UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., *et al.*,[1]	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	**Hearing Date: February 8, 2011 at 10:30 a.m.**
	)	**Related Dkt. Nos. 6567, 6645, 6652, 6655, 6657, 6660**
	)	

OMNIBUS REPLY IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY RULE 2004-1 DIRECTING THE EXAMINATION OF THE WASHINGTON MUTUAL, INC. SETTLEMENT NOTE HOLDERS GROUP

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors") hereby submits this omnibus reply (the "Reply") in further support of its *Motion Of The Official Committee Of Equity Security Holders For An Order Pursuant To Bankruptcy Rule 2004 And Local Bankruptcy Rule 2004-1 Directing The Examination Of The Washington Mutual, Inc. Settlement Note Holders Group* [Dkt No. 6567] (the "Motion") and in response to the objections (collectively, the "Objections") filed by: Appaloosa Management L.P. ("Appaloosa") [Dkt No. 6645], Owl Creek Asset Management, L.P. ("Owl Creek") [Dkt No.6660], Centerbridge Partners, L.P. ("Centerbridge") [Dkt No. 6655], Aurelius Capital Management, LP ("Aurelius") [Dkt No. 6652] (Appaloosa, Owl Creek, Centerbridge and Aurelius, together, the "Settlement Note Holders"), and the WMI Inc. Note

[1] Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.

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Holders Group [Dkt No 6657] (collectively, the "Objectors"). In support of its Reply, the Equity Committee respectfully states as follows:

I.
PRELIMINARY STATEMENT

By its Opinion and Order issued on January 7, 2011, the Court denied confirmation of the Debtors' Sixth Amended Plan of Reorganization (the "Plan") based, in part, on the allegations that members of the Settlement Note Holders group may have traded WMI securities based on confidential information concerning WMI. Specifically, the Court noted its reluctance "to approve any releases of the Settlement Note Holders in light of [the] allegations" that "the Settlement Note Holders used their position in the negotiations to gain nonpublic information about the Debtors which permitted them to trade in the Debtors' debt." Opinion at 69. Similarly, in declining to decide the interest rate issue, the Court noted that these same unresolved allegations were among the "equitable reasons" that may "warrant[] payment at the federal judgment rate rather than contract rate." *Id.* at 94.

Incredibly, the Settlement Note Holders now claim that such allegations have:

> nothing to do with the bankruptcy process, the manner in which WMI negotiated the Plan and the related GSA or with distributions under the Plan. The alleged conduct has had no effect whatsoever on the Debtors or their estates, the Debtors' conduct in these cases or the rights among creditors. The alleged conduct is simply irrelevant to the Plan process, and discovery should be denied.

(Centerbridge Obj. at 12). Although those allegations remain unproven, it is undisputed that the Settlement Note Holders purchased substantial amounts of WMI securities at various levels of priority in payment during the very same period they were intimately involved in the negotiations of the Global Settlement and the Plan. And, importantly, the Settlement Note Holders have not suggested that any of them implemented an ethical trading wall that would be required – at the very minimum – in order to trade in securities of WMI. Nor have the

Settlement Note Holders attempted to explain or otherwise justify their conduct. Instead, the Settlement Note Holders lash out and accuse the Equity Committee of seeking discovery into these issues for improper purposes.

II.
REPLY

A. Existing Evidence Strongly Suggests that the Settlement Note Holders Were Privy to Material Non-Public Information regarding the Plan and Global Settlement.

1. The Settlement Note Holders assert that the unresolved allegations against them are baseless, unsubstantiated, vague and undeserving of further inquiry. However, it is undisputed that the Settlement Note Holders purchased various securities of WMI while they were actively involved in the negotiations of the Global Settlement and the Plan. (See First Supplemental Verified Statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (Dkt. No. 3761) (the "Rule 2019 Statement"). The Rule 2019 Statement shows that every Settlement Note Holder traded WMI securities after participating in material, confidential settlement negotiations, through at least October of 2009. Further, three of the four Settlement Note Holders traded several classes of WMI securities through at least April 21, 2010 – *after* the conclusion of all settlement negotiations for the first Plan; two of the Settlement Note Holders traded PIERS up until April 2010; and two of the Settlement Note Holders traded WMI securities within two weeks of the filing of the Rule 2019 Statement last May. Despite their outrage by these allegations, the Settlement Note Holders' Rule 2019 Statement shows why additional discovery is needed.

2. In addition, documents obtained from the Debtors show that during this period the Settlement Note Holders were actively engaged in the negotiations of the Global Settlement and the Plan. For example, on February 9, 2010 – long before the announcement of the Global

Settlement – the Settlement Note Holders provided the Debtors with a "preliminary working draft of a plan term sheet for WMI." (WMI-TPS-S0117396, Trial Ex. EC28). That term sheet provides that the equity in the Reorganized Debtor will be distributed to holders of Subordinated Debt Claims. (WMI-TPS-S0117401 at page 3, Trial Ex. EC28) On or around the time the Settlement Note Holder provided that term sheet, Owl Creek, Centerbridge and Aurelius were continuing to purchase Subordinated Debt Claims as well as other WMI securities. (Fried Frank 2019 Statement). On March 5, 2011, the Settlement Note Holders provided the Debtors with "some preliminary bullets on the structure and benefits of the alternative plan." (WMI-TPS-S0114348, Trial Ex., EC 27). Also, on March 10, 2010, Debtors' counsel sent an email updating counsel to the Settlement Note Holders on settlement discussions with JPMC. (Trial Ex., EC 32). And the Settlement Note Holders even participated in the drafting of the Debtors' May 7, 2010 Ruling Request to the IRS concerning the size and characterization of the Debtors' stock loss in WMB, which underlies the Debtors' NOL of in excess of $5 billion. ((WMI_PC_500348948.00001; Trial Ex., EC 49).

3. The Settlement Note Holders point to *some* information that existed in the public domain regarding anticipated tax legislation prior to the announcement of the Global Settlement on March 12, 2010. But the existence of *some* public, material information ignores the reality that the Settlement Note Holders likely received substantial non-public information regarding the status of the Global Settlement and the terms of the Plan before the general public. Moreover, the existence of *some* public information in no way rebuts the unresolved allegation that the Settlement Note Holders traded on material, non-public information.

B. The Limited Discovery Sought By The Equity Committee Is Both Appropriate and Relevant to Issues not yet Decided by the Court.

4. Regardless of whether the Court considers the Equity Committee's discovery

under Rule 2004[2] or under Rule 7026,[3] the limited discovery requested by the Equity Committee is appropriate and should be authorized by the Court. The Court has yet to determine the appropriate rate of post-petition interest to be awarded, which decision may result in holders of WMI preferred equities to receive a distribution. The allegations that the Settlement Note Holders used confidential information to advantage themselves at the expense of others weighs directly on these issues and should be of great concern to the integrity of the bankruptcy process.

5. At the confirmation hearing, the Equity Committee introduced evidence of other misconduct by the Settlement Note Holders. For example, the Equity Committee showed that the Settlement Note Holders, who would dominate the ownership and board of reorganized WMI, had proposed plans to the Debtors to capitalize on the $5.5 billion NOL carryforward of reorganized WMI in a manner that was inconsistent with Mr. Zelin's valuation. This Court found that Mr. Zelin undervalued reorganized WMI, in part by ignoring the true value of the NOL and by assuming that reorganized WMI would not engage in new business or receive new investments. Meanwhile, the Settlement Note Holders were hashing plans to put new business into WMI and infuse it with investments. Accordingly, the Equity Committee seeks discovery

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[2] Rule 2004 grants parties in interest "broad rights of examination of a third-party's records." *Snyder v. Society Bank*, 181 B.R. 40, 41 (S.D. Tex. 1994); *see also In re Cousins Barricades & Metal Prods. Inc.*, No. Civ. A. 99-2035, 200 WL 245860, *3 (E.D. La. Mar. 2, 2000). Emphasizing the broad purpose of Rule 2004, courts permit examination of any third party that has "knowledge of the debtor's affairs," *In re Ecam Publ'ns*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991), or who can be shown to have had dealings with the debtor, *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994). *See* Bankruptcy Rule 2004(b) (noting that Rule 2004 examination may concern "any matter which may affect the administration of the debtor's estate").

[3] Under Bankruptcy Rule 7026, the Equity Committee is entitled to discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed.R.Bankr.P. 7026(b)(1). "It is well recognized that the federal rules allow broad and liberal discovery." *Pacitti v. Macy's*, 193 F.3d 766, 777-78 (3d Cir. 1999); *see also Pearson v. Miller*, 211 F.3d 57, 65 (3d Cir. 2000) ("[A]ll relevant material is discoverable unless an applicable evidentiary privilege is asserted."); *In re ML-Lee Acquisition Fund II, L.P.*, 151 F.R.D. 37, 39 (D. Del. 1993) ("[D]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.") (internal quotation omitted).

into Settlement Note Holders' true plans for reorganized WMI and its knowledge of the valuation, both to determine how reorganized WMI should be valued[4] and to determine whether the Settlement Note Holders traded on confidential information about the undervaluation of reorganized WMI. Finally, if the unresolved allegations against the Settlement Note Holders are substantiated, there may be grounds for equitable disallowance of the Settlement Note Holders' claims, which clearly could affect the interests of equity holders.[5] *See, e.g.*, *Adelphia Communications Corp. v. Bank of America, N.A.*, 365 B.R. 24, 71-73 (Bankr. S.D.N.Y. 2007), *aff'd* in relevant part, 390 B.R. 64, 74-76 (S.D.N.Y. 2008) (equitable disallowance of claims by bankruptcy court is permissible and equitable subordination is not exclusive remedy).

1. Important Issues Remain Undecided and Subject to further Discovery.

6. Contrary to the Settlement Note Holder's allegations that the Equity Committee intends to use its pending discovery as a pretext for a new wholesale investigation (see Appalooosa Obj. at 9), the Equity Committee has no intention of relitigating approval of the Global Settlement or those issues previously decided by the Court. However, the Equity Committee submits that any issues that remain undecided, or that arise by virtue of the Seventh Amended Plan, are not "law of the case" and are appropriately subject to further discovery.

7. In the Opinion, the Court expressly did not decide the appropriate post-petition

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[4] A higher valuation for reorganized WMI could clearly benefit equity holders because, if it is high enough, equity holders must be given a stake in reorganized WMI, which is not part of the waterfall.

[5] Even if the Court's Opinion denying confirmation could somehow be interpreted as a determination as to the allowance of the Settlement Note Holders' claims, those claims remain subject to reconsideration based on "the equities of the case" pursuant to Section 502(j) of the Bankruptcy Code. 11 U.S.C. § 502(j); *In re Lomas Financial Corp.*, 212 B.R. 46 (Bankr.D.Del. 1997 (a determination of "cause" under Section 502(j) should be guided by the facts set out in Rule 9024). As the Court has already recognized, the allegations that have been lodged against the Settlement Note Holders are very serious, go directly to the integrity of the bankruptcy process and should be investigated and considered as part of the Court's deliberations regarding any future plan.

interest rate, and referred to the allegations against the Settlement Note Holders as an example of inequitable conduct that, if proven, could warrant post-petition interest at the federal judgment rate. (Op. at 94). Clearly, the Court was troubled by those allegations and rightly so. The Settlement Note Holders stand to recover hundreds of millions of dollars in this case, recoveries that may prove to have been based on inappropriate use of confidential information. The Settlement Note Holders' suggestions that the allegations are irrelevant to this case and creditors' recoveries under the Plan stand in stark contrast to this Court's Opinion and common sense. The Settlement Note Holders' arguments criticizing this Court's analysis of the interest rate issue should have been raised in a motion to reconsider. They are not appropriately raised in a motion to quash discovery into the issues that this Court identified as important and relevant.

8. The Settlement Note Holders wrongly complain that the Equity Committee lacks proper factual foundation for its discovery requests. This complaint is doubly misplaced. First, as described above, there is ample foundation for the request. Second, the Settlement Note Holders misstate the law. Under the liberal discovery rules, parties are permitted to seek all relevant information possessed by the other side without a threshold showing that the other side likely has the relevant information. The Supreme Court has made this amply clear:

> [T]he deposition–discovery rules are to be accorded a broad and liberal treatment. No longer can the time–honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.

Hickman v.. Taylor, 329 U.S. 495, 507-08, 67 S.Ct. 385, 392 (1947). Contrary to what the Settlement Note Holders argue, nothing in the *Twombly* line of cases – which deal with a completely different issue – overrules *Hickman*'s long-standing interpretation of the Federal Rules, which is still applied by courts in this circuit. *See, e.g., Unicasa Marketing Group, LLC v.*

Spinelli, 2007 WL 2363158, *2 (D.N.J. 2007) ("[A] party seeking to withhold documents that fall within this broad definition [of relevant information] must do more than accuse the requesting party of launching a fishing expedition." (citing *Hickman*, 329 U.S. at 507-08)). To be sure, a party may resist discovery of relevant information on the grounds of undue burden, harassment, or related grounds, but a party is presumptively required to produce relevant information. Under this Court's prior ruling, the requested information is unquestionably relevant.

2. The Equity Committee's Discovery is Not Overly Broad, Burdensome, Meant to Delay or Intended to Harass.

9. The Settlement Note Holders implausibly argue that the discovery requests are "staggeringly broad," burdensome and designed to cause delay. *See e.g.*, Owl Creek Objection, ¶¶ 32-35. This objection is meritless and is inconsistent with the Settlement Note Holders' prior representation to this Court. At the last hearing, the Settlement Note Holders persuaded this court to defer its hearing on these discovery requests based on their promise that, if the hearing were deferred until February, the Settlement Note Holders would be able to comply with our discovery requests within two weeks.

> THE COURT: Well, if I grant the discovery will you be providing it to them within thirty days, as suggested, by then: two weeks for documents and two weeks for deposition. So by the end of February – well, the first week of March, they have everything so they can prepare for confirmation?
>
> MR. WITZEL: The short answer is we hope we don't have to get there. But obviously, whatever the Court – the answer is we'll – the answer is yes, if that's – we'll do everything we can to follow that schedule.

(Jan. 20, 2011 Trans. at 77).[6] As such, the Settlement Note Holders should not now be permitted to argue that the requests are too broad for them to comply with them within a reasonable time

[6] A copy of the transcript of the January 20, 2011 hearing is attached hereto as **Exhibit A**.

period. The Equity Committee recognizes the seriousness of the allegations that have been made against the Settlement Note Holders and intends to treat those allegations with the seriousness that they deserve. The Equity Committee's proposed discovery schedule would conclude on March 8, 2011; our design is clearly not meant to prolong consideration of the Debtors' Seventh Amended Plan. To the contrary, we expect the Settlement Note Holders to produce these documents within two weeks, as promised, so that no delay will ensue. Indeed, the Settlement Note Holders appear committed to oppose the Equity Committee's discovery at every opportunity and to pursue additional discovery of Mr. Thoma and anyone who may have helped him in preparing his objection to confirmation of the Plan. (Aurelius Obj. at 16; Appaloosa Obj. at 17; Owl Creek Obj. at 28).[7] If any delay is caused by additional discovery, it will not be on account of the Equity Committee.

10. Further, the requests are not too broad: the Equity Committee simply seeks the Settlement Note Holders' detailed trading history in post-petition WMI securities; their acquisition of confidential information; their plans for reorganized WMI; and information about any investment walls in the Settlement Note Holder entities. This is all information that should be readily available to the Settlement Note Holders – as they implicitly represented to this Court at the last hearing. Nor are the requests too intrusive. Notably, the Debtors already sought and obtained the detailed trading history of every member of the Equity Committee.

3. New Discovery Should be Permitted Into Unresolved Issues Relating to any New Plan That is Put Forward.

11. A frequent refrain in the Settlement Note Holders' objections is that the Equity

[7] The allegations at issue all involve facts and circumstances known to the Settlement Note Holders, not anyone else, and thus discovery of third parties (especially Mr. Thoma) are unwarranted. To be clear, no member or professional retained by the Equity Committee has ever had any communications with Mr. Thoma.

Committee should be barred from seeking any new discovery because the period for discovery has ended and the Equity Committee had ample opportunity to discover this information earlier. *See e.g.*, Owl Creek Objection to 2004 Motion, Dkt # 6660, ¶¶ 7-11. This objection is baseless. The prior period of discovery was geared to the confirmation hearing on the prior Plan, which resulted in a *denial* of confirmation of that Plan. Now, a new Plan must be put forward and a new hearing must be held on that Plan. The Settlement Note Holders give no reason in law, equity or practice to preclude discovery into the new Plan, especially with respect to the unresolved factual issues that this Court explicitly highlighted in its denial of the prior Plan. This Court declined to approve the contract interest rate and the releases of the Settlement Note Holders in part because of the unresolved allegation that the Settlement Note Holders traded in securities based on their knowledge of confidential, material settlement negotiations. It is specious to argue that discovery into that matter is foreclosed by that opinion. If the record were closed on this issue, this Court would not have twice cited this unresolved factual issue as a ground for not resolving the release and interest rate issues. This factual issue, and others, remains alive and is the proper subject of appropriate discovery.[8] In *In re* Coram, this Court followed the same path and allowed post-denial discovery into the issues that were left open by the denial. *See In re Coram Healthcare Corp.*, 271 B.R. 228, 232 (Bankr. D. Del. 2001) (investigation of "issues relating to confirmation of a plan" conducted following denial of

[8] Notably, the Debtors have passed the deadline by which they promised to issue the "wrap" for the new Plan and the parties have allowed the Global Settlement Agreement to expire. The state of play is clearly in flux and material changes may be forthcoming. If and when a new plan is put forward, the Equity Committee should have adequate opportunity to collect evidence needed to contest the new Plan. Further, the Debtors' will clearly have to present new evidence relating to the valuation of reorganized WMI. *See* Opinion at 98-99 (concluding that the assigned enterprise value to reorganized WMI was too low, that the Debtors' expert should have considered more sources of investment in the company and that the Debtors' expert did not take into account the full possible value of the NOL). The Equity Committee clearly has the right to seek discovery relating to new evidence regarding the value of reorganized WMI. This consideration also demonstrates that the record cannot possible be deemed closed.

confirmation of first proposed plan).

WHEREFORE, the Equity Committee respectfully requests that the Court grant the relief requested by this Motion, and for such other and further relief as it deems just and proper.

Dated: February 3, 2011

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., ET AL.,

Debtors.

- -x

824 North Market Street

Wilmington, DE

January 20, 2011

2:04 PM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: MICHAEL MILLER

Objection of Proof of Claim 2692 Filed by Robert Alexander and James Reed, Individually and on Behalf of Others Similarly Situated (Docket No. 2528)

Motion of Robert Alexander and James Lee Reed for Relief from Automatic Stay to Continue Pre-Petition Class Action Against Washington Mutual, Inc. (Docket No. 5948)

Debtors' Sixty-Second Omnibus (Non-Substantive) Objection to Claims (Docket No. 6389)

Debtors' Sixty-Third Omnibus (Substantive) Objection to Claims (Docket No. 6391)

Notice of Status Conference Regarding, Among Other Things, the Opinion with Respect to Confirmation of the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Docket No. 6564)

Motion to Schedule a Discovery Conference (re: Adv. Proc. No. 10-50911) (Adv. Docket No. 139)

Pre-Trial Conference (Adv. Proc. No. 10-53420)

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PROCEEDINGS

THE CLERK: All rise. You may be seated.

THE COURT: Good afternoon.

MR. ROSEN: Good afternoon, Your Honor. Brian Rosen, together with my partner Adam Strochak, Weil, Gotshal & Manges on behalf of the debtors. We're also here with Mr. Mark Collins and Chun Jang from Richards, Layton & Finger.

Your Honor, we start the agenda at item number 28 and 29. These are matters associated with the Alexander and Reed claims. The first was our objection to their proof of claim and the second was their motion for relief from the automatic stay.

Your Honor, as we indicated to the Court in connection with the confirmation, we have resolved against this claim against the estate, and we are in the process -- and we just completed a term sheet with respect to it, and we're in the process of fully documenting the settlement agreement. And as a result of that, the claim against the estate will be withdrawn, and so will the motion for relief from stay.

So items 28 and 29, when we complete that documentation, Your Honor, will come off of the agenda.

THE COURT: Okay.

MR. ROSEN: Your Honor, items 30 and 31, the sixty-second and sixty-third omnibus will be handled by Mr. Jang.

MR. JANG: Good afternoon, Your Honor. Chun Jang of

Richards, Layton & Finger on behalf of the debtors.

Your Honor, as Mr. Rosen indicated, the next two items are the debtors' sixty-second and sixty-third omnibus objections. The sixty-second was a non-substantive objection, and we did receive two letter responses indicating that those claimants could not appear at this hearing. It turns out that after communicating with those two claimants, they really cannot appear at any hearing during the weekday, and they're reluctant to appear by phone because of their level of English proficiency.

But regardless, they did submit those two letters. They don't contest that they own stocks. But we did revise the form of order so that their claim is subordinated to the level of stock, rather than just being disallowed as stock, similar to what we've done in the past. I don't know if that was your preferred --

THE COURT: That is my preferred --

MR. JANG: Okay, Your Honor. If I may approach, I have a form of order and the blackline of the changes.

THE COURT: You may hand it up.

All right, and I will overrule the letter objections to the extent they are objections and will enter the order, then.

MR. JANG: Your Honor, the next item is the debtors' sixty-third omnibus objection. This is a substantive objection

where we objected to three different claims. With respect to these three claims, one of them we agreed to continue while we're waiting for further information from the claimant; that's with respect to claimant Live Nation Marketing.

There was one response filed, and that was by Mr. David Pappalardo, and we have reached out to him. He has agreed to the subordination of his equity claim to the status of equity, and we've adjusted the form of order accordingly.

And the third claim, Your Honor, that we're objecting to is a claim based on a violation of a truth in lending act. And we did not receive a response. However, it's clear from the face of the claim that it says that the claim is against the FDIC as a receiver of WaMu and JPMorgan, so it's not a claim against the debtors.

And therefore, we ask the Court grant the objections at this time.

THE COURT: Is there anybody here for the sixty-third omnibus objection?

All right, I will sustain the objection.

MR. JANG: And Your Honor, I do have a form of order and a blackline, as well.

THE COURT: You may hand that up.

All right, I'll enter that order, then.

MR. JANG: All right, Your Honor, with that, I'd like to turn the podium over -- back over to Mr. Rosen who will

handle some of the status conferences.

MR. ROSEN: Your Honor, when we were last here on January 6th, the Court announced that we would be receiving the Court's ruling the following day, and of course, we all went back and we waited and waited, and we got it. And we appreciate the fact that the Court took such time to write three different opinions on the three different issues, including the most voluminous one which was the approximately 109-page decision with respect to confirmation of the plan.

Your Honor, as a result of that and a lot of the thought that went into it and review of that and discussions with many people, we thought it would be best to come back to the Court by way of this status conference to discuss the opinion and the next steps for moving towards confirmation. We obviously understood the Court's direction, and specifically, as the Court found, on page 2, about the debtors' plan not being confirmable unless certain deficiencies are corrected. And it's our goal, Your Honor, to correct all of those deficiencies or make any modifications that the Court thinks is appropriate and move forward as quickly as we can so that we can make distributions to creditors.

As I indicated, Your Honor, we took the opportunity to create this notice of the status conference and attached to it, as Exhibit A, a chart. The chart specifically goes through each of the points that the Court raised in the opinion and the

steps that the debtor was proposing to take to correct or make the modifications that the Court was suggesting. And Your Honor, we believe that, for the most part, we absolutely clearly understood what the Court was suggesting in the opinion. But as the Court will note in the exhibit, there were a few instances where we noted or said, in the event that the Court intended something different, guidance from the Court would be appreciated.

So Your Honor, if I could just turn to those few items because we want to make the plan the way the Court thinks the plan should be, and we want it to read exactly as the Court believes it should be read. And if I could fo --

THE COURT: I'm not sure if you're looking for an advisory opinion here, but --

MR. ROSEN: No, I'm going back to the original opinion, Your Honor.

THE COURT: Okay.

MR. ROSEN: And just saying what is it -- I'm not asking for a second one.

Your Honor, specifically, if I could get the Court to focus on that Exhibit A and ask you to turn to what is, I believe, the fourth box down on that first page, the overall boxes say "released by the debtors" and the fourth one said "the releases provided by the debtors should not be extended to all present and former affiliates of the lease parties". And

we refer the Court back to page 72 of the Court's opinion. And Your Honor, what we indicated there on our resolution, because the way we interpreted it, was that we will -- section 43.5 of the plan will be amended consistent with the opinion, but it would include and provide for a release of affiliates of JPMorgan and the FDIC from the debtors because we interpreted the Court to say that based upon the consideration that is being provided by those parties pursuant to the global settlement agreement, they were entitled to a release for the benefit of their affiliates from the debtors and the debtors alone.

The next item, Your Honor, is -- I believe it relates to, Your Honor -- I just want to make sure -- on page 3. And this goes to the third-party releases. And it refers to page 84 of the opinion, specifically, as we included in the middle section, Your Honor, the third-party releases may be granted by those who affirmatively consent by voting in favor of the plan and not opting out of the third-party releases. Your Honor, we had included in the right-most box what we believed had to be done, and I would like to say that I've subsequently been informed, since we filed this on Monday, that we may even have to modify that to a certain extent. Specifically, Your Honor, as we indicated in the notice that we thought what the Court was asking us to do was send a release election form expressly setting forth that no distribution will be made without the

holder's affirmative agreement to the third-party releases provided in section 43.6, and that shall be sent to, A, impaired creditors who previously opted out of the releases or failed to return a ballot, and B, holders of disputed claims who did not receive a ballot in connection with the prior solicitation. Additionally, that all unimpaired creditors or impaired creditors who affirmatively voted for the plan and did not opt out of the releases would be deemed to have granted the third-party releases. That was how we saw it, Your Honor.

We have been told subsequently that purely as an effect or a result of the DTC manner in which securities are held that it is virtually impossible to determine who the people were that may have not opted out previously, and that we actually need to send the notice to all impaired creditors, meaning even those who may have opted out previously. So it would be a solicitation of that election form only across the entire securities. So all senior note people, Your Honor, all senior sub people --

THE COURT: Okay.

MR. ROSEN: -- all PIERS people.

That does raise an issue, Your Honor, as we indicated on page 4. And we ask for the Court's guidance there, as well.

THE COURT: Well, who are the unimpaired?

MR. ROSEN: The unimpaireds, Your Honor, and -- if I can pull out my plan -- Your Honor, we looked at Class 4, the

WMI medical plan claims, 5, the JPMC rabbi trust policy claims, 6, other benefit plan claims, 7, qualified plan claims, 8, WMB vendor claims, 9, Visa claims, 10, bond claims, 11, WMI vendor claims, and 13, I guess, convenience claims.

Your Honor, everyone but the convenience claims, those are the claims that are being paid by JPMorgan pursuant to the plan, they're being -- those obligations are being assumed and being taken care of by JPMorgan a hundred cents on the dollar, and that's why they were treated as unimpaired, pursuant to the plan.

And specifically, Your Honor, I believe we identified --

THE COURT: Now, should they be giving a release to JPMorgan if JPMorgan is assuming their claim?

MR. ROSEN: They're getting paid a hundred cents on the dollar on day one, though, Your Honor.

THE COURT: Are they being paid on day one?

MR. ROSEN: Yes.

THE COURT: Or are they being assumed and paid -- for example, the vendors?

MR. ROSEN: Paid.

THE COURT: They're being pa --

MR. ROSEN: Out of the fif --

THE COURT: Does JPMorgan agree with that?

MR. ROSEN: It's out of the fifteen million dollar

escrow that's established.

MS. FRIEDMAN: Your Honor, Stacey Friedman from Sullivan & Cromwell on behalf of JPMorgan Chase. We do agree with that. And the fundamental premise that we had read in your opinion on third-party releases for nondebtors was vote, consent, and then you can have your nondebtor release. And I think when we're talking about the classes that are clearly voting and clearly consenting, we understood your opinion quite clearly, I think. What Mr. Rosen is teasing up is the unimpaired classes who are -- instead of people who are getting a hundred cents on the dollar on day one, where we read your opinion and maybe read Middle Forming (ph.) and a few others, and are here for guidance as to what was intended.

THE COURT: Okay.

MS. FRIEDMAN: But we do want to do whatever Your Honor thinks is correct.

THE COURT: Well, I was concerned about the unimpaired and are they really -- I mean, are they unimpaired simply because you're retaining their legal rights, in which case that is in contrast to a release --

MR. ROSEN: No, I --

THE COURT: -- versus are they getting a check and being paid off in full on day one. That was, I think, my --

MR. ROSEN: Your Honor, you're absolutely correct. There might be a discrepancy or a distinction between those

like the medical plan or the rabbi trust who have claims that have not ripened at this time. Absolutely. But I would say half of them are in that category and half are not. Some are getting cash on day one.

But my concern would be, of course, in that instance, if we were going to go out and solicit them and they did not return, does JPM assume their obligation or not? And of course, we would hope that JPM would assume that obligation, and I think they would want that, as well.

This gets to another point, Your Honor. And -- thanks, Stacey -- and I bring it up in the context of the securities claimants, because to me, that is the one where it appears to be the greatest likelihood of somebody not responding. Your Honor, the Court previously entered orders, at least three of them -- and I say that with respect to the senior notes, the senior subnotes, and the PIERS -- as allowing the claims in certain amounts. They are not in any way claims that we are objecting to; they are not disputed in any way. And a lot of these people received their election forms and responded. Our great concern, Your Honor, is that you may have some holders of these securities who get a new election form from DTC and say, I already signed this; why am I going to do it again. Or, I'll just throw it in this pile, or I'll just throw it in that pile, and they won't get it back. And we see a great inequity as a possibility that these people with

allowed claims who aren't going to get their money. And we want to make sure that they can get their money. And that was why we reflected in the chart, Your Honor, we wanted to discuss with you a mechanism for providing this.

We think, Your Honor, maybe we'd do it, we'd just send them repeated notices every three months until six months and say, guys, we're really serious; you need to sign this. And they may call us at some point and say, where's my money, and we'll say, because you didn't sign the form, you didn't get it back. We understand the Court's reluctance to say send them a check and if they negotiate the check, then they've deemed to give the release, but we think maybe that's a possibility as well, Your Honor, because these are people who are clearly with allowed claims; they're securities people, and we want them to get their money. But at the same time, Your Honor, we understand your concern about somehow coercing a third-party release. But we really think that we have to come up with some resolution to this issue to get these people their money and not just have it out there in the great abyss.

What if a nominee, a broker doesn't send it to the actual holder, so the holder actually can't sign it and send it back, and they don't get their money? These are the issues that we've been grappling with for the last two weeks. How do we try and solve this problem? We want these people to get their money as quickly as possible.

THE COURT: Are you doing the distribution directly to the beneficial holders, or are you issuing the check to the indenture trustees or others?

MR. ROSEN: It is going -- it goes to the indenture trustee, then it goes through DTC. So it is possible that it -- for that very reason about these forms not making their way back through there, Your Honor. And that's our concern.

THE COURT: But I mean the distribution of the cash.

MR. ROSEN: The initial one will be held by the indenture trustee.

THE COURT: Right.

MR. ROSEN: Yes.

THE COURT: I don't know the answer to that.

MR. ROSEN: So we were -- as I said, we were trying to come up with some novel ways to do it. One was this possibility of treating it as an undeliverable for a certain period of time and send them repeated notices. And as I said, the other way, Your Honor, might be if we could -- if there could be a check actually sent to them with the notice. If you negotiate this check, you will be deemed to give the third-party release required by section 43.6 of the plan.

THE COURT: Again, your check is going to go to the indenture trustee.

MR. ROSEN: Correct.

THE COURT: So the indenture trustee's going to sign

it?

MR. ROSEN: Well, he's going to have to give the notice saying that this is what will happen if you do negotiate that check -- or, do negotiate this distribution.

THE COURT: I'm missing it. Are you writing one check --

MR. ROSEN: Our distribution --

THE COURT: -- to one indenture trustee --

MR. ROSEN: Well --

THE COURT: -- for the senior secured noteholders -- senior noteholders?

MR. ROSEN: Mr. Crowley represents one of the indenture trustees.

MR. CROWLEY: Your Honor, good afternoon. Leo Crowley, counsel for the Bank of New York Mellon which is trustee for the senior notes. In concept, on the effective date or ten days after the effective date, assuming that there's enough to pay the senior notes in full, we would get a single payment. I think, as the plan was originally cast, that payment would be short by the amount of opt-outs.

THE COURT: Um-hum.

MR. CROWLEY: So it might be short by five million dollars; I think there's a million and a half dollars in opt-outs, originally. And then we would deposit it to DTC. DTC, in turn, would fund those participants.

THE COURT: Right.

MR. CROWLEY: And what Mr. Rosen is suggesting, I think, makes a lot of sense which is that we'll get a handful of people who are simply not going to return ballots at all. In fact, there were -- of the four plus billion dollars of senior notes claims in the original solicitation, there was something like ninety-one million on which no ballots came back at all. And while I recognize, Your Honor, that it's a bit of a stretch in view of your ruling in the Zenith case, I think, because we're dealing with a very small constituency, and it's a constituency that in all probability is going to be paid in full, that saying, when they -- for those people, if they don't affirmatively opt out, then by accepting the payment, they're deemed to have released. I think that would be consistent with the spirit of the case law on releases in this context. Because otherwise -- it's a lesser of two evils problem.

THE COURT: Um-hum.

MR. CROWLEY: Either you reach a little bit beyond your ruling in Zenith, which I acknowledge, I think both of us are asking you to do, or you run the risk that there's somebody out there -- and there was a retail distribution; there are individual investors who own these securities -- you run the risk that somebody, out of ignorance, is simply not going to get their distribution when they would have intended to give their release and they would've wanted the distribution.

THE COURT: Well, I don't know if anybody else wants to weigh in on this issue.

MR. STARK: Good afternoon, Your Honor. Robert Stark from Brown Rudnick on behalf of the TPS Consortium. I don't want to weigh in specifically on this issue, other than harkening back to your original statement, is this an advisory opinion. I presume there's going to be a new plan filed. I presume these people on this side of the aisle can figure out these issues. And I presume that we're going to have another hearing on confirmation of that plan. And so the idea of raising sort of intermediate issues and saying, hey, Judge, how should we fix them, it's kind of an interesting idea. I think it's completely out of order, though.

MR. HODARA: Your Honor, with respect to the specific issue that was just being discussed -- Fred Hodara, Akin, Gump, for the official committee of unsecured creditors -- with respect to that specific issue, the creditors' committee, over the past two weeks, has talked about the very issue that Mr. Crowley just addressed. And we think, as he stated well, it is, in a sense, the lesser of evils. We think that the risk that individual holders will miss out on their distribution because they have not affirmatively checked the box and granted the release is a greater evil. And so we do think that the suggestion that on receipt and then cashing of the distribution the release is deemed to be given is a fair way to do it and,

in the circumstances, the appropriate way to proceed.

THE COURT: Okay, anybody else?

MR. MAYER: Yes, Your Honor. My name is Tom Mayer; I'm from Kramer Levin and we represent Aurelius in its individual capacity as a PIERS holder and holder of securities. Just a question: the issue of exactly who would get the new opt-outs has been a matter of some debate among the settling noteholders, and we were hoping that we could limit it just to people who need the new opt-out, as your opinion suggested. Mr. Rosen's now said that's not possible. We're not sure we get that. But I have a -- just a question as to mechanically, how that's supposed to work because you're going to get a whole bunch of people who signed the opt-outs "correctly" the first time. They're now going to get a second set of opt-out forms. Which form is going to govern? The most recently received form? The first form? The second form? That was one of the benefits of just trying to make sure only the people who needed a do-over got. You've got a lot of people who did it "correctly" the first time who'll now get a chance to do it differently, and the question is which form will govern.

THE COURT: My guess is the last one.

MR. MAYER: So the last form received governs.

THE COURT: That's usually the rule, I think.

MR. MAYER: This is basically a completely new opt-out.

UNIDENTIFIED SPEAKER: Unfortunately, that's the way it's done.

MR. MAYER: Okay, thank you. I'm sorry.

THE COURT: Is that the debtors' thought, too?

MR. ROSEN: It's, unfortunately, the result that we get to because of the DTC structure, Your Honor, yes. We have to -- we can't tell the universe of those that did not opt out, so we have to go back and ask. And we will have to set new record dates in order to accomplish this. And Your Honor, there may be people who sold out of the prior position; they may hold it now, too. So that's why you have to do it this way.

Your Honor, that takes me to page 4 of the chart. We're in the section "released claims" and we're focused on page 86 of the Court's opinion. And in page 86, in the first full paragraph, the Court focused on language that was in section 1.159(ii) of the definition of released claims and felt that that was inappropriate. And what we suggested there in the proposed resolution, Your Honor, was modifying that as the Court described in the next full paragraph on page 86, and inserting that into the Romanette (ii). And again, Your Honor, if the Court intended otherwise, we would ask the Court for guidance.

THE COURT: Well, I do have some concern about -- many of these look like you're correcting it, but without everybody

having a chance to see what language you actually put in and --

MR. ROSEN: Well, Your Honor, in this --

THE COURT: -- being given the chance to -- as Mr. Stark says -- object to confirmation if there's some suggestion or some other issue or some disagreement as to what the proper correction should be, I'd like the parties to either talk about it or we'll have another hearing on it.

MR. ROSEN: Okay. Your Honor, this is obviously a provision that is of paramount for JPMorgan and the FDIC with respect to these third-party releases, and that's why we were trying to get it right, here, and make sure that we follow the Court's directive. And one of the issues that we have, Your Honor, is the fact that the global settlement agreement has a 131 expiration date, and parties want to know if, in fact, they're getting what they think they're getting before they sign on for any additional extensions of that.

THE COURT: Um-hum.

MR. ROSEN: We obviously hope that they will, but that's why we were looking, at least with respect to this one, right away, Your Honor, for the Court's guidance.

THE COURT: Well --

MR. ROSEN: I heard you.

THE COURT: -- it looks like what I said on page 86, so --

MR. ROSEN: Okay. Thank you, Your Honor.

THE COURT: -- but you can see that as well as I.

MR. ROSEN: Thank you, Your Honor.

Your Honor, next -- I don't know if I -- oh, we're down on the bottom of page 4, Your Honor, with respect to the post-petition interest, and the Court's -- we're referring, now, to page 89 and 90, Your Honor, of the opinion. And of course, the Court referenced in there the necessity to make sure that late-filed claims are covered, and obviously, we will make the modifications to the waterfall to make sure that the late-filed claims are included.

Honestly, Your Honor, I'm a little bit baffled, here, because I don't know where you cut off a late-filed claim. And so, Your Honor, one of the things that we've been discussing is is a late-filed claim one that is beyond the bar date that satisfies the Pioneer standard of excusable neglect, or is it any claim that is filed beyond the bar date, and if so, up until what date? And the opinion did not say it; I, honestly, couldn't find anything in the Code that dealt with this issue.

THE COURT: I don't think 726 addresses it, either, though, does it?

MR. ROSEN: It doesn't, Your Honor. And so the question is what is, or how do you define the universe of what a late-filed claim is? Is it one that just satisfies Pioneer?

Right now, Your Honor, we see the magnitude of this to be approximately five million dollars. It is not a large

number. But we're still trying to understand what the Court would like there..

THE COURT: Well, as I recall, this was raised by the LTW holders. So -- maybe you can tell us what 726 means.

MR. STEINBERG: Well, Your Honor, I think that the most simplest and practical way of dealing with this is that since they never sent notice to the LTW holders, and that's why we have this problem and the LTW litigation's being handled as a class action, then the simple matter is that if we win the litigation, the entire group will be allowed, and if we don't win the litigation, the entire group will not be allowed. And the issue about late filed and not late filed won't apply to the LTW holders.

MR. ROSEN: Actually --

THE COURT: So you're really only worried about your constituents.

MR. ROSEN: Right.

MR. STEINBERG: Yeah. I mean, unless someone else wants to pay me.

MR. ROSEN: And honestly, I wasn't even talking about him.

THE COURT: I know.

MR. STEINBERG: He never worries about me, I know.

THE COURT: Because there's a separate escrow for that.

MR. ROSEN: Right, because we've focused on them separately, Your Honor, and included them in the general unsecured class from the get-go. We're focused on everybody else who may have filed a late-filed claim.

MR. STEINBERG: No, I assumed he wasn't talking about us because our number was more than five million dollars.

THE COURT: Five million, that's what I thought.

MR. STEINBERG: So I assume that what I said is the way that he's planning on dealing with this, but we'll wait to see it when we see it in paper.

MR. SILVERSTEIN: But Your Honor, just to add two words, if you want the amicus answer -- it's Paul Silverstein from Broadbill.

THE COURT: Yes.

MR. SILVERSTEIN: I mean, if it's the Pioneer standard, under Pioneer, they're not late-filed claims because if you satisfy Pioneer, you're deemed to be a timely-filed claim.

THE COURT: Good point.

MR. SILVERSTEIN: So that's my only amicus comment on that one.

MR. ROSEN: I appreciate that. So then I need a back-end date, and I have no idea what that back-end date could be, Your Honor.

THE COURT: The distribution date, is what you're

suggesting? I don't know.

MR. ROSEN: Yeah.

THE COURT: U.S. Trustee have any comment on this? I don't --

MR. ROSEN: We would suggest the confirmation date, Your Honor. We think you have to call the question at some point, but --

MS. SARKESSIAN: Your Honor, Juliet Sarkessian for the U.S. Trustee. I'm here covering this for Jane Leamy. I'm --

THE COURT: She's right behind you.

MS. SARKESSIAN: Oh, is she here? Oh, you're back.

THE COURT: She's backing you up.

MS. SARKESSIAN: Sorry.

MS. LEAMY: Your Honor, unfortunately, I had to run out for another hearing that got pushed again, so I didn't get the issue. I apologize.

THE COURT: The issue is with respect to the inability to pay interest on unsecured claims until late-filed -- or, excuse me, late-filed claims get paid before interest gets paid on unsecured claims, and the question is, do we have to hold on distribution to see if some late-filed claim gets filed --

MS. LEAMY: Right, well, I don't know if this --

THE COURT: -- years from now, or do we just go ahead and make the distribution --

MS. LEAMY: Right.

THE COURT: -- based on what "late-filed" claims have been filed to date.

MS. LEAMY: Well, I don't know if the issue of any reserve was discussed. I mean, I guess if the parties could come to an appropriate reserve amount.

THE COURT: The debtor estimates that these -- today, anyway, the late-filed claims are five million --

MR. ROSEN: They're about five million --

THE COURT: -- other than the LTWs.

MR. ROSEN: Right. Other than the ones -- there were other late-filed claims that we have already objected to on substantive grounds like one you disposed of earlier today, Your Honor.

THE COURT: Um-hum.

MR. ROSEN: Those that have not been disposed of, yet, are approximately five million dollars. So it's not a reserve issue as much as, again, we need to just call the question at a certain point of time. We think the confirmation date should be the appropriate date, Your Honor, since that's when everyone is locked in. We can't have this going on forever and ever.

MS. LEAMY: Well, I think if there's a choice, we want to make allowance for some late-filed claims. Obviously, someone has to prove their case, but I would like to make -- I would think that there should be allowance for the -- for any late-filed claims.

THE COURT: I think there should be a reserve for those that have been filed through -- let's say through confirmation date, and then we'll deal with it that way.

MR. ROSEN: Thank you, Your Honor.

Your Honor, going back, then, that paragraph on post-petition interest, again, the Court indicated that in accordance with 726(a), as expressly subject to subordination pursuant to 510, interest can be paid on unsecured claims upon the payment in full of unsecured claims, including late-filed claims. We will now make sure that we have the late-filed claims included in that. They will be catalogued, if you will, Your Honor, up to the confirmation date, and as I said, we estimate those to be five million dollars at this point.

And the plan already provides, Your Honor, for the payment in full of all of those allowed unsecured claims, and as I indicated, we will make sure that the waterfall contains these late-filed claims that we know of, prior to the payment of the post-petition interest.

Your Honor, on the top of page 5 of the chart, there is an issue there with respect to the applicability of contract rate rather than at the federal judgment rate. And as we indicated, Your Honor, we submitted that as there was no admissible evidence warranting the application of the judgment rate, the contract rate should apply. We, Your Honor, don't see any reason not to do that at this time. I know the Court

made mention of this in the opinion at page 94 without saying whether the Court needed to reach the issue, however, because the Court felt that there were other issues that the Court was dealing with in the opinion itself.

THE COURT: I'm sure others have a comment on this.

MR. ROSEN: Some may, Your Honor.

MR. STARK: Your Honor, this is a large trialable issue. The plan, as I recall Your Honor saying, the plan was not being confirmed. It wasn't actually a tried issue. It wasn't my burden of proof; it was theirs. But in any event, there'll be a new plan, and in response to all the discussion with Jane Leamy, I presume there'll be a new record date motion. There'll be lots of procedure. There's a 2004 on these issues. But as I read Your Honor's opinion and I read Mr. Toma's (ph.) objection, we have an open issue that we have to explore through discovery and raise at confirmation. That's where we are. The fact that Mr. Rosen warrants -- says that this doesn't warrant, in his quasi-adjudication capacity, further consideration is interesting, but he's only one side of the aisle. There are lots of others on this side of the aisle who think quite differently.

MR. STEINBERG: Your Honor, Arthur Steinberg for the LTW holders. I actually think the simple fix is simply that the post-petition rate will be set pursuant to the Court's order at confirmation when you will have the presentation of

all the evidence; why not have a flexible document that will not have to be resolicited if it turns out that Your Honor wants to consider the federal judgment rate. You won't have to, then, do the whole process again. So I don't know why this thing is not structured so that it just provides you post-petition interest to be paid at either the federal judgment rate or the contract rate as set forth in the Court's confirmation order.

MR. JOHNSON: Your Honor, Robert Johnson from Akin, Gump on behalf of the official committee of unsecured creditors. It's our view that the record closed on December 7th, and Mr. Toma's --

THE COURT: Well, on that plan.

MR. JOHNSON: Yes.

THE COURT: But aren't we going to have another plan? I didn't confirm that plan.

MR. JOHNSON: That's right. That's right. But Mr. Toma's objection was filed on November 19th. Discovery was still in process. It is our view that there was a time for discovery, and that time for discovery passed. And so we are reluctant to see any reopening of the record. So that's the position of the committee on that.

THE COURT: So the debtor won't be presenting any evidence in support of its modified plan? I don't know if -- I'm not sure I agree with you.

MR. JOHNSON: I see the point, Your Honor.

THE COURT: Yeah.

MR. SARGENT: Your Honor, Edgar Sargent, Susman Godfrey on behalf of the equity committee. Just briefly want to register our agreement with Mr. Stark that the record is, in fact, not closed, that this will be a new plan, and we've filed a motion for 2004 discovery related to these issues, and we'd like to be permitted to proceed with that and to use the information in the subsequent confirmation hearing. Thank you.

MR. CURCHACK: Good afternoon, Your Honor. Walter Curchack on behalf of Wells Fargo as trustee for the PIERS. I just want to make one point with respect to this argument. I don't rise here to address the unsubstantiated allegations that have been made against certain holders of the PIERS.

THE COURT: Yes.

MR. CURCHACK: I simply rise on behalf of all the other PIERS holders, including Mr. Toma, who I don't believe should pay the price if, in fact, there was some misconduct by another member of their class. This is quite the contrary from the situation in the Coram case. The PIERS didn't benefit as a class by any of the alleged misconduct, assuming there was any, and I certainly am not suggesting that there was any. And I think the concept that the entire class ends up losing its recovery because of -- it's contractually-obligated to pay contract rate interest because there might have been something

done by some members of the class is absurd. And I don't even think Mr. Toma realized the hole he might have dug himself for if that was the case that that's the way that this is interpreted.

THE COURT: Um-hum.

MR. CURCHACK: Thank you.

THE COURT: I think I'll be hearing all this again at a future time. But that's why I made no ruling on it.

MR. WITZEL: Your Honor, Steven Witzel from Fried Frank on behalf of the noteholders. Good afternoon. We would just argue that the time for the equity committee to take discovery of the settlement noteholders has passed. They fully and completely took part in the confirmation discovery process. They chose not to take any discovery of the settlement noteholders, and their objection to confirmation had no reference to the settlement noteholders. And the executive committee, in particular, was fully aware of the -- well, I'll say the baseless hearsay allegations of misconduct, and they chose not once but several times to forego any factual investigation prior to confirmation.

Look, the settlement noteholders are prepared to demonstrate that these hearsay allegations are, in fact, baseless and meritless. They're not prepared to put up with what we would call absurdly broad and time-consuming and wasteful document and deposition requests, motivated, we

believe, in large part to delay this otherwise orderly process and seek intrusive discovery on very confidential and proprietary information. We would, to the extent that the Court believes that this needs to be reviewed or put forth, we would ask for some time to respond to the 2004 and also to work with the debtors and creditors' committee if the Court believes it's necessary to come up with a process to address the Court's concerns and supplement the record as needed.

THE COURT: All right, well, I will get to the discovery motion. I did not schedule it for today.

MR. WITZEL: Thank you.

THE COURT: But I'll discuss scheduling of it at the end.

MR. MAYER: Your Honor, Tom Mayer again for Aurelius. I'd like to try to narrow and respond to something you said about another hearing.

Your Honor, there was a plan, and there were a set of modifications proposed to that plan in order to address issues that Your Honor raised in your order. That doesn't require a completely new plan, and if the completely new plan deals with changing a rate of interest from coupon to federal judgment rate, that requires complete resolicitation. That was never our deal. People voted an balloted based on getting the coupon rate. So obviously, if Your Honor decides that the whole plan fails because of that, that's Your Honor's decision to make.

But I don't think we're in a situation where you have to do a complete new plan and then you get a new confirmation hearing, because if we're doing a completely new plan including that material term, Your Honor, we're talking 15 to 1600 basis points worth of recovery here.

THE COURT: Um-hum. Um-hum.

MR. MAYER: That's a new resolicitation; that's back to square one. I didn't think we were going that way; I hope we're not. Our hope was there's a set of modifications, there may be some required testimony on those particular modifications; maybe not. But there will have to be, obviously, a hearing on the approval of the plan with those modifications. But that doesn't, in my view, shouldn't allow a complete reopening of the first confirmation hearing. The issue before the Court, I think, is there were several things wrong with the plan. Basic deal got approved. Several things wrong with the plan. Try to fix it. A set of modifications, has to be a hearing on those modifications. Maybe there's evidence on those modifications. But that's not, okay, now, let's go back and start over and raise all sorts of issues that could have been raised months ago. Because if we're going to start tinkering with an enormously material term like 1,500 basis points of recovery for a particular class, that is a resolicitation and that's going back to square one. And I was hoping we were not there. I don't think that's appropriate.

MR. STARK: Your Honor, may I respond to that?

THE COURT: You may.

MR. STARK: Again, I feel like we're having a debate over interlineating an order. Okay? You had a plan; it didn't get confirmed. You issued a very lengthy opinion as to why and said go back and figure it out amongst yourselves how to make it comply. They haven't done that, yet. They're coming up in succession, all the people on that side of the aisle, and saying, hey, Judge, does this work for you? Well, maybe Mr. Mayer doesn't -- one idea doesn't work for him. They have a lot of work to do, apparently. And eventually, they'll file something, and eventually, we'll all get to look at it. And then we'll all get to litigate it, if appropriate. But the idea to come here and sort of say, well, I'm not really sure what procedure we're going to use, Your Honor, and we don't have agreement among ourselves; what do you think?

THE COURT: Um-hum.

MR. STARK: And then say, well, it's just little, tiny modifications. Your Honor, you ruled that the PIERS class couldn't divert -- within that class, you couldn't have partial rights offerings; you had to go to the full class. And as I read this on page 5, it says they're now going to go to a full class of rights offering. That feels like a different plan to me.

Again, I'm not trying to prejudge what they haven't

done yet, but it seems kind of strange to me that they keep coming up in succession, saying, well, tease this out a little bit. Help -- we're going to tease out a little bit of additional advisory opinion about how we can get this done as quickly as possible. I frankly think, Your Honor, is it's your job, litigants. Go figure it out amongst yourselves and come back when the time's right.

MR. ROSEN: Your Honor, I know Mr. Stark's going to raise whatever he can because of what happened in his little adversary proceeding on the summary judgment, but let's talk about what usually happens in a case, which is when you reach conclusion of a confirmation hearing, and as you and I have done together on other cases, the Court will inform the debtor of certain modifications that you would like, and then you will enter a confirmation order. And I understand the reasons why that was not done in this particular circumstance, but I also understand that the Court in the opinion did say that -- fix these few things and then come back. And I also do understand that the Court noted that 1129 was satisfied in many other respects. And you went down the list of what was satisfied, and you said please fix these things.

Why he said succession? Because I keep getting interrupted, Your Honor. I could do this all at once. People want to -- Your Honor, I could go right to the bottom line which is what I think my global approach to this is, and I'm

happy to get there as soon as we finish the chart.

THE COURT: Well, but I think his point is you can tell us what your global approach will be, and then I'll remain silent and you'll do it, and then people will object, and then we'll have a hearing to see if that passes muster.

MR. ROSEN: Well, that is one way to approach it. But I would say that that's probably not the most efficient; it's certainly not the most cost-effective. But we could do it that way, Your Honor.

The other thing I would note is with respect to some of these things that you've suggested that we do, they are small changes. They are not anything significant. The on that Mr. Mayer suggests would be a big change, and it could have an effect if I had to go solicit his class. His class voted no on the plan, Your Honor, and frankly, I'll take the no vote. And I won't go back and resolicit them, necessarily, because I'll just go along with all the other classes who voted in support of the plan. That would be one thing for us.

But Your Honor, let me go to what my bottom line is because I think it's the best way to approach this. Your Honor, we think that there are modifications that have to be made to address the Court's opinion. We've -- using his words, Mr. Stark's, that is -- we've teased them out, here. Your Honor, we understand what the modifications are; those that we have some questions on, we were looking for insight from the

Court. And I known at least with respect to some of these, the Court has given us that insight.

Your Honor, we would like to move forward as quickly as possible. We said that in the notice. We, in fact, as the equity committee noted in their motion to expedite everything, we said that in the press release after the Court rendered its opinion. Your Honor, we aim to do this by way of filing --

THE COURT: I didn't read your press release.

MR. ROSEN: I know, but they did --

THE COURT: Okay.

MR. ROSEN: -- and they cited it in their papers.

THE COURT: Right, okay.

MR. ROSEN: Your Honor, we aim to do this -- we could file a short few page modification or we could give you the composite addresses it. And I know from being before you on many occasions, including at the confirmation hearing, you'd like to see the full blacklined version so that it's all on one piece of paper. And that's what we've done, Your Honor. We've created -- we're in the process of finalizing, subject to what we're doing today, a seventh amended plan. But it really only addresses the modifications that are in the opinion.

We don't want to go out, Your Honor, and solicit acceptances and rejections again. We think that's a waste of time. We would like to move forward. We would like to do it, Your Honor, by way of a wrap. A supplemental disclosure

statement wrap that essentially goes around the other one. People have already got the disclosure statement. We'd like to give them a short piece of paper that explains what the Court did, explains what we're doing to address what the Court did, and now letting everybody know, here's an election form for you. Please send it back. If you're someone who didn't get a stock election form previously, like a disputed claimant like the Court asked us to do, please let us know if you want a stock election. If in fact you're somebody who's below that threshold that we designated for a rights offering, here's your chance. But I would have to say, Your Honor, we may get to the point, and we included it in this notice, that we can't -- if go that low, meaning to that low below the threshold, we may not be able to satisfy that subscription rights offering, and we may have to yank it completely and just return the thirty-one million dollars that we already received because it won't satisfy certain obligations under something called the "principally/partly rule" which is beyond me and I need better people to explain it. But that is a possibility.

So Your Honor, it's our goal to give you this wrap, for you to look at this wrap and say it satisfies whatever 1125 supplemental disclosure I need to do. Go out and solicit everybody that you said, Mr. Rosen, which is now everybody in the world for this election form, subject to whatever we decide, Your Honor, on that unimpaired grouping, and then come

back.

Now, Mr. Stark has stood up and he said, I want a full hearing on this. Well, you know what, a full hearing would be nice, but I really don't think it's necessary. The Court gave sixty-five pages in its opinion, detailed discussion of the global settlement agreement. And unless, as a result of what we're doing here, we're modifying the global settlement agreement, other than tweaking it to remove people who otherwise were getting a release, consistent with the Court's opinion, or extending the date of the termination itself, why do we have to come back here and have another hearing on that? Let the Court take the hearing, the transcript that you had previously, all that was before the Court, take the findings, put it into a piece of paper, and by the way, that may be an appealable order when the Court confirms a plan. There's no reason to go through that process again.

What else would we do at a confirmation hearing, Your Honor? It would be just showing you that we satisfied everything else because the Court already told us we satisfied 1129 in going down the list of whatever ones that we did do and the ones that the Court noted. To the extent that there was one that the Court didn't reference, we're happy to do it again.

There was a reference, Your Honor, to the payment of fees and expenses and not having them subject to the Court's

review is reasonable. We're now making that change in the plan, and that, obviously, would satisfy 1129 as you see that one subsection to be applicable.

So that's what we envisioned, Your Honor. A wrap, getting that approved, going out with an election form to everybody, coming back here as soon as possible to have this confirmation hearing. To the extent that the equity committee or Mr. Stark or anybody else in this courtroom wants to appeal from that confirmation order, if the Court decides to enter one, then let's do that. But let's get through that process, let us satisfy what the Court asked us to satisfy, let's do it as expeditiously as possible.

When do we want to do this, Your Honor? We think, Your Honor, that we can get this wrap filed very quickly. There is an omnibus date on February 8th, and I know that if I filed it tomorrow, that would be less than twenty-some odd days required by the rules, and you might say, Brian, I don't want to have it. You may say Mr. Rosen.

THE COURT: Mr. Rosen, I would.

MR. ROSEN: You may say, Mr. Rosen, I don't want to have it on February 8th. And I would say, Your Honor, okay, I understand that, but waiting for the omnibus late into February may be too late. Can we pick a date in the middle of February that would work that would satisfy the Bankruptcy Rules. And I would say, that would work for me. And then I would want to go

out, Your Honor, and have another one. And so on down the line, Your Honor. So our goal is to try to reach confirmation and consummation as quickly as possible, and at the same time, giving everybody the right to make these elections that the Court thinks it's important to have made.

So that's our goal, Your Honor. That's where we come out. It's to give everybody the opportunity to step up, but at the same time, take advantage of what the Court did over a course of a week and a half and not belabor the Court and everybody else here to redo the process.

Now, if I can go back to one other thing, and I think I already did say it, which is the last issue I saw on this chart, Your Honor.

MR. STARK: Can I have an opportunity to come back and respond to that?

THE COURT: You can.

MR. STARK: Appreciate it.

MR. ROSEN: The last issue, Your Honor, was the one that I just mentioned, but I want to repeat it, and it was the subscription rights, Your Honor. We saw what the Court wants us to do as far as the threshold. We're willing to dip below it if, in fact, it does not bring into violation any securities laws, and if it does, Your Honor, it would be our intention to withdraw the rights offering to the plan itself.

THE COURT: Okay. All right, responses to that

suggestion of process, going forward?

MR. SARGENT: Your Honor, Edgar Sargent again on behalf of the equity committee. Now, Mr. Rosen points out that the Court approved certain parts of the proposed plan and GSA and requested modifications to others. One of the issues that the Court requested modification to or had concerns about was the interest rate. And the Court had concerns about that because there wasn't -- the Court had concerns about certain allegations which had not been fully developed. The debtors and the creditors' committee, by seeking to cut off discovery and push this confirmation process through with no further development on that issue, are essentially asking for reconsideration of that ruling.

We think the Court's order is clear that the existing record is not adequate to rule on that issue, and that, therefore, further discovery needs to be developed.

Now, we have a scheduling proposal --

THE COURT: Let's not talk about the discovery yet, but in concept --

MR. SARGENT: It's just I was using it -- I'm sorry, Your Honor, but I was using it --

THE COURT: As one example. But in concept, with respect to those items that I did decide, they're not going to be relitigated.

MR. SARGENT: Correct.

THE COURT: Okay. It's law of the case, basically.

MR. SARGENT: We would agree with that.

THE COURT: Okay.

MR. SARGENT: But there are open issues that need to be explored. And we have a proposal for a schedule that I believe is somewhat longer than Mr. Rosen's, although it is roughly within the same ballpark. It's not months longer. We think that there's approximately a month's worth of discovery that needs to be taken. The issues that need to be explored, there's discovery; we've served, as has already been noted, the Rule 2004 discovery requests into the settling noteholders investments. There are document requests and interrogatories. We think two weeks, assuming the settling noteholders cooperate properly. There's not a lot of objection or motion practice related to that. That discovery could be completed in two weeks. And we noted depositions for each of the four settling noteholders and complete those in another two weeks.

There's discovery into the -- the other major issue, factual issue that I believe needs some discovery is the revaluation of the reorganized debtor. The Court found in the order that the evidence submitted by the debtors, the value of that entity is not sufficient, not proper. We would propose that the debtor would provide us with a new valuation at some point prior to plan confirmation, and we would have a chance to explore that in discovery and respond to it. Probably need two

weeks, at least, to do that. And the timing for that would key off of when the debtors would be able to come forward with their new valuation.

We need some time to respond to our -- we filed a motion, in addition to our motion for Rule 2004 discovery, the equity committee has filed a motion to certify certain issues in this case for appeal. We would want some time for that motion to certify; we don't need, obviously, the entire appeal to have been resolved before we proceed with confirmation, but we would ask that at least that motion to certify be resolved.

There's going to have to be the solicitation and consent to the releases. Apparently, the debtors' planning on doing that without first getting Court approval -- although that wasn't completely clear to me -- of the revised language. And that's going to take at least several weeks.

We have -- there's one other, I think, more minor issue that we're going to conduct some discovery into; we're going to serve discovery requests either later today or tomorrow on the debtors, going to this question of the PIERS and whether or not the PIERS are properly treated as debt or equity. It may well be that we can just resolve that informally -- I hope so -- with the debtors in just a matter of days by getting the information that we need. But that's one other thing we want to resolve before the hearing.

Then we would need to see the proposed revised plan,

including, of course, the revisions to the releases. We would need probably two weeks after having received that to prepare objections, and that objection period, of course, would also have to be subsequent to the discovery.

So I'm thinking of a month for discovery, putting us to roughly February 20th or 25th to complete the discovery that we've mentioned. The plan is out by that point, two additional weeks to prepare our objections, and then the Court could schedule a hearing at its convenience at some point after that, sometime from mid-March to sometime in April. That would be our proposal for a schedule, Your Honor.

MR. WITZEL: Your Honor, Steven Witzel for the settlement noteholders again, understanding that the Court is just interested, at this moment, in the process point and limited to that and not the discovery. Again, just simply noting -- talking about the PIERS and debtor equity, these are all issues that should have -- could have, should have been brought up in round one. Why this is coming up now is -- we don't know. And certainly the -- again, just --

THE COURT: Well, but it could have, but no decision was made, so.

MR. WITZEL: Well, we -- okay, we would argue that the -- all that information was available, and they should have brought it up. But with respect -- the important point is with respect to the allegations of the misconduct, again, we just

repeat that these are hearsay allegations, they're baseless, they're meritless, and the idea that there's going to be a month or months of discovery, it was these same considerations, the avoidance of the sort of costly and time-consuming discovery based on, frankly, very flimsy and unsupported allegations that led the Supreme Court to change the notice requirements in Iqbal and Twombly, and the idea that they can make these allegations and then try to get wholesale discovery for process point, we would strongly oppose that. But we can talk about that later.

THE COURT: Okay.

MR. WITZEL: Okay, thank you.

MR. MAYER: Thank you, Mr. Stark.

Your Honor, Tom Mayer, again, for Aurelius. The hearing on discovery will be held at some future time, and we'd like to argue at that point that no discovery is -- on the points sought is justified or required and we'll put in papers to deal with it. That's not for today. We understood that that was -- that motion to shorten time was not being granted, and therefore, I will not address the appropriateness of discovery or not.

But again, I think it comes back to the point, you asked for process and hearing. The question is what are you going to hear? Are you going to hear just the modifications, or are you going to deal with issues that could have been

raised earlier but weren't on the grounds that this is a completely new plan. We hope that you look at this as a set of modifications and not as a completely new plan because I do think that puts us back to square one with a whole bunch of things. Mr. Rosen is correct that on numerosity grounds, the PIERS class voted against the plan, but it's also true that the large holders of the PIERS elected not to litigate cram-down because we were in support of the settlement.

Again, if this is a set of discrete modifications, we can get this case done. If it's a completely new plan, it's a completely new hearing.

MR. CURCHACK: Your Honor, Walter Curchack again on behalf of the PIERS trustee. I'd just like to limit myself to the process point and remind the Court -- I'm sure it's not necessary but I will anyway -- that every day that this case goes on is money out of the PIERS' pockets, the innocent PIERS' pockets, as well as the allegedly not-so-innocent PIERS' pockets. And the most important thing is to reach closure as soon as possible in this case or there will simply be no recovery for this class at all, and it's not going to go anywhere else except into the pockets of the senior creditors by reason of the contractual subordination.

THE COURT: Um-hum.

MR. CURCHACK: So I would urge Your Honor to find as short a timetable as possible to reach that.

THE COURT: Okay.

MR. STARK: Again, Robert Stark from Brown Rudnick on behalf of the TPS Consortium.

I guess what troubles me is the kind of "trust me" notion. And maybe I just don't understand it, and if -- so maybe I'll just ask some questions, and maybe Mr. Rosen will come back and tell me if I have it right or wrong.

If the idea is that he's going to do a new plan, an amended plan, and he's going to have, as he refers to it, an 1129 wrap, that sort of says, I have another disclosure statement; you've seen it, or maybe I'll even attach it, and here are some additional, kind of, pages that sort of explain what we've done that's different due to Your Honor's opinion, and that's what he's going to submit, I don't know that I have a problem with that. And if the idea is that he's going to submit it to Your Honor on notice to everybody so that we can see what his wrap says and come back and say, you know, that 1125, it says what adequate disclosure and parties are supposed to be able to opine upon that for Your Honor to see if additions and deletions are appropriate, I don't know that I have a problem with that, either. There are aspects of it that sort of, I think, are a little interesting about, from a timing and sequencing perspective that he's going to be soliciting votes from people on issues about releases when we won't have a record developed with respect to the matters that are the

subject of the 2004 motion, and maybe that just comes out in a contested matter over a plan confirmation, but okay, he's going to file a motion that says, okay, here's my wrap. Come and make your commentary if you want to see it, and we'll all have a hearing before Your Honor, an appropriate course pursuant to 1125 and applicable rules, and thereafter, he can submit that to the parties, I think that's a fine procedure. I don't have a problem with it, as long as it runs in tandem with people's discovery rights and the ability to be heard at the appropriate time at confirmation. Works for me.

MR. LAURIA: Good afternoon, Your Honor. My name's Tom Lauria. I'm with White & Case. We represent the senior note group. Your Honor, what I'm concerned about is efficiency, at this point. The equity committee, last summer, told us that they needed an examiner and they would live by what the examiner determined. The examiner determined that they were not going to get the twenty billion dollar homerun that they were looking for in the litigation, and lo and behold, the equity committee did not live with what the examiner determined. So we had a confirmation hearing, and they had discover, they had a full opportunity to make their case that the settlement should not be approved. And they lost again. Now, they have a remedy, which is to file an appeal if and when there is a confirmed plan. Right now, we don't have that. And I think the notion that an appeal can go forward

from an order denying confirmation of a plan that they opposed that may not ever get confirmed is outrageous. There are issues of justiciability that I think the equity committee is overlooking, and I don't think that they should be overlooked.

But the important thing, here, is that the equity committee's had their shot. They've had more than their shot. And they still have at some point in time, if there is a confirmed plan, the remedies that are provided under the Code to seek an appeal from an order confirming a plan that they don't like, and to try to get a stay of that order confirming a plan. That's how the game is played. The notion that they should get a pre-appeal from an order applying to issues they don't like where a plan hasn't yet been confirmed. And the notion that we should bog this thing down with an entire new record is equally as nonsensical.

I don't know exactly what the debtors' going to file. I think the debtor should be commenced for trying to identify what it understood the issues that the Court had raised in its confirmation order and for making an attempt to give everybody a heads up regarding what their intention is to resolve those issues, and certainly, we're caught in a bit of a difficult situation here. I think we're all trying to be efficient, or at least I think some of us are trying to be efficient and not play a guessing game here. This is not a game of hide-and-seek. There are billions of dollars at stake, here, and

literally, millions and millions of dollars of interest that continue to accrue that may, in fact, never get paid, depending on how certain issues are resolved and what ultimate values turn out to be here. And what -- I think that it just needs to be made clear that more discovery and more delay has never been free in this case, and that at some point -- and I believe we've reached that point; based on the record today, the scales tip -- and we've got to find the most efficient course to try to get to an end zone.

Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3018 tell us how the game is played if a debtor modifies a plan at any time before confirmation. And I think we are, in fact, before confirmation. It doesn't say before confirmation or prior to denial of confirmation. So I think we've got to take the plain meaning of the statute at its face. So 1127 still applied. And I think if the debtor files amendments, we look to 1127 and Bankruptcy Rule 3018 to determine if there have to be additional solicitations and who has to be solicited. And until the debtor actually --

THE COURT: I'm not sure anybody's contesting that, are they?

MR. LAURIA: Well, I heard talk about new solicitations, and it sounded to me like we're getting way ahead of ourselves.

THE COURT: Well, the debtor's resoliciting based --

MR. LAURIA: Well, I think there --

THE COURT: -- for the opt-out.

MR. LAURIA: I think there are elections that people can make. Those aren't solicitations. And I guess we can all have a discussion about that at the appropriate time, but I know of no reason why those elections couldn't be made post-confirmation.

THE COURT: Well --

MR. LAURIA: To try to --

THE COURT: -- I'm not writing the plan --

MR. LAURIA: Right.

THE COURT: -- so talk to Mr. Rosen.

MR. LAURIA: Right. What I'm trying to do is just focus on the fact that there's a lot of money at stake here, and there's a lot of money being spent every time we come here. And there's seem to be people in the room who have no real economic stake in this estate, as it currently exists, who've made their best shot, not once but twice, to get an economic stake, and they still do not have it. And they're content to spend the money of the people who do have an economic stake, seemingly endlessly. And we just have to get --

THE COURT: Well --

MR. LAURIA: -- to an end line here --

THE COURT: All right.

MR. LAURIA: -- and see if we can have a confirmed

plan.

THE COURT: What do you think of the process? Bottom line. The debtor files a plan, modification. That's the only thing that is going out on notice.

MR. LAURIA: That --

THE COURT: You have no objection to that.

MR. LAURIA: I think that's right, Your Honor. I think we should have a hearing set on those modifications as quickly as possible. And if people want to object and try to argue at that time that there should be delays, for whatever reason they want to argue, I guess they're free to do that, and the Court will decide.

But I think the best thing for all concerned is to get on as tight a timeline as possible now. In other words, let's set a date by which the debtor has to file the modifications. Let's get a hearing on those modifications as soon as possible. And then, let everybody do what they got to do. But let's preserve, for the estate, the opportunity to get to that end zone quicker instead of later.

THE COURT: All right.

MR. STEINBERG: Your Honor, Arthur Steinberg for the LTWs. I will be brief. With regard to the process, I think enough people have argued what they think is appropriate that I will just follow along with the group as to what Your Honor collectively decides without trying to present an independent

thought.

But to pick up on Mr. Lauria's point about being efficient, and since Mr. Rosen did circulate his proposed resolution, and for many of the people here, they never had an opportunity to comment on it, on those that I think are contrary to Your Honor's order and to the extent that they would helpful and efficient so that it would be corrected now as compared to be corrected then, I'd like to just point out a couple of things.

With regards to the releases by the debtors, which is on his first page, he provides that the released parties will include the debtors' estates, the debtors and the reorganized debtors; I don't think it's appropriate to put into a released section by the debtor that the debtor is releasing the debtor or an entity that has not even been created yet, the reorganized debtors, et cetera.

To the extent that he references page 70 of Your Honor's opinion and says that Your Honor had ruled something with regards to a time reference as prior to the petition date. I think if he looks at page 70, he'll see that's a rearticulation of his argument. Your Honor had said that those releases to the -- you are not granting releases to those parties without regards to whether it was prior to the petition date or after the petition date. Anybody who gets protected after the petition date will be protected by the exculpation

provision.

With regard to the exculpation provision on page 74, the LTW carve-out includes officers as well as directors of the debtors.

THE COURT: What -- where are you?

MR. STEINBERG: On the exculpation provision as it relates to the --

THE COURT: LTW.

MR. STEINBERG: -- LTW --

THE COURT: Yeah.

MR. STEINBERG: -- carve-out. Your Honor --

MR. ROSEN: He's on page 2 of the chart Your Honor.

THE COURT: Got it, got it.

MR. STEINBERG: Your Honor had ruled that it applies to both the officers and the directors of the debtors. The debtors' chart only says the debtors. On the third-party releases, the debtor also makes the reference to the prior to the petition dates, citing to Your Honor's opinion, on page 81 and 82. I don't think Your Honor referenced the applicability of third party of third-party releases as it relates to a time period pre-petition date versus post-petition.

And so I make those comments, and the debtor can either agree with me or not, but I put them on the record because I figured that this was the opportunity to do so.

There is one process point that no one has really

focused on, and that is that Your Honor, in your opinion around page 100, talks about the fact that since we are now not confirming before year-end, but confirming after year-end that the valuation presented by the debtor has now changed because of the applicability of the net operating loss. For those people, including my clients, who are now going to be given an opportunity to make a stock election, a stock election to take stock instead of a cash distribution, to the extent that we become an allowed creditor of a reorganized debtor, would necessitate a review of what the new valuation of the new company is in view of the NOL situation and in view of the other infirmities in the valuation process that Your Honor had highlighted in the opinion around page 100.

And I do think it is critical that if there's a registration rights agreement, which is essentially supposed to raise capital for the reorganized entity so that there could be a greater utilization of what could potentially be as much as a five billion dollar NOL, that before people make the election as to whether to take stock or not, they should know whether there's a registration rights agreement, the success of it, and if the debtor plans on pulling, that they should have the opportunity of knowing that before actually making their election.

I don't know, really, how that fits into the debtors' timing. I do think that's critical if you're going have a

meaningful stock election, especially if you're going to take stock in an entity where you absolutely will be a minority stock holder and no control over the situation as compared to others.

Finally, the two last points is that Mr. Rosen did recite that the global settlement will expire as of January 31 unless extended, and I do think that whatever is done here, we obviously should know whether there's a global settlement still in place. There were changes to the types of releases that JPMorgan will get from third parties and whether JPMorgan entities, as compared to JPMorgan, are going to be released as part of the plan. They will need to be clarified one way or the other.

And I guess my final point is is that I think I understood Mr. Rosen's points on third party releases and late file claims as it relates to the LTW's. I think I understand the language in this proposed resolution. I would only ask, for efficiency's sake, before it actually gets in to a piece of paper, he run it by myself and my colleague, Mr. Silverstein, to think with here, so that we believe that it conforms to what is represented today, and we don't have to argue about it again in front of Your Honor.

MR. ROSEN: Your Honor --

THE COURT: You didn't think it would be easy.

MR. ROSEN: It hasn't been in two years or plus, Your

Honor. Your Honor, with respect to some of the things that Mr. Steinberg said, obviously, we're not going to waste the Court's time, and ours as well, in filing a wrap, if you will, if in fact there's no extension of the global settlement agreement. So we're going to address that issue before we even get going here.

I want to make clear that 1125, Your Honor, relates to the solicitation of acceptances and rejections to the plan, and that's not what we're intending here. So I noticed I referenced time frames, Your Honor, twenty-eight days under 2002. I'm not sure if that will applicable if, in fact, we're not really even soliciting acceptances and rejection, but rather we're just soliciting the elections themselves, or -- and in that regard, the stock election; and in that regard also, whether or not we're doing a subscription. And we will make those calls before we bother the Court with that, Your Honor.

I understand Mr. Lauria's point with respect to you could do this post-confirmation on the election process, but it's of paramount importance to the other parties to the global settlement agreement. And by the that, I mean, specifically, JPMorgan Chase and the FDIC that we have closure on this issue beforehand and not have a post-effective date kind of solicitation on the election process.

But nevertheless, Your Honor, we still think it's wise

to come to the Court and let the Court see what we're suggesting as to letting these people know about what is going on.

To Mr. Steinberg's point about evaluation in the opinion, I know that the Court said some things about the evaluation. I don't necessarily agree with those, but that's for another day, Your Honor, but we'll make that the wrap that we have before the Court will discuss the evaluation, which was, as the Court knows, uncontested testimony by Mr. Zelin. We will also, to the extent that we do the rights offering, have in the wrap information concerning the value, because anyone who does subscribe, if there is a positive value, that is a deduct from their other distributions that they are to receive, pursuant to the plan. So all of that will be in this wrap, Your Honor, and we will get it before the Court.

As to Mr. Sargent and what seemed to be an endless stream of I need this, I need that, and this is the time frame that I need it for, Your Honor, we think that that all can go on, contemporaneously, with what we're suggesting. And that's the way we handled thing on the pre-December confirmation basis, and there's no reason to change the process.

If Mr. Sargent wants to take discovery and the Court thinks it's appropriate, the debtors certainly aren't going to stand in the way. And we're happy that he does whatever he wants to do. As far as admissibility of it, Your Honor, that's

fine, and we'll deal with those issues whenever they arise, Your Honor.

THE COURT: I don't think he's filed a 2004 against the debtor, though.

MR. ROSEN: No. But he said he was going to serve me with discovery --

THE COURT: Okay.

MR. ROSEN: -- today or tomorrow.

THE COURT: Okay.

MR. ROSEN: Your Honor, we think that we should back in front of you in mid-February to look at this wrap. We think that we should back in front of you, Your Honor, mid-March, to confirm the plan as modified. That's our time frame, and everything that has been suggested today can be accomplished very neatly within that time frame.

And to address Mr. Lauria's and Mr. Curchack's concerns, we're not going to have this estate further dissipated, pushing this thing out into April or May or whatever. We want to come back. We want to address the Court's issues, and we want to start making distributions.

So that's the time frame that we're looking for, your Honor.

THE COURT: Tell me when you will have the wrap language. I know you've --

MR. ROSEN: Your Honor --

THE COURT: -- got a draft but --

MR. ROSEN: I do have a draft. I have a draft of many different things here, every different version. It depends on what you want that day. Your Honor, I think that we could file it, clearly, by the end of this month, which is January 31st, even perhaps January 28th. The only reason I say not sooner because there are so many people. We have to take account what we talked about today, and I want to make the appropriate modifications.

To the extent that I can get it filed by a week from today, that would be a goal.

THE COURT: Well, it looks like it's -- it can't be heard the 8th, and unfortunately I'm out the following week. So it looks like February 24 is going to be the hearing on the wrap.

MR. ROSEN: Well Your Honor, if that's --

THE COURT: Let me see.

MR. ROSEN: Your Honor? Your Honor, we already have a hearing Friday of that week, on the 25th, so if you want to go on the 24th --

THE COURT: Oh, is it -- I was saying the 24th because I assumed that was your date.

MR. ROSEN: I'll go -- I'll come on the 24th, and I'll stay for the 25th of the omnibus.

THE COURT: No.

MR. ROSEN: It doesn't matter. I'll move the omnibus up a date as well.

MR. STARK: Your Honor --

THE COURT: I thought it was on the 24th.

MR. ROSEN: I --

THE COURT: You're saying it's the 25th?

MR. ROSEN: I have the 25th.

THE COURT: You're right.

MR. STARK: Your Honor, if I may. I apologize. There's a fair amount of murmuring on this side of the room only from the standpoint that that's president week, and I know a lot of folks have plans. I'm sure people can change them if they need to or are told to, but that is an issue.

MR. ROSEN: Your Honor, from the debtors' standpoint, nothing is more important than this --

THE COURT: I can't --

MR. ROSEN: -- and we would like to go forward that week, if possible.

THE COURT: Well, I can't get my calendar up.

(Pause)

THE COURT: Well --

MR. ROSEN: Can you -- do you need a calendar or the Court's calendar?

THE COURT: My calendar's back up.

MR. ROSEN: Okay.

THE COURT: It is the 25th. I'm inclined to leave it the 25th.

MR. ROSEN: Your Honor, that's at 2 p.m. Your Honor, the only thing I would ask --

THE COURT: I'm sure it's going to take more than an hour, you think?

MR. ROSEN: That's exactly right, Your Honor. And I know that you like to keep an omnibus to an hour.

THE COURT: I can move you to 12 on the 25th. I don't have time on the 24th.

MR. ROSEN: That's fine, Your Honor. Your Honor, if you wanted to keep to that time frame, the omnibus in March is on March 28th, currently scheduled for 10:30 in the morning.

THE COURT: March 28th, it is, yes. How many days do you think we're going to need this time?

MR. ROSEN: Well, Your Honor, if it is what we think it should be, I think it's a one day affair. I can't speak for others because they'll do what they want to do. But things that we got out in the first one, Your Honor, the way we talked about already it be the law of the case, I think there are very few issues that remain.

MR. SARGENT: Your Honor?

THE COURT: Others disagree.

MR. ROSEN: Of course, Your Honor.

MR. SARGENT: Actually, we hope that it could be done

in a day. We won't know until we take our discovery if we have additional evidence to submit.

MR. ROSEN: Obviously, Your Honor, on each of those days we would move whatever other omnibus things there to another date so that we would free the calendar up.

THE COURT: Well, I'll leave it. If you want to change the 28th to 9:30, I have one other matter at 2 that should be short, and it looks like you can, otherwise, have the full day.

MR. ROSEN: That'd be great, Your Honor.

THE COURT: And I think, then, parties agree that the issues will be -- with respects to issues I did not decide on my opinion and the issues that are raised by the debtors' modifications.

MR. ROSEN: Your Honor, there are two additional items on the agenda for today. One is the pretrial with respect to, what we referred to, as the WNB senior note adversary proceeding. And Your Honor, I would just want to move that to February 8th. There is nothing to discuss at this point in time. All the parties are just waiting for confirmation of the plan involve -- the defendants on the other side. And we've extended answer periods with respect to that one.

MR. STROCHAK: Specifically, Your Honor, I apologize, that is --

THE COURT: Are you talking about Broadbill? No,

you're talking about number --

MR. STROCHAK: 34.

THE COURT: -- 34, okay.

MR. STROCHAK: 34, Your Honor.

THE COURT: I'm sorry.

MR. ROSEN: 33 is the Broadbill one, and my partner's, Mr. Strochak is here, and I believe --

MR. STROCHAK: Your Honor, it's Adam Strochak for the debtors. On the Broadbill matter, I think what was the calendar today was a discovery conference that had been requested at the plaintiff's request at the last hearing. We adjourned it because the Court's opinion was forthcoming on summary judgment. We now have that, and what we've done is we've taken the initiative and proposed a, kind of, case scheduling order for the plaintiffs. They indicated they were not prepared to discuss that today, so I think what we'd like to do is move this matter to February 8th and then have a, essentially, a case scheduling conference where we hopefully can agree on a scheduling order for the whole case and get on track to a resolution.

THE COURT: Go ahead.

MR. SILVERSTEIN: Paul Silverstein from Broadbill. That's correct, Your Honor.

THE COURT: Okay. Let's talk about scheduling with respect to the matters that the equity committee filed; the

discovery conference and, I guess, the certification of direct appeal.

MR. SARGENT: Yes, Your Honor, did you want argument on the scheduling or --

THE COURT: Well, let me tell when -- I ask people when they're available. I think it was a suggestion. We're not ready to discuss going ahead on that today.

MR. STROCHAK: Your Honor, Adam Strochak, again, for the debtors. Yes, we're not prepared on the twenty-six hours notice we had on the certification for direct appeal to the third circuit, as we indicated in the papers we filed. We think that there are jurisdictional issues as to whether that's even a final order that's appealable, so we'd like some time to fully brief that. We can put it on February 8th if the Court wants to do it before then. I think I'm available most days next week other than a couple that I have to be in New York.

I'd think we'd want, at a minimum, a week to submit papers and make that that's fully briefed. Also, given the schedule that we've just talked about with the confirmation at the end of March, I think the need to move quite as quickly as the equity committee wanted is alleviated quite a bit.

MR. SARGENT: I'm not sure I would agree with that. I mean, we've heard several complaints today that the equity committee's trying to drag things out, slow it down. At the same time, they're opposing our two motions to expedite. We

think that these issues need to be resolved before planning confirmation, and the sooner the better.

THE COURT: Well, I don't know about the certifications of direct appeal needs to be expedited, does it?

MR. SARGENT: Not necessarily. Again, we would like a ruling from Your Honor and also from the third circuit before the confirmation is decide on the certification question, which we think it's possible, assuming that we do move it ahead expeditiously. And February 8th, that certainly works on our end if it works for the debtor.

THE COURT: All right. Well, anybody oppose doing the certification February 8th? All right, we'll put that on for February 8th. Let's talk about discovery. You're suggesting sooner rather than later --

MR. SARGENT: Yeah.

THE COURT: -- because everybody's accusing you of dragging your feet.

MR. SARGENT: Yeah, certainly the discovery motion more than the certification motion does tie in to the schedule for the plan confirmation hearing. And we would very much like that to proceed as rapidly as possible. Sooner than February 8th, if at all possible for the Court.

MR. WITZEL: Judge, on behalf of the segment nonholders, we'll try and move expeditiously, so I think the same schedule, in view of the timing, would work for us. We

can get a response in in a week, and we could have oral argument on the 8th as well. We'll be ready for that. We'll move quickly.

THE COURT: Well, if I grant the discovery will you be providing it to them within thirty days, as suggested, by then: two weeks for documents and two weeks for deposition. So by the end of February -- well, the first week of March, they have everything so they can prepare for confirmation?

MR. WITZEL: The short answer is we hope we don't have to get there. But obviously, whatever the Court -- the answer is we'll -- the answer is yes, if that's -- we'll do everything we can to follow that schedule. But again, we're relatively confident that that won't happen, but we'll file our papers in a week, and we'll -- we can have oral argument on February 8th as well.

THE COURT: Is that okay with you?

MR. SARGENT: That's fine, certainly, yes, yes. Thank you, Your Honor.

MR. STARK: Your Honor, may I be heard?

THE COURT: I have the -- yes.

MR. STARK: It's not my motion, and I'm not a target for discovery, so it's a little out of order. We have a contested matter now. As I heard the schedule that was established for the new plan and a wrap and a confirmation hearing at the end of March, as best I can tell, there's a

contested matter that's live today. Everybody knows where my client and the equity committee stands, to a degree, it's somewhat mooted by the applicability of the federal rules -- the bankruptcy rules that say that now we have contested matter in this discovery. If the issue is --

THE COURT: So you don't think they need to have filed their motion for 2004?

MR. STARK: Well, we didn't know up until half an hour what they were going to do. But okay, now that we know what they -- we didn't -- but I guess -- we didn't know what they were --

THE COURT: What who were going to do?

MR. STARK: WE didn't know what the debtors' strategy was to get from where we are today --

THE COURT: Oh, okay.

MR. STARK: -- to getting a plan confirmed. Now we know that. Everybody knows that we have a contested matter. It's just a question of prolonging or having an argument about 2004, which, to me, is more of a scope question than anything else. I'm just trying to obviate things.

THE COURT: Um-hum. Anybody disagree with that?

MR. SARGENT: Not with the equity committee, Your Honor.

MR. MAYER: Your Honor, Tom Mayer for Aurelius again. Let's go forward on February 8th. We'll take our crack arguing

the discovery. It certainly -- certain pieces of that they asked for were definitely not appropriate. You can determine scope at that time, and we don't need to get bogged down in procedural issues of the sort that Mr. Stark mentioned. It's clear that you want to have a discovery conference -- hearing on what discovery, if any, is appropriate on the 8th, and we'll take our shot then.

MR. SARGENT: Your Honor, we're happy to proceed as we would with typical discovery and meet and confer with them about the scope of the request. If, as Mr. Stark has suggested, these are proper because it's now a contested matter, and they have objection to certain of them. They can let us know what those objections are, and we can try to come to terms with them or take it to the Court. But proceeding -- obviously proceeding now, it's going to be more efficient and quicker than waiting to the 8th to start the horses running.

MR. MAYER: I'm sorry, Your Honor, Tom Mayer again. We have a pleading ready to file. We'll file it. They'll know what our objections are. They'll prepare to respond to it on the 8th. Let's keep the 8th, and let's get the decisions on discovery done on the 8th and not fall back into what, I think, the equity committee is discussing, which is the usual adversary proceeding, months worth of discovery, which we'll push to all the other dates.

Let's keep the 8th, and let's get a decision.

MR. SARGENT: No, we're sticking to the, roughly, month that I suggested when we were discussing the schedule leading up to a confirmation hearing: two weeks for paper discovery and two weeks for depositions. And if they have objections, I think that there's no need to bother the Court with them. We can take a look at their paper and, again, meet and confer with them on it. If there's a problem, we can contact the Court by phone or informally or set a hearing for the 8th or sometime before.

MR. WITZEL: Your Honor, we'd like to file papers. We can get it in in a week, and we can have the Court have a hearing on the 8th and decide what, if anything, is appropriate and how, if any, discovery is appropriate to proceed. And we think that's the -- in the best interest of the estate and in the best interest of moving this forward.

THE COURT: Well, as I understand it, you've attached your proposed discovery to your motion?

MR. SARGENT: They have copies of all the requests, yes.

THE COURT: So, I mean, they've been served, if you will, and if it's not -- if it's a contested matter, they have to answer in thirty days. They're suggesting that they're going to be doing it if I grant -- if I don't sustain their objections on the 8th within two weeks of that, so I think we're really not taking about the -- more than a week's

difference, not even a week's difference. It's the same, so we'll deal with it on the 8th.

MR. STARK: Thank you, Your Honor.

MR. SARGENT: Thank you, Your Honor.

THE COURT: They have your discovery, so --

MR. JANG: Your Honor, just one point of clarification. With respect to the certification motion, can we assume that our objection to that certification motion is due one week before February 8th, so on February 1st.

THE COURT: February 1st? Yes.

MR. JANG: Thank you, Your Honor.

THE COURT: Should we make that the date for all of the objections to the motions? February 1st, all right. Anything else, then, today? Oh, I keep getting -- and I've gotten a third copy of the BKK, and what was the other settlement?

MR. ROSEN: Keystone, Your Honor.

THE COURT: Keystone. I had understood those to be in connection with the plan confirmation. Am I to approve the settlements now?

MR. ROSEN: No, you should hold those, Your Honor. I --

THE COURT: Okay.

MR. ROSEN: We won't send them out until --

THE COURT: Good.

MR. ROSEN: -- the right time. I didn't know that they were forwarded.

THE COURT: Well, I had gotten them at the confirmation hearing and then got a couple more copies, so --

MR. ROSEN: But you still have the originals, I believe, Your Honor, from that day in December.

THE COURT: I do.

MR. ROSEN: Okay. Thank you, Your Honor.

THE COURT: All right. We'll stand adjourned then.

(Whereupon these proceedings were concluded at 3:39 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

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