice and an opportunity to be heard by a court of competent jurisdiction must be established before any such Documents are abandoned, destroyed or rendered otherwise unavailable.

19. It is imperative that Reorganized Advanta, the Liquidating Trusts, the Liquidating Trustees or any third party transferee retain and preserve the Documents that may be potentially relevant to the Securities Litigation and the Claims arising therefrom, at least until such time as Lead Plaintiff is able to conduct and complete discovery, and that Lead Plaintiff be given reasonable notice of any proposed destruction or abandonment of the Documents and an opportunity to be heard before such proposed destruction or abandonment.

20. The Debtors, the Liquidating Trusts, Liquidating Trustees, or such other potential transferee of the Documents, as the case may be, must advise parties in interest through the Plan of their intention with respect to the Documents. Therefore, the Plan and/or any order confirming the Plan should include the following language:

> From and after the Effective Date, the Debtors, Reorganized Advanta, the Liquidating Trusts, the Liquidating Trustees, and any transferee of the Debtors' Documents (defined *infra*), as the case may be, shall preserve and maintain all of the Debtors' documents, files, books, records, electronic data (including, but not limited to, emails and email server back-up tapes) (collectively, the "Documents"), whether retained by Reorganized Advanta or any successor thereto, or transferred to the Liquidating Trusts or the Liquidating Trustees, pursuant to the Liquidating Trust

> Agreements, or to such other transferee pursuant to the Plan, and Reorganized Advanta, any successors thereto, the Liquidating Trusts, the Liquidating Trustees and/or such other transferee shall not destroy or otherwise abandon any such Documents absent further order of this Court or such other court of competent jurisdiction after a hearing upon notice to parties in interest, including Lead Plaintiff, with an opportunity to be heard.

21. To the extent the Debtors do not intend to preserve the Documents or object to the inclusion of the foregoing language in the Plan or in any Order confirming the Plan, the Disclosure Statement should explain why.

B. The Disclosure Statement Fails to Adequately Describe Available Insurance as It Relates to the Claims of Lead Plaintiff and the Securities Class Asserted in the Bankruptcy Proceeding and in the Securities Litigation, or Disclose Whether the Plan Intends to Deny Lead Plaintiff the Right to Proceed with its Claims Against the Debtors to the Extent of Available Insurance Coverage, Irrespective of any Injunctions, Discharge or Distribution under the Plan.

22. Upon information and belief, the Debtors maintain liability insurance policies (the "D&O Policies")[4] in favor of their directors and officers for claims asserted in the Securities Litigation, as well as for claims against the Debtors directly for violations of federal securities laws. While the Disclosure Statement and Plan refer to the Debtors' D&O Policies, D.S., Art. V, H.6; Plan, §8.6(b), they fail to disclose the extent of the coverage provided by these D&O Policies and all of the parties who may have a right to access the proceeds thereof. Lead Plaintiff maintains that the Securities Class is entitled to look to the proceeds of such insurance for payment in connection with the claims of Lead Plaintiff and the Securities Class and may, at least, pursue these Claims against the Debtors to the extent of such available insurance post-Confirmation. Because Lead Plaintiff may not have a direct action against the D&O insurance carriers under the D&O Policies, the proceeds of the D&O Policies may only be accessed through the pursuit of the claims asserted in the Securities Litigation. Accordingly, the Plan

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[4] To the extent the D&O Policies are determined to be executory contracts, they are deemed assumed and transferred to the applicable Liquidating Trust. D.S., Art. V.H.6; Plan, §8.6(b).

should not impact the rights of Lead Plaintiff or the Securities Class to pursue their claims against the Debtors to the extent of the proceeds of the D&O Policies.

23. In order to overcome this Disclosure Statement inadequacy, the Plan and Disclosure Statement should provide that:

> Nothing in the Plan, or in any Order confirming the Plan, shall preclude Lead Plaintiff and the Securities Class from pursuing their claims against the Debtors to the extent of available insurance coverage and proceeds. The Claims of Lead Plaintiff and the Securities Class against the Debtors, to the extent of available insurance, are preserved and not discharged by the Plan.

24. Furthermore, although couched as a "reorganization," the reality is that the Debtors are liquidating and the fiction of a reorganization involving one entity to hold stock should not offer the Debtors a discharge they would not otherwise be entitled to as liquidating debtors. *See* 11 U.S.C. §1141(d)(3)(A) (confirmation of a liquidating plan does not discharge a debtor). The Disclosure Statement is silent as to any discharge of the Debtors.

C. The Plan Injunction, Stay and Exculpation Provisions[5] are Ambiguous and Improper and Must Affirmatively Exclude any Claims or Lead Plaintiff and the Securities Class Against the Non-Debtor Defendants and any Other Non-Debtors.

i. The Bankruptcy Court Lacks Jurisdiction to Release and Enjoin the Prosecution of the Securities Claims Asserted in the Securities Litigation against Non-Debtors.

25. To the extent the Plan intends to release the claims or interests of Lead Plaintiff and/or the Securities Class or enjoin them from prosecuting their claims against the Non-Debtor Defendants, the Court must, as a threshold question, first determine whether or not it has jurisdiction to determine the validity of the Plan release and injunction provisions as they relate to the Securities Litigation against non-Debtors. The Third Circuit Court of Appeals in *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203, 214, n. 12 (3d Cir. 2000), has

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5 While the Plan and Disclosure Statement do not identify these provisions as "Releases," they effectively constitute a release of the Claims and Interests held by creditors and other parties in interest. Therefore, to the extent these provisions do in fact release or attempt to release any claims of Lead Plaintiff against a non-Debtor, including the Non-Debtor Defendants, Lead Plaintiff asserts that this Objection is applicable.

expressed its concern "that the Bankruptcy Court apparently never examined its jurisdiction to release and permanently enjoin [the third party's] claims against non-debtors." While certain matters between non-debtor third parties affecting the debtor and the bankruptcy case may be within the subject matter jurisdiction of the Court, it is not without limits and the Court "cannot simply presume it has jurisdiction in a bankruptcy case to permanently enjoin third-party *class actions* against non-debtors." *Id.* (emphasis added).

26. Recently, the Second Circuit addressed the jurisdictional issue and upheld its earlier holding in the same case that a "'bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate.'" *Johns-Manville Corp. v. Chubb Indemnity Ins. Co. (In re Johns-Manville Corp.)*, 600 F.3d 135,152 (2d Cir. 2010) "*Manville 2010*")(quoting *In re Johns-Manville Corp.*, 517 F.3d 52, 66 (2d Cir. 2008) ("*Manville 2008*")). Such jurisdiction is statutory. *In re Combustion Engineering, Inc.*, 391 F3d. 190, 225 (3d Cir. 2004). As noted in the *Manville 2010* decision, *Manville 2008* held that "a bankruptcy court's *in rem* jurisdiction was insufficient to enjoin the [direct claim] based upon . . . legal theories that seek to impose liability on [the insurer] as a separate entity rather than on the policies." *Manville 2010*, 600 F.3d at 152. Thus, the nature of the third party claim against the non-debtor, whether it be direct or derivative, must be considered before the Court can exercise subject matter jurisdiction in connection with the non-debtor releases and injunctions in the Plan. The Securities Litigation certainly asserts direct claims against non-debtor third parties over which the Court does not have subject matter jurisdiction.

ii. The Plan Injunction, Stay and Exculpation Provisions are Improper.

27. The Plan injunction and stay provision (D.S., Art. V, J.3; Plan, §10.3) at the very least requires clarification as to the extent it may impact claims against a non-Debtor. The Plan states that "all Persons who have held, hold or may hold Claims or Equity Interests and all other parties in interest . . . are permanently enjoined from [*inter alia*] (i) commencing or continuing in *any* manner *any* action or other proceeding of *any* kind . . . related to a Claim or Equity Interest

against the Debtors . . . or (v) pursuing any Claim or Interest released pursuant to Article XII (*sic*)[6] of the Plan." *Id.* (emphasis added). Because the causes of action asserted against the Non-Debtor Defendants in the Securities Litigation relate to a Claim against the Debtor, they may be subject to this improper provision. Therefore, this provision should not be allowed and is, at best, ambiguous and requires clarification.

28. The exculpation provision is also tantamount to a release of various parties, including the Debtors' officers and directors, from liability to any Entity "for *any* Claim, Cause of Action or other assertion of liability for *any* act taken in connection with, or arising out of, the Chapter 11 Cases." D.S., Art. V, J.7; Plan, §10.7 (emphasis added). This language may be read to include pre-petition claims and is therefore improper.

29. The reference in the injunction and stay provision to claims in *any* action or proceeding of *any* kind, D.S., Art. V. J.3(i) and (v); Plan, §10.3(i) and (v), as well as similar language in the exculpation provision, D.S., Art. V, J.7; Plan, §10.7 (¶28, *supra*), compounds the ambiguity. Indeed, in the absence of language to the contrary, the Plan's release, injunction and exculpation provisions are so broad and ambiguous that they may be interpreted to impact, enjoin, prohibit and/or preclude Lead Plaintiff from asserting claims in the Securities Litigation against non-Debtors or seeking discovery post-Effective Date. The Disclosure Statement offers no basis for such broad release, injunction and exculpation provisions, that may be justified only in the most extraordinary and unusual circumstances. *See* ¶¶30-31, *infra*. In order to avoid any doubt, the Disclosure Statement and Plan should affirmatively provide that no non-Debtors are being released from claims by or liability to third parties, such as Lead Plaintiff and the Securities Class, and that Lead Plaintiff's ability to request and obtain relevant discovery is not impacted in any way.

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[6] Article XII of the Plan does not appear to provide any releases and the reference thereto should be deleted. However, to the extent Article XII is intended to provide for the release of any Claims or Interests, those Claims and Interests should be disclosed. Lead Plaintiff reserves its rights to object to any release purportedly available under Article XII.

30. As a result of the broad language of the aforesaid Plan provisions, non-debtors who, in the absence of unusual circumstances, are not entitled to the protections of the Bankruptcy Code, may very well benefit from such protections. Therefore, to the extent any of Lead Plaintiffs' claims in the Securities Litigation may be subject to the Plan Injunction and/or Release provisions, the provisions are improper. *See Deutsche Bank AG London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141-42 (2d Cir. 2005) (holding that non-debtor releases are proper only in rare cases and may be "tolerated only if the affected creditor consents"); *see also Continental*, 203 F.3d at 211(holding that a debtor must satisfy its burden of proof and establish through specific factual findings that non-debtor third-party releases are fair and necessary); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 608 (Bankr. D. Del. 2001)(citing *Continental* for the proposition that "extraordinary circumstances [are] required to meet even the most flexible test for third party releases.") *In re Combustion Engineering*, 391 F. 3d 190, 236 (3d Cir. 2004) (holding in an asbestos injury case that 11 U.S.C. §105 may not be used to validate a non-debtor release where to do so trumps another Bankruptcy Code section).

31. In the absence of consideration and creditor consent, non-debtor third-party release, injunction and exculpation provisions have been disallowed and rejected by this Court. *See, e.g., In re Exide Techs.*, 303 B.R. 48, 75 (Bankr. D. Del. 2003). Here, Lead Plaintiff and the Securities Class are not receiving any consideration from the non-Debtor third parties who may benefit from these gratuitous provisions and do not consent to the injunction, exculpation and resultant release provisions under the Plan. Therefore, the following language should be included in the Disclosure Statement and the Plan:

> Nothing in the Plan or in any order confirming the Plan shall (i) affect, release, enjoin or impact in any way the prosecution of the claims asserted, or to be asserted, against any non-Debtor in the Securities Litigation or (ii) preclude Lead Plaintiff and/or the Securities Class from seeking discovery from the Debtors, Reorganized Advanta, the Liquidating Trusts or Trustees or such

other transferee of the Debtors' Books and Privileges, or any other assets of the Debtors.

32. If it is the Debtors' intent to release and enjoin third-party claims against non-Debtors, including any of the claims asserted in the Securities Litigation, then the Plan is unconfirmable as a matter of law. Furthermore, Lead Plaintiff should not be obliged to take the risk with respect to determining the extent of the Plan release, injunction and exculpation provisions or whether a Non-Debtor Defendant may be provided shelter within the ambiguous language under the Plan.

CONCLUSION

33. Based on the foregoing, Lead Plaintiff respectfully requests that an order be entered (i) denying approval of the Disclosure Statement and (ii) granting Lead Plaintiff such other and further relief as the Court deems just and proper.

Dated: December 7, 2010

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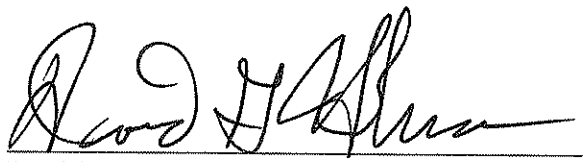
CERTIFICATE OF SERVICE

I, David G. Holmes, hereby certify that on this 7th day of December, 2010, I caused copies of the *Objection of Lead Plaintiff, Western Pennsylvania Electrical Employees Pension Fund, to Disclosure Statement for Debtors' Joint Plan Under Chapter 11 of the Bankruptcy Code* to be served on the parties on the attached list in the manner indicated.



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