

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>IN RE:</b>	)	Case No. 09-13931(KJC)
	)	(JOINTLY ADMINISTERED)
	)	Chapter 11
<b>ADVANTA CORP., et al.,</b>	)	
	)	
<b>Debtors.</b>	)	
<hr/>		
<b>ADVANTA BANK CORP.,</b>	)	Case No. 10-50795(KJC)
	)	
<b>Plaintiff,</b>	)	
	)	
<b>versus</b>	)	Courtroom 5
	)	824 Market Street
<b>ADVANTA CORP.,</b>	)	Wilmington, Delaware 19801
	)	
<b>Defendant.</b>	)	August 16, 2010
	)	10:01 A.M.

TRANSCRIPT OF EMERGENCY MOTION OF PLAINTIFF, ADVANTA BANK  
CORP., FOR DECLARATORY AND INJUNCTIVE RELIEF IN  
CONNECTION WITH ITS AMENDED COMPLAINT  
(ADVERSARY 10-50795(KJC), DOCKET 9). MOTION OF THE FEDERAL  
DEPOSIT INSURANCE CORP., AS RECEIVER OF ADVANTA BANK CORP.,  
SEEKING A DECLARATION THAT THE AUTOMATIC STAY DOES NOT APPLY  
OR, IN THE ALTERNATIVE, AN ORDER GRANTING RELIEF FROM THE  
AUTOMATIC STAY (ADVERSARY 10-50795(KJC), DOCKET 25).  
BEFORE HONORABLE KEVIN J. CAREY  
UNITED STATES CHIEF BANKRUPTCY JUDGE

ECRO: AL LUGANO

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1 THE COURT: Good morning, everyone.

2 MULTIPLE SPEAKERS: Good morning.

3 THE COURT: I got some interesting news over the  
4 weekend. Does somebody want to tell me about it?

5 MR. LEMONS: Just one second, Your Honor, while I try  
6 to turn this gizmo on where I've got my notes.

7 THE COURT: All right.

8 MR. LEMONS: Okay. Good morning, Your Honor. Robert  
9 Lemons from Weil Gotshal & Manges on behalf of the debtors.

10 I'm happy to be able to announce this morning that  
11 the debtors, the committee, and the FDIC have reached agreement  
12 on a settlement of the FDIC's adversary proceeding, the trial  
13 of which was scheduled to begin today, and additionally, of all  
14 claims between the debtors, and the FDIC and ABC -- or Advanta  
15 Bank Corporation.

16 Since the last hearing in this proceeding, Your  
17 Honor, the parties did engage in settlement discussions while  
18 preparing for the trial that was scheduled to start today. As  
19 the Court is aware, those discussions reached a stalemate a few  
20 weeks ago.

21 But pursuant to an order of the Court, the parties  
22 engaged last Tuesday in a mediation conducted by Judge Drain  
23 (phonetic) in New York.

24 Although the parties didn't agree to a settlement at  
25 the mediation itself, the mediation was critical, I believe, to

1 breaking the stalemate and paved the way for the settlement.

2 I'd like to express on the record the parties'  
3 gratitude towards Judge Drain for taking the time both to  
4 prepare for and attend the mediation. I think that he was a  
5 highly effective mediator, and the parties will, in short  
6 order, jointly send him a letter thanking him, and informing  
7 him that we've settled.

8 THE COURT: Yes, I intend to convey my own thanks  
9 immediately following this hearing.

10 (Laughter)

11 MR. LEMONS: I think there are a lot of people  
12 probably very happy that his efforts were so fruitful.

13 I have with me this morning, Your Honor, the  
14 settlement principles that the parties negotiated over the  
15 weekend, as I'll -- as will be sort of stated in those  
16 principles, the expectation is that there will be a definitive  
17 document, the approval of which we'll seek from the Court.

18 But with the Court's permission, I'd like to read  
19 these principles into the record now. And, of course, you  
20 know, answer any questions or issues that the Court might  
21 have.

22 THE COURT: All right. You may proceed.

23 MR. LEMONS: And I apologize in advance. They're a  
24 little bit lengthy, but I think compared to the three-day trial  
25 that we were facing, it's probably not too bad. Certainly is

1 the lesser of the two evils.

2 THE COURT: Well, I set aside the time anyway, so --

3 MR. LEMONS: Okay.

4 (Laughter)

5 MR. LEMONS: Okay. So, these are the principles of  
6 agreement to resolve the adversary proceeding, which I'll refer  
7 to herein as the principles.

8 Also, Your Honor, before I start this -- while this  
9 is not the settlement agreement itself, it was a written  
10 document. So, if I refer in it to "the below" or "the  
11 above," I'm referring to statements I made previously or will  
12 make.

13 Set forth below are the settlement principles agreed  
14 among the Federal Deposit Insurance Corporation, I'll refer to  
15 that as the FDIC, as the receiver of Advanta Bank Corp., which  
16 I'll refer to here as ABC. On behalf of the FDIC and ABC,  
17 Advanta Corp., which I'll refer to as Advanta, and the Official  
18 Committee of Unsecured Creditors in Advanta's pending Chapter  
19 11 case, which I'll refer to as the Committee, and will refer  
20 to the parties collectively as the parties. The settlement's  
21 in connection with the adversary proceeding docketed at Number  
22 10-50795, and it's also with respect to all potential claims,  
23 causes of action, or other potential damages or liability  
24 arising out of or in connection with Advanta's filing of  
25 consolidated tax returns for 2008 and 2009 on behalf of the

1 affiliated group, which is a term as defined in the tax sharing  
2 agreement among Advanta and certain of its subsidiaries. I'll  
3 refer to that tax sharing agreement as the TSA.

4           The following principles are binding upon the  
5 parties, and subject only to documentation consistent with  
6 these principles:

7           One, Advanta and the Committee consent upon such time  
8 that the FDIC delivers a written representation to Advanta and  
9 the Committee that it has all necessary consents and authority  
10 to consummate the settlement agreement among the parties  
11 consistent with the terms of these principles to the lifting of  
12 the automatic stay, to the extent the stay applies at all, to  
13 permit the FDIC to file federal tax returns on behalf of the  
14 affiliated group, to carryback up to five years the affiliated  
15 group's net operating losses from 2009. I'll refer to that  
16 representation by the FDIC as the FDIC representation. And  
17 I'll refer to those tax returns to be filed by the FDIC as the  
18 FDIC returns.

19           For the avoidance of doubt, it is the intent of the  
20 FDIC that the FDIC shall make the FDIC representation before  
21 September 15th, 2010. And it is the intent of the parties that  
22 following receipt of the FDIC representation, the FDIC will  
23 file the FDIC returns on or before September 15th, 2010.

24           Further, for the avoidance of doubt, the automatic  
25 stay shall not be lifted, and the FDIC shall not be permitted

1 to file the FDIC returns until the FDIC representation is made  
2 consistent with these terms.

3           Prior to filing the FDIC returns, the FDIC will  
4 consult with Advanta and the Committee regarding the form and  
5 substance of the FDIC returns and the process of their filing.  
6 If the FDIC representation is made and the FDIC returns are  
7 filed in form and substance, and by process satisfactory to  
8 Advanta and the Committee, Advanta agrees to support and  
9 provide reasonable assistance to the FDIC in connection with  
10 its filing of the FDIC returns. Provided, however, that this  
11 agreement of Advanta shall not require it to agree that its  
12 filing of the 2009 consolidated tax return, and the amended  
13 2008 consolidated tax return, and the elections and waivers  
14 made as part of those filings were not authorized actions under  
15 the Bankruptcy Code.

16           Two, after the filing of any such FDIC return as  
17 provided in Paragraph 1:

18           A, in the event the Internal Revenue Service pays any  
19 refund in connection with any net operating loss carryback from  
20 2009 for the affiliated group, such refund shall be shared  
21 between the FDIC/ABC, and Advanta such that the FDIC/ABC shall  
22 receive 90 percent of such refund, and Advanta 10 percent of  
23 such refund.

24           In the event the IRS provides notice of its  
25 determination that it will not pay any refund in connection

1 with the carryback of the affiliated group's net operating loss  
2 carryback from 2009, the FDIC shall have an allowed general  
3 unsecured claim against Advanta's Chapter 11 estate in the  
4 amount of \$50 million.

5 Three, upon the date that the FDIC representation is  
6 delivered to Advanta and the Committee:

7 A, the FDIC/ABC, and any of ABC's wholly owned  
8 subsidiaries, which I'll refer to the FDIC, and ABC, and those  
9 subs collectively as the ABC parties, shall withdraw with  
10 prejudice all proofs of claim filed by the ABC parties against  
11 Advanta or its Chapter 11 debtor affiliates and their Chapter  
12 11 cases, and shall agree not to reassert the claims asserted  
13 therein against any of Advanta, other debtors, or their  
14 nondebtor affiliates who are not ABC parties, which I'll refer  
15 to as the affiliates, together with Advanta and the other  
16 debtors as the Advanta parties.

17 And the ABC parties shall agree to release any and  
18 all claims, as defined in 11 U.S.C., Section 101(5) causes of  
19 action and other potential bases of liability against the  
20 Advanta parties, the Committee, the members of the Committee,  
21 and their respective counsel and advisors arising in whole or  
22 in part, prior to the date hereof, whether known or unknown,  
23 and of any nature whatsoever.

24 Provided, however, for the avoidance of doubt, that  
25 the withdraw of these proofs of claim and this release shall

1 not constitute a release of any claims the ABC parties may have  
2 against Advanta's directors and officers, other than the  
3 specific claims which I'll describe in Item C in a moment.

4           B, the Advanta parties, on behalf of themselves, and  
5 in the case of the debtors, their Chapter 11 estates, shall  
6 withdraw with prejudice their proof of claim asserted in ABC's  
7 receivership, and shall agree not to reassert the claims  
8 asserted therein against any of the ABC parties, and to release  
9 any and all claims as defined in 11 U.S.C., Section 101(5),  
10 causes of action and other potential bases of liability against  
11 the ABC parties and their respective counsel and advisors,  
12 arising in whole or in part, prior to the date hereof, whether  
13 known or unknown, and of any nature whatsoever.

14           C, the ABC parties agree to provide a full release in  
15 writing in form and substance satisfactory to Advanta and the  
16 Committee to Advanta's directors and officers solely relating  
17 to any claims they may have against the directors and officers  
18 with respect to the directors' and officers' decision to make  
19 the March 14th, 2010 tax filings, and the elections or waivers  
20 within such filings.

21           D, none of these aforementioned releases shall  
22 release or waive any claims arising from any actions of or  
23 failure to take action by any of the ABC parties or the Advanta  
24 parties after the date hereof, including, without limitation,  
25 any actions or failures to take action in respect of servicing

1 or paying for the servicing of credit card accounts receivable  
2 owned by the Advanta parties.

3           E, upon the delivery by the FDIC to Advanta and the  
4 Committee of the FDIC representation:

5           One, the FDIC -- I'm sorry. The ABC parties shall no  
6 longer be parties to the TSA.

7           Two, none of the ABC parties on the one hand, or the  
8 Advanta parties on the other hand, shall have any claims  
9 against each other under or arising from the TSA, other than  
10 the rights to the refund and the claim expressly described  
11 herein. Provided, however, that these principles shall not  
12 affect any rights or claims of the Advanta parties with respect  
13 to each other under the TSA.

14           And, three, the Advanta parties shall not contest any  
15 tax elections -- I'm sorry. The ABC parties shall not contest  
16 any tax elections of the Advanta parties, other than by filing  
17 and supporting the FDIC returns.

18           The fourth point, Your Honor, is in the event the  
19 FDIC is unable to make the FDIC representation by September  
20 30th, 2010, then upon written notice by any party to the other  
21 parties:

22           A, any party may make a written request to this Court  
23 that the adversary proceeding be reset for an evidentiary  
24 hearing before the Court;

25           B, in such restored adversary proceeding, or

1 otherwise, the FDIC shall make no argument, claim, or assertion  
2 with respect to the fact that the FDIC returns have not been  
3 filed, or that they have not been filed by any particular date.  
4 And the parties otherwise agree that, except as provided in C  
5 -- which I'll read in a moment -- none of the parties shall be  
6 prejudiced by the existence or terms of these principles.

7           And, C, the FDIC/ABC shall not, until 30 days after  
8 the merits of the FDIC's claims, if any, under the TSA are  
9 adjudicated by the Court by a final order, including resolution  
10 of any subsequent appeals, or the expiration of any period for  
11 filing appeals has lapsed without the filing of any appeal or  
12 motion to stay:

13           One, file the FDIC returns without seeking to lift  
14 the automatic stay;

15           Two, seek to lift the automatic stay to file the FDIC  
16 returns;

17           Or, three, seek authorization in any other forum to  
18 effectuate the filing of the FDIC returns.

19           Five -- and I'm almost finished -- the FDIC  
20 represents that it has all necessary institutional, corporate,  
21 and governmental consents and authorities to enter into and  
22 consummate a settlement consistent with these principles, other  
23 than formal approval by the FDIC's Board of Directors, which  
24 approval may not be required, or the delegated authority  
25 process, which the FDIC may seek to invoke in lieu of formal

1 approval by the Board of Directors.

2           Six, Advanta and the committee represent that subject  
3 to the Court's approval, they have all necessary consents and  
4 authority to enter into and consummate a settlement consistent  
5 with these principles.

6           Seven, upon receipt by the FDIC of its necessary  
7 consents and authority to enter into and consummate the  
8 settlement, it shall promptly withdraw with prejudice the  
9 adversary proceeding and all motions filed in connection  
10 therewith, or otherwise relating to Advanta's filing of tax  
11 returns in March, 2010.

12           And lastly, Number 8. The terms of the settlement  
13 are fully subject to this Court's approval, and the FDIC  
14 returns shall not be filed with the IRS prior to the receipt of  
15 such approval.

16           Additionally, if the approval is not granted, the  
17 parties' agreement to these principles shall be void, and the  
18 reading of these principles into the record today shall not be  
19 deemed binding on or an omission by any of the parties.

20           So, those, Your Honor, are the settlement principles  
21 that the parties agreed to.

22           As I just read, the parties anticipate needing the  
23 Court's approval of the settlement agreement. The next omnibus  
24 hearing is not scheduled until September 23rd. But because the  
25 settlement is aimed towards, and built around filing the

1 competing tax returns on or before September 15th, I'd like to  
2 respectfully request that the Court grant us a time, at least  
3 several days before the 15th, for a hearing of a motion seeking  
4 approval of the settlement agreement.

5 THE COURT: All right. I'll hear from others, but I  
6 have a couple of questions. Does this still leave to the IRS  
7 the determination of which return it wishes to act upon?

8 MR. LEMONS: Yes, it does. And that's why we have  
9 got the sort of "either or" toggle in terms of what the claims  
10 of the parties are, in the event that the IRS does not accept  
11 the return.

12 THE COURT: Okay. Thank you. Does anyone else wish  
13 to be heard?

14 MR. RAICHT: Good morning, Your Honor. Geoffrey  
15 Raicht, McDermott Will & Emery, for the FDIC.

16 I wasn't sure if I caught a couple of words in Mr.  
17 Lemons' presentation, I just ask to do it again, if you  
18 wouldn't mind?

19 (Laughter)

20 MR. RAICHT: Mr. Lemons has accurately reflected the  
21 terms that we -- the principles that we came up with over the  
22 weekend.

23 I think, Your Honor, this is a clear case that both  
24 the FDIC, the debtor, and the Committee were all having a  
25 Captain Ahab moment and we were all going to go down with the

1 whale. And but for Judge Drain's participation to, again,  
2 break the stalemate, I think we would not be here today. And  
3 so we do owe him a debt of gratitude.

4 But obviously as Mr. Lemons has articulated, these  
5 are the principles upon which we will support the terms.

6 Thank you.

7 THE COURT: Thank you. Does anyone else wish to be  
8 heard?

9 MR. SCHWARTZ: Your Honor, Roger Schwartz, Latham &  
10 Watkins, for the Committee.

11 Your Honor, the Committee also supports and is in  
12 agreement with the principles, as articulated on the record  
13 with Mr. Lemons.

14 We'd like to also thank Your Honor for your patience  
15 and consideration with respect to this adversary proceeding and  
16 accommodating the various schedules of the parties at given  
17 points in the adversary proceeding.

18 And we'd also like to join Mr. Lemons and Mr. Raicht  
19 in express the Committee's thanks to Judge Drain for his  
20 assistance during the mediation. We weren't an easy bunch to  
21 work with, but he stuck with us throughout the afternoon and  
22 evening.

23 So, thank you, Your Honor.

24 THE COURT: Thank you. Anyone else?

25 (No audible response heard)

1 THE COURT: Okay. When is it expected to -- that  
2 you'll have a 9019 motion on file?

3 MR. LEMONS: Well, Your Honor, we -- we're working as  
4 fast as we can -- the associates back at the ranch on drafting  
5 the settlement agreement and putting that motion together. I  
6 don't have an exact date because, frankly, we just reached  
7 agreement on the settlement principles last -- late last night.  
8 So --

9 THE COURT: I'm not being impatient. It just -- it  
10 would affect the timing of when I set the hearing, that's all.

11 MR. LEMONS: I mean we'll -- we -- I think we'll get  
12 it on file as soon as the Court would like us to have it on  
13 file. By the end of the week, I think we could certainly do  
14 it.

15 THE COURT: Okay. That helps. Well, I would find  
16 some time for you either during the week of August 30th or  
17 September 6th. Do you have a preference?

18 MR. LEMONS: September 6th, Your Honor.

19 THE COURT: Okay.

20 MR. LEMONS: That might give us a few more days to  
21 get the motion on file.

22 THE COURT: How about Wednesday, September 8th, 10  
23 o'clock.

24 MR. LEMONS: Thank you, Your Honor. Perhaps we'll  
25 get lucky and won't need a hearing.

1 THE COURT: You may not need a notice to shorten it  
2 that -- I'm not counting the days, but if you do, you can fill  
3 that date in.

4 MR. LEMONS: Okay.

5 THE COURT: And I will tell you, unless there's an  
6 objection, based upon my prior involvement in the skirmishes  
7 that have occurred so far, I don't think I need any further  
8 evidence in support of the resolution.

9 MR. LEMONS: Thank you, Your Honor.

10 THE COURT: Okay. Now, just make sure that the  
11 proposed relief covers disposition of the other matters on  
12 today's agenda, making them moot because of the resolution.  
13 And anything else that's hanging out there in connection with  
14 -- I'll call it the former dispute.

15 MR. LEMONS: We will, Your Honor.

16 THE COURT: Okay. And is there anything further for  
17 today?

18 MR. LEMONS: No, sir.

19 THE COURT: All right. Well, in turn, let me thank  
20 the parties. I know how hard sometimes these things are to  
21 work out, especially -- this is not a criticism -- when the  
22 Government is involved. It adds an additional level or levels  
23 of process to work through. My congratulations to you all.

24 Thank you very much. That concludes this hearing.  
25 Court will stand adjourned.

1 MR. LEMONS: Thank you, Your Honor.

2 MULTIPLE SPEAKERS: Thank you, Your Honor.

3 (Whereupon, at 10:21 A.M., the hearing was adjourned.)

4

5 CERTIFICATE

6

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

10

11

12 /s/ Karen Hartmann AAERT CET\*\*D0475 Date:

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**UNITED STATES BANKRUPTCY COURT**  
**District of Delaware**

**In Re:**  
Advanta Corp.  
Debtor

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Chapter: 11  
Bankruptcy No. 09-13931-KJC

Advanta Bank Corp.

Plaintiff

Adversary No. 10-50795-KJC

vs.

Advanta Corp.

Defendant

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


A transcript of the proceeding held on 8/16/2010 was filed on 8/23/2010 . 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 9/13/2010 .

If a request for redaction is filed, the redacted transcript is due 9/23/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 11/22/2010 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 8/23/10

(ntc)

## Notice Recipients

District/Off: 0311-1  
Case: 10-50795-KJC

User: AI  
Form ID: ntcAP

Date Created: 8/23/2010  
Total: 1

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

ust United States Trustee 844 King Street, Room 2207 Lockbox #35 Wilmington, DE 19899-0035

TOTAL: 1