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Objection Deadline: June 6, 2012 at 4:00 p.m.

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Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹	)	Case No. 12-10202 (ALG)
)	
Debtors.	)	(Jointly Administered)
)	
	)	FILED UNDER SEAL

**DEBTORS' MOTION AND MEMORANDUM OF LAW IN SUPPORT
OF THEIR REQUEST FOR AN ORDER IN AID OF AN ASSET SALE
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.



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Pursuant to section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9014, Eastman Kodak Company (“Kodak”), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the “Debtors”), brings this motion in aid of their planned sale of certain intellectual property assets pursuant to sections 105, 363 and 541 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors plan to file their bid procedures for that sale in the near future. In support of this motion, the Debtors concurrently submit the following memorandum of law.

PRELIMINARY STATEMENT

The Debtors seek the relief requested by this motion because Apple Inc. (“Apple”) and FlashPoint Technology, Inc. (“FlashPoint”) are trying to delay and derail Kodak’s efforts to sell its valuable Digital Capture Portfolio pursuant to section 363 of the Bankruptcy Code.² The Debtors’ planned sale of its Digital Capture Portfolio (a collection of patents that all relate to digital imaging), free and clear pursuant to sections 105, 363 and 541 of the Bankruptcy Code, is a centerpiece of the Debtors’ reorganization efforts. In aid of that sale, the Debtors need this Court to order that Apple and FlashPoint have no interest in U.S. Patent No. 6,292,218 (the “218 patent”) and that Apple has no interest in nine other Kodak patents to which it recently asserted ownership claims. The monetization of those patents is contemplated by the Debtors’ outstanding financing agreements and, as the Debtors explained in their first day declaration,³ is critical to the Debtors’ successful reorganization. If the Debtors can obtain a fair price for the

² The Debtors also are pursuing a sale of the Kodak Imaging Systems and Services Portfolio, referred to as the KISS Portfolio. Neither Apple nor Flashpoint has asserted an ownership claim to any of the patents in the KISS Portfolio.

³ See Declaration of Antoinette P. McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Pleadings ¶¶ 40-41, dated Jan. 18, 2012. (Dkt. No. 2.)

Digital Capture Portfolio, they could repay the debtor-in-possession financing and take a substantial step toward emerging from chapter 11.

This Court has the power to determine what is property of the estate and to order a sale of that property under section 363 of the Bankruptcy Code free and clear of invalid ownership claims asserted by Apple and FlashPoint (or any other third party).

Apple is the single largest infringer of the Digital Capture Portfolio, and given its ongoing patent war with other smartphone and tablet manufacturers, Apple is also a potential purchaser of those Kodak patents. The patents in the Digital Capture Portfolio are registered in the name of Kodak. They have been openly licensed and litigated by Kodak for many years. Since 2001, Kodak has generated more than \$3 billion in revenue from licensing the patents in the Digital Capture Portfolio to 37 sophisticated parties in arm's length transactions.

Apple, however, has refused to pay Kodak a penny in royalties for the patents in the Digital Capture Portfolio. Kodak's digital camera technologies have been an important element of the success of Apple's hugely popular iPhone, iPad and iPod Touch products. Apple, now the world's largest company by equity value, currently owes Kodak more than a billion dollars in damages for infringing the patents in the Digital Capture Portfolio—the payment of which would be more than enough to pay off the debtor-in-possession financing and a significant step in the Debtors' emergence from chapter 11. Apple's liability to the Debtors increases on a daily basis as the infringement continues.⁴

⁴ Apple's continuing infringement of the patents in the Digital Capture Portfolio, if established, as well as Apple's interference with the sale process, is properly viewed as an "act to obtain possession . . . or exercise control over property of the estate" under section 362(a)(3) of the Bankruptcy Code. Although not the subject of this motion, the Debtors may in the future seek appropriate remedies in this Court, *nunc pro tunc* to the petition date, for Apple's violations of section 362(a)(3), which the Debtors believe may be knowing and willful.

Seeing a strategic benefit in Kodak's financially weakened position, Apple's tactic has been to use its substantial cash position to delay as long as possible the payment of royalties to Kodak for its patents. Apple voluntarily appeared before this Court on the first day of these cases to oppose the Debtors' debtor-in-possession financing and assert publicly an ownership claim to the '218 patent and other unspecified Kodak patents. The ownership claims that are the subject of this motion—which are both untimely and specious—should be viewed in this light.

Apple asserted that it “owns” the '218 patent for the first time in response to an International Trade Commission (“ITC”) investigation into Apple's infringement of the '218 patent—nine years after issuance of that patent and nearly 20 years after Kodak's and Apple's joint development work relating to digital cameras. After losing its ownership claim on the merits in the ITC proceeding, Apple asserted the same baseless claim in this Court. More astounding is Apple's recent assertion—raised two months *after* the Debtors filed their petitions—that it also “owns” nine other Kodak patents (the “Nine Additional Kodak Patents”). Apple's ownership theory relates entirely to joint development work done by Apple and Kodak in the early 1990's—nearly 20 years ago. All of these ownership claims are untimely, are inconsistent with decades of behavior by Kodak (and Apple) in the real world, and lack any valid legal basis.

FlashPoint—a company spun off from Apple in 1996—also appeared in these bankruptcy proceedings and asserted an ownership claim to the '218 patent—first derivatively through Apple, and then directly. Despite repeated requests from the Debtors, FlashPoint has declined to provide any evidence to substantiate its ownership claim to the '218 patent.

This Court should not permit Apple to interfere with the administration of these estates. To begin with, Apple's (and, therefore, Flashpoint's) ownership claims are barred by the statute of limitations and/or the equitable doctrine of laches. If Apple believed it was the owner of important Kodak patents in the field of digital photography, Apple was not permitted to sit on its hands and do nothing for many years. Apple's decision to press its ownership claims now—as to both the '218 patent and the Nine Additional Kodak Patents—should be seen for what it is, namely, a ploy calculated to prevent the Debtors from using the 363 sale process to obtain a fair price for Kodak's Digital Capture Portfolio (or to enable Apple to buy it on the cheap and extinguish its infringement exposure). Because Apple's ownership claims are time-barred, there is no need for this Court to consider them on their merits.

Yet, if this Court were to consider Apple's and FlashPoint's ownership claims on the merits, it would be a simple matter to conclude that neither Apple nor FlashPoint has a cognizable interest in any of the ten Kodak patents. Apple has already lost on the arguments it wants to replay in this Court. Apple raised its ownership claim to the '218 patent in response to patent infringement claims asserted by Kodak before the ITC, and Apple's ownership claim was squarely rejected by the Chief Administrative Law Judge, Paul Luckern ("Chief ALJ Luckern").

 and the documents produced by Apple in response to this Court's March 22, 2012 Order authorizing Rule 2004 discovery—which are a subset of the documents produced by Apple in the ITC proceedings—confirm that Apple's ownership claims are baseless. To the extent FlashPoint's ownership claim to the '218 patent is derivative of Apple's ownership claim, it fails as well.

Despite Apple's representations that it uncovered new evidence in support of its ownership claims in a recent investigation, Apple produced in response to the Debtors' Rule

2004 discovery requests nothing but the same documents previously produced to Kodak in prior ITC proceedings. By this response, Apple has made clear that there is no new evidence that would undermine the conclusions reached by Chief ALJ Luckern.

The ownership claims asserted by Apple and FlashPoint can be disposed of easily by this Court. Apple and FlashPoint cannot overcome the initial hurdle of demonstrating that their ownership claims are timely. Even if Apple and FlashPoint could overcome that hurdle, they have no basis for impeaching the conclusions of Chief ALJ Luckern in the ITC proceeding, and the extensive evidentiary record developed in that proceeding is all this Court would need to consider and reject the assertion that Apple and FlashPoint own patents that are plainly property of the estate, paving the way for a free and clear sale of Kodak's Digital Capture Portfolio.

BACKGROUND

Kodak is a digital imaging and material sciences company with a long history of innovation and successful commercialization of proprietary technologies. Kodak has invested significantly in research and development for more than a century. In 1976, Kodak designed and built the first operating digital camera, and since then has invested billions of dollars in research and development in the field of digital imaging technology. Kodak's significant investment in research and development has produced an ongoing stream of innovations in digital imaging technology—innovations that have generated thousands of patents. Today, Kodak owns approximately 10,700 patents, including the '218 patent and the Nine Additional Kodak Patents at issue in this motion. Kodak Fellow Kenneth Parulski, a coinventor of the '218 patent, has more than 190 patents to his name and is widely recognized as a pioneer in the design of digital cameras.

On December 30, 1994, Kodak filed an application with the U.S. Patent and Trademark Office (“PTO”) and, on September 18, 2001, the PTO issued the ‘218 patent, entitled “Electronic Camera for Initiating Capture of Still Images While Previewing Motion Images,” which named Mr. Parulski and Timothy J. Tredwell as inventors and claimed priority to the 1994 application. By valid assignment from the two inventors, Kodak is the owner of all right, title and interest in and to the ‘218 patent. Since 2004, Kodak has instituted numerous patent infringement actions to enforce the ‘218 patent in the ITC and the U.S. District Court for the Western District of New York. Every one of the infringement actions that has been resolved resulted in a settlement with a royalty-bearing licensing agreement in favor of Kodak. Apple, which claims to be active in the field of digital imaging technology, cannot have been ignorant of Kodak’s successful efforts to enforce the ‘218 patent over the last eight years.

A. Other Litigation Relating to Apple’s Claim that It Owns the ‘218 Patent

In January 2010, Kodak filed a complaint with the ITC asking the Commission to commence an investigation against Apple for violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, which forbids the importation of patent-infringing products into the United States. In February 2010, the ITC commenced an initial investigation into Apple’s importation of infringing iPhone products, No. 337-TA-703 (the “ITC 703 Proceeding”). Concurrent with initiation of the ITC 703 Proceeding, Kodak filed a patent infringement lawsuit against Apple in the U.S. District Court for the Western District of New York, Civil Action No. 6:10-cv-06021-MAT (the “W.D.N.Y. Action”).⁵ At Apple’s request, the W.D.N.Y. Action was stayed pursuant to 28 U.S.C. § 1659 pending a final decision in the ITC 703 Proceeding.

⁵ On August 25, 2010—less than a week before the start of the hearing in the ITC 703 Proceeding—Apple filed a complaint in California state court against Kodak asserting state statutory and common law claims and seeking
(footnote continued)

Apple raised its ownership claim to the '218 patent as a defense to Kodak's patent infringement claims in the ITC 703 Proceeding. Apple's ownership claim to the '218 patent was explored in the extensive discovery that occurred during the ITC 703 Proceeding, which included the production of more than 3.5 million pages of documents and the depositions of more than 60 witnesses. There was a thorough vetting in the ITC 703 Proceeding of Apple's claims that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (703-Apple1788378-85, Exhibit 1 to

Declaration of Steven L. Holley, executed on May 14, 2012 ("Holley Decl."))

After a six-day hearing in September 2010, [REDACTED]

[REDACTED]. (Final Initial and Recommended Determinations ("ID") at 99-108, dated Jan. 24, 2011, attached as Exhibit 2 to Holley Decl.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at 108 & n.24.)

(footnote continued)

a declaration that Apple is the owner of the '218 patent. The timing of that filing suggests that Apple intended to impede the ITC 703 Proceeding, similar to Apple's efforts to impede these bankruptcy proceedings. After the action was removed to federal district court in California, the court issued an order staying the action and finding that all of Apple's claims were compulsory counterclaims to patent infringement claims asserted by Kodak in the W.D.N.Y. Action. As a result, Apple voluntarily dismissed the California state court action and filed an amended answer and counterclaims in the W.D.N.Y. Action asserting an ownership claim to the '218 patent.

B. Apple's Post-Petition Requests for Relief from the Bankruptcy Court Relating to Its Ownership Claims

On January 19, 2012, the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code and a motion seeking approval of debtor-in-possession financing secured by substantially all of the Debtors' assets, including Kodak's Digital Capture Portfolio. On that same day, Apple filed a limited objection to the Debtors' motion seeking approval of their debtor-in-possession financing. In that objection, Apple claimed that it, not Kodak, owned the '218 patent. Apple also claimed—for the first time in any forum—that it had an ownership interest in other unnamed Kodak patents. (Limited Objection of Apple Inc. to Debtors' Motion for Entry of Interim and Final Orders (Dkt. No. 40) at 2.)

Apple pressed its claim that it owned the '218 patent and other unnamed Kodak patents a few weeks later when it filed a motion seeking relief from the automatic stay. In that motion, Apple sought permission to (i) proceed with the W.D.N.Y. Action and (ii) seek to transfer the W.D.N.Y. Action to the U.S. District Court for the Southern District of New York. (Apple's Motion Seeking Relief from the Automatic Stay to Facilitate Resolution of Patent Ownership Disputes Prior to the Debtors' Sale of Those Patents (Dkt. No. 344).) The Debtors opposed Apple's motion and sought discovery from Apple under Rule 2004 to investigate Apple's ownership claims. On March 8, 2012, the Court denied Apple's motion for relief from the automatic stay, noting that "Apple's proposed relief would hardly move the matter forward with the expedition needed for there to be any hope of a determination on the ownership issue." (Hr'g Tr. 64:9-12, March 8, 2012.)

On March 16, 2012, Apple's counsel sent a letter to the Debtors' counsel identifying the Nine Additional Kodak Patents to which Apple now asserts ownership claims: U.S. Patent Nos. 5,493,335; 5,828,406; 6,147,703; 6,441,854; 6,879,342; 7,210,161; 7,453,605;

7,742,084; and 7,936,391. (Letter from Marcus Sernel, Kirkland & Ellis LLP, to Brian D. Glueckstein, Sullivan & Cromwell LLP (March 16, 2012), attached as Exhibit 3 to Holley Decl.) This list includes patents that have been successfully licensed and actively litigated by Kodak for years without any hint of an ownership claim being raised by Apple. What Apple has done is assert ownership claims to patents it views as strategic for Kodak, including all of the patents that Kodak has asserted against Apple in the latest ITC proceeding and patents recently asserted by Kodak in litigation against other parties. Apple is asserting ownership claims to patents that Kodak is protecting through litigation, but, tellingly, has never sought to intervene in any action brought by Kodak against third-party infringers. While that strategy is designed to inflict maximum pain on the Debtors, it has no principled basis in law or fact.

In response to document requests served by the Debtors pursuant to the Court's March 22, 2012 Order Authorizing and Directing the Examination of Apple Inc. (the "Rule 2004 Order") (Dkt. No. 707), Apple produced no new documents specific to the Nine Additional Kodak Patents. In fact, Apple did not produce a single piece of paper in support of its claims that it had not previously produced in the ITC 703 Proceeding or another ITC proceeding initiated by Apple against Kodak (the "ITC 717 Proceeding"), which also raised issues regarding Kodak's joint development efforts with Apple. Apple stated in its objections and responses to the Debtors' document requests that it would search for and produce "any additional responsive, non-privileged documents." (Apple's Objections and Responses to Kodak's Requests for Production of Documents and Things at 5, 6, 7, attached as Exhibit 4 to Holley Decl.) Having produced no additional documents despite that representation, Apple has conceded that no

documents other than those previously produced in these ITC proceedings support its ownership claims as to the '218 patent and the Nine Additional Kodak Patents.⁶

C. FlashPoint's Post-Petition Assertion of an Ownership Claim to the '218 Patent

FlashPoint appeared before the Court at the March 8 hearing on Apple's motion to lift the automatic stay and announced that it "claim[s] a derivative interest through Apple" to the '218 patent. (Hr'g Tr. 38:20-21, March 8, 2012.) FlashPoint subsequently reversed course and asserted for the first time in a letter from its counsel to the Debtors' counsel that FlashPoint "in fact has a direct interest in the '218 patent" and thus "should be entitled to participate in any discussions regarding a proposed mechanism to resolve matters relating to the '218 patent." (Letter from Todd A. Feinsmith, Pepper Hamilton LLP, to Steven L. Holley, Sullivan & Cromwell LLP (April 2, 2012), attached as Exhibit 6 to Holley Decl.) In response, the Debtors requested that FlashPoint provide any information in its possession that supports the contention that FlashPoint has a direct ownership interest in the '218 patent, something that FlashPoint has declined to do. Instead, FlashPoint has informed the Debtors that it is discussing some sort of standstill agreement with Apple that would make clear—as FlashPoint originally told the Court—that whatever ownership interest FlashPoint has in the '218 patent is derivative of Apple's purported ownership interest.

⁶ In an email dated April 25, 2012, Apple's counsel represented that "[w]e are not affirmatively withholding any documents that Apple believes support its ownership claims. We have produced all relevant, non-privileged documents that we are aware of that relate to the ownership issues." (Email from M. Sernel to B. Glueckstein (April 25, 2012), attached as Exhibit 5 to Holley Decl.)

JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

The statutory bases for the relief requested herein are sections 105, 363 and 541 of the Bankruptcy Code. By this motion, the Debtors respectfully request entry of an order in aid of their planned section 363 sale, substantially in the form attached as Exhibit A, that Apple and FlashPoint have no interest in the '218 patent and that Apple has no interest in the Nine Additional Kodak Patents, and permitting a sale of those patents pursuant to section 363 of the Bankruptcy Code in due course, free and clear of any interest of Apple or FlashPoint.

ARGUMENT

Section 105(a) of the Bankruptcy Code provides, in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105 invests bankruptcy courts with extensive equitable powers to oversee bankruptcy proceedings and maximize estate value. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995) (holding that Congress intended for the bankruptcy court to have comprehensive jurisdiction to use its equitable powers under Section 105). The Second Circuit is clear that “bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.” *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *see also In re Croton River Club, Inc.*, 52 F.3d 41, 45-46 (2d Cir. 1994) (holding that bankruptcy courts have broad equitable power to manage affairs of debtors).

Under Federal Rule of Bankruptcy 9014, a movant may request relief from the Court after “reasonable notice and opportunity for hearing” is afforded to a party against whom such relief is sought. Fed. R. Bankr. P. 9014(a). The Advisory Committee notes to Rule 9014 explain that “[w]henver there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter.” Fed. R. Bankr. P. 9014 advisory committee’s note (1983). Here, the ownership claims asserted by Apple and FlashPoint to valuable property of the estate which the Debtors are planning to sell under section 363 of the Bankruptcy Code can and should be resolved by this Court upon this motion.

As the Court stated at the hearing on Apple’s motion to lift the automatic stay, Apple’s effort to litigate its ownership claim in the U.S. District Court for the Southern District of New York “would hardly move the matter forward with the expedition needed for there to be any hope of a determination on the ownership issue.” (Hr’g Tr. 64:9-12, March 8, 2012.) In a similar vein, Judge Gerber in *In re Adelpia Communications, Inc.* permitted a dispute concerning property of the estate to proceed as a contested motion, noting the “material prejudice to the other stakeholders in this [chapter 11] case that could be the consequence of [the Court’s] insistence upon adversary proceeding formalities.” (Hr’g Tr. 311:17-20, July 26, 2005, No. 02-41729 (Bankr. S.D.N.Y.), attached as Exhibit 7 to Holley Decl.). Here, where it is essential that the Debtors’ plan to sell the Kodak Digital Capture Portfolio under section 363 of the Bankruptcy Code move forward expeditiously, proceeding by contested motion to resolve Apple’s and FlashPoint’s ownership claims to valuable property of the estate, as defined in section 541 of the Bankruptcy Code, is the only way to “move this matter forward with real expedition.” (Hr’g Tr. at 65:12-13, March 8, 2012.)

This Court can resolve the dispute over the ownership of the ten Kodak patents at issue promptly through this motion. Such a prompt resolution would remove any impediment created by Apple's and FlashPoint's ownership claims to the Debtors' ongoing efforts to sell Kodak's Digital Capture Portfolio through a section 363 sale. Apple and FlashPoint should not be allowed to interfere with that sale, which is an important component of the Debtors' reorganization efforts.

I. Resolving Ownership Claims to the Debtors' Valuable Patents Is a Core Bankruptcy Issue that This Court Needs to Resolve.

"Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11." 28 U.S.C. § 157(b)(1). As the U.S. Supreme Court has held, "core proceedings are those that arise in a bankruptcy case or under Title 11." *Stern v. Marshall*, 131 S.Ct. 2594, 2605 (2011). Resolution of Apple's and FlashPoint's ownership claims to patents that the Debtors are trying to sell to enable them to emerge from chapter 11 is plainly a core proceeding.

"It is without question" that this Court has jurisdiction over all property of the estate and the "jurisdiction to decide whether disputed property is, in fact, property of the estate." *See In re Washington Mutual, Inc.*, 461 B.R. 200, 217 (Bankr. D. Del. 2011). As the Second Circuit has held, before particular property can be administered in a bankruptcy proceeding, a bankruptcy court should "determine whether the debtor has a valid ownership interest" in that property. *In re Koreag, Controle et Revision S.A.*, 961 F.2d 341, 349 (2d Cir. 1992). In *Garrity v. Leffler (In re Neuman)*, 71 B.R. 567, 573-74 (Bankr. S.D.N.Y. 1987), a district court upheld an injunction issued by a bankruptcy court blocking a state court action because the bankruptcy court, "rather than another court, should be the forum to decide whether an asset is property of the estate." These cases make clear that the decision whether the '218 patent and the Nine

Additional Kodak Patents are property of the estate—or instead belong to Apple and/or FlashPoint—falls squarely within this Court’s jurisdiction. *See In re Salander O’Reilly Galleries*, 453 B.R. 106, 122-23 (Bankr. S.D.N.Y. 2011).

As a practical matter, only this Court can ensure that Apple’s and FlashPoint’s baseless ownership claims are resolved prior to a timely section 363 sale. Under the terms of the debtor-in-possession financing, the Debtors must file a motion seeking approval of bidding procedures for the sale by June 30, 2012. (*See* Debtor-in-Possession Credit Agreement § 5.01(s) (Dkt. No. 16).) And the Debtors and other stakeholders have an independent interest in seeing the sale process move forward as expeditiously as possible. Having Apple’s and FlashPoint’s ownership claims resolved by some other court would result in substantial delay, and would deny this Court control over one of the most important events in these proceedings. The adverse consequences for these chapter 11 cases could be severe. Apple and FlashPoint should not be permitted to interfere with the section 363 sale in a manner that prejudices the interests of the Debtors and their creditors.

II. Apple’s and FlashPoint’s Ownership Claims Are Barred by the Statute of Limitations and the Equitable Doctrine of Laches.

A. Apple’s and FlashPoint’s State Law Ownership Claims Are Barred by the Applicable Statutes of Limitations.

Apple’s ownership claims are barred by the applicable statute of limitations, which do not exceed four years.⁷ (*See* Defendant Apple Inc.’s First Amended Answer, Affirmative Defenses and Counterclaims ¶ 63, Case 6:10-cv-06021-MAT (W.D.N.Y. Action), filed March 25, 2010 (Dkt. No. 23) (asserting breach of contract, conversion and unfair

⁷ Because FlashPoint has articulated no independent basis for asserting direct claims against Kodak, FlashPoint’s claims are similarly barred.

competition claims under California law, deceptive business practices claim under New York law, and unfair competition and breach of confidence claims under New York and California law).⁸ The limitations period “begins to run upon the occurrence of the last element essential to the cause of action.” *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal. 3d 176, 187 (1971). “The plaintiff’s ignorance of the cause of action . . . does not toll the statute.” *Id.*; see also *Krieger v. Nick Alexander Imports, Inc.*, 234 Cal. App. 3d 205, 221 (Ct. App. 1991).

To the extent Apple’s ownership claims are based on an alleged breach [REDACTED], those claims accrued at least by the time the ‘218 patent issued on September 18, 2001.⁹ If—as Apple erroneously claims—[REDACTED], then Apple’s breach of contract claim accrued when Apple was reasonably put on notice that Kodak was asserting ownership over that subject matter by obtaining a patent. In *Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.*, 583 F.3d 832, 847-48 (Fed. Cir. 2009), the Federal Circuit held that a patent ownership claim based on a contract accrued when the defendant patent assignee made a presentation to the plaintiff in which the defendant asserted an ownership interest in the invention, even though the presentation was made before any patents were issued and before two of the three patent

⁸ Cal. Civ. Proc. Code § 337(1) (West 2012) (four year limitations period for contract claims); *id.* § 338(c) (three year limitations period for conversion); Cal. Bus. & Prof. Code § 17208 (West 2012) (four year limitations period for unfair competition, unfair and/or deceptive business acts and unlawful business acts under California law); N.Y. C.P.L.R. 214[2] (McKinney 2012) (three year limitations period for deceptive business acts under New York law); *Trustforte Corp. v. Eisen*, 2005 WL 3501587, at *4 (N.Y. Sup. Ct. Nov. 15, 2005) (three year limitations period for claims based on misappropriation such as common law unfair competition and breach of confidence); Cal. Civ. Proc. Code § 339(1) (West 2012) (two year limitations period for unfair competition and breach of confidence under California law); *id.* § 343 (four year statute applies to all actions not specifically covered).

⁹ Beginning in 1999, Kodak’s patent applications were published and made publicly available eighteen months after filing. See 35 U.S.C. § 122, 37 C.F.R. 1.211. Kodak’s application for the ‘218 patent was a divisional application of one filed on December 30, 1994, so it became public upon issuance of the patent.

applications were even published. At the very least, the court found that the plaintiff was on constructive notice at the time the patent applications were published. *Id.* Here, given Apple's joint development work with Kodak, issuance of the '218 patent was sufficient to start the clock running on Apple's ownership claims. Thus, Apple's ownership claim to the '218 patent became time-barred at the latest by September 18, 2005, four years after the '218 patent was issued.

To the extent Apple contends that it was “unable to see or appreciate a breach ha[d] occurred,” it is Apple's burden to prove that it was unable “to have made earlier discovery despite reasonable diligence.” *E-Fab, Inc. v. Accountants, Inc. Servs.*, 64 Cal. Rptr. 3d 9, 16-17 (Cal. Ct. App. 2007) (quoting *Moreno v. Sanchez*, 131 Cal. Rptr. 2d 684, 689 (Cal. Ct. App. 2004)). In light of Apple's joint development work with Kodak on digital cameras in the early 1990's and [REDACTED]

[REDACTED]. Documents produced by Apple pursuant to the Rule 2004 Order establish [REDACTED]. (See, e.g., 717-Apple0101168 to 77, attached as Exhibit 8 to Holley Decl.; 717-Apple0101178 to 273, attached as Exhibit 9 to Holley Decl.; 717-Apple0110551 to 75, attached as Exhibit 10 to Holley Decl.). That is consistent with what any sophisticated technology company with experience in protecting its intellectual property would do. Apple was aware of the nature of its joint development efforts with Kodak, so Apple should have kept tabs on whether Kodak was applying for and being issued patents on technologies that Apple purportedly thought it owned.

Courts have held that facts can render publication of a patent application or issuance of a patent constructive notice to the plaintiff of a breach of contract or other related harm because the technology is no longer “inherently undiscoverable.” *WesternGeco v. Ion*

Geophysical Corp., 2009 WL 3497123, at *4-5 (S.D. Tex. Oct. 28, 2009). Issuance of a patent—or even publication of a patent application—“should have put a reasonable person on notice.” *Micrel Inc. v. Monolithic Power Systems, Inc.*, 2005 WL 6426678, at *6 (N.D. Cal. Dec. 9, 2005); *see also IBM Corp. v. Zachariades*, 70 F.3d 1278, 1278 (9th Cir. 1995) (holding that issuance of a patent served as constructive notice to plaintiff because it “reveal[ed] information which should have alerted [plaintiff] of the need to inquire further”). In *University Patents, Inc. v. Kligman*, 1991 WL 64652, at *8-9 (E.D. Pa. April 22, 1991), the court held “as a matter of law” that issuance of a patent constituted notice to plaintiffs of breach of contract because “plaintiffs no longer reasonably could be excused from their duty to make appropriate inquiries which would have put them on notice of potential causes of action.” Here, Apple had specific reason to be on notice because of its prior relationship with Kodak. [REDACTED]

[REDACTED]. Given Apple’s interest in potential Kodak patents, Apple should have kept current on Kodak’s efforts to obtain patents involving digital camera technology. Therefore, the publication of Kodak patent applications or the subsequent issuance of patents to Kodak put Apple on notice of any alleged breach [REDACTED]

The story does not end there. Even if Apple could avoid the conclusion that it was on constructive notice, Apple had *actual notice at least by 2005* that Kodak was asserting against other competitors digital camera patents to which Apple is now claiming ownership. In 2005, Apple received a subpoena in litigation between Kodak and Sony Corporation relating to some of the patents that Apple now claims to own—the ‘218 patent and U.S. Patent No.

5,493,335 (the “‘335 patent”).¹⁰ That subpoena makes specific reference to Project Adam, as well as the Phobos and Aspen projects. (Subpoena to Apple Computer, Inc., *Eastman Kodak Co. v. Sony Corp.*, No. 04-cv-6095 (W.D.N.Y.), issued August 12, 2005 (the “Apple Subpoena”), attached as Exhibit 11 to Holley Decl.) If not earlier, Apple knew when it received the Apple Subpoena that Kodak was pursuing patent infringement claims based on the ‘218 and ‘335 patents. Apple did not assert that it owned those patents after receiving the Apple Subpoena. Instead, Apple waited another five years to assert that it owned the ‘218 patent, and that claim is time-barred.

Despite the fact that the ‘335 patent was at issue in the Sony litigation that generated the Apple Subpoena, Apple now claims—for the first time last month—that it is the owner of the ‘335 patent. That belated ownership claim is utterly baseless. If Apple thought that it owned the ‘335 patent, which issued on February 20, 1996, there is no conceivable explanation for why Apple did not assert that ownership claim earlier given that the ‘335 patent is cited as prior art in *eleven of Apple’s own patent applications*, most dating back to the 1990’s.¹¹ In fact, the named inventor of Apple’s ‘629 patent, which issued on July 21, 1998, is Eric Anderson, the former Apple employee that Apple now argues invented the technology claimed in the Kodak patents at issue. Apple knew all about the ‘335 patent, certainly by August 2005 when it

¹⁰ The litigation also involved U.S. Patent Nos. 6,573,927 and 6,784,924, which are parent patents to four of the patents Apple now claims it owns. A parent patent typically has the same patent specification and drawings as any patents that claim priority to that parent patent. Here, the ‘605 patent that Apple claims it owns has the exact same specification and exact same drawings as its parent, the ‘927 patent. Similarly, the ‘161, ‘084, and ‘391 patents to which Apple now claims ownership have the exact same specification and drawings as their parent, the ‘924 patent.

¹¹ Those eleven patent applications resulted in the following patents issued to Apple: U.S. Patent Nos. 6,263,453, 6,031,964, 5,949,160, 5,938,766, 5,935,259, 5,920,726, 5,867,214, 5,790,878, 5,784,629 (the “‘629 patent”), RE40,865, and RE39,213. FlashPoint similarly designated Kodak’s ‘335 patent as prior art for twelve patents issued to FlashPoint.

received the Apple Subpoena, so its delay in asserting an ownership claim to the '335 patent is inexcusable.

Apple was on notice that Kodak had obtained these digital camera patents, and therefore had a continuing obligation to inquire as to the scope of any new Kodak patents for any relevant technologies. Apple's failure to take reasonable steps to protect its purported rights means that all of Apple's ownership claims are now untimely. As set forth in Exhibit 12 to the Holley Declaration, Apple's ownership claims to the rest of the Nine Additional Kodak Patents are barred by the statute of limitations because those patents either issued more than four years before March 16, 2012 when Apple first asserted those ownership claims, or patent applications for the parent patents of the Nine Additional Kodak Patents were published more than four years before that date.¹² Patents that issued from continuation or divisional applications of previously filed patent applications have the benefit of the earlier filing date. 35 U.S.C. § 120. Thus, publication of patent applications for such parent patents—in conjunction with the history of joint development activities between Apple and Kodak and [REDACTED] [REDACTED]—demonstrate that Apple had constructive—if not actual—notice of the accrual of its ownership claims. *See Roche*, 583 F.3d at 847; *WesternGeco*, 2009 WL 3497123, at *4-5; *Micrel Inc.*, 2005 WL 6426678, at *6; *IBM Corp. v. Zachariades*, 70 F.3d at 1278. As a result, all of those ownership claims are barred by the statutes of limitations.

¹² Four of the Nine Additional Kodak Patents were issued more than four years before 2010 (U.S. Patent Nos. 5,493,335, 5,828,406, 6,147,703, 6,441,854), and the others are either a division or a continuation of patent applications which were published more than four years before 2012 (U.S. Patent Nos. 6,879,342, 7,210,161, 7,453,605, 7,742,084, 7,936,391). *See* Holley Decl. Exs. 12 and 13.

B. Apple's Inventorship Claim is Barred by the Equitable Doctrine of Laches.

The equitable doctrine of laches also bars Apple's claim that it invented the subject matter of the '218 patent. When applying the doctrine of laches to such an inventorship claim, courts evaluate (a) whether the plaintiff's delay in bringing the suit was "unreasonable and unexcused" and (b) whether that delay caused "material prejudice" to the defendant. *Serdarevic v. Advanced Medical Optics, Inc.*, 2007 WL 2774177, at *5 (S.D.N.Y. Sept. 25, 2007), *aff'd*, 532 F.3d 1352 (Fed. Cir. 2008) (quoting *Intirtool, Ltd. v. Texar Corp.*, 369 F.3d 1289, 1297 (Fed. Cir. 2004)). "A presumption of laches arises where a patentee delays bringing suit for more than six years after the date the patentee knew or should have known of" his claim. *Serdarevic*, 2007 WL 2774177, at *5 (quotation omitted). "The six year clock begins to run from the date on which the plaintiff had 'actual or constructive knowledge of an act . . . that gives rise to a legal claim.'" *Id.* (quotation omitted). Because Apple knew, or should have known, that the '218 patent was issued on September 18, 2001, a presumption of laches has applied at least since September 18, 2007. That is more than two years before Apple first raised its inventorship claim in the ITC 703 Proceeding.

Some courts, including one in the Southern District of New York, have held that the laches period of delay may start even before a patent issues, "commenc[ing] when the purported inventor has actual or constructive notice of a patent application that omitted him as inventor or incorrectly included persons on an application, or that such an application is forthcoming." *Mahmood v. Research in Motion, Ltd.*, 2012 WL 242836, at *7 (S.D.N.Y. Jan. 24, 2012); *accord Hor v. Chu*, 765 F. Supp. 2d 903, 916 (S.D. Tex. 2011) (laches period of delay commences "when a plaintiff knew or should have known that the defendant filed a patent application . . . and failed to name him as an inventor, regardless of whether such notice occurred

prior to the patent's issuance"); *Moore v. Broadcom Corp.*, 2008 WL 425932, at *4 (N.D. Cal. Feb. 14, 2008); *Frugoli v. Fournies*, 74 U.S.P.Q. 2d 1716, 1719 (D. Ariz. 2004).

In *Expert Microsystems v. University of Chicago*, the court granted summary judgment to the patent holder, holding that the laches period of delay began when the purported inventor performed a prior art search and printed copies of the patents that were the subject of the dispute. 712 F. Supp. 2d 1116, 1120-21 (E.D. Cal. 2010). Although the purported inventor submitted a declaration stating that he did not read or evaluate the content of the patents at the time he conducted the prior art search, the court held that he could have "discovered with reasonable diligence that [he] may have had an inventorship claim against defendants." *Id.* Here, the laches period of delay arguably began to run at least as early as 1996, which is the earliest issuance date for any of the patents now the subject of Apple's ownership claims, and in any event no later than 2001, which is the issuance date of the '218 patent, the patent at the heart of Apple's argument. Thus, a presumption of laches arose long before Apple first raised its inventorship claim to the '218 patent in the ITC 703 Proceeding.

Similarly, as set forth on Exhibit 13 to the Holley Declaration, the presumption of laches has attached to each of the Nine Additional Kodak Patents because Apple was on constructive notice as of the date the patent first became public, either through publication of the patent application or issuance of the patent. Apple's citation to the '335 patent in its own patents in the 1990's establishes that Apple was aware of Kodak's digital camera patents. Moreover, the Apple Subpoena put Apple on actual notice in 2005 that Kodak was pursuing infringement litigation on digital camera patents purportedly related to the joint development activities between Kodak and Apple in the 1990's, at which point Apple should have canvassed Kodak's patent applications and patents issued to Kodak for any relevant technologies. The Apple

Subpoena specifically references Project Adam (as well as the Phobos and Aspen projects), so the laches delay period for any Kodak patents that Apple contends are connected with those joint development activities started *no later* than August 2005. Apple never asserted an ownership claim to any Kodak patent until 2010, and did not assert an ownership claim to the Nine Additional Kodak Patents until March 16, 2012. There is no excuse for that delay.

Once the presumption of laches attaches, the burden shifts entirely to Apple; the Debtors can remain “utterly mute” on the issue of prejudice and still prevail on Apple’s ownership claims. *Serdarevic v. Advanced Medical Optics, Inc.*, 532 F.3d 1352, 1359 (Fed. Cir. 2008). The Debtors, nevertheless, can demonstrate material prejudice resulting from Apple’s unexcused delay in asserting its inventorship claims. Material prejudice may be in the form of either economic prejudice or evidentiary prejudice. *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1033 (Fed. Cir. 1992). With respect to economic prejudice, Kodak has spent years enforcing the patents that Apple now says it owns, at great time and expense to the company. It has also entered into licensing agreements with numerous companies based, in part, on its ownership of the ‘218 patent, and the ‘218 patent and the Nine Additional Kodak Patents are all included in Kodak’s Digital Capture Portfolio that the Debtors are endeavoring to sell. These activities could not have gone unnoticed by Apple. The belated assertion by Apple that it owns the ‘218 patent—and the Nine Additional Kodak Patents—seeks to usurp the economic benefits that Kodak gained through the systematic maintenance, defense and enforcement of its patents, and threatens to disrupt the section 363 sale, thereby interfering with the Debtors’ reorganization efforts and threatening the Debtors’ ability to emerge from chapter 11. That is a textbook example of economic prejudice.

The Debtors would also suffer evidentiary prejudice as a result of Apple's unexcused delay in asserting its inventorship claims. Evidentiary prejudice arises where the delay in asserting an inventorship claim curtails a defendant's ability to mount "a full and fair defense" to that claim due to the loss of documentary evidence or the unreliability of memories. *A.C. Aukerman Co.*, 960 F.2d at 1033. Here, the passage of nearly 20 years since Apple and Kodak's joint development efforts and the passage of more than 10 years since issuance of the '218 patent would make it significantly more difficult for Kodak to refute attacks on its ownership of the '218 patent—although Kodak has every confidence it could do so again, just as it did in the ITC 703 proceeding. *See Frugoli*, 74 U.S.P.Q. 2d at 1721 (after 8 years, accurate recollection "would be difficult for any percipient witness").

* * *

Apple and FlashPoint waited far too long to assert their ownership claims and, as a result, those claims are barred by the statute of limitations and/or the equitable doctrine of laches. The untimely nature of Apple's and Flashpoint's ownership claims is a fully sufficient basis for the Court to reject those claims as a matter of law.

III. Apple's and FlashPoint's Ownership Claims Are Meritless.

A. If the Court Were to Reach the Merits of Apple's and FlashPoint's Ownership Claims, Such Claims Can Be Resolved by This Court.

Even if the Court elected to reach the merits of Apple's and FlashPoint's untimely ownership claims, it would readily determine that those claims—which Apple and FlashPoint must prove by clear and convincing evidence—should be summarily dismissed. As an initial matter, Apple cannot evade this Court's jurisdiction by arguing that its claim involves complex issues arising under federal patent law. Such an argument directly contradicts Apple's prior

[REDACTED]

In response to the Debtors' recent document requests for all documents supporting or relating to Apple's ownership claims, Apple produced only documents that were previously produced in the ITC 703 Proceeding and the ITC 717 Proceeding. By failing to produce anything new and subsequently confirming there are no other documents to produce, Apple has thereby conceded that there are no other documents other than those before Chief ALJ Luckern that need to be considered to resolve Apple's inventorship claim regarding the '218 patent and the Nine Additional Kodak Patents. (*See* Holley Decl. Ex. 5.) In short, there is nothing for this Court to review that was not already taken into consideration in the ITC 703 Proceeding.

[REDACTED]

[REDACTED]

As a matter of equity, Apple should not be permitted to assert the same claim it lost in the ITC 703 proceeding in these bankruptcy proceedings, especially when Apple's assertion of that claim is interfering with the Debtors' ongoing efforts to sell Kodak's Digital Capture Portfolio. As Apple made plain in its response to the document requests that the Debtors served in March 2012, there are no new documents that were not before Chief ALJ Luckern in the ITC 703 Proceeding that have a bearing on Apple's claim to ownership of the '218 patent. Even if the Court were to reach the merits, there is thus no need for long and complicated proceedings in this Court to resolve the ownership question. That question can, and should, be decided based on the outcome of the ITC 703 Proceeding, a litigation in which Apple had a full and fair opportunity to be heard after developing an extensive factual record in discovery.

[REDACTED]

that Apple did not argue that it owned the '218 patent [REDACTED]
[REDACTED] until 2010 when Kodak asserted that Apple was infringing the '218 patent demonstrates the highly dubious nature of Apple's claim.

The ownership claims that Apple asserted for the first time in its March 16, 2012 letter to the Debtors' counsel can and should be dealt with summarily now that Apple has made clear it has no evidence to support those claims. Obviously, it is incumbent on Apple to prove it was the inventor of the subject matter of the Nine Additional Kodak Patents that Apple identified for the first time just over one month ago. [REDACTED]

[REDACTED] As a result, Apple cannot establish that its ownership claims to the Nine Additional Kodak Patents are any more valid than its baseless ownership claim to the '218 patent.

The only apparent logic in Apple's list of Nine Additional Kodak Patents to which it belatedly asserted ownership claims is that the list includes all four of the patents asserted in the complaints Kodak filed against Apple in the ITC and the U.S. District Court for the Western District of New York just before the Debtors filed their chapter 11 petitions, *i.e.*, U.S. Patent No. 7,210,161, U.S. Patent No. 7,453,605, U.S. Patent No. 7,742,084 and U.S. Patent No. 7,936,391. The presence of those four patents on the list—but not other members of patents in the same patent families—merely points out the opportunistic nature of Apple's ownership claims. The Court need not engage in long and complicated proceedings to reject ownership claims that are so obviously being asserted to interfere with the Debtors' efforts to sell patents that are valuable property of Kodak's estate.

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court grant this motion and order such other and further relief as the Court may deem just and proper.

NOTICE

Notice of this Motion has been provided by U.S. mail, overnight delivery, hand delivery, email if requested or, with the exception of the Court and the U.S. Trustee, facsimile to: (a) the Office of the United States Trustee for the Southern District of New York; (b) Togut, Segal & Segal LLP, counsel to the Official Committee of Unsecured Creditors; (c) U.S. Bank, National Association, as indenture trustee; (d) Wilmington Trust, National Association, as indenture trustee; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' post-petition secured lenders; (h) the Environmental Protection Agency; (i) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; and (j) Kirkland & Ellis LLP, counsel to Apple Inc., and (k) Pepper Hamilton LLP, counsel to FlashPoint Technology, Inc. The Debtors respectfully submit that further notice of this Motion is neither required nor necessary. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

No prior motion for the relief requested herein has been made to this or any other Court.

Dated: May 14, 2012
New York, New York

/s/ Andrew G. Dietderich

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PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the relief requested in the Motion must be filed electronically with the Court on the docket of *In re Eastman Kodak Company*, Case No. 12-10202 (ALG), pursuant to the Court's General Order M-399 (available at <http://www.nysb.uscourts.gov/orders/m399.pdf>), by registered users of the Court's case filing system and by all other parties in interest on a 3.5 inch disc, preferably in portable document format, Microsoft Word or any other Windows-based word processing format and served by U.S. mail, overnight delivery, hand delivery or, with the exception of the Court and the United States Trustee, facsimile upon each of the following: (a) the Chambers of the Honorable Allan L. Gropper, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (b) the Debtors and their counsel; (c) the Office of the United States Trustee for the Southern District of New York; (d) Togut, Segal & Segal LLP, counsel to the Official Committee of Unsecured Creditors; (e) U.S. Bank, National Association, as indenture trustee; (f) Wilmington Trust, National Association, as indenture trustee; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (j) the Environmental Protection Agency; (k) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; (l) Kirkland & Ellis LLP, counsel to Apple Inc.; (m) Pepper Hamilton LLP, counsel to FlashPoint Technology, Inc.; and (n) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, so as to be actually received **no later than June 6, 2012 at 4:00 p.m. (EDT)**. Only those responses that are timely filed, served and received will be considered at the hearing.

Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.²

Dated: May 14, 2012
New York, New York

/s/ Andrew G. Dietderich

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² The Debtors will file a reply to any interposed objections no later than 12:00 p.m. (EDT) the day prior to the hearing.

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)		
In re:	)	Chapter 11	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹	)	Case No. 12-10202 (ALG)	
Debtors.	)	(Jointly Administered)	
)		

**ORDER IN AID OF AN ASSET SALE PURSUANT TO
SECTION 363 OF THE BANKRUPTCY CODE**

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for an order in aid of their planned sale of certain intellectual property assets pursuant to sections 105, 363 and 541 of Title 11 of the United States Code and Federal Rule of Bankruptcy Procedure 9014; it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; after due deliberation thereon; and good and sufficient cause appearing therefor;

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Apple Inc. has no interest in U.S. Patent No. 6,292,218 (the “‘218 patent”) or U.S. Patent Nos. 5,493,335; 5,828,406; 6,147,703; 6,441,854; 6,879,342; 7,210,161; 7,453,605; 7,742,084; and 7,936,391 (the “Nine Additional Kodak Patents”).
3. Flashpoint Technology, Inc. has no interest in the ‘218 patent or the Nine Additional Kodak Patents.
4. Upon consummation of a sale of the patents pursuant to section 363 of the Bankruptcy Code, the ‘218 patent and the Nine Additional Kodak Patents shall be sold free and clear of any purported interest of Apple or FlashPoint.
5. The requirements set forth in Local Rule 9013-1(b) are satisfied.
6. This Order is immediately effective and enforceable.
7. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: June [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

Steven L. Holley
Andrew G. Dietderich
Brian D. Glueckstein
Michael H. Torkin
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

*Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____	)	Chapter 11
In re:)	
	)	Case No. 12-10202 (ALG)
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	
	)	(Jointly Administered)
Debtors.)	
	)	FILED UNDER SEAL
_____)	

**DECLARATION OF STEVEN L. HOLLEY
IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER IN AID OF
AN ASSET SALE PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.

DECLARATION OF STEVEN L. HOLLEY

STEVEN L. HOLLEY declares:

1. I am a member of the Bar of the State of New York and a member of Sullivan & Cromwell LLP, counsel for Debtors in the above-captioned action. I also am a member of the Bar of the United States District Court for the Southern District of New York.

2. I make this declaration to place before the Court certain materials referenced in “Debtors’ Motion and Memorandum of Law in Support of Their Motion for an Order in Aid of an Asset Sale Pursuant to Section 363 of the Bankruptcy Code,” dated May 14, 2012.

3. Attached as Exhibit 1 is a copy of the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], bearing production numbers 703-Apple 17788378 to 85.

4. Attached as Exhibit 2 is a copy of the Final Initial and Recommended Determinations, dated January 24, 2011, issued by the late Chief Administrative Law Judge Paul J. Luckern in the U.S. International Trade Commission Investigation No. 337-TA-703.

5. Attached as Exhibit 3 is a copy of a letter from Marcus Sernel of Kirkland & Ellis LLP to Brian D. Glueckstein of Sullivan & Cromwell LLP, dated March 16, 2012.

6. Attached as Exhibit 4 is a copy of Apple’s Objections and Responses to Kodak’s Requests for Production of Documents and Things, dated April 5, 2012.

7. Attached as Exhibit 5 is a copy of an e-mail from Mr. Sernel to Mr. Glueckstein, dated April 25, 2012.

8. Attached as Exhibit 6 is a copy of a letter from Todd A. Feinsmith of Pepper Hamilton LLP to me, dated April 2, 2012.
9. Attached as Exhibit 7 is a copy of the transcript of a hearing held before Hon. Robert E. Gerber on July 26, 2005 in *In re Adelphia Communications, Inc.*, captioned No. 02-41729 (Bankr. S.D.N.Y.).
10. Attached as Exhibit 8 is a copy of [REDACTED], bearing production numbers 717-Apple0101168 to 77.
11. Attached as Exhibit 9 is a copy of [REDACTED], bearing production numbers 717-Apple0101178 to 273.
12. Attached as Exhibit 10 is a copy of [REDACTED], bearing production numbers 717-Apple0110551 to 75.
13. Attached as Exhibit 11 is a copy of a subpoena served on Apple, issued August 12, 2005, in the case captioned *Eastman Kodak Co. v. Sony Corp.*, No. 04-cv-6095 (W.D.N.Y.).
14. Attached as Exhibit 12 is a table that lists, for each of the ten Kodak patents to which Apple has asserted an ownership claim in these proceedings: (1) the patent issuance date; (2) the publication date of the patent application (if any) and (3) the date on which a four-year statute of limitations period expired.
15. Attached as Exhibit 13 is a table that lists, for each of the ten Kodak patents to which Apple has asserted an ownership claim in these proceedings: (1) the patent issuance date; (2) the publication date of the patent application (if any), and (3) the date that a presumption of laches attached.

16. Attached as Exhibit 14 is a copy of [REDACTED]

[REDACTED]

[REDACTED].

17. Attached as Exhibit 15 is a copy of [REDACTED]

[REDACTED], bearing production
number 703-Apple0405370.

18. Attached as Exhibit 16 is a copy of [REDACTED]

[REDACTED], bearing production
number 703-Apple0405369.

19. Attached as Exhibit 17 is a copy of [REDACTED]

[REDACTED], bearing production
numbers 703-Apple0023000 to 19.

20. Attached as Exhibit 18 is a copy of [REDACTED]

[REDACTED], bearing production
numbers 703-Apple0021958 to 2002.

I declare under penalty of perjury under the laws of the United States that the
foregoing is true and correct.

Executed on May 14, 2012.

/s/ Steven L. Holley
Steven L. Holley

Exhibit 1 Filed Under Seal

Exhibit 2 Filed Under Seal

Exhibit 3

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Marcus E. Sernel, P.C.
To Call Writer Directly:
(312) 862-2389
msernel@kirkland.com

300 North LaSalle
Chicago, Illinois 60654

(312) 862-2000
www.kirkland.com

Facsimile:
(312) 862-2200

March 16, 2012

By E-Mail

Brian D. Glueckstein
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Re: Apple's claims of ownership to patents assigned to Kodak

Dear Brian:

I write in response to Kodak's request for additional information regarding Apple's claims of ownership of patents presently assigned to Kodak. In an effort to move towards a fair and prompt resolution of these claims, we provide the preliminary information below based on our investigation to date.

Based on the information presently known to us, Apple intends to pursue claims with respect to the following patents assigned to Kodak:

5,493,335
5,828,406
6,147,703
6,292,218
6,441,854
6,879,342
7,210,161
7,453,605
7,742,084
7,936,391

Apple's ownership claims will be pursued based on at least the following causes of action: correction of inventorship, breach of contract, conversion, unfair competition, deceptive business practices, and/or breach of confidence. Apple seeks both monetary and injunctive relief,

Brian D. Glueckstein
March 16, 2012
Page 2

including but not limited to damages for harm to Apple and recovery of funds improperly received by Kodak, declarations of correction of inventorship and ownership, and any other appropriate relief.

As you know, Apple has sought several times to move forward with litigation of its ownership claims but has been blocked from doing so by Kodak. Apple has thus been unable to further explain and develop its ownership claims within the context of the parties' litigations, and looks forward to the opportunity to do so. The information provided above is therefore preliminary and subject to further refinement, including but not limited to when Apple is afforded the opportunity to take discovery of Kodak with respect to these claims.

Apple's identification of these patents and causes of action should not be viewed or construed as an assertion of such claims for purposes of 11 U.S.C. § 362 or otherwise. We are merely providing this information in response to Kodak's informal request. Moreover, by this letter, Apple does not waive, and in fact preserves, all of its rights and remedies, including without limitation its jury trial rights and its rights to have any disputes with Apple adjudicated by a district court.

We trust that our voluntary identification of these details regarding Apple's ownership claims should be more than sufficient to allow the parties to discuss an appropriate path forward to adjudicate them. Please let me know if you have any questions or concerns.

Sincerely,

/s/ Marcus E. Sernel P.C.

Marcus E. Sernel, P.C.

Exhibit 4

**APPLE'S OBJECTIONS AND RESPONSES TO KODAK'S
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Apple Inc. ("Apple") hereby responds to the Requests for the Production of Documents and Things (Nos. 1-12) of Eastman Kodak Company ("Kodak").

Apple's responses to these requests for production should not be viewed or construed as an assertion of any related claims at this time for purposes of 11 U.S.C. § 362 or otherwise. Moreover, by these responses, Apple does not waive, and in fact fully preserves, all of its rights and remedies, including without limitation its jury trial rights and its rights to have any disputes with Apple adjudicated by a district court.

GENERAL OBJECTIONS

Apple makes the following General Objections to each request in Kodak's Requests for the Production of Documents and Things (Nos. 1-12) ("requests"), and expressly incorporates each of them into the specific responses set forth below.

1. Apple objects to these requests as premature and unreasonably burdensome in view of the parties' ongoing discussions regarding production of documents from the ITC investigations.

2. Apple objects to the definitions stated in the requests to the extent they are inconsistent with the Federal Rules of Civil Procedure. Apple will respond to the requests only to the extent required by the Federal Rules of Civil Procedure.

3. Apple objects to each request to the extent it seeks information or documents that are protected by the attorney-client privilege, work-product doctrine, the common-interest and/or joint-defense privilege, and/or any other applicable privilege, protection, or immunity.

4. Apple objects to each request to the extent it seeks documents not within Apple's possession, custody, or control.

5. Apple objects to each request to the extent it seeks production of confidential materials in the absence of an appropriate confidentiality agreement.

6. Apple objects to each request to the extent it seeks disclosure of information that Apple is under an obligation to a third party or court order not to disclose.

7. Apple objects to each request to the extent it seeks information or documents not relevant to the ownership disputes or to the claims or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence, or which is otherwise outside the proper scope of discovery.

8. Apple objects to each request to the extent it is unduly burdensome or oppressive in nature.

9. Apple objects to each request to the extent that it uses terms that are not defined, understood, or are otherwise vague and ambiguous.

10. Apple objects to each request to the extent it seeks production of “all” or “any” documents that refer or relate to a particular subject on the grounds of overbreadth, undue burden and expense, and that it calls for information outside the scope of discovery.

11. Apple objects to Kodak’s definition of “relating to” and “relate to” as overly broad, unduly burdensome and oppressive and vague.

12. Apple objects to Kodak’s definition of “Apple” as being overbroad, unduly burdensome and oppressive, calling for information and documents outside the scope of discovery, and as seeking information and documents beyond Apple’s possession, custody, or control.

13. Apple objects to each request to the extent that a response is sought with respect to a question of law or to the extent that a response calls for an expert opinion.

14. Apple's agreement to produce any category of documents is not a representation that any such documents in that category actually exist in Apple's possession, custody, or control, or can be located through a reasonable search, or that such documents are relevant.

15. Apple's investigation is continuing and ongoing, and Apple reserves its right to supplement its responses and objections as appropriate.

16. Apple objects to the temporal scope of each request, which contain no temporal limitation at all, as overly broad and unduly burdensome.

17. Apple objects to Kodak's Instructions to the extent they impose obligations beyond those required by the Federal Rules of Civil Procedure.

18. The objections and responses contained herein are given without prejudice to Apple's right to produce or rely on subsequently discovered information, facts, or documents. Apple accordingly reserves the right to change the responses herein and/or produce or rely on subsequently discovered documents as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made. Apple reserves the right to later object to the admissibility into evidence of any information, documents, or things produced in response to these requests on any permissible grounds, including grounds not identified below. The responses herein are made based on good faith efforts, but are in no way to be deemed to be to the prejudice of Apple in relation to further discovery, research, and analysis.

SPECIFIC RESPONSES & OBJECTIONS

REQUEST NO. 1:

A list of all patents issued or assigned to Kodak that Apple purports to own or in which Apple claims an ownership interest.

RESPONSE TO REQUEST NO. 1:

Apple objects to this request to the extent it improperly seeks creation of documents that do not already exist. Apple further objects to this request as premature given that Apple's analysis of potential ownership claims remains ongoing. Apple further objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request to the extent that it calls for an expert opinion.

Subject to its specific and general objections, Apple states that, in a voluntary effort to attempt to move forward with resolution of ownership issues, Apple previously provided Kodak's counsel with a list of patents that, based on investigations to date, Apple believes to be implicated by its ownership claims.

REQUEST NO. 2:

All Documents and Communications identifying any Kodak patent that Apple claims to own or in which Apple claims an ownership interest.

RESPONSE TO REQUEST NO. 2:

Apple objects to this request as vague and ambiguous with respect to the meaning of "identifying any Kodak patent." Apple further objects to this request as overbroad and unduly burdensome in requesting a potentially broad array of "all documents and communications" relating to particular patents, much of which has no relevance to any claims or defenses of any

party. Apple further objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product.

Subject to its specific and general objections, Apple states that, in an effort to move forward with resolution of ownership issues, Apple previously provided Kodak's counsel with a list of patents that, based on investigations to date, Apple believes to be implicated by its ownership claims.

REQUEST NO. 3:

All Documents and Communications supporting or relating to any Apple claim of ownership or an ownership interest in any patent issued or assigned to Kodak, including but not limited to any such documents within Apple's custody or control relating to Flashpoint.

RESPONSE TO REQUEST NO. 3:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request as vague, ambiguous, and overbroad with respect to its use of the term "relating to." Apple further objects to this request as overbroad and unduly burdensome in requesting a potentially broad array of "all documents and communications" relating to particular subject matter. Apple further objects to this request to the extent it seeks confidential documents of third parties from whom consent has not been obtained.

Subject to its specific and general objections, Apple states that a substantial production of documents supporting Apple's claims was already made to Kodak in connection with ITC investigations. Apple will produce these documents again, subject to an appropriate confidentiality agreement. Apple will also produce any additional responsive, non-privileged documents that are located through a reasonable search, subject to an appropriate confidentiality agreement.

REQUEST NO. 4:

All Documents and Communications supporting or relating to Apple's claim that it is "the rightful owner of the '218 Patent (and potentially many other Kodak patents)," as alleged in the ¶ 6 of the Apple DIP Objection.

RESPONSE TO REQUEST NO. 4:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request as vague, ambiguous, and overbroad with respect to its use of the term "relating to." Apple further objects to this request as overbroad and unduly burdensome in requesting a potentially broad array of "all documents and communications" relating to particular subject matter.

Subject to its specific and general objections, Apple states that a substantial production of documents supporting Apple's claims was already made to Kodak in connection with ITC investigations. Apple will produce these documents again, subject to an appropriate confidentiality agreement. Apple will also produce any additional responsive, non-privileged documents that are located through a reasonable search, subject to an appropriate confidentiality agreement.

REQUEST NO. 5:

All Documents and Communications supporting or relating to Apple's assertion that it "is entitled to restitution of all or a substantial portion of the licensing revenues that Kodak has obtained based on its improper claims to ownership of the '218 patent and potentially other patents sought based on Apple's innovations and technology," as alleged in ¶ 7 of the Apple DIP Objection.

RESPONSE TO REQUEST NO. 5:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request as vague, ambiguous, and overbroad with respect to its use of the term “relating to.” Apple further objects to this request as overbroad and unduly burdensome in requesting a potentially broad array of “all documents and communications” relating to particular subject matter.

Subject to its specific and general objections, Apple states that a substantial production of documents supporting Apple’s claims was already made to Kodak in connection with ITC investigations. Apple will produce these documents again, subject to an appropriate confidentiality agreement. Apple will also produce any additional responsive, non-privileged documents that are located through a reasonable search, subject to an appropriate confidentiality agreement.

REQUEST NO. 6:

All Documents and Communications relating to the ownership of the ‘218 Patent produced by Apple in the ‘703 Proceeding.

RESPONSE TO REQUEST NO. 6:

Apple objects to this request to the extent it seeks confidential documents of third parties from whom consent has not been obtained.

Subject to its general and specific objections, Apple states that a substantial production of documents supporting Apple’s claims was already made to Kodak in connection with ITC investigations. Apple will produce these documents again, subject to an appropriate confidentiality agreement.

REQUEST NO. 7:

All Documents and Communications relating to the ownership of the '218 Patent obtained by Apple that were produced in the '663 Proceeding.

RESPONSE TO REQUEST NO. 7:

Apple objects to this request on the grounds that Apple was not a party to the 663 Proceeding. Apple further objects to this request to the extent it seeks to shift to Apple the burden of investigating what documents may have been produced in other cases to which Apple was not a party.

REQUEST NO. 8:

All Documents and Communications relating to the ownership of any patent in which Apple claimed any ownership interest in the '717 Proceeding.

RESPONSE TO REQUEST NO. 8:

Apple objects to this request as vague and ambiguous with respect to the meaning of "patents in which Apple claimed any ownership interest." Apple further objects to this request as overbroad and unduly burdensome in requesting a potentially broad array of "all documents and communications" relating to particular subject matter. Apple further objects to this request as overbroad and unduly burdensome to the extent it seeks documents relating to patents not implicated by the parties present ownership disputes.

Subject to its general and specific objections, Apple states that a substantial production of documents supporting Apple's claims was already made to Kodak in connection with ITC investigations. Apple will produce these documents again, subject to an appropriate confidentiality agreement.

REQUEST NO. 9:

All transcripts of testimony, including, but not limited to, deposition, hearing testimony, and all affidavits or declarations provided by Eric Anderson on behalf of Apple relating to ownership of the '218 Patent.

RESPONSE TO REQUEST NO. 9:

Subject to its general objections, Apple states that it will produce transcripts of testimony given by Eric Anderson in the 703 investigation that are located through a reasonable search, subject to an appropriate confidentiality agreement.

REQUEST NO. 10:

All agreements or understandings between Apple and Eric Anderson relating to his involvement in disputes between Apple and Kodak over the ownership or inventorship of the '218 Patent.

RESPONSE TO REQUEST NO. 10:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request as vague and ambiguous with respect to the meaning of "his involvement in disputes between Apple and Kodak."

Subject to its specific and general objections, Apple states that it will produce agreements with Eric Anderson entered into in connection with ownership disputes between Apple and Kodak, subject to an appropriate confidentiality agreement.

REQUEST NO. 11:

All Documents and Communications relating to the value of Kodak's digital imaging portfolio (as that term is used in the Apple DIP Objection).

RESPONSE TO REQUEST NO. 11:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product. Apple further objects to this request to the extent it seeks to shift the burden to Apple of locating and producing documents originating from Kodak.

Subject to its general and specific objections, Apple states that, based on investigations to date, it is not aware of responsive, non-privileged documents in its possession that did not originate from Kodak.

REQUEST NO. 12:

All Documents and Communications relating to the motivation for or effect of Apple's assertion of claims in these chapter 11 cases that it has an ownership interest in patents issued or assigned to Kodak.

RESPONSE TO REQUEST NO. 12:

Apple objects to this request to the extent that it seeks documents or information protected from discovery by attorney-client privilege and/or work-product.

Subject to its general and specific objections, Apple states that, based on investigations to date, it is not aware of responsive, non-privileged documents in its possession.

Dated: April 5, 2012

/s/ Marcus E. Sernel

James H.M. Sprayregen, P.C.
Brian S. Lennon
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

David R. Seligman P.C.
Marcus E. Sernel, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to Apple Inc.

Exhibit 5

Glueckstein, Brian D.

From: Sernel, Marc <msernel@kirkland.com>
Sent: Wednesday, April 25, 2012 10:19 PM
To: Glueckstein, Brian D.
Cc: Holley, Steven L.; Dietderich, Andrew G.; ddunne@milbank.com;
mstamer@akingump.com; Rokach, David; Seligman, David R.; Lennon, Brian S.
Subject: RE: Kodak

Brian -- Following up on my detailed voicemail to you of earlier today, I wanted to confirm that I believe we should be able to produce to you the transcripts/rulings identified in the first four bullet points on page 2 of your letter. I believe that the documents responsive to your fifth bullet point would be included within those already produced to you (i.e. they were part of the 703/717 productions as well), but I am trying to confirm that. As I explained in my voicemail, the documents/information identified in the last two bullet points relate to a proceeding to which Apple was not a party, and likely implicate third party confidentiality issues that we will have to work through. We will reach out to Flashpoint's counsel to begin to work through these issues and I will update you when I have more information.

We are not affirmatively withholding any documents that Apple believes support its ownership claims. We have produced all relevant, non-privileged documents that we are presently aware of that relate to the ownership issues. In light of the fact that this is pre-litigation discovery to ostensibly allow you to propose a mechanism for litigating these issues, we believe we have more than met our obligations and we patiently await Kodak's proposal as to how to move forward with the litigation. You have not explained, nor do I understand, how production of a privilege log at this time would further the objectives you set forth as justifying the need for this 2004 discovery in the first place. We can discuss issues such as exchanging privilege logs once the parties are engaged in full-blown discovery in whatever litigation mechanism is established to resolve the ownership issues.

Please feel free to call me if you have any questions or concerns.

Thanks -- Marc

Marcus E. Sernel
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
(312) 862-2389
msernel@kirkland.com

From: Glueckstein, Brian D. [mailto:gluecksb@sullcrom.com]
Sent: Monday, April 23, 2012 8:24 PM
To: Sernel, Marc
Cc: Holley, Steven L.; Dietderich, Andrew G.; ddunne@milbank.com; mstamer@akingump.com
Subject: Kodak

Please see the attached letter.

Regards,
Brian

Brian D. Glueckstein

Sullivan & Cromwell LLP | 125 Broad Street |

New York, NY 10004-2498

T: (212) 558-1635 | F: (212) 291-9305 |

gluecksb@sullcrom.com

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Exhibit 6



15th Floor, Oliver Street Tower
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Boston, MA 02110-2736
617.204.5100
Fax 617.204.5150

Todd A. Feinsmith
direct dial: 617-204-5145
direct fax: 800.507.0866
feinsmitht@pepperlaw.com

April 2, 2012

Via E-Mail

Steven L. Holley, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Dear Steven:

I write in response to your March 19th letter and to reiterate the comments which I made at the hearings on March 8th and 20th.

Contrary to your assertion, FlashPoint has *not* acknowledged that it does not have a direct ownership interest in the '218 patent. As I made clear at the March 8th hearing, we were (at that time) in the process of reviewing, together with patent counsel, the precise nature of FlashPoint's interest. Indeed, we are of the view that FlashPoint in fact has a direct interest in the '218 patent. Additionally, the fact that Apple is in the process of litigating its ownership claims does not form a basis upon which to exclude FlashPoint from participating in the dispute concerning the '218 patent. Apple, which is a defendant in infringement claims asserted by the Debtor, likely has different interests and motivations than FlashPoint in regard to the adjudication and resolution (judicial or otherwise) of the '218 patent dispute.

Based on the foregoing, FlashPoint should be entitled to participate in any discussions regarding a proposed mechanism to resolve matters relating to the '218 patent, and FlashPoint should also be able to participate in any related discovery. Since it does not appear that you are willing to agree to FlashPoint participating on a consensual basis, we will take the issue up with the Court as we indicated at the March 20th hearing.

Philadelphia

Boston

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Orange County

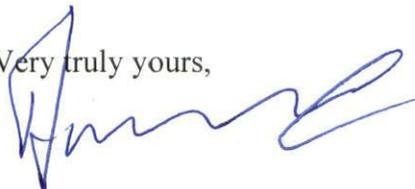
Princeton

Wilmington

Pepper Hamilton LLP
Attorneys at Law

Steven L. Holley, Esq.
Page 2
April 2, 2012

Very truly yours,



Todd A. Feinsmith

cc: William Belanger, Esq.
Dennis F. Dunne, Esq. (ddunne@milbank.com)
David R. Seligman, Esq. (david.seligman@kirkland.com)

Exhibit 7

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2 UNITED STATES BANKRUPTCY COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

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-----x

4 In The Matter Of

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Case No. :
02-41729

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8 ADELPHIA COMMUNICATIONS, INC.

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Debtor

-----x

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July 26, 2005
10:35 a.m.

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United States Custom House
One Bowling Green
New York, New York 10004

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Hearing re: Motion by Atty for the Ad Hoc
16 Committee of Arahova Noteholders Striking Debtors' May
2005 Amendments to Schedule of Liabilities, etc. ;
17 Motion of the Ad Hoc Committee of Arahova Noteholders
Granting Leave, Standing and Authority to Prosecute
18 Intercompany Claims and Causes of Action, Modifying
the Automatic Stay; Motion by Attorney for the Debtor
19 for an Order in Aid of Confirmation Establishing
Pre-Confirmation Procedures to Resolve Certain
20 Intercreditor Issues.

21

22 B E F O R E:

23

HON. ROBERT E. GERBER,

24

Bankruptcy Judge.

25

0002

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Adelphia Communications Corp.

2

A p p e a r a n c e s:

3

WILLKIE, FARR & GALLAGHER LLP

Attorneys for the Debtor

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0003

787 So. Street, Apt. 209
New York, New York 10019-6099

BY: MYRON TREPPER, ESQ.
ROGER NETZER, ESQ.
BRIAN E. O'CONNOR, ESQ.
TERRENCE K. McLAUGHLIN, ESQ.
MORRIS J. MASSEL, ESQ.
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HOWARD SCHUB, ESQ.

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BY: JUDITH ELKIN, ESQ.

Adelphia Communications Corp.

A p p e a r a n c e s (Cont'd):

HAYNES AND BOONE, LLP
Attorneys Bank of America
901 Main Street, Suite 3100
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0009

1 Adelphia Communications Corp.

2 THE COURT: Mr. Trepper, I think
3 I know all the parties in this case. I assume
4 you have some prepared remarks. By all means,
5 you should feel free to make such points as you
6 see fit. The same with the other parties. I
7 see Mr. Lauria, Mr. Bennett, representatives of
8 the banks, the trade claims, and somewhere out
9 there I thought I saw Mr. Kaplan on behalf of
10 Huff, and I'm sure there may be others who may
11 want to be heard as well.

12 Just a few observations before
13 you begin, Mr. Trepper. First, I've read all
14 the papers. I want you folks to focus
15 principally on matters that you didn't have a
16 chance to respond to in the briefing, plus such
17 relatively limited matters as you think are
18 worthy of emphasis subject to the questions and
19 concerns that I would be grateful if you would
20 address.

21 I would like both sides to
22 address, or all three sides to address, that
23 being the Debtors' side, the parent
24 noteholders' side, the Arahova noteholders'
25 side, the extent to which there are any real

0010

1 Adelphia Communications Corp.

2 disputes as to what transactions Adelphia
3 entered into before the filing of this case,
4 what assets and/or liabilities were
5 transferred, what cash went in and out of the
6 Bank of Adelphia to the various entities, or
7 are what we're really talking about accounting
8 or recharacterization or avoidance issues? In
9 essence, differences in perspective as to what
10 conclusions I should draw from wholly or
11 largely undisputed historic facts.

12 Mr. Trepper in particular, I
13 know you don't want a do-over on all the work
14 that Adelphia and its accountants did on the
15 schedules, but I would like you to clarify the

16 extent to which -- to Steven L. Holey's findings, when
17 we get to the five or six issues that we're
18 going to deal with on the mechanism that you've
19 proposed, to what extent my findings or -- on
20 the intercreditor issues could trump what the
21 Debtors' initial views were as expressed in its
22 most recent schedule amendments.

23 Similarly, all parties, should I
24 go as far as the parent noteholders seemingly
25 now urge in their opposition, seemingly endorse

0011
1 Adelphia Communications Corp.
2 conclusions that the Debtor may have drawn, or
3 should I simply rule today in connection with
4 this motion that we're not going to throw out
5 the benefit of all the work that the Debtor and
6 Pricewaterhouse did up to this point in time
7 and we'll have a full and fair opportunity, as
8 part of the process the Debtors recommend, to
9 argue matters as to conclusions to be drawn
10 from the work that was done, the significance
11 of historical facts, characterization,
12 avoidance and the like. Now, the Debtor and
13 Mr. Bennett may have different views on that,
14 but I would like to get clarification as to
15 what you're asking me to conclude at this
16 juncture.

17 I would like all sides, but
18 particularly the Debtor, to clarify the extent
19 to which issues raised by -- principally by the
20 banks, which were largely timing and procedural
21 issues, have been addressed by reason of the
22 amended order, or, conversely, the extent to
23 which concerns that they raised remain.

24 And lastly, after business hours
25 yesterday, my chambers received a submission

0012
1 Adelphia Communications Corp.
2 from the Arahova noteholders with seemingly
3 very broad-brush statements of facts that are
4 said to be disputed, including, somewhat to my
5 confusion and surprise, disputes as to whether
6 SEC filings were made, what dates they were

7 made, disputing that of Steven L. Boyle's 2039 of 250
8 order, disputing what I would have certainly
9 thought would be wholly undisputed facts,
10 raising -- you know, raising Rule 11 issues if
11 we ever got to that point.

12 But more fundamentally, I want
13 everybody's views as to what I should do with a
14 submission filed after hours the night before a
15 hearing that suddenly raises all of these
16 matters of factual dispute on matters which
17 I've got to scratch my head to see would be a
18 matter of factual dispute and also those that
19 might be more debatable. I want the views of
20 all the parties as to what I should do with
21 that submission and what I should do with the
22 statement of opposition, one which, by reason
23 both of its breadth and its substance, and my
24 difficulty as a judge in dealing with
25 submissions of that character in the context of

0013

1 Adelphia Communications Corp.

2 my case management orders that are supposed to
3 set up a level playing field and that are
4 supposed to give rise to due process in dealing
5 with matters of factual dispute.

6 With those things said,
7 Mr. Trepper, I would ask that you start.

8 MR. TREPPER: Thank you, Your
9 Honor.

10 One of the -- the way -- before
11 you raised your issues, which are all obviously
12 things we will address, I just thought that we
13 ought to start with where we were last week and
14 what has happened since then for the record.
15 As most parties in interest know, there was
16 what constituted a courtroom chambers
17 conference last week where the parties in
18 interest expressed their views on this process
19 and moved the various hearings to today. I
20 don't propose to rehash what went on in that
21 conference, but among the things that you
22 suggested at the conclusion of that conference
23 to my partner, Mr. Abrams, and to all the other

24 parties, was that we of Severely Bullied 2040 of 250
25 certain questions that were troubling the

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1 Adelphia Communications Corp.
2 Court, or at least were issues that the Court
3 wanted us to address regarding the transaction
4 itself, the potential loss of the transaction
5 and other things of that nature, which we are
6 prepared to address today. And I thought we
7 would do that and try, if we can, to weave that
8 into the questions you've asked.

9 THE COURT: Sure.

10 MR. TREPPER: I also think it's
11 important that we note, and I think you raised
12 this in connection with your comments on the
13 banks and their comments on the proposed
14 procedures -- I'd like to just set the record
15 straight and make sure we have the record
16 straight.

17 Since the filing of the motion
18 and the chambers conference, our people have
19 spent a substantial amount of time with various
20 parties trying to adjust and accommodate the
21 schedule to deal with significant, and we
22 would, I think, concede, legitimate issues of
23 due process, timing and other things that flow
24 from the requests we've initially made.

25 As a result of that process, a

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1 Adelphia Communications Corp.
2 revised form of order was filed yesterday which
3 seeks to accommodate many of the comments but
4 obviously hasn't satisfied all of them. But --
5 for the record, that was filed on Friday; I'm
6 sorry. We have copies available here today,
7 but it is part of the court record. I wanted
8 to make sure of that.

9 At some point in this hearing I
10 will cede the floor to Mr. O'Connor and
11 Mr. McLaughlin, who have been dealing with the
12 multiple parties on those procedures and
13 comments, so I will not bumble my way through
14 situations that I have not been involved in.

15 But I just wanted the Court to know that that
16 is already in motion and an effort is being
17 made to accommodate whatever we can accommodate
18 within the bounds of reasonableness.

19 We filed last evening, an
20 illustrative time line for the resolutions
21 process as we've designed it, which flows from
22 the revised order that was filed, and, again,
23 we have copies of that available here today.

24 And we recognize that these
25 serial filings obviously are difficult for

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1 Adelphia Communications Corp.
2 everyone to keep track of because we're dealing
3 in realtime as we move towards the hearing, but
4 we thought it was appropriate to have a record
5 that there has been progress in resolving some
6 of the issues with many of the parties, and you
7 will hear from other parties today with respect
8 to how they view what we've now proposed in its
9 modified form. So for the record, that has
10 happened and it is happening. There have
11 been --

12 THE COURT: And that's the
13 process that led to the black line that was
14 submitted to me as part of the amended order?

15 MR. TREPPER: Yes, sir. There
16 have been, even including the document you
17 mentioned yesterday, a significant number of
18 pleadings that have been filed relating to
19 discovery requests and other things which the
20 Court has considered in telephone conference
21 calls with the affected parties. I don't think
22 we need to deal with the record of that today,
23 simply that those have occurred. And we are
24 here today to deal with the issues that were
25 raised at the chambers conference and to

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1 Adelphia Communications Corp.
2 proffer our support of the motion in aid of
3 confirmation.

4 I want to be sure, because of
5 the number of people who are here, that I have

6 and the Court has the several responses
7 filed at nine. And I can identify each of them
8 if you wish so that if there's anyone who feels
9 that a response they have made has not been
10 included for this record, they can so identify
11 it and we can avoid having people step up to
12 the podium.

13 We have a filing by the Ad Hoc
14 Convertible Notes Committee, a filing by Bank
15 of America, a filing by Wachovia Bank National
16 Association, the Equity Committee, the Olympus
17 Administrative Agent, the Ad Hoc Adelphia Trade
18 Claims Committee, a group identified as the
19 Calyon parties, class action plaintiffs, and
20 the Arahova Ad Hoc Committee, which is
21 Mr. Lauria's group. Those are the responses
22 that our records indicate have been filed
23 today. I just realized as I looked at
24 Mr. Kaplan that there was a filing by W.R. Huff
25 as well, which I left out. My apologies.

0018

1 Adelphia Communications Corp.

2 THE COURT: I've got that one.

3 MR. TREPPER: And to the best of
4 my knowledge, and I looked to Mr. Shiff, the
5 Creditors' Committee have not filed anything in
6 this regard.

7 MR. SHIFF: We have not,
8 although some of the members have in their
9 capacity.

10 THE COURT: I understand.

11 MR. TREPPER: Okay. That's the
12 record as I stand here today.

13 If I may, Your Honor, I'd like
14 to start with the questions that you asked of
15 Mr. Abrams, who is, by the way -- I apologize
16 for his absence, but he managed to suffer a
17 sports-related injury over the weekend which
18 has disabled him for while, and further I will
19 not speak.

20 The first question that you
21 asked -- and forgive me if I quote it directly,
22 but I wanted to make sure I got it right. We

23 took this all from the Steven Pollack of PG&E
24 could possibly be more important than
25 maximizing the value for all of the

0019

1 Adelphia Communications Corp.
2 stakeholders in this case and bringing into the
3 estate \$17-1/2 billion worth of cash and
4 seemingly very valuable common stock for the
5 benefit of all, that could then be," your
6 words, "divvied up among various creditor
7 constituencies in accordance with their legal
8 entitlements to that. And I, like any
9 bankruptcy judge, am going to want parties to
10 address whether it could possibly be wise to
11 jeopardize that." That's the first area I'd
12 like to comment on if I might. You asked us to
13 respond to that question.

14 First of all, it's very
15 difficult to disagree with the Court under any
16 circumstances, but certainly in a matter like
17 this, it's impossible to disagree with the
18 Court. Securing \$17.6 billion for all
19 constituents is by any measure a good thing for
20 everybody in this case, including the objectors
21 to the process.

22 I think -- and here I have to be
23 careful, because I think the best evidence of
24 this is contained in the record of the
25 April 20th hearing which approved the breakup

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1 Adelphia Communications Corp.
2 fee for the Time Warner/Comcast transaction, or
3 resulted in the approval, and that record is
4 sealed. So with the breadth and scope of
5 people in the courtroom today, I am not going
6 to reveal what was said on the record.

7 I will tell you that I can
8 characterize it, and have here pages of that
9 record for Your Honor's review just to confirm
10 the accuracy of our comments. But basically
11 the Creditors' Committee, the Official
12 Creditors' Committee, which though mute today,
13 speaks for all creditors and spoke very, very

14 vocally at that point Steven L. Rep. 15 of 250 supported
15 the \$17.6 billion Time Warner/Comcast
16 transaction. Mr. Friedman was extremely
17 eloquent, as he usually is. He gave Your Honor
18 all the reasons why the Committee supported the
19 approval of the breakup fee at the time, why
20 the Committee was supporting the transaction.
21 And I think when the statutory fiduciary
22 representing the interests of all creditors
23 comes to the conclusion that, along with the
24 Debtor, this is the best transaction available,
25 that's somewhat persuasive evidence.

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1 Adelphia Communications Corp.

2 I have the page references for
3 you; I have brought them with me. But, again,
4 I'm reluctant to distribute them at this point
5 in time.

6 THE COURT: I understand. You
7 can hand them up. But I just want to be sure
8 that anybody who has a different perspective
9 today, like Mr. Lauria or anybody else, gets a
10 copy before you hand it up to me. You can do
11 it at the next recess.

12 MR. TREPPER: I would then
13 comment -- and, again, in dealing with this,
14 particularly from the Arahova representatives'
15 basis -- which, by the way, as a preliminary
16 matter, we fully understand their desire to
17 maximize the recovery for the Arahova holders
18 in this case and we're not trying to stand in
19 their way. Whether we agree with a lot of
20 what's happened is irrelevant to this
21 discussion.

22 But when we go back to the sale
23 process itself and what was in the best
24 interests of all of these estates, including
25 Arahova, not a single party suggested that we

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1 Adelphia Communications Corp.
2 needed to decide what was in the best interests
3 of a particular estate or a particular silo in
4 determining what deals should be done. We had

5 no objections, no consideration of Steve's Policy 2045 of 250

6 bankers were retained, and you will recall the
7 painful retention process, which would have had
8 some direction, I think, if there were
9 objections for the bankers and the M&A advisers
10 to do this on a separate entity basis versus
11 what's the best deal available.

12 You will recall that there
13 were -- and the evidence at the April 20th
14 hearing demonstrated that the argument was that
15 there were separate bids from many of these
16 entities, no bids from some of them, and
17 aggregate bids of a small number for the entire
18 company. Nobody -- during the entire sale
19 process, which took a full year, where there
20 was ongoing dialogue with the Creditors'
21 Committee's advisers, the Equity Committee's
22 advisers and other relevant parties in the
23 case, including, at the time that certain of
24 Mr. Bennett's clients became restricted, the ad
25 hoc senior noteholders, no one suggested that

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1 Adelphia Communications Corp.

2 the actual consideration to be derived under
3 the transaction was dependant upon an
4 entity-specific calculus. What's the best
5 deal, how do we get the most money, was the
6 main interest.

7 And lastly, and I think most
8 significantly, when we got down to a general
9 agreement that pursuit of the transaction with
10 Time Warner and Comcast was the more desirable
11 route to take, we invited and -- I guess
12 "invited" is a qualified term -- we certainly
13 conceded that there was a need to involve the
14 Creditors' Committee -- and at that point
15 Mr. Bennett and his clients were restricted --
16 in a direct dialogue, shoulder to shoulder to
17 us with Time Warner and Comcast to improve the
18 price, improve the terms of the deal, take any
19 conditionality out of it. And I think it's
20 fair to say that was it was a totally
21 collaborative effort. Mr. Friedman so

22 commented in connection with the hearing of Steven L. Polley, Page 246 of 250
23 hearing. And what resulted was a transaction
24 which the Creditors' Committee and
25 Mr. Bennett's group, who was then, again I

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1 Adelphia Communications Corp.
2 emphasize the word, "restricted" to certain
3 members of it, recommended that transaction and
4 the breakup fee to this Court.

5 So I guess I tried to answer
6 your question in pieces, but when we have the
7 statutory representatives of all creditors, the
8 representative of a large constituency of other
9 creditors, and I think even at some point the
10 Equity Committee saying that they were in favor
11 of the transaction because the process had been
12 conducted properly, although they would have
13 liked to have seen more money, we have powerful
14 evidence of why this transaction is in the best
15 interests of the estate and why it should be
16 pursued.

17 A couple of things from that
18 record which are public. Substantially all of
19 the Debtor's constituents supported the sale
20 and Your Honor commented that the sale was
21 important to me, it was important to the Equity
22 Committee and eventually, if not sooner, it
23 became important to the bulk of the estate's
24 creditors, even senior ones.

25 And, again, during this entire

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1 Adelphia Communications Corp.
2 process -- and I'm not emphasizing this only
3 for a point of emphasis, but from a point of
4 practicality -- there was no colloquy over
5 whether this transaction was in the best
6 interests of ACC, the parent; Arahova, the
7 affiliate; Century, another affiliate; Olympus,
8 another affiliate. It was the valve of the
9 transaction that everyone was focused on.
10 There were certainly discussions going on on a
11 parallel track about how allocations might
12 occur, but that was never an issue for approval

13 of the transaction. of Steve L. Pollock and other people
14 for substantially all of the affected parties
15 supporting the transaction.

16 I would go further and tell you
17 that -- and I have to be careful here again --
18 prior to seeking the approval of the
19 transaction with Time Warner and Comcast, the
20 Debtor and its bankers, and by this I'm
21 referring to the M&A bankers, UBS and Allen,
22 made a detailed presentation to the Creditors'
23 Committee and to Mr. Bennett's group on a
24 confidential basis that basically compared the
25 potential value of a standalone transaction to

0026

1 Adelphia Communications Corp.
2 the Time Warner transaction, and everyone
3 concluded that the premium embedded in the
4 transaction with Time Warner was substantial
5 and warranted pursuit of that transaction.
6 That information is confidential. It is not
7 something that I think should be made a part of
8 this record.

9 Time Warner and Comcast have no
10 idea what our contrasting views of value were,
11 although I think they can figure it out, and I
12 think that the premium was measured in not
13 millions of dollars, but numbers that had nine
14 figures in them. So everyone knew what we were
15 doing and no one said, We don't want this
16 transaction unless we know what we're getting
17 from it.

18 At the breakup fee hearing, Your
19 Honor noted we have an offer from Time Warner
20 that's improved over where we were earlier in
21 terms of estimate of the estate's enterprise
22 value. I would say to Your Honor that if
23 members of the Arahova group, some of which
24 were members of the Creditors' Committee, not
25 all of them, but some of them -- some of

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1 Adelphia Communications Corp.
2 Mr. Lauria's clients now are newcomers to the
3 process who were not agreeing to previously be

4 restricted. If anyone on behalf of Steven L. Pappas or Arahova,

5 which has its indenture trustee on the
6 Creditors' Committee and a representative of
7 the Arahova noteholders on the Creditors'
8 Committee, at least one that I know of, was
9 going to raise the issue of whether or not the
10 transaction should be approved before knowing
11 how much of the transaction proceeds were going
12 to flow to a specific debtor group, the time to
13 raise that has long passed.

14 So we're now at a point that, I
15 think stating the obvious, which is we have a
16 transaction which is clearly in the best
17 interests of the estate. And how do we get it
18 done? We have concluded, and the papers are
19 replete with it, that the only way to get it
20 done in any time frame that reasonably
21 accommodates a Time Warner/Comcast closing
22 date, outside closing date, which is by virtue
23 of the terms of the contract, one year, exactly
24 one year from where we are today, the end of
25 July of 2006, with some possibility of a modest

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1 Adelphia Communications Corp.
2 extension based upon regulatory issues -- we
3 have concluded that the only way to do that is
4 to commence what we have defined as the
5 resolution process. The resolution process
6 gives parties the due process rights which Your
7 Honor was very concerned about, I'll get to
8 that in a minute.

9 The plan process, which we will
10 attempt by virtue of disclosure statement
11 processes some time I would assume in the month
12 of September, although we haven't had a formal
13 scheduling yet, we'll try to --

14 THE COURT: I think the most
15 important concern was that it not be during the
16 first week of school.

17 MR. TREPPER: Having passed that
18 point in my life, I am very, very sensitive to
19 the other parties' interests.

20 THE COURT: Those of us who are

21 parents of young children of Steven L. Boyd, Jr. and

22 concerns of that character.

23 MR. TREPPER: It's always nice
24 when your children are taking their children to
25 school so you don't have to worry about it

0029

1 Adelphia Communications Corp.

2 anymore.

3 We're going to make every effort
4 to run a plan process and a disclosure
5 statement process in parallel to this
6 resolution process. It's a very difficult
7 process to construct, of course, but one that
8 is our job, and, I would say, the rest of this
9 group's job to construct if we're going to
10 preserve the value of the transaction.

11 Obviously if people don't like
12 the Time Warner deal, which is only going to be
13 approved at this point through a plan of
14 reorganization, they can vote against the plan.
15 They can object to confirmation of a plan.
16 They can raise whatever objections they may
17 have with respect to the transaction itself in
18 the context of confirmation processes.

19 But to sit here and wait until
20 the parties conclude what they're going to do
21 and how they're going to do it with the clock
22 ticking on a timetable which sounds like a long
23 time, but with the magnitude of these issues
24 and the magnitude of the dollars involved and
25 the history involved is not a long time, we see

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1 Adelphia Communications Corp.

2 no alternative in response to Your Honor's
3 questions but to commence the resolution
4 process.

5 Now, having said that -- and I
6 can go into all the reasons why it's necessary.
7 Prolonged litigation is not going to serve
8 anyone's interests, certainly not disorganized
9 litigation, which is going to be difficult to
10 keep together.

11 But there are other things that

12 we have to think about Steven. People are not
13 insignificant. This business at this point is
14 being managed in connection with a sale
15 process. Managing a business toward a sale is
16 a challenge for management, even if it's a sale
17 that's going to occur a year out. Retention of
18 people is critically difficult. Recruitment of
19 people is almost impossible because the
20 business is about to be sold. There are always
21 judgments made about how you retain core value,
22 adhere to the requirements of the asset
23 purchase agreement.

24 But as you go forward in a
25 situation like this, if there isn't a rational

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1 Adelphia Communications Corp.

2 timetable that we can look to to move the case
3 towards confirmation, there should be, in all
4 parties' minds, a legitimate concern about
5 potential attrition in value of the enterprise,
6 and nobody wants that to happen. If a plan was
7 voted down, which I think is unlikely, people
8 would then have to be left with or resort to an
9 alternative plan scenario, perhaps a standalone
10 plan scenario, and it is not wise to have a
11 company in this state of uncertainty for a
12 prolonged period of time.

13 I think that it's clear that
14 people are doing a good job of trying to manage
15 through it, and it is something that we always
16 have in our minds, but I think the record
17 should indicate that the business is being
18 managed towards a sale.

19 That said, Your Honor, you asked
20 the following question: "Don't I need to do
21 that which is necessary to ensure due process,
22 which means seemingly starting teeing up the
23 matter for judicial determination in the event
24 of an inability to agree, as soon as possible?"

25 We say yes. Hard to disagree

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1 Adelphia Communications Corp.

2 with that. We think the resolution procedures

3 do that. At some point, probably pretty soon,
4 I'll have Mr. O'Connor and Mr. McLaughlin take
5 you through what has been accomplished in the
6 way of procedures themselves and the proposed
7 order. We've solicited input from an armada of
8 constituents and we've tried to accommodate as
9 many as we can. And the revised order I think
10 meets most of those comments.

11 You did say, We may not have the
12 ability to give people due process of the
13 quality that we could give them if we were
14 delayed in a material way. We agree with that,
15 but we also agree with your other comment that
16 you have wide discretion to determine what's in
17 the best interests of the estate in managing
18 this process.

19 We frankly regret having to put
20 this in Your Honor's bailiwick and Your Honor's
21 lap for judicial determination. Our preference
22 as the Debtor would be to have tried to achieve
23 consensus. We don't have consensus at this
24 point in time. I'm frankly hopeful, Your
25 Honor, that by permitting parties to get

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1 Adelphia Communications Corp.
2 intimately familiar with the legal issues and
3 the economic issues embedded in the outlined
4 issues in the motion in aid of confirmation,
5 with sophisticated business people and counsel,
6 a process of education, which would be -- in
7 the short term might result in parties'
8 adjusting their expectations, recognizing the
9 risks of their relative positions and perhaps
10 engaging in settlement discussions. But I
11 can't predict that, and the fact that I can't
12 predict that today, the only thing we can do as
13 responsible stewards of this estate is to move
14 forward.

15 Does Your Honor have a question?

16 THE COURT: No. Please

17 continue.

18 MR. TREPPER: You did note, and
19 I think it goes without saying, that you "would

20 be very wary about letting the parties go into a free fall or
21 major chapter 11 case go into a free fall or
22 some kind of uncontrolled spin by reason of
23 uncontrolled litigation that's perceived by
24 some to advance their own agendas." I am
25 wholeheartedly in agreement with that.

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1 Adelphia Communications Corp.

2 I attribute no motive other than
3 parties' believing that they have legal rights
4 they wish to assert, and if they need tactical
5 advantage, they'll try to find it. They have a
6 right to proceed. All we're trying to do is
7 create an environment where that occurs in an
8 organized fashion to the benefit of all
9 parties, and particularly for the Court,
10 because we would, again, prefer to deliver you
11 a package of consensus which we're not able to
12 do today, and that is unfortunate.

13 I think that the resolution
14 process itself will result in a far more
15 orderly process than any of the other things
16 we've seen so far, including, frankly,
17 pleadings of the nature that were filed last
18 night. I'm not sure I even know how to respond
19 to that, because I haven't had a chance to
20 fully review it, but my own view of it is that
21 it should be, frankly, ignored. We didn't want
22 to see any more of this. That's why we're
23 trying to put the resolution process in place.
24 Again, I ascribe only professionally sound
25 motivations to the parties who are doing what

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1 Adelphia Communications Corp.

2 they're doing. All we want to do is make sure
3 it gets done in a way that moves the case
4 forward and doesn't put it on hold while
5 people, quite frankly, show off their
6 litigation skills.

7 I'm trying to move quickly,
8 because there are a lot of people standing.
9 I'm trying to be as polite as I possibly can.

10 There's a lot made in the

11 response by the Arbitrator. We need
12 a massive appointment of new fiduciaries for
13 all these debtors. We wholeheartedly disagree
14 with that. I think the Court has already
15 expressed itself as being concerned about that.

16 Before I get to the merits of
17 it, I'd like to comment on the timing of it.
18 It's very late in the day to be raising this
19 argument, Your Honor. It's been well known to
20 everyone in this case at the Creditors'
21 Committee level and the various ad hoc
22 committee levels and the Equity Committee, that
23 there are substantial intercompany claims and
24 other intercompany issues. Presentations have
25 been made, discussions have been had, maybe not

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1 Adelphia Communications Corp.
2 with the absolute precision that this discovery
3 will entail, but no one at the time suggested
4 that there was any need for separate
5 fiduciaries.

6 This has been going on for a
7 couple of years, not a couple of weeks. It's
8 been known that the Debtors' management, with
9 input from Pricewaterhouse and others, has been
10 engaged in this massive restatement effort in
11 order, in fact, to get audited financials,
12 which were necessary for this company, either
13 as a standalone emergence or under a sale. And
14 while a single management team, skilled as they
15 were, dedicated as they were, did all this
16 work, nobody suggested that each of them needed
17 to be -- each of the entities needed to have a
18 separate fiduciary.

19 We understand that there may be
20 issues that need to be litigated on behalf of a
21 particular estate, which is why we've proposed
22 the limited standing construct that may at
23 least allow them to be litigated free of these
24 allegations of conflict. But more fiduciaries
25 would be an absolute disaster in this case. I

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1 Adelphia Communications Corp.

2 think it's clear that Steveny, Page 254 of 250
3 just have to look at the fee applications, and
4 understood that the Debtor was represented by
5 one counsel, not separate attorneys. Each
6 debtor did not have a separate counsel. That's
7 been known throughout this case. That's been
8 raised now as a necessity as well and I'm sure
9 will be commented on today. We wholeheartedly
10 disagree.

11 But the timing of it, to call
12 that into question at this point, when so much
13 has gone on in this case, so much has been
14 accomplished, so much has been done, to find us
15 as perfectly fine fiduciaries when we were
16 negotiating a \$17.6 billion transaction but an
17 unqualified fiduciary when we're trying to set
18 up a procedure to resolve significant issues in
19 which people at least think we have a conflict,
20 is a little bit much in our opinion.

21 We have -- there's just --
22 again, I don't want to go over ground I've
23 already plowed. A limited grant of standing
24 here is all that is needed to get these cases
25 moved forward. Some parties in interest I

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1 Adelphia Communications Corp.
2 think agree with that. I don't know of -- I
3 only know of one party in interest right now
4 who disagrees, and you'll hear from them.

5 But there is no need. And Your
6 Honor correctly observed that no one who wants
7 to assert these claims with standing on behalf
8 of, for example, ACC or Arahova, should want to
9 assume fiduciary duties to a greater mass of
10 parties than those they actually speak for.
11 The limited standing construct absolutely does
12 that and does it efficiently. These are all
13 well-qualified law firms with qualified
14 financial advisers. There's a massive amount
15 of data to be reviewed. They will review it,
16 they'll get their information, and they can
17 litigate their cases.

18 And if we want to get into the

19 practicalities of appointing new parties of 250
20 fiduciaries, it's a very interesting
21 discussion. Who would they be? There are only
22 a small group of people in the management of
23 this company who fully understand the entire
24 range and scope of the intercompany issues and
25 have been part of the audit process. To

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1 Adelphia Communications Corp.
2 appoint new people for whatever purpose,
3 whatever title, who would report, I assume, to
4 those people who have already done the work, is
5 simply absurd and unnecessary.

6 The board of directors of
7 Adelphia, which supervises the entire overall
8 construct of this case I guess, would be argued
9 to be also conflicted, which we don't agree
10 with. But putting new fiduciaries in serves no
11 purpose. I can see these fiduciaries wanting
12 to retain their own separate counsel, their own
13 separate advisers, and at some point in time
14 even asking this estate for substantial
15 indemnification based on what's gone on here.
16 How we would even navigate our way through
17 something like that? It's wholly unnecessary,
18 I think it's senseless. We think it's
19 unnecessary. And I think Your Honor probably
20 understands it better than I do and I don't
21 need to say much more about it.

22 Let me just check and see if
23 I've covered the other areas.

24 An issue was raised -- and,
25 again, I'm not sure how I touch on this -- in

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1 Adelphia Communications Corp.
2 the response from Arahova that talks about the
3 entire fairness of the resolution process and
4 then refers us to Delaware law regarding entire
5 fairness constructs.

6 First, the entire fairness
7 doctrine, we don't think has any applicability
8 here. It exists under Delaware law to evaluate
9 actions that have been taken by or failed to be

10 taken by a board of directors of a corporation alleged
11 to be conflicted, and those allegations are
12 usually made in the aftermath of the decisions.
13 The whole point of proceeding with the
14 resolution process is to put a mechanism in
15 place to eliminate a conflict that is alleged
16 to exist, or at least to in some way adjust the
17 heat around that conflict.

18 Even if it was to be applied,
19 the entire fairness test would be satisfied
20 here. It requires, under Delaware law, a fair
21 price, which we have, and a fair process, which
22 we've developed. So, again, I think it's a
23 somewhat out-there argument which I just needed
24 to comment on because I had not seen it raised
25 before. It's inapplicable here and I don't

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1 Adelphia Communications Corp.

2 think we need to deal with it.

3 There's a concern expressed,
4 referring to the Arahova response, that we may
5 have abandoned causes of action. That's the
6 whole purpose of the limited standing
7 discussion. Number one, the Debtor has never
8 intended to abandon any transaction or any
9 claim, and it's hard for me to believe that,
10 with the zeal with which things are being
11 pursued by both ACC and Arahova, that any
12 legitimate claim, and I underline the word
13 "legitimate" is going to be abandoned. So the
14 Debtor is doing what it can to move the process
15 forward.

16 Part of the concern I have and
17 we have is that it is in some ways suggested
18 that the Debtor should now, if we're going to
19 move forward with the resolution process, take
20 a holiday, absent itself and not be involved,
21 in fact not be permitted to speak with respect
22 to any issue raised during the process.

23 First and foremost, as we did in
24 the litigation posture with the Creditors'
25 Committee on the bank litigation, the Debtor

0042

1 Adelphia Communications Corp. v. Time Warner Entertainment Co., L.P., et al., 2005 WL 2057 (S.D. Cal. 2/21/05)

2 conferred limited standing -- Your Honor has
3 not yet issued your decisions in that area, and
4 retained -- and we still want to retain and
5 must retain the right to settle any of these
6 issues and disputes as part of a plan or other
7 mechanism.

8 To simply eliminate or suggest
9 that the Debtor and its representatives should
10 be eliminated from the process at this point in
11 time is absurd. We are not going to at this
12 point in time take sides, but we certainly
13 should have the right at any point in time to
14 seek to propose compromises, suggest
15 alternatives, and anything that's desirous of
16 moving the case forward and achieving
17 confirmation of a plan is what we're about.

18 Your Honor raised an issue which
19 I think is an interesting one, which is, can't
20 we simply approve the Time Warner transaction
21 as part of the confirmation process and leave
22 the allocation issues through the resolution
23 process to be determined in connection with
24 confirmation or thereafter. If you search the
25 case law, I don't think you can find a case

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1 Adelphia Communications Corp.
2 directly on point that authorizes such relief,
3 nor do I find a case that says it can't be
4 done, which means that there's no reason it
5 shouldn't be done, at least to us. There are
6 analogous cases under the settlement construct
7 in 9019 where there are discussions, and it's
8 even discussed in connection with the
9 Government settlement here, about the ability
10 to close a transaction and worry about the
11 allocation of proceeds in later proceedings.

12 That is similar to -- maybe not
13 directly on point with, but similar to what
14 might occur here if there was no settlement.
15 The resolution process would be designed to run
16 in parallel with a plan process. The plan
17 would have to describe in detail the resolution

18 process potential outcomes, and we haven't yet
19 discussed finalizing how allocations might be
20 discussed in that disclosure statement.

21 But I can certainly foresee and
22 we can certainly foresee getting to a
23 confirmation hearing where all of these issues,
24 if they haven't been settled, may have to be
25 decided either at or after confirmation. The

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1 Adelphia Communications Corp.
2 confirmation order however, would result in the
3 transaction being closable, not closed, because
4 there obviously are final order conditions in
5 the Time Warner transaction.

6 But if the issue is whether we
7 can proceed with a plan of reorganization that
8 embeds the Time Warner transaction, we do
9 believe we can do that and it is our intention
10 to attempt to do that, again in the exercise of
11 our fiduciary duties to get that deal done and
12 a plan confirmed.

13 (Interruption.)

14 MR. TREPPER: I think there was
15 a lot more that I was going to discuss. A
16 couple of areas that are of extreme concern to
17 us.

18 The Arahova committee argues
19 that the process cannot succeed unless the
20 participants are given a full menu of rights
21 and privileges afforded to any debtor in
22 possession. The resolution process, as it has
23 been revised, provides participants with the
24 full menu of rights to deal with the issues in
25 the resolution process. That does not deprive

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1 Adelphia Communications Corp.
2 these folks of an ability to come to this Court
3 at any time and seek relief external to that
4 for other issues which they wish to raise. But
5 it is not something that I think is on the
6 table today.

7 An issue that has been raised
8 which is extremely troubling and one that needs

9 to be discussed, is the request of Steven P. Roy, suggestion,
10 or, I think, demand that in order for the
11 resolution process to proceed, there has to be
12 a waiver of the attorney/client privilege with
13 regard, to -- I assume, a broad waiver of the
14 attorney/client privilege.

15 We, I think vigorously disagree
16 with that. I think it's important that Your
17 Honor understand that we view the
18 attorney/client privilege as an asset of all of
19 the debtors. We have been counsel and many
20 firms have been counsel to these estates on
21 very specialized matters, including tax and
22 other things, and it is not appropriate at this
23 point, absent a showing of extreme prejudice by
24 anyone, to demand a waiver of the
25 attorney/client privilege when the debtor has

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1 Adelphia Communications Corp.
2 retained the right to propose settlement or
3 will retain the right to propose settlement and
4 where the waiver of that privilege, by virtue
5 of it being therefore available -- the
6 information being available to parties outside
7 of this dispute, could -- and I can't go
8 further than that -- cause extensive damage
9 even to the Arahova estate, because there is
10 information that has been developed and legal
11 analysis that has been developed that should
12 not be, at this point, broken through by
13 allowing the attorney/client privilege to be in
14 any way affected by this process.

15 Arguments are made about 503(b)
16 and the right to compensation earlier than when
17 you demonstrate that you've made a substantial
18 contribution. I'll only observe that Your
19 Honor has commented that you know of no case
20 that provides for that. I think that counsel
21 has probably conceded that. We don't think
22 it's appropriate. It has not been requested by
23 Mr. Bennett's side of the argument. I don't
24 see any reason why we should prejudge whether a
25 substantial contribution has been made until we

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of Steven L. Pooley Pg 260 of 250

1 Adelphia Communications Corp.
2 determine whether a substantial contribution
3 has been made.

4 I'm going to go to my notes of
5 what Your Honor has asked. One that I think --
6 again, if you have any questions about what
7 I've said? I've tried to shorten my
8 commentary, given the scope of the issues and
9 the number of people in the courtroom and the
10 discomfort factor of the entire environment.
11 So if there's anything that I haven't covered
12 on those points, Your Honor, I leave that to
13 your discretion.

14 THE COURT: You can continue.

15 MR. TREPPER: You have asked one
16 question -- I asked Mr. O'Connor to address it.

17 You've asked whether the
18 findings you make in connection with any of the
19 intercreditor disputes could in any way trump
20 the work that has been done by the Debtors. I
21 think that was your question. I was trying to
22 jot it down.

23 THE COURT: Yes. Or putting it
24 differently, the extent -- is my microphone
25 coming through? The extent to which I should

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1 Adelphia Communications Corp.
2 regard the work that the Debtor has done as
3 being binding on Mr. Lauria and Mr. Bennett and
4 their allies in terms of litigating issues of
5 concern to their constituencies.

6 MR. TREPPER: Well, let me
7 respond to that in the following way: Number
8 one, I think that the work that the Debtors
9 have done will be useful to both, whether they
10 agree with the conclusions and the information
11 that's been developed or take different
12 positions based upon what they learn. That is
13 their privilege and I don't think the
14 resolution process changes that at all.

15 One area that we have dealt
16 with, we have tried to deal with, and we deal

17 with it in the response of Steven L. Poye of the motion
18 to strike schedules, is an issue relating to
19 the presumptive validity of the amounts set
20 forth in the Debtors' amended schedules which
21 have been filed with this court relating to
22 intercompany claims. And what we have said
23 with respect to that, and we've said it in a
24 footnote in one of our pleadings and would
25 actually say it in any sort of format that

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1 Adelphia Communications Corp.
2 parties require in an order, is that we believe
3 that the numerical calculations that are
4 embedded in the schedules; that is, that the
5 work that was done provides a series of
6 numerical calculations and numbers that the
7 Debtors believe are accurate and are entitled
8 to a presumption of validity, rebuttable though
9 it may be. We stand behind the numbers. The
10 characterization and what parties want to talk
11 about with respect to those numbers is clearly
12 fair game.

13 I think it would be -- we would
14 have rendered meaningless the year or more and
15 thousands of hours of businessmen's time
16 putting together these calculations in good
17 faith without any bias or any sense of rigging
18 process, but merely -- and again, I remind
19 people, one of the reasons we did -- let me
20 digress for a moment.

21 Because in a lot of these large
22 cases, people throw up their hands and say, We
23 can't figure out these intercompany accounts,
24 we can't figure out these claims, there's no
25 purpose in us doing it, let's just sort of meld

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1 Adelphia Communications Corp.
2 everything together and toss a plan out here.
3 We did it differently here for a
4 number of reasons. Number one, this company
5 needed audited financials. There were
6 reporting subsidiaries that could not report
7 without those audited financials. This company

8 would need audited for Steven L. Poy of Page 250 as a
9 standalone company, and as the APA with Time
10 Warner has proven, would need audited
11 financials to be sold.

12 In order to obtain audited
13 financials, the company needed to restate the
14 intercompany accounts. It was done with no
15 particular constituency in mind. It was done
16 in accordance with normal GAAP instructions.
17 All of that information is available. It would
18 be strange for the company to say that we --
19 that work, which resulted in -- and we've said
20 it in many different contexts -- millions of
21 intercompany accounts being examined and
22 conclusions being reached and accounts being
23 restated, was meaningless as to numerical
24 amount, would be the height of folly. We do
25 not dispute that parties can look at these

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1 Adelphia Communications Corp.
2 amounts differently, can challenge whether they
3 are valid claims under various bankruptcy case
4 law and precepts. But the numerical
5 specificity is reasonable to conclude as to
6 validity. That's what our comment was and I
7 think that's the area you're asking me to talk
8 about.

9 With respect to the fraudulent
10 transfer issues that are raised in the motion
11 in aid of confirmation, a lot of work has been
12 done on what we call mapping, that is, mapping
13 subscriber movement. Most of that has been
14 shared with the Creditors' Committee and other
15 representatives already. Your Honor will hear
16 evidence in that regard if this matter is not
17 settled or these matters are not settled. We
18 are not prejudging the outcome or what would
19 happen, but we certainly have a large database
20 at the Debtor level and Debtor's counsel level
21 of information regarding the mapping of what
22 happened and how it happened. How people
23 choose to litigate the issue is their
24 privilege.

25 With respect to the question on

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1 Adelphia Communications Corp.

2 the bank's -- I think that their issues have
3 been addressed in the proposed order, but
4 you'll hear from Mr. Phelan and others with
5 regard to that when Mr. O'Connor gets up to
6 talk about it.

7 And I don't know that I got the
8 full thrust of Your Honor's first question, the
9 extent to which any real disputes relating --

10 THE COURT: Well, I mean, you
11 touched on that a moment ago. You were talking
12 about what happened and how it happened:

13 Historic movement of subscribers, assets, lines
14 of business and so forth. And I assume that
15 cash may have come out of Bank of Adelphia or
16 gone in, and you've provided information as to
17 what happened to the cash in and out. And I
18 would have thought that that's not a matter of
19 controversy among the parties, but I want
20 people, not necessarily you, but Mr. Bennett or
21 Mr. Lauria or their allies, to tell me whether
22 they're going to want to litigate that or not.

23 MR. TREPPER: Okay. I confess
24 not to have reviewed the pleading filed last
25 night. I'll let Mr. O'Connor address it or Mr.

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1 Adelphia Communications Corp.

2 McLaughlin when they rise.

3 I think, Your Honor, I've tried
4 on behalf of the Debtor to address your
5 questions. I think this resolution process is
6 somewhat unique, although it's been done in
7 other cases, large cases, Enron, for example.
8 There's a small case in Texas where at least
9 something like this was done that Mr. Lauria
10 has more familiarity with than I do.

11 But I think that big problems
12 require creative solutions. We've tried in
13 every way we possibly can to get these matters
14 resolved through discussion, negotiation and
15 settlement. They clearly, at least for now,

16 need to be teed up for Steven L. Byrnes of 250
17 determination. The first stage of that is to
18 get people informed. We've spent a lot of
19 time, and it's been difficult with the
20 Creditors' Committee's accountants, Weiser, on
21 supplying data. It's very, very technical.
22 I'm not going to get into all of those
23 discussions as to what gigabytes of what went
24 on what disk. It's not something that I have
25 the technical capacity to even discuss.

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1 Adelphia Communications Corp.

2 A lot of work has already been
3 done as a predicate to this process. A lot
4 more needs to be done. This will create a
5 tremendous strain on the litigants and,
6 frankly, on the management of the company,
7 because our resources are limited. Our people
8 in the finance department are dealing with not
9 only these issues and will have to deal with
10 these issues, but are also dealing with the
11 requirements of the Time Warner transaction,
12 for financial information for public filing
13 requirements and the rest.

14 That said, they know they're
15 going to have to deal with it. We've begun the
16 process of setting ourselves up to do it. We
17 need to get it started, or the Time Warner
18 transaction -- and I call it the Time Warner
19 transaction with apologies to Mr. Slaughter --
20 as to the Time Warner/Comcast transaction, that
21 process, at least on the surface, is in
22 jeopardy. Time Warner and Comcast have made it
23 very clear to us, as you would expect most
24 buyers to do, that they have no ability to and
25 they are not going to extend the outside dates

0055

1 Adelphia Communications Corp.

2 for the closing of that transaction, at least
3 at present, and I can represent that's a
4 conversation I had with Mr. Slaughter. They're
5 not prepared to do that. We know what our
6 deadlines are. We're trying to meet them.

Franklin, Steven W. Boyle, et al. v. Preferred

7
8 to be here saying, We just need a disclosure
9 statement, the plan is fine, everything is
10 cooked and we'll close the deal. But right now
11 we're not there and this is the process to get
12 us there.

13 So with that, unless you have
14 any questions of me, I'll step aside.

15 THE COURT: No. I don't. At
16 this point I think it would be useful to take a
17 five or ten minute recess, and then I assume --
18 was it your thought that I would then hear from
19 Mr. O'Connor on the specifics, or should we
20 deal with the more conceptual stuff?

21 MR. TREPPER: I think that --
22 again, it's totally your decision, but I would
23 think it's best for you to hear from the
24 affected parties on what I have said and what
25 we think -- what the papers have said before we

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1 Adelphia Communications Corp.
2 get into what I would call the line-by-line
3 discussion of what's in the proposed order and
4 how it evolved.

5 THE COURT: I agree with you.
6 All right. We'll take a recess until 20 of and
7 then I'll hear from Mr. Lauria next. So you
8 can plan your lives, we're going to proceed up
9 to about 1:00 o'clock and if, as I suspect,
10 we're not done by then, we'll take about an
11 hour recess and then I'll hear from everybody
12 else until everybody has had a chance to speak
13 their piece. We're in recess.

14 (A recess was taken from 11:30 a.m.
15 to 11:42 a.m.)

16 THE COURT: Mr. Lauria, come on
17 up, please.

18 MR. LAURIA: Good morning, Your
19 Honor.

20 THE COURT: Good morning.

21 MR. LAURIA: Your Honor, as I --
22 before I get started here, I have prepared some
23 demonstrative materials that I would like to

24 have the Court be able to see my
25 conversation. And if I may approach?

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1 Adelphia Communications Corp.

2 THE COURT: Yes. Have your
3 adversaries received copies yet?

4 MR. LAURIA: Yes, they have,
5 Your Honor. I think we've tried to distribute
6 them throughout the courtroom.

7 Your Honor --

8 MR. BENNETT: If I might be
9 heard about this very briefly, what was just
10 passed to Your Honor?

11 THE COURT: Yes.

12 MR. BENNETT: Mr. Lauria was
13 kind enough to give me a copy of these just
14 before we started. It strikes me that what is
15 labeled Exhibits 13 through 19 are additional
16 factual matter not included in their moving
17 papers on the schedules point, which, of
18 course, we responded to their moving papers and
19 the absence of evidence. I think he's trying
20 to add evidence to a motion that was grounded
21 on something different and I would object to
22 the consideration of anything in Exhibits 13
23 through 17 as -- if it was evidence he was
24 relying upon, it belonged attached to his
25 moving papers and not sprung on us this

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1 Adelphia Communications Corp.

2 morning. I don't have my database with me to
3 check the accuracy of any of this, and it is
4 completely a new matter not in their papers.

5 THE COURT: Mr. Lauria?

6 MR. LAURIA: Your Honor, I'm not
7 offering any of this as evidence today. I
8 understood that this was not an evidentiary
9 hearing. Merely as a demonstrative item to
10 speak to.

11 I will, however, represent to
12 the Court that all of the numbers contained on
13 Exhibit 13 are precise transcriptions of the
14 numbers contained in the DiBella affidavit,

15 which has been offered into evidence and placed into
16 the record twice in these proceedings, and that
17 the -- except for the numbers that are lifted
18 directly from the amended schedules. I have
19 brought copies of the DiBella affidavit and the
20 amended schedules and I'd be happy to provide a
21 copy to anyone who would like to read behind us
22 to make sure that we got the numbers correct.
23 But, again, I offer them only as demonstratives
24 and not for evidence.

25 THE COURT: Well, given the

0059
1 Adelphia Communications Corp.
2 purposes of this hearing and its focus on
3 determining procedures which are most
4 consistent with setting up mechanisms to
5 provide due process, I'm going to take all of
6 these exhibits as indicating the kinds of
7 issues that parties in interest are going to
8 wish to litigate, in essence to set the
9 litigation terrain for matters that you folks
10 will have full opportunity to be heard on in
11 one way or another, depending on the outcome of
12 this hearing. But I'm not going to take any of
13 this for the truth of the matter asserted or
14 for making any findings of fact.

15 MR. BENNETT: Thank you, Your
16 Honor.

17 MR. LAURIA: Fair enough, Your
18 Honor. That's consistent with our intention.
19 I will ask the Court I guess for some
20 clarification, however. It is our
21 understanding that our motion to strike the
22 amended schedule is on today and we did intend
23 to address the issues raised by that motion in
24 our argument today.

25 THE COURT: Sure. I understand

0060
1 Adelphia Communications Corp.
2 the motion to strike is on. Is this relevant
3 to the motion to strike?

4 MR. LAURIA: I think it is, Your
5 Honor.

THE COURT: Steven L. Rapp of 25011

hear what you have to say on that and then I'll give your opponents a chance to be heard and then I'll decide.

MR. LAURIA: Okay.

THE COURT: Thank you.

MR. LAURIA: Thank you, Your Honor.

Your Honor, the Debtors' procedure motion is intended to aid confirmation of a plan -- by the way, can everybody hear me all right? No? Yes -- that implements --

THE COURT: I can hear you, Mr. Lauria. That's probably as important as anything.

MR. LAURIA: Actually, substantially more important. Your Honor.

The motion is intended to aid confirmation of a plan. It implements a sale

Adelphia Communications Corp.

transaction that I think all parties who have spoken have said maximizes the value from an enterprise perspective. In fact, I take it, from what I've been able to glean, that it is undisputed that the value to be realized is sufficient to pay all senior third-party debt in full. In fact, such would probably be the case even without the so-called Time Warner/Comcast premium. As such, I think it's fair to view the premium that is frequently referred to as something that benefits, first and foremost, the ultimate parent Debtor and its creditors.

This would all be fine and, in fact, noncontroversial, but for one thing. Relying on the intercompany claims as set forth in the amended schedules as a siphon of value, the ACC noteholders are trying to overcome their structural subordination and get their recovery from Arahova's subsidiaries ahead of Arahova's noteholders who are otherwise

23 structurally senior of Steven L. Popoff Pg 269 of 250

24 I'd like the Court to take look
25 at Exhibit number 1 on this point. The blue

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1 Adelphia Communications Corp.
2 squares are the holding companies, including
3 Arahova, between Arahova and its operating
4 businesses. Each of those entities, pursuant
5 to the amended schedules, has significant
6 intercompany payables or receivables:
7 \$1.4 billion receivable at the Arahova
8 Communication level, a \$717 million payable at
9 the Century Communications Corp. level, a \$3.5
10 billion intercompany payable at the Century
11 Cable Holdings Corp. level, and a \$4.1 billion
12 receivable at the Century Cable Holdings LLC
13 level.

14 What's important about that is,
15 because of the so-called Bank of Adelphia
16 paradigm, the recoveries on those claims all go
17 to the guy in yellow. And that guy in the
18 yellow is connected by the dark line up to ACC
19 operations. So to the extent that these claims
20 are ultimately allowed, they are, in effect, a
21 siphon that overcomes the structural
22 subordination that would otherwise apply to
23 recoveries at the parent level. And that is
24 the source of the controversy that is going to
25 require some attention and resolution in these

0063

1 Adelphia Communications Corp.
2 proceedings.

3 In effect, the ACC noteholders
4 are attempting to exercise what I guess you
5 could call a free option on the assets of
6 Arahova's subsidiaries. And I say "free,"
7 because they can't do any worse than just
8 ending up with the surplus that would otherwise
9 flow up through the organization as a
10 consequence of this resolution procedure
11 process.

12 Now, as I'm going to explain in
13 some detail, the proposed procedures, combined

14 with the claims as set forth in the schedules, and the plan facilitate, we think
15 schedules, and the plan facilitate, we think
16 improperly and unfairly, the ACC noteholders'
17 efforts to prejudice Arahova and its creditors.
18 It should come as no surprise, in fact, that
19 more or less these procedures are supported by
20 the other constituencies who are either being
21 paid in full, or, in the case of the ACC
22 noteholders, are attempting to overcome their
23 structural subordination. So I will
24 demonstrate the procedures are unnecessarily
25 complex, they delay rather than expedite

0064

1 Adelphia Communications Corp.
2 resolution of certain threshold issues, and are
3 contrary to the Bankruptcy Code and Rules, both
4 procedurally and substantively.

5 The first point I'd like to
6 address, which I believe is one of the issues
7 the Court raised at the status conference two
8 weeks ago, is the issue of fiduciary
9 obligations. We believe that the procedures
10 impermissibly relieve the Debtors of their
11 fiduciary obligations in these cases, and they
12 do so in two important ways. Number one, by
13 not requiring them to identify the claims that
14 they have against other affiliates, and number
15 two, by not requiring them to vigorously defend
16 intercompany claims and causes of action
17 asserted against a debtor.

18 Now, Your Honor, courts have
19 regularly permitted creditors or creditor
20 committees to assert claims on behalf of a
21 debtor. We don't need to cite the authority
22 now on that point. But to the extent that
23 these procedures purport to grant standing to
24 various constituencies to assert causes of
25 action on behalf of one or more Debtors, we

0065

1 Adelphia Communications Corp.
2 obviously have no objection to that, and,
3 indeed, that takes over some of the relief that
4 we had sought in our motion for standing, which

5 was also set for today by Steven L. Polley, Pg 12 of 271 of 250

6 However, we believe it's
7 inappropriate to leave creditors in an
8 effective Easter egg hunt to try to find all of
9 the claims. What the Debtors say they're going
10 to do is, they're going to create a data room
11 and we can all have access to it and we'll all
12 figure out the claims we want to assert. We
13 think that's inappropriate. We believe that
14 the procedures must require the Debtors, who
15 are clearly in the best position to know, to
16 identify all known intercompany claims and
17 causes of action.

18 How can we be expected to know?
19 We don't have the same access to individuals or
20 to information that they do. And if we weren't
21 given access and if the Debtors don't tell us,
22 then what's going to happen to these claims?
23 Because they're unidentified and the Debtors
24 are under no obligation under the procedures to
25 identify them.

0066

1 Adelphia Communications Corp.

2 I want to note, in response to
3 Debtors' counsel's comment that they have no
4 intention to abandon claims, the way we read
5 the procedures, without an obligation on the
6 Debtors' part to identify claims, that is the
7 practical effect.

8 Now, the second issue here is
9 that we believe that there is no precedent,
10 we've seen none cited in any of the papers and
11 we've been able to find none, standing for the
12 proposition that a debtor does not have a duty
13 to defend a suit brought against it, which is
14 distinguishable from the area where the debtor
15 is deciding to prosecute or not prosecute a
16 claim. There, you can certainly exercise
17 discretion to decide is this a cause of action
18 that is worth it pursuant to a cost/benefit
19 analysis to pursue. But if a suit is brought
20 against a debtor seeking to take away half of
21 the debtor's estate, there is no decision to

22 make, there's no distribution of Steven's property. The
23 debtor is duty bound to defend that lawsuit and
24 protect the estate from the attack.

25 The procedures call on the
0067

1 Adelphia Communications Corp.
2 creditors to exercise their defense right, and
3 we believe that is inappropriate. No one else
4 can possibly be in as good a position to mount
5 a defense to any of these claims that are going
6 to be asserted as the Debtors. Again, they
7 have superior access to information and to the
8 people who are aware of transactions and
9 workings that have led to these claims.

10 We are concerned about this both
11 in our anticipated capacity as a plaintiff and
12 as a defendant. As a plaintiff, we want a
13 non-defective judgment when we get to the end
14 of this process and, quite frankly, we can't be
15 assured of that without the opposing Debtors'
16 active participation in its defense. As
17 defendants, we want a complete defense. We
18 don't have access to the personnel and to the
19 information. For example, in this litigation,
20 what would we do, defending the Arahova estate,
21 when we get a request for admissions? How
22 could we possibly respond? The quandary is
23 untenable and must be resolved in some fashion.
24 And a data room, no matter how good or
25 complete, is not an acceptable surrogate for

0068
1 Adelphia Communications Corp.
2 the Debtors' obligation to actively participate
3 in its defense of a cause of action brought
4 against it.

5 Chapter 11 contemplates, and the
6 creditors of each estate in these proceedings
7 are entitled to, an independent, unconflicted
8 fiduciary to defend against these causes of
9 action. Now, Your Honor, to another question
10 that you asked last week or two weeks ago. We
11 are not asking today for more fiduciaries.
12 We're just asking for a debtor in possession.

13 In consideration of the approval
14 of these procedures, a second change that we
15 believe must be made is that the Court should
16 order each debtor that gets sued to appoint an
17 independent director or officer and to require
18 that independent director or officer to retain
19 conflict counsel to advise it with respect to
20 the matters raised by the litigation. The
21 creditors, of course, should be entitled to
22 participate in the defense in any fashion they
23 deem appropriate, but they are entitled to the
24 active participation and assistance of a
25 fiduciary. And we believe, Your Honor, the

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1 Adelphia Communications Corp.
2 failure to require that would constitute
3 reversible error.

4 Next area, Your Honor, with
5 respect to avoidance actions. The procedures
6 are defective to the extent they don't require
7 an adversary proceeding. Bankruptcy Rule 7001
8 requires that avoidance actions be brought as
9 an adversary. It's mandatory; it's not
10 optional. The proposed procedures seek to
11 supplant that requirement and they simply
12 can't.

13 This is -- this is a due process
14 question. Obviously an adversary proceeding
15 activates all of the 7000 series rules and
16 provides significant protection to all of the
17 participants in the litigation, the most due
18 process possibly to be provided. In contrast,
19 a contested matter brings into play only
20 certain series 7000 rules pursuant to 9014.

21 THE COURT: Other than complaint
22 and answer, can you highlight the differences
23 between the applicability of the adversary
24 series of rules and the contested matter rules,
25 insofar as 9014 encompasses so many of the

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1 Adelphia Communications Corp.
2 rules that we normally associate with due
3 process?

MR. LO STEVEN L. POLY OF 2074 OF 250

afraid you were going to ask that question. I am not prepared to give the Court a detailed recitation of the differences between the 7000 series rules and accompanying Federal Rules of Civil Procedure that are lost in the contested matter practice as opposed to an adversary proceeding. I will however, commit, should the Court like, to submit a comparison in 24 hours, if that would be helpful to the Court.

THE COURT: Well, I think the many parties in this courtroom are looking for parties to address and the Court to address the relevant issues today. I have to tell you that this is an area that I've focused on from time to time and I am having trouble thinking of areas in which they differ.

And I've got to tell you, being old enough to have practiced under the Act and remembering when bankruptcy rules came into place, I certainly see that matters that historically were within the jurisdiction,

Adelphia Communications Corp.

summary jurisdiction of the bankruptcy court under the old Act found their way into contested matters, and certainly the kinds of disputes that you and Mr. Bennett have with each other are the classic meat of matters that -- intercompany obligations, matters of an in rem nature, are the exact kinds of things that would have been within the old summary jurisdictions of the court. And I remember when you used to have to bring a plenary action against parties when it wasn't within the summary jurisdiction of the Court. But here we're talking about stuff that's, you know, in emergence from the old summary jurisdiction.

So I really -- and the adversary rules, like to recover money or property, which is the classic thing for which you used to have to bring a plenary action, it's an understandable transition.

21 So if Steven says that
22 you're losing due process because I deal with
23 things as a contested matter where you have
24 notice and opportunity to be heard, you have
25 all of the discovery rules as of right, not

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1 Adelphia Communications Corp.
2 this Court's discretion, as 9014 expressly
3 provides, and the order that your adversaries
4 propose builds in more due process than I can
5 possibly imagine, and if not, as the banks
6 pointed out, you know, you can raise particular
7 concerns in that regard and they can be heard,
8 I've got problems with that distinction.

9 MR. LAURIA: Well, Your Honor, I
10 think, just to draw on the point that the Court
11 referred to initially, just the fundamentals of
12 a complaint and an answer are lacking from
13 these procedures. What you have is parties
14 filing competing issue lists that they modify
15 over time, but you never have something as
16 simple and basic as a complaint laying out the
17 allegations that an opponent is required to
18 answer or to seek to dismiss.

19 One of our criticisms, which
20 I'll get to in a moment, is that there are no
21 mechanisms built into these procedures for
22 dispositive motions. I suspect that there will
23 be any number of issues that will, in fact, be
24 solvable, either on the basis of an -- in
25 effect, a motion to dismiss or a motion for

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1 Adelphia Communications Corp.
2 summary judgment. That's not provided for in
3 these procedures.

4 THE COURT: Those are expressly
5 authorized in contested matters. If you look
6 at 9014, 7056 is incorporated.

7 MR. LAURIA: Correct.

8 THE COURT: And I must say that
9 on the kinds of issues that you and Mr. Bennett
10 are talking about -- and I don't mean to
11 exclude other people in this room who may have

12 needs and concerns - of Steven Polyzo of 250
13 of skepticism as to the extent to which all
14 that many of them can be decided without
15 factual inquiry, but certainly you would have
16 the right to be heard on that. But I have some
17 problems with that.

18 And as far as the importance of
19 pleadings go, I mean, you're aware, I gather,
20 that this court eliminated from its local rules
21 the requirement for marked pleadings, and the
22 reason for that is one of the guys who was on
23 the committee who did it who was also present
24 at the judges' meeting because they were so
25 useless.

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1 Adelphia Communications Corp.

2 Would your concerns be addressed
3 if I inserted into the timetable a mechanism
4 for pretrial order that required, by belt and
5 suspenders, a further clarification of the
6 matters of dispute between you and Mr. Bennett?

7 MR. LAURIA: Your Honor, I think
8 that that would certainly help to address the
9 concern. I do think though, that when we're
10 talking about the amount of dollars at stake
11 here and the number of parties who have an
12 interest in the outcome, that one of the things
13 that we are all going to be looking for is
14 finality when we get to the end of an issue,
15 and we don't want to leave the parties, or the
16 Court for that matter, subject to a subsequent
17 challenge on procedural grounds that some party
18 or constituency somehow did not get the
19 opportunity to participate.

20 And I guess this goes to another
21 area. We really are suggesting that the Court
22 utilize the Bankruptcy Code and Rules for this
23 resolution process rather than a new and albeit
24 quite creative litigation resolution process
25 that hasn't got the benefit of stare decisis

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1 Adelphia Communications Corp.

2 behind it. The benefit of abiding by the

3 bankruptcy rules and Federal Rules of Civil
4 Procedure is that a lot of hard questions about
5 what the parties' rights are have been asked
6 and answered. If we effectively adopt the
7 Adelpia civil procedures for dispute
8 resolution, we are starting on a blank piece of
9 paper and we run the risk of being exposed to
10 all kinds of disputes and issues which will
11 purely be left to the discretion of the Court
12 as far as what the parties' rights are and what
13 the effects of parties's actions or inactions
14 are on other parties' rights, whereas the civil
15 procedures, bankruptcy rules and the federal
16 rules as made applicable give us a lot of
17 answers to a lot of questions.

18 And I quite frankly don't
19 understand, and the Debtors have not explained,
20 why we have to deviate so dramatically from the
21 bankruptcy rules and the Federal Rules of Civil
22 Procedure. To the extent that the Debtors are
23 concerned about timing, we all know that the
24 federal rules accommodate and give the Court
25 the power to expedite litigation and, in fact,

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1 Adelpia Communications Corp.
2 to enter scheduling orders that require all of
3 the things that are to be done in connection
4 with the resolution of these issues in a timely
5 fashion. And why we have to take out our pens
6 and write up a whole new set of civil
7 procedures for this case is beyond me and seems
8 to be an invitation to, rather than simplifying
9 all of our lives, rather to be complicating it.

10 THE COURT: Well, I guess the
11 problem I have, Mr. Lauria -- and if you don't
12 have any more to say beyond what you said, then
13 that's the way it is. But Rule 9014, which
14 covers contested matters, I don't know exactly
15 the total number that it incorporates
16 expressly, but it does seem to cover 7009,
17 7017, 7021, 7025, 7026, 7028 all the way
18 through 7037, 7041, 42, 52, 54 through 56,
19 7064, 7069 and 7071, and all of those are as

20 except if the Court of St. Louis, 9014 of 250

21 Now, in the great bulk of
22 matters that bankruptcy judges take into
23 account, such as contested confirmations, 9014
24 and contested matter doctrine is perceived as
25 providing pretty good due process. And in fact

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1 Adelphia Communications Corp.

2 many folks have said -- I'm going to ask the
3 people who are on the phone to go on mute if
4 they aren't already -- that there is no
5 correlation between the importance of a matter
6 and the extent to which it's covered as an
7 adversary proceeding on the one hand, or a
8 contested matter on the other. And if there's
9 a greater way to give you due process, I'm
10 prepared to keep an open mind on that.

11 Certainly statements of issues
12 sure walk and talk to me like allegations of
13 complaints. And I can understand a brief,
14 frankly, with better understanding of the
15 issues that divide the parties than I can
16 understand a set of marked-up pleadings. So I
17 still need more help on that.

18 MR. LAURIA: Well, Your Honor, I
19 guess we believe that if a complaint is filed
20 and answered, that you will be able to frame
21 the issues effectively for resolution, first
22 through dispositive motion practice and finally
23 as a consequence of expedited discovery on
24 trial. But that -- we believe that that is a
25 tried and true way of framing the issues. And,

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1 Adelphia Communications Corp.

2 quite frankly, the burden really rests on the
3 Debtors to demonstrate why those procedures
4 don't work here. And I don't see the basis. I
5 mean --

6 THE COURT: Fine.

7 MR. LAURIA: Okay, thank you.

8 Just to conclude the point, we believe that the
9 procedures should rely principally on the
10 Federal Rules of Civil Procedure and the

11 bankruptcy rules of procedure of 250

12 resolution of these issues with an appropriate
13 scheduling order to be adopted by the Court
14 that lays out the time line for appropriate
15 matters to be taken up and addressed.

16 Another point that the Debtors
17 raised was the issue of privilege. As we have
18 set forth in our papers, we believe that the
19 procedures should resolve up front or, at the
20 very least, provide for a prompt summary
21 resolution of the privilege issues. Here we
22 have a situation where one counsel has advised
23 all of the Debtors regarding the intercompany
24 issues to this point. Today we are preparing
25 for, and framing how, disputes regarding those

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1 Adelphia Communications Corp.

2 intercompany issues that have arisen or will
3 arise are going to be resolved.

4 Your Honor, we believe that the
5 case law is very clear as most recently
6 announced in a decision in the Mirant Miran
7 case, that under such circumstances there is no
8 privilege as a matter of law as between the
9 parties who retained the single counsel and
10 were advised by that counsel on the subject
11 matter of their dispute.

12 As a consequence, we believe
13 that to create a truly level playing field,
14 this issue must be addressed. Each side must
15 have equal access to all of the work and advice
16 that has been given on these very complex and
17 very important issues if we are to resolve
18 these problems in an efficient fashion.

19 I might add that it also will
20 permit the parties to assess what Debtors have
21 characterized as neutrality in their handling
22 of these issues.

23 We have concerns, Your Honor,
24 that, in fact, certain of the issues, the
25 intercompany issues, have been affected by

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1 Adelphia Communications Corp.

2 interests that are located in one state or
3 another, and the desire to avoid certain
4 problems and issues, and we think that we'd
5 like to know that. We think that it ultimately
6 may impact how value is allocated and how
7 recoveries come out in these cases. That is
8 only going to come through if each constituency
9 in effect mounting the defense or acting as a
10 plaintiff on behalf of an estate in either
11 case, has access to the work that has been done
12 by counsel for the constituencies.

13 The next area that I'd like to
14 get into is the sequencing contemplated by the
15 procedures motion. With respect to that, as a
16 preliminary matter, I want to make one thing
17 very clear. I think the Court has expressed
18 its concern about the potential for delay, the
19 possibility that delay could threaten the Time
20 Warner transaction, and has stated as recently
21 as yesterday, its concern that we, the Ad Hoc
22 Committee of Arahova Noteholders, are, in fact,
23 trying to create delay for the purpose of
24 acquiring leverage.

25 I want to assure the Court that

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1 Adelphia Communications Corp.
2 that's not the case. And indeed, to the
3 contrary, we believe that the prompt resolution
4 of a number of threshold issues is in
5 everybody's best interest and may, in fact, be
6 required to facilitate the parties' working
7 their way through what is an undoubtedly
8 complex procedural maze in getting to
9 confirmation of a plan based on a transaction
10 that, although negotiated and viewed as a
11 transaction with the whole enterprise,
12 ultimately has to be part of a confirmation
13 process that, as Congress instructs us, has to
14 be done on a debtor-by-debtor basis absent
15 substantive consolidation.

16 We believe that one of the
17 threshold issues that in fact can be expedited
18 and resolved much faster than proposed in the

19 procedures is the issue of Severance Pay of 250,000 in
20 terms of value and cost. We believe that the
21 allocation issue is one that involves limited
22 discovery and will ultimately be a matter of
23 experts developing their views regarding
24 appropriate valuation methodology regarding the
25 various business units. We think that these

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1 Adelphia Communications Corp.
2 issues can and should be resolved early, as
3 opposed to in late February, basically the last
4 thing that gets over the fence under the
5 Debtors' proposed procedures.

6 And you can compare that absence
7 of complexity to the issues that are sure to be
8 on the table with respect to the intercompany
9 claims. Just looking at the Debtors' papers,
10 we're talking about 7 million transactions and
11 billions of dollars moving in the first
12 instance between and among debtors and
13 non-debtor entities in numerous different
14 directions and amounts, and then in the
15 restatement all being run through Bank of
16 Adelphia for accounting purposes. That is
17 going to be a time-consuming exercise and is
18 going to require significant discovery and
19 analysis.

20 On the other hand, allocation,
21 we've got the number. We know what the
22 businesses are, we know where the subscribers
23 are, we can tell what the revenues are and the
24 EBITDA is. The experts can take that data and
25 they can form opinions as to value on an

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1 Adelphia Communications Corp.
2 efficient basis and get that issue resolved up
3 front.

4 Now going to the Court's
5 question about protecting the interests of all
6 perhaps at the cost of the interests of one.
7 Your Honor, we believe that the Second Circuit
8 has instructed that you can't do that. The
9 Augie Restivo decision seems to make it quite

10 clear that the Court of Appeals by the
11 interests of a single creditor constituency of
12 a single debtor for the benefit of all.

13 I won't burden the Court with
14 reading the language from the decision, but it
15 is there and, in fact, relies on a prior
16 decision, the Flora Mir decision, where, just
17 very briefly, Judge Friendly stated, The nub of
18 counsel's argument was that only consolidation
19 will permit the quick consummation of
20 arrangement under chapter 9. That may indeed
21 be desirable, but not at the cost of
22 sacrificing the rights of Medor's debenture
23 holders.

24 In both of these cases the
25 bankruptcy court had determined that a

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1 Adelphia Communications Corp.
2 transaction was in the interests of the
3 enterprise and consolidated and one creditor
4 constituency felt that that was inappropriate
5 and that they were being prejudiced. And in
6 both cases the Second Circuit has said you
7 can't treat a bankruptcy estate or a series of
8 related bankruptcy estates as a single estate
9 unless there's a proper basis for substantive
10 consolidation. In the absence of that, you
11 have to operate the Bankruptcy Code on a
12 debtor-by-debtor basis.

13 And therefore we believe that it
14 is of the utmost importance to the Time
15 Warner/Comcast deal to get allocation done soon
16 instead of later, because only once we know how
17 the value is being divided between the critical
18 estates -- and I don't think this gets down to
19 a fight over 240 odd estates, because I think
20 very quickly people will acknowledge that
21 creditors in fact are going to be getting paid
22 at those levels and you'll have the value
23 rolling up. So what you'll do is, you'll get
24 to the hot spots, where the allocation of value
25 will, in fact, be very important and

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1 Adelphia Communications Corp. of Steven L. Lauria, Pg 84 of 250

2 conceivably outcome determinative when we get
3 to confirmation.

4 We also think that an early
5 determination retards the ability of anyone to
6 be manipulative in the allocation process. If
7 allocation occurs at the very end, when either
8 the plan has already been confirmed or is on
9 the verge of confirmation as proposed by the
10 Debtors, there will be an incentive on the part
11 of certain parties to push for a low value, for
12 example, at Arahova and there will be no cost
13 to that push. However, if we go through
14 allocation now, everybody is going to be
15 incentivized to come up with a fair value in
16 each pocket because an artificially depressed
17 number will invite third-party interest. So
18 this is, we believe, a truth serum to keep
19 everybody honest by getting the allocation done
20 up front. It avoids mischief and will
21 encourage an honest assessment of value rather
22 than a depressed one.

23 Your Honor, we also believe --

24 THE COURT: Pause, please,

25 Mr. Lauria.

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1 Adelphia Communications Corp.

2 MR. LAURIA: I'm sorry.

3 THE COURT: You used the word
4 "allocation" both this time and when you
5 started this discussion. By that did you mean
6 to include or exclude other areas of difference
7 in perspective between you and the parent
8 company bondholders, such as intercompany
9 indebtedness; your contention, presumably, that
10 there might be recharacterization; and
11 Mr. Bennett's view that there might not be? In
12 other words, were you using "allocation" as a
13 word of art, or were you using it to capture
14 the totality of the differences or the issues
15 that you and Mr. Bennett are going to have to
16 duke out?

17 MR. LAURIA: I was using it in a

18 very narrow sense, you're not trying to bring to my attention
19 drawing my ambiguity to my attention. I was
20 focusing in the first instance on allocation of
21 the Time Warner consideration between and among
22 the debtor entities.

23 THE COURT: And that alone?

24 MR. LAURIA: Yes, yes.

25 I do think that there is a

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1 Adelphia Communications Corp.
2 second family of allocation issues that can be
3 resolved on a similar course and in a similar
4 fashion, and those are the ones relating to
5 particular costs associated with the chapter 11
6 and the transaction. As the Court is aware,
7 there are going to be some material tax costs
8 associated with the transaction. There have
9 been significant SG&A costs incurred during the
10 pendency of the chapter cases, a couple of
11 billion dollars that has not been allocated to
12 our knowledge. All of the operating reports
13 are presented on a consolidated basis, so we
14 don't know where that's gone. We think that
15 should be and can be resolved early on.

16 The allocation of payment of the
17 DIP. There has been some suggestion that a lot
18 of money has been spent within Arahova. And,
19 again, we'd like to have an opportunity to
20 understand that and make sure that the DIP cost
21 is properly allocated among the estates.

22 By the way, there are
23 restructuring costs, the SG&A, the DIP. None
24 of those are addressed at all in the procedures
25 and, in fact, all default down to the thing you

0088

1 Adelphia Communications Corp.
2 do at the end of the process. Again, these
3 seem like things that don't involve all of the
4 historic complexity and difficulty that many of
5 the other issues do and are ripe for an early
6 determination.

7 But, strictly speaking, the most
8 important value allocation issue I'm talking

9 about is just how the Steven L. Byrnes gets
10 divided among the estates. So we believe that
11 that issue should be separated out and put on a
12 separate timetable and resolved.

13 And, in fact, Your Honor, if I
14 can ask you to take a quick look at the second
15 exhibit, we have laid out, pursuant to the
16 procedures we proposed in our papers, a
17 comprehensive time line for how we think all of
18 the issues or families of issues should be
19 addressed. And as you can see, we believe that
20 allocation is something that can be set for
21 decision by December. And hopefully we would
22 be in a position for that, the outcome of that,
23 to accommodate a disclosure statement and be
24 available to the constituencies at a time when
25 they still are in a position to exercise their

0089

1 Adelphia Communications Corp.
2 voting rights.

3 Your Honor, I've already touched
4 on another point here. We do believe that the
5 procedures should be amended to provide for
6 dispositive motions. There should be some
7 mechanism to seek resolution, even if it's not
8 a complete resolution of an issue, but for the
9 parties to seek and obtain summary judgment.
10 Certainly it will be helpful to not only the
11 parties, but also the Court, to narrow and
12 focus issues before we get all the way to the
13 end of the process and have the full menu of
14 issues set to be tried. We believe it would be
15 quite helpful and efficient to boil things down
16 as soon as possible.

17 And recognizing, Your Honor,
18 that ultimately the chapter 11 process is a
19 process that is, in my experience, designed to
20 drive settlement, I think the more
21 opportunities we can create for early
22 resolution of issues, the more opportunities
23 we're going to create for parties to be
24 thinking about where they're going to wind up
25 and what their settlement opportunities are,

0090

of Steven L. Poole Pg 87 of 286 of 250

1 Adelphia Communications Corp.
2 which certainly I think, echoing the comments
3 of Debtors' counsel, is something we strive
4 for.

5 Final sequencing point. Well, I
6 guess I've touched on it already. That we
7 believe that the allocation process should
8 include the -- in addition to taxes and the
9 like, it should also include the SG&A
10 restructuring costs and the DIP.

11 Another area, Your Honor, that
12 we have problems with is the treatment of
13 substantive consolidation in the procedures.
14 Paragraph 6A5 on page 10 basically lays out two
15 options on substantive consolidation. For
16 whatever reasons, the procedures say that we're
17 going to litigate over whether or not sub con
18 is proposed in the plan, that is, the silo
19 structure is appropriate, or whether there
20 should be no substantive consolidation at all.

21 This seems artificially and
22 unfairly limiting. There are obviously
23 numerous other permutations that are possible
24 on this issue, given the facts that we have
25 here, and we believe that both of the

0091

1 Adelphia Communications Corp.
2 alternatives that have been proposed are
3 prejudicial and unfair to the Arahova
4 noteholders. We believe that the procedures
5 should be changed to permit the parties to
6 present any substantive consolidation case that
7 they believe is appropriate, and the procedures
8 should very clearly permit the Court to have
9 the flexibility to order substantive
10 consolidation or not as it believes
11 appropriate, not faced with the consequence of
12 a particular outcome blowing up the plan.

13 Your Honor, with respect to the
14 discovery procedures, I think it's simple to
15 say that we would like the full protection of
16 the bankruptcy rules and the Federal Rules of

17 Civil Procedure. In Steven L. Pappas, 478 F.2d 250
18 concerned that the body of law out there that
19 guides us all in how discovery is to be done
20 and what the consequences are of doing it
21 incorrectly -- I guess the court can fairly say
22 I don't know much about that based on the
23 ruling yesterday -- protects everybody, best of
24 all, and should be fully incorporated into
25 these procedures.

0092
1 Adelphia Communications Corp.
2 Now, Your Honor, one of the
3 things that lies at the heart of this dispute,
4 and the Court touched on it in its initial
5 questions, is the presumption, if any, to be
6 afforded the intercompany claims as set forth
7 in the amended schedules. This obviously is an
8 issue of central importance because of the
9 potential effect that these claims can have on
10 constituencies' recoveries.

11 And so the question is, the
12 fundamental question is: Should the claims as
13 set forth serve as a starting point or as a
14 foundation or baseline for the parties'
15 exercise in coming to a resolution of these
16 intercompany claim issues.

17 And, interestingly, the Debtors'
18 answer to this question is I think ambiguous at
19 best. The Debtor says that we did the math
20 right, but we really aren't prepared to tell
21 you that these ultimately will be claims. Now,
22 I won't explain this in some detail, but we
23 think that in and of itself means the claims
24 are disputed as far as the Bankruptcy Rules and
25 Code are concerned and therefore not entitled

0093
1 Adelphia Communications Corp.
2 to a presumption of validity.
3 I'd like to walk the Court
4 through that. The starting point, of course
5 and I just cited the relevant language on
6 Exhibit 3, is Bankruptcy Rule 3003(b), which
7 provides, in substance, that a claim scheduled

8 as undisputed, not contingent or disputed is
9 prima facie evidence of the validity and the
10 amount of the claim.

11 Now, the Debtors, with the not
12 surprisingly enthusiastic support of the ACC
13 noteholders, argue that since technically in
14 the amended schedules, they did not check the
15 box that says "unliquidated," they did not
16 check the box that says "contested" and they
17 did not check the box that says "disputed,"
18 that the standard has been met. Case closed.

19 Your Honor, we say not so fast.
20 To determine what is met, we need to look at
21 the official forms. Bankruptcy Rule 1007
22 requires that the schedules be prepared as
23 prescribed by the appropriate official forms.
24 And when we look at the official forms, the
25 instructions to Official Form 6 for the

0094

1 Adelphia Communications Corp.
2 schedules give guidance to what is looked for
3 as to whether or not a claim is unliquidated or
4 disputed.

5 Let me just again take an
6 excerpt from the language on Exhibit 5 here.
7 "An unliquidated is a claim the amount of which
8 is not completely certain."

9 A disputed claim is a claim
10 when -- "A claim is disputed" -- I'm sorry. "A
11 claim is disputed when the debtor and creditor
12 do not agree on the debtor's liability or on
13 the amount of the debt."

14 Now, against that guidance,
15 let's look at what the Debtors have actually
16 done. The signed statement of Mr. MacDonald
17 appears to adopt the statement that the claims
18 are not disputed, they're not contingent and
19 they are liquidated. However, all of that is
20 caveated by the global notes. And, Your Honor,
21 we have excerpted in Exhibits 6, 7 and 8
22 language in the global notes that I think is
23 relevant to whether or not the Debtor has, in
24 fact, said these claims aren't disputed as to

25 liability or amount of several possible claims are

0095

1 Adelphia Communications Corp.

2 certain.

3 Note 8 says, "The intercompany
4 balances can be characterized in many ways,
5 including," reading down to iv, "equity."
6 Well, if they're equity, they're not claims.

7 Flipping the page to Exhibit 7,
8 global note 10, in the middle, the Debtors say,
9 "Any failure to designate a claim as
10 'contingent,' 'unliquidated' or 'disputed' does
11 not constitute an admission by the Debtors that
12 such claim is not "contingent," "unliquidated"
13 or "disputed." Your Honor, I almost feel that
14 it's double-talk. I mean, it's like saying,
15 they're not contingent, disputed or
16 unliquidated unless they are contingent,
17 disputed or unliquidated.

18 I have a hard time buying that
19 that type of caveated language entitles the
20 claims that this is talking about to a
21 presumption of validity that requires an
22 objecting party to step forward first with
23 evidence. And that's really what we're talking
24 about is: Is there a burden shifting that has
25 occurred by virtue of the filing of these

0096

1 Adelphia Communications Corp.

2 amended schedules.

3 It goes on, Your Honor. Note
4 15, the first sentence. "The debtors and their
5 agents, attorneys and financial advisors do not
6 guarantee or warrant the accuracy or
7 completeness of the data that is provided
8 herein."

9 Your Honor, looking at those
10 three notes, I think the Court can reach the
11 conclusion that the presumption contemplated by
12 Bankruptcy Rule 3003(b) has not been met.

13 I'd also ask that the Court
14 consider flipping to Exhibit 9, the declaration
15 language that is required by the forms, which

16 basically says, in ~~in Steven Popay's~~ ~~of 2009~~ that they
17 are true, correct to the best of my knowledge,
18 information and belief. That is the
19 affirmation that is required.

20 And look at what Mr. MacDonald
21 has said. And that's flipping forward to
22 Exhibit 18. It's the last item in my packet
23 here. When you -- you see that language at the
24 end? It's actually there, "true and correct to
25 the best of my knowledge, information and

0097
1 Adelphia Communications Corp.
2 belief." But if you go back up a couple of
3 lines, what it says is, "and upon the
4 reservation of rights in the Global Notes
5 annexed hereto." Now, what I read that as
6 saying is that they're true and correct unless
7 they're not true and correct.

8 Now, Your Honor, at the risk of
9 overkill on the point, I'd like you to look
10 with me at Exhibit 10. This is the text to
11 footnote 32 in the Debtors' response to our
12 motion to strike. And the bolded language
13 really is quite amazing. "The Debtors believe
14 that their efforts justify such a presumption
15 as to the specific amount of each transaction.
16 However, beyond the quantification of the
17 Intercompany Transactions, the Debtors believe
18 that the issues raised in the Global Notes and
19 this response require that the presumption not
20 be extended to intercompany issues regarding
21 (a) the proper characterization and treatment
22 of Intercompany Transactions and (b) whether
23 such intercompany balances (or portions
24 thereof) are avoidable, give rise to
25 enforceable or allowable claims, or should be

0098
1 Adelphia Communications Corp.
2 disregarded." Now, that does not sound like a
3 sufficiently strong affirmation of those
4 numbers to create a presumption that a litigant
5 has to overcome.

6 THE COURT: Well, pause, please,

7 Mr. Lauria, because the review of the
8 question I asked early on about trying to get
9 my arms around the extent to which you guys
10 differ on the historic facts and the underlying
11 balances on the one hand, or whether what we're
12 really talking about is a matter of
13 characterization, treatment, avoidance, that
14 kind of stuff. Certainly -- I mean, the money
15 may be resting one place by reason of past
16 allocations of, let's say, SG&A, and you may
17 say that it was error to pile all the SG&A on
18 any particular debtor, or any variant of that.
19 All of that I understand.

20 But it sounds to me like if the
21 Debtors did say this, I'm not sure if you and
22 the Debtors are differing that much. Maybe I
23 should ask this of Mr. Trepper and
24 Mr. O'Connor, and I'll come back to that them
25 on that. It sounds to me like you guys are

0099

1 Adelphia Communications Corp.
2 coming together on that issue.

3 MR. LAURIA: Your Honor, we had
4 hoped that there might be a stipulation that
5 the claims would be treated as disputed and
6 thus have a completely level playing field as
7 we come together with whoever we come together
8 with in litigating what these claims are and
9 how they affect parties' recoveries. The
10 Debtors have not provided that stipulation,
11 although I would argue that, with the language
12 in their response here, it's hard for them to
13 maintain any --

14 THE COURT: But you didn't
15 undertake to answer the part that I thought
16 might be the place where you guys diverge,
17 which is, they say, Look, the dollars are what
18 the dollars are, the money went where the money
19 went. And that is a hugely important starting
20 point unless you disagree with it. I need help
21 on that.

22 MR. LAURIA: Thank you, Your
23 Honor. I'm sorry to say we're not at a point

24 where we can agree on Steven L. Poole, Page 2 of 250, I'm
25 going to show you in just a moment a couple of
0100

1 Adelphia Communications Corp.

2 examples of some rudimentary problems that we
3 believe exist with the numbers in the amended
4 schedules that call into question whether even
5 the statement that the quantification of these
6 numbers is correct as reflected in the amended
7 schedules.

8 In fact, moving in that
9 direction, footnotes 10 and 11 on Exhibit 11
10 raise two very important issues. Footnote 10
11 says, in substance, that we determined it was
12 not feasible to try to develop audited
13 financials at any subsidiary because of
14 complications arising from intercompany
15 transactions. They're called mapping issues
16 here.

17 It sounds to me like an
18 admission that the exercise was either
19 abandoned or never undertaken to get
20 sufficiently comfortable with the intercompany
21 numbers that an audit could be prepared at any
22 subsidiary level, so what we got was only a
23 consolidated audit. That's footnote 10.

24 Footnote 11 raises a different
25 problem. Footnote 11 seems to say that because

0101
1 Adelphia Communications Corp.

2 the numbers were so screwed up for 1999 and
3 2000, we determined we could not do an audit
4 for those years, so we started with 2001.

5 Now, the thing that we and our
6 financial advisers cannot figure out is, how do
7 you create an opening balance sheet that's
8 reliable for an audit if you're saying the
9 starting point is so screwed up that you
10 couldn't audit it.

11 Now, this is something that
12 we're going to have to take deep dive discovery
13 on, and it's not going to be solved with just
14 looking at documents in a data room. We're

15 going to have to talk to Steve P. Byrd, who are going
16 to have to explain to us how this was done.
17 Because we believe this note basically suggests
18 that there may be fundamental defects in the
19 2001 audit, that the assumptions that must have
20 been made to create an opening balance sheet
21 are subject to substantial question and doubt.

22 Suffice it to say that between
23 the caveats in the global notes and these
24 admissions in the Debtors' response to our
25 motion, we think at least technically we should

0102

1 Adelphia Communications Corp.

2 be on a level playing field regarding these
3 claims and we shouldn't have to come forward
4 and put forth the first evidence to attack
5 them, nor should anybody else. Somebody should
6 have to support a claim with evidence to give
7 rise to a presumption that somebody else has to
8 overcome, and that should be the first step.

9 Moreover, and despite all of the
10 time and expense that has been incurred in
11 developing these amended schedules, we believe
12 there are material inaccuracies in the numbers.
13 I went ahead and did the math here on the back
14 of the envelope on Exhibit 12. The Debtors
15 have said they spent 5,000 hours looking at
16 7000 lines of intercompany transactions. Well,
17 when you do the math, that comes out to about
18 2-1/2 seconds of review of each entry.

19 Now, I know the Debtors are
20 going to say, Well, we didn't actually have to
21 spend that much time on all the entries. Well,
22 that sounds like there must be some entries
23 they didn't look at at all to have enough time
24 built up to really spend a lot of time on some
25 biggies.

0103

1 Adelphia Communications Corp.

2 Nevertheless, Your Honor, based
3 on publicly available information -- and the
4 publicly available information is the amended
5 schedules and the affidavit of Mr. DiBella --

6 we see a \$2.8 billion of Steven Rigas at the top.

7 We -- I can't tell you with certainty today,
8 because we have not been able to conduct
9 discovery, as the Court is aware. But there is
10 a strong circumstantial case that I'd like to
11 describe for the Court.

12 Looking at Exhibit 13, we have
13 identified four Rigas managed entities,
14 Highland Prestige Georgia, Highland Video
15 Associates, Hilton Head Communications and
16 Ionian Communications, which, according to the
17 affidavit of Mr. DiBella, originally prepared
18 on August 20, 2004 and then resubmitted at the
19 DOJ settlement hearing in May, these -- the
20 Debtors' books and records reflected, on
21 April 30th, 2002, total payables by the Debtors
22 to these four Rigas managed entities of over
23 \$1.8 billion. Now, that raises flags in your
24 mind anyway. Why, knowing how the money
25 flowed, would the Debtors owe the Rigas managed

0104

1 Adelphia Communications Corp.
2 entities \$1.8 billion? It seems incongruous.

3 Well, Mr. DiBella says that is
4 the consequence of a series of book entries and
5 reclassifications that were made by the Debtors
6 as part of the effort to move the Century
7 co-borrower facility off the books of Century,
8 to hide it, the so-called fraud. And when you
9 undo, when you reverse those numbers, the thing
10 flips. And, in fact, those same four entities
11 owe the Debtors over a billion dollars.

12 Now, to our surprise, when we
13 looked at the amended schedules, guess which
14 numbers are in there? The corrected ones that
15 undo the fraud? No. The numbers that are in
16 there show a billion, seven is owed to these
17 same four entities. Now, there is a two-month
18 gap. Mr. DiBella's numbers were as of
19 April 30th, 2002 and the amended schedules are
20 as of June 30th, 2002. I think, again, just by
21 hypothesis, that can explain the \$100,000 gap.
22 But certainly \$1.7 billion owed to these RMEs

23 is a lot closer to the Steven L. Bybee of 2095 of 250
24 includes the fraud than them owing the Debtors
25 a billion dollars, which is what DiBella

0105

1 Adelphia Communications Corp.
2 says is -- in his words, in his affidavit, the
3 true amount.

4 Your Honor, these numbers are
5 what are in the schedules, what the Debtors are
6 telling us are the correct numbers that we
7 should be working off of. I can't tell you
8 today that what I have just hypothesized is
9 correct, but I can tell you that these are the
10 numbers that are in the public record, and
11 where there's smoke there's fire.

12 Now, the other inaccuracy we
13 believe that's baked into the amended schedules
14 is what the Debtors refer to as the Bank of
15 Adelphia paradigm. We've excerpted some
16 language from the reply on Exhibit 14. "As a
17 result of the Bank of Adelphia paradigm, the
18 Historic Entries are accounted for as if the
19 entries were between Adelphia Cablevision" --
20 that's Bank of Adelphia -- "and the acquired
21 entities, and were reflected in the balances
22 presented in both the January 2005 and May 2005
23 Intercompany Schedules."

24 Now, our problem with that is,
25 that, by definition, is going to change

0106

1 Adelphia Communications Corp.
2 everybody's numbers because it results in a
3 different netting sequence. And, Your Honor,
4 if you can flip with me to Exhibit 15, I'll try
5 to illustrate my point in a couple of quick
6 ways here. This is hypothetical; just made-up
7 numbers here. We took three of the debtors,
8 Arahova, Olympus and FrontierVision. By the
9 way, I note that in point 2, it says
10 "Parnassos." That's a typo. That should be
11 Frontier.

12 Assume this is what the numbers
13 were pre restatement. You have a \$150 claim

14 from Arahova to Olympus, Steven V. Polyzos, \$150 claim
15 from Arahova to FrontierVision, and
16 FrontierVision has a \$200 claim back against
17 Arahova. The result would be Arahova would
18 have a \$150 claim against Olympus, and Frontier
19 would have a \$150 claim against Arahova, so
20 you'd have two \$150 claims on the books or
21 you'd find 150 somewhere in these amended
22 schedules. Your Honor, remember, one of the
23 other things the Debtors did in the amended
24 schedules is, they did all the netting.

25 Now, if you flip to page 16, you

0107

1 Adelphia Communications Corp.
2 see what happens to those two \$150 numbers in
3 the reclassification using the Bank of Adelphia
4 paradigm. By running everything up to Bank of
5 Adelphia, you end up with Arahova having a \$200
6 claim against Bank of Adelphia and Bank of
7 Adelphia having a \$200 claim against it, and
8 everything nets out and so you have a zero
9 claim. So under the Bank of Adelphia paradigm,
10 instead of having two \$150 claims, one coming
11 in and one going out, you have a zero claim.

12 Now, the --

13 THE COURT: Your point being
14 that the Bank of Adelphia should be regarded as
15 a conduit which in essence should drop out of
16 the picture and you should see whether money
17 can be traced to an ultimate source or
18 recipient?

19 MR. LAURIA: That's correct,
20 Your Honor.

21 Going back to the prior issue we
22 were talking about with the four RMEs and their
23 claims against the estate, we don't have the
24 transparency to see where those claims go
25 through into the debtor organization. If

0108

1 Adelphia Communications Corp.
2 that -- just by way of example, if that entire
3 2.8 goes against Century, that \$3.5 billion
4 intercompany payable against Century Cable

5 Holdings Corp., the bottom blue box on the front page that I assure
6 bottom blue box on the front page that I assure
7 you Mr. Bennett really loves, goes down to
8 \$700 million.

9 THE COURT: I understand the
10 issue, but I also wonder -- it may be way
11 premature. Certainly I'm not going to be
12 making determinations on these merits. But I
13 guess I've got to wonder what I'll be asked to
14 do when some of the money can be traced outside
15 of the Bank of Adelpia and some of it can't
16 be.

17 MR. LAURIA: Well, Your Honor, I
18 guess I could only speculate at this point,
19 because, again, we haven't gotten to look
20 behind the curtain yet.

21 THE COURT: Go on.

22 MR. LAURIA: The Bank of
23 Adelpia paradigm is even more harmful in the
24 context of claims between and among our
25 subsidiaries. And if you would look at Exhibit

0109

1 Adelpia Communications Corp.
2 17 with me for a moment, I can illustrate this
3 quickly. If you assume that, before the
4 restatement, Adelpia Prestige and Adelpia
5 Cleveland, two indirect subsidiaries of
6 Arahova, there was an \$100 claim owing by
7 Prestige to Cleveland, the Bank of Adelpia
8 paradigm routes that up to the Bank of
9 Adelpia. So Prestige now has a claim against
10 Bank of Adelpia and Bank of Adelpia has a
11 claim back against Cleveland.

12 So whereas in the first instance
13 all the value would stay in our family and flow
14 up, now what you have is the value getting
15 intercepted and going up to Bank of Adelpia.
16 Now, it wouldn't matter if Bank of Adelpia
17 claims were getting paid in full, but nobody
18 has made that representation. And so what you
19 have is a material change in the value of our
20 estate. Because we're going to send a \$100
21 claim up from an entity that everybody tells me

22 is solvent and we're of Steven L. Poole of Bank of
23 Adelphia paying the \$100 claim back down in
24 pennies on the dollar. So the net effect of
25 this Bank of Adelphia paradigm is a diminution

0110

1 Adelphia Communications Corp.
2 of the value that's going to flow up to
3 Arahova.

4 Your Honor, this kind of gets to
5 one of the points we make in our motion, that
6 given that this was all done postpetition, it's
7 kind of hard to understand how exchanging a
8 claim against one entity for a claim against
9 another entity, which, viewed from the
10 perspective of the Debtor that claims an asset
11 and taking the chance that it's going to be
12 worth less now than it was before you did the
13 recharacterization, isn't something that should
14 have been done with relief from the stay,
15 relief under section 363.

16 And to the extent that there was
17 netting done, offsetting? Why doesn't the stay
18 prevent that? Why wasn't notice given? Why
19 wasn't a motion filed before all of these
20 changes were made? Assets were effectively --
21 one asset was effectively exchanged for
22 another. Nobody would say this was the
23 ordinary course of business.

24 So in addition to being
25 technically flawed, we think there are

0111

1 Adelphia Communications Corp.
2 substantive outcome impacting issues as a
3 consequence of the restatement and the amended
4 schedules, and by all accounts the numbers
5 should not be afforded any presumption of
6 validity at this stage of the game.

7 The final point I wanted to
8 address is the issue of Mr. MacDonald's
9 capacity. The Debtors have argued that he
10 signed on behalf of all of the debtors. And
11 they rely on the language, flipping to page
12 18 -- this is his signature page. They rely on

13 the language at the top of the Declaration of Steven L. Pappas, that
14 says, "Declaration of Adelpia Communications
15 Corporation and its debtor affiliates,
16 (collectively, The "Debtors"). And they say,
17 Well, look, that shows it right there, he
18 signed for everybody.

19 But I think what Mr. MacDonald
20 signed starts with the word "I." I think
21 that's his oath. And what that says is that,
22 "I, the Senior Vice President and Chief
23 Accounting Officer of Adelpia Communications
24 Corporation, the ultimate parent of the Debtors
25 in these cases, declare under penalty of

0112

1 Adelpia Communications Corp.

2 perjury." And then down under his signature
3 block it says the same thing. Now, what's a
4 little odd about this issue is, quite frankly,
5 it's easily curable one would think.

6 THE COURT: By doing another 239
7 of them? That's what you want me to tell them
8 to do?

9 MR. LAURIA: Or just one that
10 has a footnote that says, This is for all these
11 entities and I'm doing it in my capacity as an
12 officer for all these entities. I mean, he
13 doesn't have to sign 240 times. I'm sure
14 there's a simpler way to do it. My question
15 is: Why didn't the Debtors cure it. Why
16 didn't the Debtors cure it? I don't know. We
17 couldn't take any discovery, Your Honor, and I
18 hate to keep raising that point. We don't know
19 why. We couldn't ask the man. The fact of the
20 matter is, he didn't. They've known about this
21 issue for over a month and they haven't cured
22 it.

23 It causes us, in our concerned
24 mind, looking at these other numbers that are
25 very problematic, to wonder if Mr. MacDonald

0113

1 Adelpia Communications Corp.

2 really doesn't want to swear to anything on
3 behalf of Arahova. Maybe Mr. MacDonald really

4 is concerned about the conflict of interest of having
5 as an officer simultaneously signing a document
6 with respect to transactions where he's both
7 the creditor and the debtor. I can only
8 speculate.

9 But what I do know is that
10 outside of the bankruptcy arena, corporate law
11 provides mechanisms for dealing with exactly
12 that problem. Companies form independent
13 committees of their board to take action to
14 retain the protection of the business judgment
15 rule when they get involved in transactions
16 that involve conflicts. Delaware law says, and
17 the law of most other states follows this, that
18 the burden is on the debtor to establish the
19 overall fairness of the transaction. There's
20 no burden shifting. There's no benefit of the
21 business judgment rule.

22 As the Court said in its
23 comments earlier today, the duty of loyalty and
24 disinterestedness are at the heart of it. I
25 can't tell from this --

0114

1 Adelphia Communications Corp.

2 THE COURT: "It" being an effort
3 to invoke the business judgment rule? I think
4 Mr. Trepper said, We're not trying to invoke
5 the business judgment rule.

6 MR. LAURIA: Well, that's fine,
7 except they haven't done anything to establish
8 the overall fairness of the transactions that
9 give rise to these claims or the process
10 pursuant to which the restatement was done.
11 That record hasn't been made.

12 THE COURT: Go on.

13 MR. LAURIA: Your Honor, I just
14 have a couple of final points I'd like to make.

15 One, we recognize that there's a
16 very beneficial transaction on the table.
17 We're not trying to block it. We're not
18 disputing it. What we're trying to do is make
19 sure that the appropriate steps are taken to
20 ensure that that transaction can close and that

21 the value can be captured, I think you can find
22 ourselves at a point in time when parties' only
23 redress is to oppose the plan.

24 The second point I wanted to
25 mention here at the end is that counsel has

0115
1 Adelphia Communications Corp.
2 mentioned a number of times -- it's in the
3 papers, it's been said here today -- that
4 somehow the Arahova noteholders broadly should
5 be bound by certain things that have happened
6 in the case to date because they didn't speak
7 up earlier, and in particular relying on the
8 fact that at least one member of the committee
9 I represent was a member of the official
10 Creditors' Committee and had access to
11 information and therefore the fact that the
12 Arahova noteholders didn't speak up, they're
13 now bound.

14 Your Honor, I don't think that's
15 at all fair, and I don't think it's consistent
16 with any reasonable notion of waiver,
17 particularly when you take into account the
18 fact that the member that counsel is referring
19 to got the information he got confidentially
20 and was not allowed to share it with other
21 Arahova noteholders. To hold the Arahova
22 noteholders have now waived rights just seems
23 to be way out in left field.

24 The other thing is, there was
25 discussion about the sale and the process that

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1 Adelphia Communications Corp.
2 has led to the sale and the issues that arise
3 with respect to fiduciary duties of the
4 Debtors, and counsel said they've never been
5 raised before; it's too late. Your Honor, I
6 don't think these are issues that are waivable,
7 simply put, and I don't think these are issues
8 that materialized until the prospect started to
9 come into focus about who was going to get paid
10 and who wasn't going to get paid. You know, if
11 you pay a creditor constituency in full, if you

12 make an entity solvent, and all rights of parties are owed
13 up to the shareholder of that entity. It
14 simplifies the fiduciary duty morass. It's
15 only when you start saying, I'm not going to
16 pay somebody, that the fiduciary problem really
17 bubbles to the top.

18 Related to that, I'm sure I
19 didn't miss this, but I know that the sale has
20 not yet been approved. And to suggest that
21 parties have waived their rights to complain
22 about or comment on the sale is preposterous I
23 think.

24 Final point, Your Honor -- I'm
25 sorry. The Court expressed some concern about

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1 Adelphia Communications Corp.
2 the submission that we made last night, and I
3 certainly apologize for the tardiness of that.
4 Let me try to explain it as follows. As a
5 consequence of the Court's denial of our motion
6 not only to compel discovery but also to strike
7 the answer, we were concerned that, pursuant to
8 your standing orders, the failure to dispute
9 the factual allegations contained in the
10 Debtors' response to our motion could
11 constitute a deemed admission of those
12 allegations that could impact our review rights
13 should we need to pursue review. And we were
14 simply filing that paper to preserve our
15 appellate issues with respect to the denial of
16 our motion to strike.

17 And that was all that was
18 intended. I did not intend to throw a curve
19 ball. And, in fact, I will apologize for some
20 of the language. You know, the "including the
21 following" language was really inappropriate.
22 It should have been just the specified
23 paragraphs that we were focusing on. And even
24 within those paragraphs, had we had the time,
25 we probably would have selected out particular

0118

1 Adelphia Communications Corp.
2 statements in each of those paragraphs, because

3 I recognize there are some paragraphs that

4 include facts that at the end we aren't
5 disputing but that we tried to identify very
6 narrowly each paragraph that did have a fact
7 that we disputed and just make sure that we
8 were not waiving any review rights as a
9 consequence of the denial of our motion to
10 strike.

11 And I hope that addresses the
12 Court's concern on that issue. I certainly
13 apologize for any confusion on that point.

14 THE COURT: All right. We'll
15 take a recess until 2:00 o'clock, and I'll hear
16 from Mr. Bennett next.

17 (A recess for lunch was taken from
18 1:03 p.m. to 2:04 p.m.)

19 THE COURT: Good afternoon.
20 Have seats. Mr. Bennett, your turn.

21 MR. BENNETT: Thank you, Your
22 Honor. I tried to reorganize my remarks based
23 upon what happened this morning. I'm going to
24 have to do some shifting back and forth and I
25 hope you'll bear with me.

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1 Adelphia Communications Corp.

2 Your Honor, I'll start with the
3 Exhibit 1, which is a corporate -- which is the
4 corporate chart of Adelphia, just as a place of
5 reference. And the Court should, of course,
6 understand, as I think Your Honor does, that
7 it's a partial corporate chart and there's some
8 arbitrariness about how people arranged the
9 boxes next to each other, but I think the lines
10 are more or less right.

11 I want to begin where Mr. Lauria
12 began, which is the -- with his remark about
13 structurally senior, and I want to make sure
14 that everyone remembers that at least in the
15 4.9 billion plus of debt and several issues
16 that I represent, there's not a single
17 subordination word in any of the indentures or
18 notes. There is language discussing a form of
19 structural subordination with respect to

20 intermediate entities of Steven Lee Polys of 2010 of 250
21 the prospectuses and supplemental prospectuses
22 that are issued both ways at different points
23 in time.

24 I didn't actually bring the
25 exact langrage with me. It is kind of

0120
1 Adelphia Communications Corp.
2 interesting. It does not say that the parent
3 company debt is subordinated to any other debt
4 though, but the structural seniority is
5 something that, of course, cuts both ways. And
6 what I wanted to make sure the Court
7 understood, and it probably does already, is
8 that Arahova Communications, Inc. with all of
9 their discussions about assets and close to
10 assets and asset holding entities, is a holding
11 company. Just like the parent company, it is a
12 holding company of a discrete group of other
13 companies.

14 And the point I wanted to make
15 about structural seniority is that when you
16 take a look, for example, at Century
17 Communications Corp., immediately under Arahova
18 Communications, Inc., you see there a
19 \$717 million intercompany payable which is
20 highlighted in blue to the left of the
21 relatively heavy solid line. That is a claim
22 against Century Communications Corp., a
23 subsidiary of Arahova Communications, Inc. and
24 is structurally senior to all of the debt
25 inside of Arahova Communications, Inc. And the

0121
1 Adelphia Communications Corp.
2 same remark would apply to the \$3.5 billion
3 intercompany payable below it and also to all
4 of the intercompany payables in white ovals
5 that aren't shaded across the bottom of Exhibit
6 1. All of those intercompany payables are, to
7 use the words Mr. Lauria chose, structurally
8 senior.

9 Now, I want to pause on this
10 just as background, not to argue a point, but

11 because I think it's of Stayout Rules of 2010 of 250 and
12 some of the later issues that we're going to be
13 dealing with and how they fit into the world.
14 This is not a case, like most, and I would go
15 so far as to say substantially all of the cases
16 on the books, that deals with the competition
17 of an intercompany claim, say against Arahova
18 Communications, Inc. and its third party
19 creditors. There's lots of cases that deal
20 with that issue. This is a very different kind
21 of issue that comes up over and over again, and
22 I just wanted to make sure we realize that.

23 The second part I wanted to make
24 sure that we all realized is that while the
25 Debtor, in an abundance of caution, and I think

0122

1 Adelphia Communications Corp.
2 in their effort to appear and be neutral --
3 which on any given day I'm not sure they are.
4 Some days I think they do things that are
5 prejudicial to my clients too. It's --
6 different days, I feel differently about
7 whether the Debtor is really hewing to
8 neutrality or actually being neutral. But I
9 think in terms of data, they're trying to be
10 neutral. But in an overabundance to be
11 neutral, they list ways things can be
12 characterized, you know, and there's this one
13 disregarded.

14 Now, the law linked to
15 intercompany claims, by the way, is a law about
16 recharacterization. An Arahova lawyer that
17 predated Mr. Lauria I think was the person who
18 said, Oh, they should be disregarded. But I've
19 looked really, really hard for a disregarding
20 case as opposed to a recharacterization case
21 and I've never found a disregarding case. And
22 I don't think we're going to ever find one
23 unless one new one is decided between now and
24 the time we deal with it.

25 So when we talk about these

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1 Adelphia Communications Corp.

2 lists of things that Steven Hapley, people have
3 these overextensive lists, but they're
4 sometimes not practical.

5 It's also become very popular to
6 say that intercompany claims can be
7 recharacterized into equity. But, again, just
8 for context and not to make an argument, if
9 Your Honor goes back and reads the intercompany
10 cases of the more common genre, which is the
11 competition of intercompany claims in a
12 particular entity versus other claims asserted
13 against that entity, sometimes a claim is
14 capitalized and turned into equity.

15 THE COURT: Sometimes -- you got
16 drowned out.

17 MR. BENNETT: Sometimes a claim,
18 an intercompany claim, is capitalized and
19 turned into equity within that entity. But in
20 every case where that happens, the entity that
21 advanced the money was the equity holder.

22 We have a different situation
23 here. As has been pointed out, unless the
24 Debtors' maps are completely wrong, and I'll
25 have a word about that in a minute, the

0124

1 Adelphia Communications Corp.
2 loans -- when it is referred, to intercompany
3 payables and intercompany receivables on this
4 chart, they are intercompanies and payables, as
5 Mr. Lauria conceded, with Adelphia Cablevision
6 LLC, an entity that owns none of the persons to
7 which it loaned money or made advances.

8 So what you have -- again, just
9 so we make sure we have the vocabulary right,
10 is a circumstance where a relative third
11 party -- it's part of the group, but it's not a
12 direct parent of the borrowing entities -- has
13 made an advance. Even if that advance is to be
14 recharacterized, a point that we don't concede
15 for a moment, as I'm sure Your Honor
16 understands, it gets recharacterized into
17 something; it doesn't disappear. And it may
18 well turn out to be equity, probably preferred

19 equity, but, again, of Steven L. Polk's of 2017 of 250
20 point.

21 But if it's recharacterized, I
22 don't want to be left -- if the doctrine is
23 recharacterization and not disregarding,
24 Adelphia Cablevision winds up with something
25 for its money. There may be a huge issue as to

0125

1 Adelphia Communications Corp.
2 what. We think general unsecured claims.
3 Other things -- other people may feel
4 differently.

5 But I think it's important to
6 remember that as the background so we
7 understand what this case is about, as
8 distinguished what from certain other cases are
9 about.

10 The next thing I want to do,
11 Your Honor, is to turn to kind of the more
12 sensational part -- and I use "sensational"
13 carefully because we're going to discuss why
14 it's sensational in a second -- of Mr. Lauria's
15 argument, and this is all related to the issue
16 of the schedules motion I think. And the place
17 I want to start I guess is again with his own
18 exhibit and the exhibit I'll start with is the
19 declaration concerning Debtors' schedules,
20 which, again, is a form.

21 And I'm going to try really
22 hard, Your Honor, not to duplicate anything we
23 said in our papers about how rules are to be
24 applied, how forms are used, et cetera and so
25 forth. But the most important words on this

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1 Adelphia Communications Corp.
2 form, at least in my view, and the words that
3 enable officers to sign schedules without
4 Draconian fears, are the words that say the
5 numbers on the data sheet are true and correct
6 to the best of my knowledge, information and
7 belief. This, in and of itself, Your Honor, is
8 an important qualifier. I'm not sure I'm
9 100 percent right, but I've told my clients,

10 what this means, when Stevens says, "You've tried the best you can,"
11 is, You've tried the best you can.

12 Now, let's take a look at some
13 of the things that -- well, I want to say
14 generally, I think what the general notes --
15 the Debtors' general notes say is that Debtors
16 have looked at our books and records, they've
17 done a lot of work, it was in connection with
18 work they had to do anyway, and we tried the
19 best we could. And that, by the way, is what
20 winds up having a presumption.

21 Digression here. The motion
22 that was made was to strike the schedules. The
23 motion that was not made -- I didn't see a
24 motion that said we're going to refine or deal
25 with the presumptions on burden of proof in the

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1 Adelphia Communications Corp.
2 context of a specific objection with factual
3 grounds. I think it's morphed in a way from
4 one to the other. I'm going to argue about the
5 motion that was made, not the motion that
6 hasn't been made, fully understanding that
7 there may be another motion some day about
8 presumptions and burdens in the context of a
9 real objection as opposed to the motion that
10 was filed.

11 Now let's go and look at the
12 parts that were excerpted, because this is the
13 part that I think says that when you read the
14 global notes as a whole, they're nothing more
15 than the statement that it is in the official
16 form, which is, I've done the best I can to the
17 best of my knowledge, information and belief.

18 And the most important sentence
19 I found was on Mr. Lauria's Exhibit 8 and his
20 reproduction of paragraph 15. And he made -- a
21 lot of bold text. And he made a big point of
22 the bold text on the first five lines. What is
23 most important is the next sentence that's
24 there and not highlighted in bold for some
25 reason. And it says, "While every effort has

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Adelphia Communications Corp.

1
2 been made to provide accurate and complete
3 information herein, inadvertent errors or
4 omissions may exist."

5 What's this guy talking about?

6 Well, he's saying, I've done the best I can.
7 The things that Mr. Lauria made a big deal
8 about, the fact that we can't warrant the
9 accuracy or completeness, we're not responsible
10 for loss or injury, what he's really saying is,
11 don't expect me to be a guarantor of accuracy.
12 I've done the best I can. There may be
13 inadvertence, errors or omissions. Those are
14 things he doesn't know about; they're beyond
15 his knowledge, information and belief.

16 So Mr. Lauria's first point was
17 to take us all through the qualifications and
18 say, this undermines the whole enterprise. And
19 I have to say Your Honor, no, it doesn't. It
20 gives more precise content perhaps than I've
21 ever seen before to what does it mean to do
22 something to the best of your knowledge,
23 information and belief, but it doesn't do much
24 more than that. That's with respect to the
25 qualifications.

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1 Adelphia Communications Corp.

2 Then we came to the sensational
3 part. And the sensational part was the
4 introduction of these new exhibits, which, of
5 course, weren't referred to in the motion when
6 we would have had a lot more time to deal with
7 them. And Your Honor should not regard this as
8 a complete response, but I need to make a
9 series of observations.

10 First of all, Exhibit 13, which
11 Mr. Lauria, I think more correctly than he
12 knew, described as smoke rather than fire. The
13 important thing on Exhibit 13 -- or there's two
14 important things on Exit 13. One is that it's
15 about Highland Prestige Georgia, Highland Video
16 Associates, Hilton Head Communications and
17 Ionian Communications.

9 Georgia, Highland Voice of Stevens, Polgar, 2021 11 of 250 Head
10 Communications or Ionian -- I hope I'm
11 pronouncing it correctly -- if those
12 entities -- if debt drawn down by those
13 entities is ultimately paid by Adelpia, there
14 may be a subsequent accounting entry that may
15 cause a reversal, but that also may not be an
16 entry that was properly made in the prepetition
17 accounts, which is the date as to which the
18 schedules speak.

19 Now, I'm not asking Your Honor
20 to make a decision on that. I will tell you
21 there is a reason why, when someone makes an
22 objection to claim, as pointed out in our
23 paperwork, one is required to set out the
24 specific grounds for the objection: So that it
25 can be tested, so that people whose job it is

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1 Adelpia Communications Corp.
2 to understand this data can look at the
3 suggestion of error and say, is there one or
4 isn't one, and respond.

5 To come to a hearing and say all
6 of the Debtors' hard work reflected in publicly
7 filed schedules that people have absolutely
8 been relying upon should be thrown out because
9 they suppose that they found some smoke with
10 respect to entities that don't even appear on
11 their hit parade, that is improper, that is not
12 an objection to claim, that is not a basis for
13 relief.

14 I next turn to the second
15 sensational effort to talk about the
16 intercompany claims, which is the repointing or
17 Adelpia paradigm slides, Exhibits 15 and 16
18 and 17. And these, by the way, were conceded
19 to be hypothetical, not reflecting any actual
20 entries that anyone has found anywhere. But
21 let me talk about the Adelpia paradigm just to
22 understand why it might be reasonable. Debtors
23 decided it was reasonable. It may well be
24 attacked anyway, but let's make sure we have
25 the complete story about why it might be

1 Adelphia Communications Corp.
2 reasonable. I'm going to be a little flip on
3 purpose.

4 One of the reasons is because
5 Your Honor approved it. What do I mean by
6 that? Well, Adelphia's postpetition cash
7 management system is the Adelphia paradigm, the
8 Adelphia Bank paradigm. There is one entity
9 with bank accounts. There's an exception to
10 that, it's not material, but I want to make
11 sure I note it. All cash transactions go
12 through the entity with the money. Your Honor
13 has probably approved similar vehicles in
14 countless chapter 11 cases. I have personally
15 accepted some and received orders -- and
16 received orders approving them in countless
17 chapter 11 cases. Mostly everyone in this room
18 has had the same experience.

19 The idea that one debtor might
20 have all the bank accounts and the other
21 debtors will faithfully account through journal
22 entries for their uses of money and come back
23 to the court and report to the court what they
24 used, what they owed, what they contributed
25 based on journal entries, is the way

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1 Adelphia Communications Corp.
2 multi-debtor estates conduct business in the
3 United States of America today. It also
4 happens to be the way many, many, many, many
5 complex corporations outside of bankruptcy
6 conduct their business. And we noted in the
7 cases that we cited more than a few opinions
8 where bankruptcy judges have made exactly the
9 same observation.

10 In Adelphia's case, all of the
11 cash and all of the bank accounts were in
12 Adelphia Cablevision with that one exception
13 which isn't very important here. It is
14 practical and reasonable for the Adelphia
15 people to conclude, for the accountants to
16 conclude, that if a particular entity, an

17 Arahova subsidiary of Stevenik, By the way, Arahova,
18 needed money to pay a bill to a lineman working
19 on something and they got money to do it -- is
20 it likely they got it from an entity that
21 didn't have a bank account? Of course not.
22 They probably got it from the entity that did
23 have the bank account. That was reality. That
24 is reality. That is reality in most
25 corporations that do business in the United

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1 Adelphia Communications Corp.
2 States today.

3 Now, it may well be that you can
4 conjure up circumstances where that paradigm
5 generates results that you don't like. But if
6 the paradigm is the factual reality and not a
7 surprising or outlying factual reality, but a
8 very core, normal, ordinary course reality,
9 there's nothing wrong necessarily with the
10 Debtor's assumption that when someone asks for
11 cash, they got it from an entity that had cash,
12 and when someone deposited cash, they deposited
13 it in an entity that had a bank account. These
14 are not stretches. These are not necessarily
15 intended to induce distort -- to create
16 distortions. They didn't necessarily create
17 distortions. What the Debtor is saying is, We
18 looked at our world and made some common sense
19 conclusions with the help of a fleet of
20 professionals and after spending an enormous
21 amount of money.

22 If Your Honor needs a touchstone
23 as to whether it is reasonable to begin with
24 the Debtor's records as they saw them, pursuing
25 money, the Hillsborough Holdings case is the

0136

1 Adelphia Communications Corp.
2 place to look. We've said in our papers -- I
3 hope Your Honor remembers this among all the
4 other things we said in our papers -- is that
5 the cases that Arahova are cited to you are tax
6 cases. They did not cite to you a single
7 bankruptcy case. I am astonished at the degree

8 to which some of the States. By the way, you are
9 so incredibly appropriate to this case.

10 THE COURT: Hillsborough being
11 at the top of the pile?

12 MR. BENNETT: Hillsborough being
13 one of them. And then I was astonished to hear
14 about Flora Mir. Flora Mir, the transaction
15 that was involved there of course was a
16 substantive consolidation to eliminate an
17 intercompany claims. Judge Friendly's opinion
18 is all about the importance of maintaining
19 separateness, because the intercompany claim is
20 something that's important too. I also think,
21 although it's not what Augie Restivo is
22 frequently cited for, Augie Restivo also --
23 among the reasons why substantive consolidation
24 was denied in that case was to give validity to
25 intercompany claims.

0137

1 Adelphia Communications Corp.

2 I want to say another point that
3 relates to the schedules. It also kind of
4 relates to substantive consolidation. I think
5 it's quite at the center of all of this. I
6 think the Debtors believe that there is
7 separateness here, that if it wasn't perfectly
8 maintained in all respects, it was achievable
9 with work. They have some issues that are
10 still up in the air they call the mapping
11 issues. They report in their papers that
12 records were kept at a finer level of
13 granularity even than at the corporate level,
14 were kept, you know, at certain business units
15 which are even below corporate levels in
16 complexity. So I think that's what they
17 believe.

18 If they believe in separateness,
19 and it may well be that this case is about
20 enforcing the separateness and the corporate
21 structure that Adelphia conducted its business
22 in, the intercompany equity holdings are part
23 of that network, that description, that
24 separateness or that reality, and so are the

25 intercompany claims of Steven Leary, et al. that the

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1 Adelphia Communications Corp.
2 equity is important and the debt is not. We
3 all don't do that as bankruptcy professionals.
4 We normally look at debt first, then equity.
5 Arahova talks about we're trying
6 to reverse the impact of subordination, words
7 you can't find in our debt instrument. What
8 they're saying is they want to exalt
9 intercompany equity above intercompany debt.
10 That's what's going on here. It's not the
11 collision between intercompany claims and
12 intercompany claims in most places; it's a
13 collision between what intercompany debt is
14 telling you and what intercompany equity is
15 telling you. And as bankruptcy professionals,
16 it's the intercompany debt that we would
17 normally pay attention to before we would worry
18 about intercompany equity.

19 Unless Your Honor has any
20 questions, I think that's really all I have
21 with respect to the schedules motion apart from
22 the papers. I'm not going to repeat anything I
23 said in the papers, but I think that that's --

24 THE COURT: Let me get back and
25 focus on something you said early on, which is,

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1 Adelphia Communications Corp.
2 you said you were here to argue the motion
3 that's before me and not the motion that could
4 be made. There have been a number of means by
5 which -- the extent to which I should use what
6 the Debtor has accomplished so far going
7 forward if I deny the motion. In each case I
8 think they came out of things the Debtor said
9 in one or another of their papers. You are
10 content, if that motion is denied, to let that
11 issue be decided later on, after people have a
12 further chance to be heard on that issue?

13 MR. BENNETT: I think that's
14 right, Your Honor. I mean, I think that, as to
15 the numbers, we're going to keep coming back to

16 the fact that -- I hope, at the end of the day,
17 and I can't know this, that the Arahova Ad Hoc
18 Committee is not going to say that we don't
19 believe a word of what the Debtor did and we're
20 going to start all over again tracing every
21 single Adelpia bill that was collected by
22 every single debtor entity or every single
23 business unit and find its way through the
24 intercompany accounts because every single one
25 did go through the intercompany accounts

0140

1 Adelphia Communications Corp.
2 because there was one set of bank accounts, and
3 insist on reconstructing all of it.

4 I believe, at the end of the
5 day, the Debtors' efforts are going to be
6 enormously useful. And it is appropriate that
7 the next step be, if there is a specific
8 objection to a specific claim, file in it a way
9 that constitutes a cognizable objection,
10 whether in a statement of issues, which I think
11 is just fine as a substitute for a complaint,
12 or whatever other way the Court orders that is
13 appropriate, so we can figure out what the
14 great mass of undisputed is -- and I have to
15 believe there's going to be a great mass of
16 undisputed -- and focus in on what disputes
17 there really are, as opposed to theatrical
18 disputes that were raised today as an effort to
19 turn back the clock on the work that the Debtor
20 did.

21 So I think Your Honor should
22 deny the motion. I think when we confront a
23 piece of a developed objection and we get down
24 to a hearing and say, you know, who is going to
25 go first, who has the burden, we'll figure it

0141

1 Adelphia Communications Corp.
2 out then. As to some things, it's probably not
3 going to matter. As to other things, it might
4 matter a great deal because there may be a
5 vacuum of evidence on a particular point.

6 But I would leave it to a future

7 determination in the ~~Stevens~~ ~~Platz~~ ~~of~~ ~~2021~~ ~~17~~ ~~of~~ ~~250~~
8 particularized issue, whether defined by a
9 pretrial order, a statement of issues, or a
10 complaint, to assign burdens and who stands up
11 first and whose witnesses go first, et cetera.
12 That's what I would do and I think that's what
13 the Court should do.

14 Turning next to the
15 procedures -- and there's some overlap with
16 respect to the procedures when we get to the
17 issue of the standing motion people have
18 skipped over, but it raises two very important
19 issues I don't want to forget about and I want
20 to come back to at the end, one of which is not
21 in our papers, but I hadn't realized it until
22 last night.

23 In the order of the objections
24 that were raised -- I guess I want to start
25 with a general comment about these procedures

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1 Adelphia Communications Corp.
2 that the Debtor prepared and has since
3 negotiated extensively with a number of parties
4 in interest, negotiations, by the way, that I
5 participated in personally most of the time,
6 other people in my office participated in some
7 of the time, and that actually Arahova
8 participated in most of the time.

9 I don't want Your Honor to
10 think, going away from here, that those
11 procedures are the best possible idea from the
12 perspective of the ACC noteholders and we're
13 somehow in love with them. That would be
14 overstating it to an enormous degree.

15 First of all, I'm glad it's in
16 the record of this case that I'm trying to
17 protect the first week of September because it
18 might be the only argument I have to defend
19 myself when my wife hears what's going to
20 happen to my life beginning in the second week
21 of September.

22 THE COURT: I'm assuming all of
23 the parties, and perhaps disproportionately

24 those in small firms, Steve Lombardi says they have to work
25 pretty hard over the next six months or eight

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1 Adelphia Communications Corp.

2 months that we're talking about.

3 MR. BENNETT: It's pretty
4 daunting when you actually look at the
5 deadlines and the work that's required to be
6 done and the number of issues that have been
7 injected in what to me was a basic dispute
8 about priority and enforceability of
9 intercompany claims. It is going to be an
10 enormous amount of hard work compressed into an
11 unbelievably short period of time and I might
12 as well be seeing my kids off to boarding
13 school.

14 But that's not really the
15 important point. The important point is, there
16 are dozens of compromises enmeshed here in an
17 effort to get something that's practical and
18 workable. Going through, again, some of the
19 issues --

20 THE COURT: The "here" being the
21 revised Debtor schedule?

22 MR. BENNETT: The revised Debtor
23 schedule.

24 I want to say at this point that
25 I only got the proposed Arahova schedule on

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1 Adelphia Communications Corp.

2 Friday and only really looked at it carefully
3 yesterday. I have to say I don't want to say
4 address it now because it would probably waste
5 time. If Your Honor is at all considering any
6 of it, I will tell Your Honor that I want to be
7 heard, because I regard many of the provisions
8 as quite twisted and designed to benefit one
9 party at the expense of another.

10 This is something that I think
11 the Debtor tried mightily to avoid in its
12 process and was watched by so many people that
13 I don't think the accusation can be fairly
14 leveled at them that they tilted the field in

15 any way, didn't stop Steven R. Boylston.

16 As to the specific complaints of
17 the procedures leveled by the Arahova Ad Hoc
18 Committee, first of all, about fiduciaries and
19 requirements to defend. It is absolutely the
20 case, Your Honor, that we could have gone about
21 it this way and that the Court might have gone
22 about it this way if this had started up or if
23 the issue had been joined as vigorously as it
24 is now, many, many months ago. I confess, it
25 is somewhat awkward that, on behalf of ACC

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1 Adelphia Communications Corp.

2 noteholders -- and as Your Honor knows, I
3 represent a lot of them. I don't even
4 represent a majority because the issue is so
5 big. So there are many other people out there
6 that -- on the one hand, free-riders, and the
7 other hand, may not have the faintest idea as
8 to what the issues are at stake.

9 But I do believe that changing
10 everything now and creating more fiduciaries
11 and more lawyers that are paid at the expense
12 of the estate is probably a net bad, a net
13 negative as opposed to a net positive, and,
14 accordingly, we have decided not to pursue that
15 particular direction.

16 I do want to be clear. If the
17 Court is persuaded that Arahova needs a special
18 representative and special estate counsel and
19 other attributes in order to permit them to
20 effectively defend the interests of the Arahova
21 bondholders, the ACC noteholders want all of
22 that too and would see it as a grave
23 disadvantage if one party got that kind of
24 relief and another party did not.

25 I thought Your Honor was -- hit

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1 Adelphia Communications Corp.

2 the nail on the head on the issue of asking the
3 Arahova committee exactly what specific
4 procedures are missing. I say that because
5 they got a whole bunch in the context of the

6 negotiations that they put before it
7 was not surprising that Mr. Lauria came up more
8 or less empty.

9 There's another reason why Your
10 Honor can feel particularly comfortable in
11 having more flexibility with respect to
12 procedures in this context than in some others.
13 There is no right to a jury trial on any issue
14 that anyone has mentioned in this courtroom.
15 These issues are by and among debtors who are
16 before the bankruptcy court, all in what Your
17 Honor correctly described as closely analogous
18 to in rem type controversies. What we need are
19 not procedures that are in the abstract useful
20 from the context of a rule book and from prior
21 history. What we need are procedures that Your
22 Honor finds useful in order to make good
23 findings of fact and, to the extent necessary,
24 conclusions of law. That's what we need.

25 Now, on the issue of summary

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1 Adelphia Communications Corp.
2 judgment and motion practice, for a time it was
3 argued strenuously by the Arahova people that
4 this was an appropriate feature of the
5 procedures, and for a while there was actually
6 something like that in there.

7 THE COURT: Did you say they
8 were arguing that it was an appropriate --

9 MR. BENNETT: Right, an
10 appropriate piece of the procedures. And for a
11 while it was in there. But the more I thought
12 about it, and I think Your Honor may have had a
13 similar reaction, when you look at the issues,
14 there aren't any true summary judgment issues
15 as in true issues of law where the facts really
16 aren't disputed, as opposed to perhaps areas
17 where one side wants to put the other to a fire
18 drill to pull together their disputed facts.
19 And in the context of a procedure that is as
20 short as this is, it struck me that the summary
21 judgment approach was a way to attempt to
22 reorder issues and to create harassment, one

23 party against the one of Steven L. Fogel of 2021 of 250

24 I told the Arahova, but I'll
25 tell the Court, I think they're of limited

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1 Adelphia Communications Corp.
2 usefulness, but if it becomes a meaningful
3 aspect of those procedures, we've got issues
4 that we would properly style as summary
5 judgment motions too. I think it's going to
6 add confusion, distraction and additional work
7 and really will not be informative to the Court
8 at the end of the day, because there will be
9 more fights over --

10 THE COURT: Just a minute
11 please, Mr. Bennett.

12 Will the gentleman who is on the
13 phone either put his phone on mute or hang up?

14 Go on, Mr. Bennett.

15 MR. BENNETT: To me it strikes
16 me that where issues are --

17 THE COURT: Just a minute. I'm
18 telling you folks on the phone that if this
19 doesn't end in about ten seconds I'm going to
20 tell my clerk to disconnect all of the phone
21 lines. Annie, disconnect them.

22 Go on, Mr. Bennett.

23 MR. BENNETT: Okay. Where was
24 I? On the issue of summary judgment
25 proceedings as really resulting in a bunch of

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1 Adelphia Communications Corp.
2 harassment and distraction, I think -- in the
3 context of this accelerated a schedule, I don't
4 think they have a fair place. It will show up
5 pretty quickly toward the end if there's any
6 issue that's, in fact, not disputed, as opposed
7 to an issue where one party contends it should
8 not be genuinely disputed, and if there are
9 purely legal issues that really are purely
10 legal issues, I'm for deciding them as soon as
11 possible. I just don't believe that that's a
12 fair characterization of what you're going to
13 find here.

14 particularly interesting that the urge for
15 early -- for summary judgment motions to
16 facilitate early settlement dialogue came from
17 a party that, the last time we were before Your
18 Honor, said that they didn't know enough to be
19 ready to settle yet or have any discussions at
20 all.

22 I'm going to skip over privilege
23 for a second.

24 THE COURT: Pause while you're
25 on this aspect. Do you think -- you know,

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1 Adelphia Communications Corp.
2 Mr. Lauria talked about asserted prejudice by
3 reason of there not being a complaint and
4 answer. I would like to get your views on that
5 aspect. And a first cousin of that: Do you
6 have views on whether it's a good thing or a
7 bad thing if I try to shoehorn into the
8 schedule, requirements for pretrial orders, one
9 or more pretrial orders.

10 MR. BENNETT: I am one of the
11 authors of the idea -- it's new in this draft
12 versus the last draft -- of an early statement
13 of issues as a substitute for a complaint. I
14 thought one of the problems with the initial
15 procedures proposed by the Debtors was that you
16 didn't know what issues you were briefing, you
17 didn't know what issues you were conducting
18 discovery about. I've been continually
19 distressed at how the issues seem to get
20 broader every day as opposed to remaining more
21 or less confined to the ones we thought were
22 initially relevant.

23 So I'm for an early statement of
24 controverted matters that could be the basis
25 for then figuring out what you're doing in

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1 Adelphia Communications Corp.
2 discovery and what discovery is reasonable,
3 what documents are reasonable, and I thought
4 the statement of issues was kind of like that.

5 I hope Steve Polby begins

6 issues do not come to look like modern
7 complaints with 500 paragraphs of allegations.
8 I don't think it's necessary for people this
9 advanced in the case to have that to understand
10 what people are talking about. But I do think
11 they have to be useful statements of the issues
12 someone is complaining about.

13 For example, if, when they
14 consider the facts, the ACC committee believes
15 that somehow the issues that they attempted to
16 raise on Exhibit -- I'm sorry, I keep missing
17 it. Exhibit 13 -- if that's an issue, then I
18 suppose there would be four or five paragraphs
19 that would basically say something to the
20 effect that they believe that the Highland
21 Prestige Georgia, Highland Video Associates,
22 Hilton Head Communications and Ionian
23 Communications scheduled entries are erroneous
24 because they failed to take into account an
25 appropriate prepetition adjustment for debt

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1 Adelphia Communications Corp.
2 reclassification. That would be an issue. You
3 could also plead this for 20 pages, but I'm not
4 sure it would be useful to do that.

5 So somewhere, yeah, there has to
6 be a statement of issues. Whether it takes the
7 form of a complaint or not, I'm less interested
8 in as an issue. I can live with it either way.

9 As to whether or not the
10 procedures could be augmented by the
11 requirement for a pretrial order, there is a
12 second final statement of issues that's
13 provided for toward the end of the process; I
14 can't even remember when it is. That could
15 very easily be converted into a traditional
16 pretrial order. And if there were more
17 milestones along the way where issues might get
18 narrowed or redefined, I actually think that
19 can only help. Maybe we would see early
20 whether anything is truly getting out of hand.
21 I think I can work with them.

22 A word about sequencing. And I
23 will come back to the whole privilege issue.
24 The Debtors' sequence is not my idea. The
25 Debtors' sequence is their idea. As long as
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1 Adelphia Communications Corp.
2 we're discussing ideas about sequencing, I'll
3 tell you how I think it ought to work. I think
4 the first issue, the most important issue, and
5 maybe the dispositive issue, is what is the
6 meaning of the intercompany claims. Are they
7 pari passu obligations? Are they not pari
8 passu obligations but nevertheless structurally
9 senior? Are they for any reason not
10 enforceable? Those are the central issues.

11 You can't decide whether -- for
12 example, one of the issues they wanted put up
13 front, and they didn't mention it in oral
14 argument but in their schedule -- the Arahova
15 group would say, put fraudulent transfer issues
16 first, before those, after their valuation
17 issues. And I say to that, you can't figure
18 out if there's been a fraudulent transfer by
19 anybody until you know what its liabilities
20 are. And some of those liabilities might be
21 intercompany, because, again, we're talking
22 about intercompany transfers, not transfers to
23 third parties.

24 THE COURT: Because it might
25 have been on account of an antecedent debt?

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1 Adelphia Communications Corp.
2 MR. BENNETT: There are all
3 kinds of things. There was never any
4 subscribers that were transferred. There were
5 entities that were transferred. Some of them
6 were transferred subject to debt. Some of that
7 debt was third party, some of that debt was
8 intercompany debt. All of these things become
9 relevant. If they're enforceable obligations,
10 they have one place in the fraudulent transfer
11 analysis. And if they're not, they have a
12 different place in the fraudulent transfer,

13 analysis. But the issues are not derivative, not
14 determinative of each other, but interrelated.
15 And logically, at least to me, the validity and
16 enforceability of intercompany claims comes
17 first.

18 As to value allocation, I have
19 to say that -- it's just my opinion; it
20 probably shouldn't count -- that those issues
21 are much more marginal than the intercompany
22 claim issues, but I don't know what the -- what
23 the Arahova contentions will be. There is
24 significant evidence from the sale process
25 about value allocation which I think is

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1 Adelphia Communications Corp.
2 determinative. Maybe that's a motion for
3 summary judgment, because that was actually the
4 process where everything was marketed most
5 vigorously and most intensively. And it
6 strikes me that that evidence is the best
7 evidence of value and everything else is just
8 commentary. But, again, that's an opinion and
9 I haven't heard their contentions yet. I don't
10 know. This is a relatively new issue for me,
11 that there is a problem with this.

12 So the point I want Your Honor
13 to take away is, we view the central issue that
14 needs to be decided is the intercompany claims
15 issue. The others we believe are derivative.
16 The Debtors' schedule is slightly different
17 than that. We'll live with it until an obvious
18 problem arises.

19 Cost allocation. Again, a new
20 issue. I don't know what they mean. Perhaps
21 this is an investigation of the postpetition
22 consolidated cash management system and that
23 they want to look at every single charge that
24 impacted in any way, Arahova or Arahova
25 subsidiaries. I hope that's not what they

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1 Adelphia Communications Corp.
2 mean, because we'll be celebrating next summer
3 here and the summer after and the summer after.

4 I hope I'm wrong. But Steven's Policy of 2012 of 250
5 been injected. I suppose it has to be dealt
6 with. I'm not sure it's going to move the
7 needle very much. I'm not sure they know if
8 it's going to move the needle very much. I'm
9 not sure why it's gotten the enhanced
10 importance that it did.

11 And on substantive
12 consolidation, I think I have a slightly
13 different interpretation as to what the Debtors
14 were up to than the Arahova committee
15 interpretation. For purposes -- it does make
16 sense that for purposes of the motion in aid of
17 confirmation, which is primarily -- and maybe I
18 should talk about this at some point later --
19 not necessarily exclusively, but really
20 primarily a dispute between Arahova creditors
21 and ACC creditors, that in that context,
22 substantive consolidation should be about
23 separate entity, respecting it at the
24 240-entity level, versus the Debtors' chosen
25 pattern of substantive consolidation for plan
0157

1 Adelphia Communications Corp.
2 purposes. I'm not sure that the Debtors'
3 mentor could mean that they foreclosed other
4 inquiry in the context of the broader plan
5 process where everyone might be affected by the
6 substantive consolidation issue. And then I
7 suppose the question of, once you decide you're
8 going to substantively consolidate in an era
9 where you know a lot about but maybe not
10 absolute perfect identity of each and every
11 debtor, you're going to now like choose
12 different ways?

13 That may be a sensible thing to
14 talk about in the context of confirmation, but
15 not here. I don't think the Debtors did or
16 could mean to foreclose any substantive
17 consolidation inquiry in connection with the
18 plan. I do think they intended to narrow the
19 issues that were dealt with in the context of
20 the procedures in aid, but I could be wrong and

21 the Debtors will tell me if I'm wrong. But at
22 any rate -- that would be the last issue with
23 respect to the procedures.

24 Your Honor, I do need you to
25 indulge me for one more minute on the issue of

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1 Adelphia Communications Corp.
2 standing, because I also think it says a lot
3 about the procedures. There are some very
4 important points and I'm again going to turn to
5 Exhibit 1 to illustrate the first one.

6 Point number one. Vocabulary
7 and definitions matter a lot in this case. In
8 the Arahova motion, the word "Arahova" means
9 Arahova Communications, Inc., a Delaware
10 corporation, the first blue box on the top of
11 Exhibit 1. "Arahova Debtors" means something
12 different. "Arahova Debtors" means every
13 direct and indirect subsidiary of Arahova
14 Communications.

15 The part that's confusing is the
16 Debtors sometimes refer to the Arahova Debtors
17 too. What the Debtors mean when they say the
18 "Arahova Debtors" is the Arahova Debtors that
19 are grouped into the Arahova debtor group. The
20 Arahova debtor group does not include the
21 Century Communications entities. The Arahova
22 debtor group does not include the Century/TCI
23 debtor group; they are separate debtor groups.

24 The debtor groups were formed to
25 facilitate postpetition financing. They don't

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1 Adelphia Communications Corp.
2 have lot of other reality besides that, I
3 think. I know other people might dispute that.
4 But when Arahova asked for standing on behalf
5 of the Arahova Debtors to pursue a fraudulent
6 transfer, they're looking for standing for all
7 of these entities underneath Arahova
8 Communications irrespective of the debtor
9 group.

10 Now, as stated in the Debtors'
11 papers, some of the transfers that are the

12 subject of this fraud of Steven L. Polys of 20128 of 250, or
13 I should say all, originated well under the
14 Century Debtor group, not in the Arahova Debtor
15 group. The Arahova papers are very clear.
16 What do they want? They want all of the things
17 that were transferred from entities other than
18 Arahova and through Arahova. I think the point
19 we made clearly in our papers, Arahova being
20 what we all usually call a mediate transferee,
21 and not a transferor in the traditional sense.
22 They want to capture standing of entities that
23 were transferors further up the chain but have
24 used that power for the benefit of Arahova
25 Communications.

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1 Adelphia Communications Corp.

2 That can't be right. The -- it
3 may well be that someone needs standing to
4 represent the interests of the Century entities
5 that were the initial transferors. That could
6 never be someone who represents one of the
7 early stage, mediate transferees. That is a
8 fundamental flaw with the standing motion. And
9 if you pay attention to defined terms, you'll
10 see that it's vividly there.

11 And it may well turn out that
12 even under the Debtors' procedures, which are a
13 little bit looser about this in getting people
14 to argue different issues and have standing to
15 argue issues as opposed to standing to
16 represent individual entities, we may have an
17 issue arise here that no one is around to take
18 a particular position that needs to be taken.
19 I hope we don't get there. But the idea that
20 the Arahova creditors' group would ever get
21 standing to represent a plaintiff and defendant
22 in the same action is very troubling. It can't
23 work.

24 Now, next point about standing
25 and fiduciaries. And this is an uncomfortable

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1 Adelphia Communications Corp.

2 and sensitive topic that always gets people

3 aggravated, but it really has to do with.
4 And I also want to begin by starting with some
5 record evidence, which was one of Mr. Lauria's
6 favorite things the last time we were before
7 Your Honor.

8 Where I think Your Honor needs
9 to look at, if it's convenient, is docket
10 number 7955 which is the Bank of America's, as
11 Century bank agent, objection, and document
12 7990, which is the Arahova noteholders'
13 objection. And this is what I noticed on the
14 plane last night. White & Case is on both of
15 them. White & Case as a law firm represents
16 Bank of America as a claimant against Century
17 Debtors. White & Case as a law firm, I assume
18 with a completely separate team, represents the
19 Arahova noteholders. It is absolutely
20 something clients can do. Bank of America
21 could have agreed to waive to let White & Case
22 represent the other position in this case, and
23 the Arahova noteholders, being fully informed,
24 may have waived the existence of the Bank of
25 America representation.

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1 Adelphia Communications Corp.

2 But here we go. Are we going to
3 give White & Case a role as a fiduciary in
4 having standing on behalf of Century Debtors
5 where the same firm is concurrently
6 representing Bank of America as a creditor of
7 the Century Debtors? White & Case couldn't be
8 employed by any debtor in this case, and giving
9 them standing to take a position in court with
10 the Century Debtors' name on it while
11 concurrently representing a creditor of Century
12 Bank as a defendant, by the way, in the
13 litigation where some fraudulent transfers are
14 also relevant as well as dozens of other
15 things, is something that I just don't
16 understand. That is not a conflict that
17 private clients can waive.

18 Now, what else are we told about
19 White & Case's role in this case? Now, I'm not

20 sure they asked for a Steven Polley of P230 of 250
21 but they want access to privileged information
22 from everyone in their Arahova Debtors, which
23 includes Century, their adversary across the
24 hall. Again, private -- that litigation is
25 supposed to be extraordinarily valuable. The

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1 Adelphia Communications Corp.
2 Debtors and the Committee proposed that the
3 residual creditors in the case, which probably
4 includes ACC and Arahova, take \$100 million of
5 their money and invest in the future of that
6 litigation. That's in the Debtors' plan. And
7 we're now told that we're supposed to give
8 privileged documents with respect to the very
9 debtors, to the very same law firm, that's
10 engaged to defend those claims. This is
11 absurd.

12 Parties can agree to create
13 Chinese walls, but this now is a debtor
14 pursuing litigation against the same firm. And
15 I have to say, Your Honor, I've never been a
16 big believer in Chinese walls, and in a case
17 this big, this important, important to law
18 firms, where the lawyers use the same e-mail
19 systems, they use the same document management
20 systems, they use the same library, and as
21 importantly or maybe more importantly, they go
22 to the same partnership meetings and retreats,
23 I don't think any creditor in this case wants
24 to take that risk, putting privileged documents
25 or fiduciary responsibility in a firm that

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1 Adelphia Communications Corp.
2 represents an adversary in major bank
3 litigation here and has for many years. I hope
4 that committee counsel is not so conflicted in
5 this matter as to see the problem here too.

6 Your Honor had some questions,
7 and I want to make sure I hit them all the way.

8 The first was, you know, what
9 are the real factual disputes. We believe
10 that, at minimum, the Debtors' work on the

11 intercompany claims and where the cash went and
12 what the accounting entries are is a very
13 valuable place to start. It is the only place
14 to start. It does represent that best to their
15 knowledge, information and belief, albeit
16 subject to elaborate qualifications. That is
17 the normal starting point.

18 I think in terms of the factual
19 background for the transfers, it's a little bit
20 different. There's a process going on that
21 might get there. But the Debtors conceded
22 mapping issues even in their restatement.
23 About the only risk factor relating to
24 substantive consolidation that they actually
25 referred to in their restated financials that

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1 Adelphia Communications Corp.
2 were issued around the turn of the year related
3 to the placement of assets and where they were
4 and where they came from. And so there's
5 details that need to be fleshed out and I would
6 be kidding myself and Your Honor if I thought
7 that we were really done with that question. I
8 don't think we are.

9 I think the other big hole
10 opened up by the ascension of fraudulent
11 transfers to this new level are values in '91;
12 that's going to turn out to be important. If
13 there are fraudulent transfers that can't be
14 disposed of as a purely legal basis, there's
15 going to be important work that will have to be
16 done about valuation of a number of entities,
17 which may also entail valuation of a number of
18 subscribers back in the '91 period, and I think
19 the Debtor in their footnote said they haven't
20 started that evaluation yet. I know we
21 haven't. I don't know where the ACC committee
22 is. Those are factual issues that do need to
23 be dealt with.

24 I also agree that the allocation
25 of value that's -- actually sounds like it's

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1 Adelphia Communications Corp.

2 going to be made a very responsive
3 exercise with a whole bunch of experts. I
4 think we have the record of the sales process
5 and maybe that will short-circuit it and maybe
6 it won't. But factual development hasn't even
7 begun. And I would say the same with respect
8 to the allocation of expenses.

9 As to, Your Honor, what is the
10 significance of the Debtors' numbers, I think I
11 explained it already. I think they're -- and I
12 think unless Your Honor has any questions about
13 anything, those are my responsive remarks.

14 THE COURT: Thank you,
15 Mr. Bennett.

16 All right, does anybody who
17 hasn't had a chance to be heard for the first
18 time want to be heard now?

19 THE COURT: Mr. Kaplan.

20 MR. KAPLAN: Thank you, Your
21 Honor. Gary Kaplan from Fried Frank on behalf
22 of W.R. Huff.

23 Your Honor, before I go through
24 our objection to the procedures, there's one
25 thing that Mr. Bennett sort of glossed over at

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1 Adelphia Communications Corp.
2 the beginning of his presentation which I think
3 is essential for putting all of this into
4 context. And I think Mr. Bennett said that,
5 Well, there might have been some language in
6 the prospectuses about structural seniority,
7 but, you know, he doesn't remember it being
8 clear, he didn't have the language in front of
9 him.

10 We attached that language to our
11 objection and, you know, I looked it again and
12 I've been struggling for the last 15 minutes,
13 as I read through the language, trying to
14 figure out what in there gives anybody pause.
15 You know, the language couldn't be clearer,
16 that the operations of the Adelphia parent
17 company are conducted through its subsidiaries,
18 therefore the Adelphia parent company is

19 dependent upon the cash flow and cash
20 flow and distributions from its subsidiaries to
21 meet its debt obligations, including its
22 obligations with respect to the notes. Because
23 the assets of its subsidiaries and other
24 investments constitute substantially all the
25 assets of the Adelphia parent company and

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1 Adelphia Communications Corp.

2 because those subsidiaries and other
3 investments Will not guarantee the payment of
4 principal of -- and interest on the notes, the
5 claims of holders of the notes effectively will
6 be subordinated to the claims of creditors of
7 those entities.

8 And, in fact, if you look
9 through some of the prospectuses, some of them
10 go into a lot more detail. I won't burden the
11 record with reading them. But if you look, the
12 one for the \$500 million of 9-3/8 senior notes
13 due 2009, it actually details more so, and it
14 actually talks about the amount of subsidiary
15 debt and it actually says that the notes would
16 have been effectively subordinated to
17 \$6 billion of indebtedness of an equal
18 preferred stock of Adelphia's subsidiaries, et
19 cetera, et cetera.

20 So I think when we look at all
21 of the different disputes and all of the
22 various issues that have been called the
23 paramount issues in this case and how
24 complicated it is and that the issues keep
25 growing, the starting point needs to be that

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1 Adelphia Communications Corp.

2 when people bought their bonds, they understood
3 what they were getting. They understood
4 structural seniority. Intercompany claims, I
5 understand they've been restated and are
6 continuing to be restated, perhaps they've
7 done, they've spent tens and tens and tens of
8 millions of dollars of restating. That was
9 there when the notes were issued, and when

10 people bought their notes, I don't know where they
11 fell out in the priority schemes.

12 What we're really talking about
13 is what procedures are we going to set up for
14 people to try to adjust those priorities. And
15 I think when we look at that and we look at
16 confirmation and we look at the Time Warner
17 deal, all of that really needs to be put into
18 perspective. What we're really looking at is
19 certain senior bondholders saying, Hey, How do
20 I sop up some value to me, which admittedly
21 they told me I wouldn't get that value, but I
22 need to try to find a way.

23 And I think when we look at the
24 Debtors who sit here and say, you know, We're
25 neutral, we reserve the right to settle later,

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1 Adelphia Communications Corp.

2 but right now, you know, you guys, you're doing
3 a great job, go fight it out, we need to look
4 at that in the context of they know the debt
5 that they sold, they know their capital
6 structure and they know, when they offered the
7 debt, what people's expectations were.

8 And with that, I'd like to just
9 turn briefly to the procedures in our
10 objection. And I don't want to pick on Mr.
11 Bennett, but I think there is one thing that he
12 said which I think really goes to the heart of
13 our objection. And when he was talking
14 about -- I think he was responding, and he
15 said, you know, issues such as who has the
16 burden, who goes first, well, we'll figure it
17 out then.

18 And frankly, Your Honor, that's
19 precisely what our objection is. There's no
20 reason that we need to set up a new protocol,
21 or whatever we're calling this new procedure
22 that has a whole process, but we don't even
23 know who has the burden, and then we have to
24 figure that out later.

25 We're supposed to file issues

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1 lists that -- you know, we heard Mr. Bennett's
2 description of what he views an issues list to
3 be. You know what? I don't know what an
4 issues list is. Is it the same as an issue on
5 appeal? Is it more like a complaint? I think
6 everybody in this room knows what a complaint
7 looks like, knows what the appropriate pleading
8 standard needs to be in a complaint. Yes,
9 there are more detailed complaints, there are
10 some complaints that are less detailed. But
11 everybody here knows that -- if they're handed
12 a complaint to review, they know what the
13 complaint has to say and they can make a
14 judgment that says, I have adequately pled my
15 case. I don't know what an issues list does.
16 I don't know what I need to plead in an issues
17 list to make it satisfactory.

18
19 And, Your Honor, there was some
20 discussion earlier about, you know, well,
21 contested matters have a whole bunch of
22 procedures. There's due process and, you know,
23 most of the 7000 rules are incorporated into
24 contested matters, so why do you need the rest.

25 I think -- number one, I think

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2 just -- this discussion about who has the
3 burden, I think it is an important concept that
4 needs to be -- that needs to be described.

5 THE COURT: Well, none of the
6 Federal Rules of Civil Procedure speak to who
7 has a burden on any issue, do they?

8 MR. KAPLAN: No, Your Honor.

9 But you at least have a motion that starts it.
10 You either have -- if you're looking at a
11 contested matter, a contested matter is started
12 typically by a motion or something else. Here,
13 we don't have that first shot that starts the
14 battle. Everybody says what their issues are,
15 everybody submits briefs, and then well, we
16 figure out who's sort of first, who is second,
17 who has the burden. If there's a motion on, we

18 know who has the burden of responding, who's objecting.

19
20 Instead, we have free-for-all,
21 where everybody files a brief, everybody argues
22 who should be considered as the first motion,
23 who should have the burden, but we have no
24 structure. And that's number one.

25 Number two, I don't think we

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1 Adelphia Communications Corp.

2 have the luxury to simply say, Well, you know,
3 a complaint is nice, but we don't really need
4 it because you have enough protections without
5 it, so we can dispense with the complaint.
6 I've looked through the rules and I don't see
7 where it says a complaint is optional. If you
8 have an avoidance action, it needs a complaint.
9 And I don't see any place -- and maybe there's
10 a case out there that I missed that says, well,
11 those rules are optional.

12 A complaint -- you know, yes,
13 the rules say that you have to start with a
14 complaint and, yes, you then have to file an
15 answer and your answer has to -- there are
16 certain defenses. If they're not included in
17 the answer, they're waived. I've never seen
18 anything that says they are optional and the
19 court can say, you know, we'll just
20 fast-forward and skip that step.

21 Your Honor, just going back to
22 the procedures, the biggest issue we have is,
23 if something needs to be done by complaint, it
24 should be done by a complaint.

25 Number two, I don't simply think

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1 Adelphia Communications Corp.

2 that -- saying that people should file issues
3 lists that are undefined, we'll all file briefs
4 and we'll figure out later, you know, who
5 should go first and who has the burden, I just
6 don't think that works.

7 Then there's another part of the
8 procedures. They've set up participants.

9 There are deemed participants of Steven Perlberg of 250

10 participants and maybe other participants.

11 It's essentially an exclusive club. If you're
12 not one of the deemed participants that are
13 listed, you sort of have to make an application
14 and you have to explain why you think your
15 interests are not adequately represented.

16 And this goes a little bit to
17 the discussion before about fiduciaries and it
18 goes to some of the comments Your Honor made at
19 the last chambers conference. Everybody here
20 is in it for themselves. Unless you're a
21 statutory fiduciary, you're not a fiduciary.
22 Your clients can make a decision tomorrow, You
23 know what, let's not fight this issue, let's
24 settle, let's not settle.

25 The Bankruptcy Code is set up to

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1 Adelphia Communications Corp.

2 give every creditor and party in interest a
3 right to be heard. There is no application
4 process to say, Well, those guys are doing a
5 good enough job and therefore I don't need to
6 be heard.

7 THE COURT: I understand and in
8 many ways agree with that point, Mr. Kaplan. I
9 was thinking about that as I was getting ready.
10 But if you want to appear and be heard, you've
11 got to say something. And I guess what I'm
12 having difficulty with is, I understand your
13 perspective about 1109(b) giving anybody who
14 wants to weigh in on an issue the ability to do
15 it, but is it unreasonable to expect that if
16 you want to weigh in on that issue, you've got
17 to say something about that issue?

18 MR. KAPLAN: I don't think it's
19 unreasonable, but I think you have to look at
20 the way the process works. Typically you get a
21 motion, you can analyze that motion, figure out
22 whether you have a stake in it, how it's
23 playing out, what people have argued, whether
24 you need to add something or whether it's
25 covered.

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2 The way the process works now is
3 there's these issues that are filed, which we
4 don't know how detailed, and people can
5 supplement them later, and if you're not a
6 participant at the beginning, as I read it, you
7 don't get to participate in discovery, so you
8 can't sit there and see what's developing, how
9 are these issues being handled, and you're sort
10 of out the process from the beginning.

11 And, again, if there's a
12 complaint filed, you can see it and say, you
13 know what? I'm fine with the way this
14 litigation is going, I'm not going to seek to
15 join the litigation, and let it go. If there's
16 a motion filed, you might respond to the
17 motion, you might not decide, I don't need to
18 be heard.

19 Here there's a ticket at the
20 beginning which says, if you want to
21 participate, you have to look around the room,
22 see if the people who are currently speaking up
23 are sort of good enough to represent your
24 interests. If you think yes, then you sit down
25 and forever hold your peace. If you think not,

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1 Adelphia Communications Corp.

2 you have to apply, the Debtor determines
3 whether they think you really should be heard
4 or not, and if not, then we turn for Your Honor
5 to speak.

6 And, frankly, I think it's
7 inconsistent with 1109. I don't think the
8 Debtor should be given a gatekeeper role to
9 determine whether, you know, some ad hoc
10 committee or another is an appropriate
11 spokesperson, or that it should be left for the
12 Court to say, You know what? Yes, I think that
13 person is an appropriate spokesperson for you,
14 so you can't be heard. I just don't think that
15 that is the way it's intended to work.

16 I think -- in the recent

17 bankruptcy amendments, seventh Repeal of 239 of Congress

18 has sort bent over backwards to ensure that
19 creditor participation is increased and the
20 amount of information going to creditors is
21 increased as opposed to decreased. And what
22 this process is is to make an exclusive club.

23 And if any procedures are going
24 to be adopted, I think that the thing that I've
25 spoken about that is critical and fundamental,

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1 Adelphia Communications Corp.

2 that there not be a small group of people who
3 are given access to information, and everybody
4 else, if they want to be heard, they have to
5 file an application or otherwise they're barred
6 from the process --

7 And then one other thing is --
8 and this one, honestly, I'm not just not sure
9 how it works and I just would like
10 clarification when the Debtors get up and walk
11 through later on all the different changes.
12 There is some language that sort of preserves
13 other rights and preserves rights with respect
14 to confirmation. I'm not sure, frankly, how it
15 works and what somebody can object to at
16 confirmation. Obviously all the different
17 issues that we've talked about today touch on,
18 ultimately, the plan.

19 And it's not clear to me what
20 you have to raise today and what do you waive
21 if you don't raise it in your issues list. Do
22 you have to list every confirmation issue? If
23 not, are you going to walk into the situation
24 months down the road where they say, You didn't
25 file an issues list, you didn't raise that, and

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1 Adelphia Communications Corp.

2 therefore that issue is too late?

3 And I think before we adopt
4 those procedures, we really need to take a
5 close look at them and really delineate. When
6 it says things such as, unless you raise an
7 issue now, it's waived, I think we need to take

8 a very close look and we are

9 very clear on, know precisely what it is that
10 we are talking about so that we don't run into
11 a situation where confirmation, which is
12 ultimately the big show here, that somebody
13 says, Well, it's too late. If you wanted to
14 raise that issue six months ago, you should
15 have filed an issues list that we could have
16 posted on Adelphia's Web site.

17 And I think, Your Honor -- just
18 one second to make sure I'm not missing
19 anything.

20 Unless Your Honor has any
21 questions, that's all I have.

22 THE COURT: You already answered
23 them. Thank you, Mr. Kaplan.

24 Mr. Phelan, did you want to be
25 heard?

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1 Adelphia Communications Corp.

2 MS. ATTANASIO: Good afternoon,
3 Your Honor. Lee Attanasio of Sidley Austin
4 Brown & Wood. We represent noteholders holding
5 approximately 108 million principal amount of
6 notes issued by Ft. Myers, which is an entity
7 in the Century debtor group. It's secured by
8 assets of Olympus.

9 THE COURT: Right. I got your
10 papers generally in support of the Debtor if I
11 recall.

12 MS. ATTANASIO: That's correct,
13 Your Honor. However, when the Debtors filed
14 the modified form of order, one issue did come
15 to rise, and that is, as Mr. Kaplan referenced,
16 the filing of these issue statements.

17 As we sit right now, our clients
18 don't particularly have an issue. The Debtors
19 assert that our debtor groups are solvent, our
20 claims will be paid in full, and that's
21 terrific.

22 But in light of the challenges
23 that have been raised by the Arahova
24 noteholders, we do need to participate in this

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1 Adelphia Communications Corp.
2 protected. And we have spoken with Debtors'
3 counsel and they are willing to add us as a
4 deemed participant, I take it, so that we can
5 participate and, you know, make sure that those
6 rights continue to be protected, and that's
7 fine.

8 However, I am concerned that
9 come two weeks from now, when we're supposed to
10 file an issues list and we don't have an issue
11 at this point in time -- I do not want any of
12 our rights to be waived to have any issue when
13 it comes to a final issues list or the close of
14 factual discovery or even confirmation, that in
15 some way we have been prejudiced by not filing
16 a statement of an issue that has yet to come to
17 light.

18 THE COURT: Okay.

19 MR. PHELAN: Very briefly, Your
20 Honor. Robin Phelan for the Bank of America,
21 the agent for the Century lenders.

22 The first comment I'd like to
23 make is that lawyers in big firms also work
24 hard.

25 THE COURT: Yeah. I encountered

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1 Adelphia Communications Corp.
2 that from time to time in my first life.

3 MR. PHELAN: Substantive point
4 number one. I just want to make sure that the
5 proposed Debtors' order -- that it's clear the
6 proposed Debtors' order does not change any
7 confidentiality orders or confidentiality
8 agreements that have been entered into in
9 connection with any of the other litigation in
10 this case, that all that stuff still applies
11 and this isn't meant to supersede or alter that
12 in any manner, shape or form. It is my
13 understanding that is also the Debtors'
14 understanding.

15 The second point is, as we

16 understand it, this procedure does not preclude
17 any discovery, or objections, or discovery in
18 connection with objections relating to the
19 confirmation that don't totally overlap with
20 what's going on here. For example, substantive
21 consolidation looks like it's dealt with here,
22 but other issues involving confirmation will be
23 essentially on a separate, although probably
24 parallel track, and they will be dealt with in
25 the normal course as provided for by the

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1 Adelphia Communications Corp.
2 Bankruptcy Code and Rules. It is, again, my
3 understanding that it's also the Debtors'
4 understanding with respect to confirmation
5 issues.

6 The third item relates to the
7 data room. As we understand it, we have had
8 some problems in the past with a particular
9 data management system that was utilized in
10 connection with the litigation. A lot of
11 people have had problems with that. It's my
12 understanding that the Debtors are going to use
13 a different system in connection with this data
14 room. We'll work with the parties and, as
15 indicated, it will be searchable, there will be
16 indexes, and you actually can find things in
17 there.

18 As we understand the revised
19 form of order, in essence, when we file our
20 preliminary issues statement -- and to address
21 the previous comment, we're getting paid under
22 the plan and we don't know what's going to come
23 up. We'll file preliminary issue statements
24 and say we're getting paid and anything that
25 comes up that takes a dollar out of our pockets

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1 Adelphia Communications Corp.
2 is one of our issues. So we'll file that.

3 And my understanding is the way
4 it works on pages 4 and 5 of the revised order
5 is that the Debtor then puts in that data room
6 the data that is responsive to those issues.

7 Much like if we had asked Steven Leroy of Page 250 a

8 document request, the Debtor then affirmatively
9 states, I've put -- I've given you all those
10 documents. They will -- by placing them in the
11 data room and following this order, they will
12 be making the affirmative statement roughly
13 akin to Federal Rule 34 that they have
14 responded.

15 We then look. Say we want to
16 deal with the Star Wars deal, acquisition for
17 the Star Wars rights for their programming.
18 Well, we'll look in the Star Wars file. And we
19 might look in the programming file and we might
20 look in the Lukas film file, but maybe there's
21 some Nemo e-mails in Leroy's file because Leroy
22 handled the deal. And we don't really know
23 that, but some stuff looks like it's missing.
24 We then make a certification to them that says,
25 We looked and we think something is missing.

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1 Adelphia Communications Corp.

2 Then it's their obligation to go produce
3 whatever is missing, put it in there and
4 certify, in fact, that they have. That's our
5 understanding of the procedures and it's our
6 understanding also that that's the Debtors'
7 understanding of the procedures.

8 We have couple of comments. I
9 don't know that the Debtor or the Court can do
10 much about it because there is a finite amount
11 of days between now and the time this procedure
12 needs to be over. The expert reports look like
13 they're due five days after the depositions are
14 concluded. That's kind of hard, because you
15 may not know what experts you even need until
16 you take somebody's deposition, much less hire
17 them and have them produce a report.

18 That's the way it's set up in
19 the schedule now. It may turn out that that
20 works just fine, but it's real conceivable that
21 some adjustment's going to have to be made to
22 that, because, you know, the-next-to-the-last
23 deposition you take, an issue or a fact issue

24 is raised that requires only by to file an
25 expert and prepare an expert report.

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2 We just need -- there needs to
3 be enough flexibility to deal with that at some
4 point in time. These time lines, in fact, are
5 very, very tight. For example, there's only
6 ten days to list deponents after the Debtor
7 identifies its witnesses. That's a very short
8 period of time. There's only 60 days for
9 depositions. We realize, again, the Debtor has
10 a finite amount of time to deal with, but we
11 hope the Court will be flexible if these dates
12 need to be adjusted at some point in time for
13 good cause.

14 THE COURT: Okay. Mr. Brozman.

15 MR. BROZMAN: Thank you, Your
16 Honor. Andrew Brozman, Chadbourne & Park, for
17 Calyon New York Branch and Calyon Securities,
18 Inc.

19 Your Honor, I don't know if I
20 have a dog in this fight, but that's my
21 problem. I have been told by the Debtors, and
22 I have no reason to believe disbelieve it,
23 that, as some others have said, we will not be
24 prejudiced in our rights to obtain discovery by
25 not participating in this process. I heard

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1 Adelphia Communications Corp.

2 Mr. Phelan say that unless the issues totally
3 overlap, we won't be precluded from doing so.

4 The problem I have is, I don't
5 know what any of that means. And I don't want
6 to suggest that I have an issue with the
7 Debtors' procedures if they don't affect me,
8 but I do have an issue because I do not know
9 what relief is requested in this process. If I
10 know what relief is requested, I can make a
11 judgment as to whether I am injured.

12 THE COURT: Can you get a clue
13 by reading the issue statements?

14 MR. BROZMAN: I have read the

15 issues statements, v. Steven D. Boyle of 2145 of 250

16 THE COURT: No. I think the
17 parties' statements of issues as they go
18 forward.

19 MR. BROZMAN: And when am I able
20 to jump on that train? How much time has to
21 pass before I am participating in discovery
22 that I find may be relevant to a confirmation
23 issue that is not among the six that had been
24 listed? Again, my objective here --

25 THE COURT: You're concerned

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1 Adelphia Communications Corp.
2 that some confirmation issues that weren't
3 perceived to be related at the beginning are
4 going to pop up.

5 MR. BROZMAN: What I am
6 concerned with is that we end up with a process
7 similar to what we've had today, which is the
8 ooze of issue that ends up being put before the
9 Court for adjudication. And those issues will
10 have at least some kind of law of the case,
11 perhaps impact upon confirmation objections
12 that have yet to be filed and have yet to be
13 responded to with issues being joined. I don't
14 want to intrude on this process, but I don't
15 want to be told when I serve my document
16 requests in connection with a confirmation
17 objection that I haven't filed yet.

18 THE COURT: That the train has
19 already left the station.

20 MR. BROZMAN: Number one, the
21 train has already left the station, and that,
22 Oh, yeah, your documents are in that document
23 room, go find them. I think that I have to be
24 able to understand what issues those documents
25 are responsive to. I have to understand

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1 Adelphia Communications Corp.
2 whether the requests that I made have been
3 responded to by the dump of documents into the
4 document room. I have to know that if somebody
5 is taking a deposition for issues A, B and C,

6 when I notice the deposition of Steven Ripley of Page 246 of 250
7 Well, he's already been deposed, or, he's
8 already been deposed and issue C was at least
9 tangentially, if not completely, covered in
10 that deposition.

11 Again, I am pleased to have the
12 Debtors go through this process. I require no
13 formality in the process, I am not anywhere
14 where Mr. Lauria is. However, I do need some
15 mechanism that provides that I am not going to
16 be bound by the issue resolution that may
17 happen at the end of the day and precluded from
18 discovery on my objections which are not even
19 due to be filed yet.

20 So I suggest, Your Honor, that
21 unless we have a way of better defining the
22 relief sought so I can make the choice to come
23 in and defend my interests, then my recourse is
24 simply to become a participant/observer on all
25 of this. And, you know, that's a choice. I

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1 Adelphia Communications Corp.
2 can sit and watch. And it may be edifying, it
3 may not be.

4 But if you read the Debtors'
5 procedures, I am treated like I am a party to
6 those disputes for all purposes of those issue
7 resolutions. And perhaps the easy way out of
8 that conundrum is simply to provide that unless
9 one, as a participant or observer, actively
10 litigates an issue, files papers, creates a
11 controversy with respect to issues that are
12 listed, they should be no different than any
13 other bystander to what appears to be an
14 Arahova/ACC dispute that does not directly,
15 although maybe indirectly, affect me.

16 So I join with Ms. Attanasio and
17 others who have raised the concern that we let
18 these procedures go by as quickly as we can,
19 but, please, somehow ensure that when we come
20 up and step up to the podium, nobody says to
21 us, Sorry, that's done, that's finished and
22 you're bound.

23 Thank of Steven Lybelle of 247 of 250

24 THE COURT: Thank you. Mr.

25 Russell.

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1 Adelphia Communications Corp.

2 MR. RUSSELL: Thank you. Good
3 afternoon, Your Honor. I just have a number of
4 concerns that to some extent relate to the
5 concerns that Mr. Brozman just articulated.

6 The first is, I understand from
7 a brief conversation with Mr. Netzer at the
8 break and from listening to Mr. Phelan's
9 comments, that to the extent parties want to
10 take discovery related to confirmation but not
11 related to the issues set forth in paragraph 6
12 of the Debtors' proposed order, that will be on
13 a parallel track.

14 And I guess I'm not entirely
15 sure what that means, Your Honor. If that
16 means that such discovery is not subject to the
17 procedures set forth in the proposed order and
18 not subject to the time line set forth in the
19 proposed order, that's fine. And if that's the
20 case, I'd just like some clarification from the
21 Debtors to that effect. And if that is the
22 case, we'll obviously confer with the Debtors
23 to try to work out some reasonable procedures
24 for confirmation discovery unrelated to the
25 issues set forth in the resolution procedures

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1 Adelphia Communications Corp.

2 motion.

3 My second point relates to the
4 data room. My problem is that while the
5 revised proposed order addresses many of the
6 concerns that we raised, and I appreciate the
7 Debtors' efforts in that regard, the proposed
8 order still provides that before a party can
9 serve document requests, I have to say I looked
10 in the data room and I couldn't find the
11 documents I'm looking for.

12 And as we made clear in our
13 objection, the problem with that, Your Honor,

5 Warner sale, and the rest of the proceeds, of 250

6 including pay-backs and distributions to
7 creditors, including the Olympus lenders, that
8 total about 2 billion, so it leaves us, from
9 our perspective, with about a \$3 billion
10 cushion. That's a huge cushion.

11 What folks are talking about
12 though, are fraudulent transfer actions
13 somewhere between a billion or a billion, five,
14 intercompany claims of about 2.9 billion,
15 although there are claims back. Substantial
16 portions of those intercompany claims relate to
17 the RFEs and there may be issues there. Quite
18 frankly, very quickly it adds up to real money.

19 We have maybe three concerns
20 that I would like to offer Your Honor with
21 respect to what the Debtor has proposed. The
22 first one is conceptual and then it gets a
23 little more detailed.

24 On a conceptual basis, we are
25 stakeholders and certain likely defendants. We

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1 Adelphia Communications Corp.
2 just want our entities to get a complete
3 defense. Adelphia has three years of
4 experience. They have spent hundreds of
5 millions of dollars in professional fees
6 developing these issues. They have opinions,
7 they have views and they ought to advocate
8 them.

9 In their papers, for example,
10 they lay out five ways that intercompany claims
11 could be treated. The Debtors have a view on
12 what the appropriate treatment of the
13 intercompany claims is based on a very thorough
14 review of the underlying factual background and
15 understanding of the applicable case law, and
16 the parties, the stakeholders and the
17 defendants and this Court, they are all
18 entitled to the benefit of that understanding.
19 The procedures, in our view, ought to be
20 modified so that instead of just throwing up
21 the equivalent of a jump ball, the Debtors at

22 least put out the initial policy of 250 people
23 can agree with it or not agree with it.

24 THE COURT: Pause, please,
25 Mr. Noble, because I'm at risk of losing you.

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1 Adelphia Communications Corp.
2 Do you understand Mr. Lauria or anybody else in
3 this room to be talking about suing your guys
4 to recover money or property other than by
5 means of the Creditors' Committee's pending
6 action?

7 MR. NOBLE: If by my guys you
8 mean the Olympus lenders, the answer is no. If
9 by my guys you mind the entities that
10 constitute our collateral, I think the answer
11 is yes. I understand Mr. Lauria and the
12 Arahova guys to be looking to pick a fraudulent
13 transfer fight with the Olympus Debtors, and
14 that fight is somewhere between a billion and a
15 billion, five.

16 I also understand that
17 Mr. Lauria has certain concerns with
18 intercompany claims. There are 2.9 billion of
19 intercompany claims against the Olympus
20 Debtors. There also happen to be 2.9 billion
21 in claims back. We think we're wholly
22 subordinated, but it's big dollars, and we
23 think folks are looking to pick a fight with
24 our guys in terms of our collateral debtors.
25 So it would be yes to that.

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1 Adelphia Communications Corp.

2 THE COURT: The debtors whose
3 assets are your collateral.

4 MR. NOBLE: Right. The obligors
5 under the Olympus facility. If there is enough
6 value taken out of those debtors, and by my
7 rough, back-of-the-envelope calculation, that
8 has to be something above 3 billion, then we
9 start to care about it. And, again, three
10 billion is a lot of money, but a billion, five,
11 or a billion dollar fraudulent transfer action
12 is a lot of money and 2.9 billion in

13 intercompany claims of Steven L. Byrnes of 251 of 250

14 So we have concerns that we have
15 a process that's going to work so these issues
16 are properly presented and decided and are not
17 crammed into kind of a shortened process where
18 we run the risk of getting whipsawed or not
19 having a fully articulated record on any of
20 these issues.

21 So our first and our primary
22 concern, although I would caption it as a
23 conceptual, is we think the Debtors ought to be
24 in there advocating a position, a position
25 based on three years of experience, hundreds of

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1 Adelphia Communications Corp.
2 millions of dollars in professional fees.

3 And we're entitled to a full
4 defense from Adelphia. We don't want them on
5 the sidelines, concerned about only what
6 Mr. Abrams I think referred to the other day as
7 the seepage issues. By then it's too late, and
8 I'm going to come back to why it's too late.

9 But our first point is we would
10 like the Debtors to be involved on the front
11 end and to establish a bench line that folks
12 can agree with or disagree with but that would
13 give guidance to the process and, quite
14 frankly, this Court.

15 Our second issue, and it really
16 has two subparts, goes to the briefing
17 mechanics. And the first one that I'd like to
18 offer the Court is on the procedural
19 safeguards, Rule 7001 issues that have been
20 talked a little bit about. Under 7001, a
21 fraudulent transfer action would be an
22 adversary proceeding and ought to be subject to
23 the procedural safeguards in an adversary
24 proceeding. And there are a couple there that
25 I would highlight. The first is what Your

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1 Adelphia Communications Corp.
2 Honor referred to as the complaint and answer
3 component of it, which we view as important,

5 articulation of the issues, although the
6 statement of issues may do that, I'm not sure,
7 at some level.

8 But what the statement of issues
9 does not do, which the complaint and answer
10 does do is, it gives both sides of the issue.
11 And I think, by requiring that both the sides
12 of the issue be presented, it is more likely
13 that Adelphia is going to have to step up to
14 the plate and either be on the plaintiff's or
15 the defendant's side with respect to these
16 avoidance actions or we're going to be able to
17 get the benefit of Adelphia's learning and
18 participation in the process. And we don't
19 think that 7001 is an issue that -- is a
20 protection that can be waived, quite frankly.

21 And there's a second component
22 to the adversary proceeding, and although
23 technically it's encompassed under the 9014
24 reference, as a practical matter, I'm not sure
25 it is under the Debtors' procedures. And that

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1 Adelphia Communications Corp.

2 is the ability --

3 THE COURT: Under what
4 procedures?

5 MR. NOBLE: What?

6 THE COURT: Under what
7 procedures?

8 MR. NOBLE: Under the Debtors'
9 procedures. And that is the ability to take
10 multiple motion challenges to what goes up.
11 First is the legal under 12(b)(6). The second
12 is the factual under the summary judgment. And
13 I don't see that kind of bifurcated process
14 provided for under the Debtors' process. And
15 some of this can go in tandem, where the
16 12(b)(6) stuff can be briefed and argued and
17 put up front, and if there's any decision, that
18 can be developed. But we ought to have an
19 opportunity, I believe, to take multiple motion
20 challenges at it.

21 And the other part of the options
22 that the Court offered up was the idea of a
23 pretrial order, and I think that's probably
24 helpful. I think it probably starts to narrow
25 the issues before the trial. And 9014 I guess

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1 Adelphia Communications Corp.

2 is pretty good.

3 But when you're talking about a
4 billion or a billion, five fraudulent transfer
5 action, I think people are entitled to
6 procedural protections under the rules and we
7 ought to get it right, as opposed to a new, ad
8 hoc procedure that nobody really knows what it
9 looks like and nobody really knows how or if
10 it's going to work. So we would ask the Court
11 to consider baking in, at some level, the
12 requirements under Rule 7001.

13 The second briefing mechanism,
14 which I still -- I had to go back and look at
15 the order a couple of times -- is the reply
16 period. What we're talking about is three
17 years to develop the record plus whatever
18 discovery goes on in the electronic data room,
19 potentially multiple plaintiffs with
20 potentially not a guideline from the Debtors,
21 with billions of dollars at stake. And here we
22 are, the Olympus lenders, looking at the briefs
23 and we have nine days to respond, nine calendar
24 days to respond to billions of dollars of
25 actions that have been developed over a number

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1 Adelphia Communications Corp.

2 of years. That's not due process. That's
3 log-rolling. That's getting things done
4 effectively, but it's not due process from the
5 lenders' perspective and a nine-day response
6 period, just ain't right. We're entitled to
7 more than nine days to lay out for this Court
8 what our position is. And those are our two
9 issues on briefing mechanics.

10 The last issue I would throw out
11 based on Mr. Phelan's comments. This may have

12 already have been dealt with. And what we
13 talking about is the Amici data system. The
14 Debtor ought not to be allowed, I don't think,
15 to put these documents on the Amici data system
16 for a couple of reasons. One, it just doesn't
17 work, at least that's been the experience in
18 this case, where documents are loaded in a
19 non-searchable format and it's like a needle in
20 a haystack trying to find something.

21 And two, Amici is a proprietary
22 software program. It's an entity, as I
23 understand it, that was founded by David Boies
24 and some other folks and is affiliated with the
25 Boies Schiller law firm. We shouldn't be

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1 Adelphia Communications Corp.
2 required to operate Debtors' counsel's
3 proprietary software. It ought to be on a
4 separate database. So that would be the last
5 observation or the third observation that we
6 would offer on this.

7 THE COURT: And to implement
8 your ideas, I assume you would like me to take
9 into account the time to take your
10 grandchildren to the first day of school.

11 MR. NOBLE: Your Honor, the
12 Arahova bondholder Ad Hoc Committee has laid
13 out a procedure which has some problems. It
14 needs to be developed so we can put in a
15 process that gives the parties the procedural
16 protections they're entitled to over a time
17 period that works, that would be brisk. But,
18 quite frankly, when we're talking about
19 billions of dollars, we're entitled to those
20 protections. I can't go back or I shouldn't be
21 in a position to go back to the Olympus lenders
22 and say, Well, we thought they were oversecured
23 and quite frankly, we could have properly
24 articulated the record --

25 (Reporter interrupted)

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1 Adelphia Communications Corp.

2 MR. NOBLE: But I certainly

3 don't want to be in that position for 20 years from
4 now.

5 THE COURT: Anything else, Mr.
6 Noble?

7 MR. NOBLE: Thank you, Your
8 Honor.

9 THE COURT: Yes, sir.

10 MR. WYNNE: Richard Wynne of
11 Kirckland & Ellis, very briefly, on behalf of
12 the Ad Hoc Committee of Non-Agent Lenders.

13 Your Honor, I really only wanted
14 to speak to a few points raised by the black
15 lined order, because Your Honor will notice we
16 did not file an objection because we
17 effectively -- viewed the motion hopefully,
18 that we would be effectively monitor-type
19 participants, that it would be between the
20 Arahova and ACC groups and not necessarily
21 affect our clients' recoveries.

22 There are, however, two points
23 that I wanted to make in response to the black
24 lined order and, in fact, alleviate some of the
25 issues that have come up. One is that our

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1 Adelphia Communications Corp.
2 concern is that -- whether these six hearings
3 deal, really, with those issues. The sixth
4 hearing, which is sort of a catchall hearing,
5 whether that then encompasses some other
6 confirmation issues that we would care about
7 and would not have originally thought.

8 One solution, I think, to the
9 whole issue problem -- and I think that the
10 pretrial order idea is a good idea, but I also
11 believe that we could have these initial issue
12 statements being set forth and then not wait
13 until the time period set forth in the black
14 lined orders, that 21 days before each hearing,
15 there would be a hearing to determine what
16 issues will be encompassed in that hearing.

17 I think a better procedure would
18 be for Your Honor to have the issue statements
19 presented by the parties and then convene a

20 hearing 20 days later, or by the way, where
21 Your Honor actually decides, okay, these are
22 the issues that we're going to hear in hearing
23 1, hearing 2, hearing 3, 4, 5 and 6, so that
24 all the parties can know whether -- any issue
25 that I might think is a confirmation issue that

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1 Adelphia Communications Corp.
2 I'm going to raise later on, or separately,
3 whether that has somehow morphed into or crept
4 into this procedure and this process and, in
5 fact, we should get active in that. And I
6 think if we added that type of a hearing to it,
7 it would enable the Court, I think, to have
8 more control over what the issues are, who
9 needs to participate in discovery. That was
10 one suggestion that we had.

11 The second suggestion was that
12 the actual -- how the data room is going to
13 operate. There's lots of concerns, I think
14 among everybody, even if we're just a
15 monitoring participant, over the ability to
16 find and locate documents. I think it would
17 simply be incumbent on the Debtors to have,
18 really effectively, a team of people that
19 people can call, can deal with, can e-mail for
20 assistance with the database. And if they do
21 that simple step, I think that will alleviate
22 some of the practical issues.

23 The last opinion, and I think
24 this corresponds with what Mr. Bozman said, we
25 do want to make sure that our confirmation

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1 Adelphia Communications Corp.
2 issues, the things that we raised in the
3 letters that we sent to Your Honor with respect
4 to the status conference, that those
5 effectively don't get lost and we have a
6 separate schedule. For example, Your Honor
7 knows we have a major issue over what's
8 indemnifiable for the non-agent lenders and
9 what's not. We don't -- frankly, have not
10 decided yet whether it's appropriate for us to

11 file a declaratory relief of Steven L. Pohl, Pg 157 of 250
12 could somehow get that into this procedure,
13 into, let's say, hearing 6, whether we'll deal
14 with the Debtors or the Committee on another
15 procedure if they're not willing to come to an
16 agreement. We'll work on that.

17 But those sorts of issues that
18 we have specifically, that other parties have
19 specifically, I think need to go on a parallel
20 track or be incorporated into this procedure.

21 That's all that I had, Your
22 Honor.

23 THE COURT: Okay. Mr. Pohl.

24 MR. POHL: Good afternoon, Your
25 Honor. Steven Pohl for the Ad Hoc Trade Claims

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1 Adelphia Communications Corp.
2 Committee.

3 Your Honor, I've got two sets of
4 comments and I will keep them as limited as I
5 can and I'll avoid repeating what other folks
6 have already said.

7 One set of comments has to do
8 with what's remarkably missing from an
9 intercreditor dispute process and one has to do
10 with a suggested partial solution to many of
11 the problems we've heard relative to spillage
12 of this dispute to other creditors. First,
13 Your Honor, what's missing is --

14 THE COURT: You want to get paid
15 at eight percent instead of two percent after
16 getting paid in full?

17 MR. POHL: Yes, Your Honor. And
18 Judge Drain actually addressed that yesterday
19 in the Loral confirmation hearings, finding
20 that the federal judgment rate is not the
21 appropriate rate to pay to trade creditors,
22 finding that the state law approach is the
23 right approach, that which is selected for the
24 bondholders at their contract rate, and you
25 can't, in effect, stick the trade with the

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1 Adelphia Communications Corp.

2 federal approach which is paying the bondholders
3 the state approach. So, yes.

4 And we believe, Your Honor,
5 that -- it's not as if we're asking to be paid
6 more than what others are being paid. It makes
7 it sound as if we're, you know, pigs at the
8 trough. That's not the case.

9 THE COURT: Well, that
10 accusation can be made vis-a-vis more than one
11 party in this case.

12 MR. POHL: I just didn't want to
13 be selected individually for that.

14 THE COURT: I'll agree not to
15 accuse you of that alone.

16 MR. POHL: But those rates that
17 are being paid to the bondholders and to the
18 banks under their contract. And remember, the
19 banks have been paid from the beginning of the
20 case. Because I think what the Court found was
21 that the entities where their claims are at --
22 you were asking before, whether it's their
23 collateral. I think there's one or two or
24 three prepetition bank facilities that have
25 asset collateral. The others are unsecured at

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1 Adelphia Communications Corp.
2 every debtor that is an obligor under a
3 guarantee. The only collateral is a stock
4 pledge and that certainly doesn't add to the
5 value of any particular debtor, as to whether
6 it's solvent or not.

7 So we're no different than the
8 bondholders, we're no different than the banks.
9 We're just looking for our fair share of
10 interest. And it's an intercreditor dispute.
11 It's been settled once before. The Creditors'
12 Committee settled this at eight percent back in
13 November. The Debtors have chosen not to
14 include that and has stayed steadfast that it's
15 got to be the federal rate, two percent.

16 So for that matter to be
17 addressed -- not necessarily as part of this,
18 because this is fairly complicated, but on a

19 parallel track so that in Steven's Petition of 250 is part
20 of disclosure and creditors with trade claims
21 can be told as part of disclosure what they're
22 going to get, or at least they can be told
23 that: You know what? It's going to be up to
24 the judge. It's not necessarily two percent.
25 The judge will determine it as a matter of fact

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2 and law. That Was point one.

3 The next point, Your Honor,
4 is --

5 THE COURT: Just so I
6 understand, you think it's appropriate for me
7 to deal now with the other issues of
8 considerable concern as to the extent to which,
9 after your guys have been paid in full, they
10 get paid at a particular interest rate in
11 excess of the two percent federal judgment rate
12 on a non-interest-bearing instrument?

13 MR. POHL: Yes, assuming that
14 they are paid in full, which the plan now says,
15 which I understand some of these folks debate.
16 But if they're paid in full, because they're
17 insolvent debtors, they should have an interest
18 rate that is well north.

19 THE COURT: I understand the
20 issue. And if Judge Drain ruled on it, either
21 by dictating something into the record or by
22 writing on it, you can bet I'm going to read
23 what he said. But the issue I have more
24 difficulty with is the extent to which it
25 should be engrafted upon the other concerns

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1 Adelphia Communications Corp.

2 that have been the subject of discussion for
3 the other six hours today.

4 MR. POHL: Let's just take, for
5 example, that it is eight percent versus
6 two percent. By way of example only. That's a
7 six percent delta over four years. If we use
8 the Debtors' opco trade claims estimate of
9 \$500 million, it's a \$120 million issue. Now,

10 I'm not suggesting that the policy of some
11 of the disputes going on here, but it is
12 significant. And it is those dollars that, if
13 not paid to the opco trade, result in a
14 windfall to the equity holders, those debtors
15 above the debtors that are supposed to be
16 paying that rate of interest. That windfall
17 goes to the structurally subordinate creditors.
18 And in a plan or in a disclosure seeking votes,
19 it would indicate -- where the Debtor says,
20 Here are what we believe are the estimated
21 claims in this group, it ought to have an
22 addition to that, 120 or whatever the right
23 number is, so that when people are figuring out
24 the waterfall, and those that are at the -- in
25 effect, the top of the capital structure but

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1 Adelphia Communications Corp.
2 the bottom of the waterfall, they know that
3 there's another 120 million or whatever the
4 right number is that's not going to be paid to
5 them, or at least the issue is addressed and
6 people are on notice and people can vote
7 knowing what the issue is.

8 THE COURT: Well, you agree that
9 that can be described in a paragraph or two
10 statement of the risk factors in a disclosure
11 statement, that depending on how the Court
12 rules as to your entitlement, you may only get
13 two percent interest after getting paid in full
14 instead of getting eight percent interest?

15 MR. POHL: Yes. And -- I
16 believe that's correct. I'd like see it
17 determined in advance. But, yes, We could
18 insert something in the disclosure statement,
19 along with, we would hope, something that we
20 could say to the trade creditors, because there
21 are situations, some of the cases, Dow -- I
22 don't think it's Cartolucci (ph,) but the Dow
23 case indicates that there might be a different
24 result if you follow a different chain of cases
25 where there has to be a cram-down imposed on a

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2 dissenting class, as opposed to, if the class
3 votes yes, maybe you can stick with the federal
4 rate.

5 THE COURT: Okay.

6 MR. POHL: The next, Your Honor,
7 has to do with the so-called spillover. We
8 started off here last week with a procedures
9 motion and a plan which hasn't changed, which
10 indicated that the battle being laid out by the
11 Debtor was confined to the most structurally
12 subordinate creditors, the ACC notes, the
13 Arahova notes. They've complained, so now what
14 we have, it appears, is a procedures motion and
15 proposed order but not a changed plan that
16 suggests there could be spillage. And I guess
17 a fair question to be asked is, you know, at
18 what level of involvement for those creditors
19 that are in the plan now being paid in full
20 must they undertake.

21 We heard from Mr. Bennett that
22 he's got his own database. We've seen the
23 charts that Mr. Lauria has prepared based on
24 the work done by his firm and his financial
25 adviser. We've heard about 7 million

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1 Adelphia Communications Corp.
2 transactions and a billion dollars of cash.
3 And the question is whether every creditor out
4 there, whether they're a deemed participant or
5 not, needs to gear up and get up to speed. We
6 think that's just an unfair burden to put on
7 every group of creditors, whether it's an
8 operating company, ad hoc trading, the parent,
9 the Frontier bonds, the Olympus bonds. You
10 know, the banks can speak for themselves.

11 You know, one suggestion was
12 made by Mr. Noble that there ought to be an
13 involvement of Adelphia here so that if there's
14 transactions challenged, assessments of
15 intercompanies, what should the sub con look
16 like or not look like, Adelphia, who has all
17 the information, has a say.

Another copy of the waterfall is on top of that or in place of it, is, you know, we have an estate fiduciary that's sitting by the sidelines here, the Creditors' Committee, and it's got professionals and they could be involved. Maybe they don't take positions, and they aren't right now and that's okay, because its members are all the combatants. But they

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1 Adelphia Communications Corp.
2 could be very involved, know what's going on,
3 be in the data room, attend the depositions.
4 And perhaps, Your Honor, with a
5 mechanism through this court, but I don't have
6 it perfectly set up in my mind, let people
7 know, Geez, there's going to be spillover and
8 here are the facts that have been developed on
9 it and you can get yourself up to speed.

10 Instead of every single constituent hiring a
11 financial adviser to model Lazard's waterfall.

12 We tried that, Your Honor, on a
13 limited basis, and with all due respect to
14 Lazard, they would only provide the output for
15 their waterfall, not their computer model, so
16 it was like pulling teeth, trying to figure out
17 what was going on. To replicate that -- I'm
18 sure these groups have done it -- it's costly.
19 And for every group to have to do that, it
20 would be costly, and we think, Your Honor,
21 unfair and not the appropriate use of
22 everybody's money when we have an estate
23 fiduciary that could carry a significant
24 laboring arm to do that. Thank you.

25 THE COURT:: Mr. Shiff, I

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1 Adelphia Communications Corp.
2 thought that would trigger the desire to be
3 heard.

4 MR. SHIFF: Good afternoon.
5 Adam Shiff of Kasowitz Benson on behalf of the
6 Creditors' Committee. And although Mr. Trepper
7 indicated about five hours ago that I'd be mute
8 today, I apologize, but I will try to be brief

9 at least. A few very good ones of Steven P. Polley of 2023 of 250
10 which have been encapsulated by others.

11 And surprisingly, actually, I
12 find myself in agreement with many of the banks
13 today on some of the issues they've raised.
14 First of all, just to back up, as we stated on
15 July 12th at the chambers conference, the
16 Creditors' Committee remains in support of
17 pursuing the Time Warner/Comcast deal and
18 seeking to get it consummated hopefully as
19 quickly as possible.

20 That said, obviously a number of
21 members, who have all spoken very eloquently
22 today, have a lot of issues with respect to the
23 mechanics, as to how we're going to get there.

24 I don't think it's appropriate
25 for us to jump into that part of the dispute

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1 Adelphia Communications Corp.

2 following some of what the Court has said, but,
3 as the Court is aware, the Committee does have
4 some problems with the plan that go beyond
5 simply intercreditor disputes. These involve,
6 among other things, the bank litigation, some
7 of the corporate governance issues.

8 And since the July 12th hearing,
9 we have had conversations with Mr. Abrams, and
10 it is certainly possible, as a result of being
11 unable to reach an agreement, either, A, the
12 Committee will remain in a position not to
13 support the plan, but, maybe more germane to
14 today's hearing, will be a position where we
15 need to participate in discovery.

16 And without repeating what
17 Mr. Phelan said, and I think some of the other
18 banks, based on the understanding we have here
19 today, that this protocol does not deal with
20 that discovery, that will happen as a second
21 basis, either part of a separate protocol which
22 was earlier discussed, or separately. I think
23 it's not a problem to move forward on that as
24 to the intercompany discovery protocol,
25 understanding everyone has their other issues.

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2 THE COURT: Pause, please. In
3 other words, what you're saying is on your
4 issues, if you have to agree to disagree, that
5 that would deal -- be dealt with on either a
6 parallel track or a slightly trailing track
7 with the intercreditor issues.

8 MR. SHIFF: Exactly. And,
9 again, I don't think it's an issue for today,
10 whether it's parallel trail or otherwise.
11 Where it gets tricky would be if someone would
12 say, Well, that person was deposed as part of
13 this protocol, therefore you cannot have a
14 deposition on this totally other issue.

15 A lot of people have repeated
16 the understandings -- mostly banks have
17 repeated the understandings they have with the
18 Debtor. I got similar assurances in the
19 hallway. I think the Debtor probably will
20 speak again today, sandwiched over a four-hour
21 period, and hopefully we can get clarification
22 as to those points.

23 I think the second issue that
24 arises, which is sort of something that we are
25 concerned with as a fiduciary, and probably

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1 Adelphia Communications Corp.

2 more concerned with for either our less vocal
3 members or for those on behalf of whom we have
4 duties who haven't been to court yet, or
5 haven't even hired lawyers yet, and that
6 touches both on this what has been described as
7 the spillover or leakage issue, which was
8 discussed quite a bit at the July 12
9 conference, as well as the issue of either
10 people who are sort of involved now who don't
11 think their ox is being gored and then they get
12 gored through the process.

13 Unfortunately, I don't -- you've
14 heard some suggestions here as to trying to
15 alleviate the problem. I, unfortunately, don't
16 have the perfect solution or even the ultimate

17 solution to offer the Court. But if we can

18 guarantee no one's ox will get gored who don't

19 think they have any skin in the game.

20 Certainly -- I think, following
21 up on what Mr. Pohl said, certainly we will, to
22 the extent we can, continue to monitor this and
23 try and serve as a serving board for others who
24 may have interests. We've heard, for example,
25 from the indenture trustee for the Olympus

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1 Adelphia Communications Corp.
2 bonds, who sits on our committee and would be
3 affected by the same issues that Mr. Noble
4 alluded to; in other words, they think they're
5 getting paid in full, they don't think they
6 have to be concerned about all of these issues,
7 but if a series of findings come down or a
8 series of events happen, including some of the
9 fraudulent conveyance issues, some of the
10 intercompany issues, they could potentially see
11 what they think they're getting today under the
12 plan, a full recovery, being reduced.

13 Now, it's one thing -- we could
14 say to them or the Court could say to them,
15 You're all big boys and you're here. Sit in on
16 everything and, you know, keep yourself
17 abreast. Unfortunately, that's a lot, I think,
18 to ask someone who doesn't think or in all
19 likelihood don't believe are, you know, subject
20 to being gored in this process.

21 So I think, one, Mr. Pohl's
22 suggestion certainly is helpful. I think --
23 the pretrial orders I think are helpful. But I
24 think there does need to be a duty that's put
25 on the Debtor and, I think, to a limited

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1 Adelphia Communications Corp.
2 extent -- I hate to take on a duty, but I think
3 the Creditors' Committee in a subsidiary role,
4 which is essentially to make sure we get these
5 notice of issues out to these other people, to
6 make sure these notice of issues or initial
7 statements of issues are possibly followed up

8 with a quicker -- I don't want to jump into the word
9 "answer," because I don't want to jump into the
10 debate now if we're having a complaint and an
11 answer, as one group has suggested, or just a
12 statement of issues, as has also been
13 discussed. But some type of response to those
14 in a shorter time frame so that, again, we can
15 educate and keep these other people abreast so
16 that they realize that they are going to be
17 affected by it before their findings, at which
18 time it's too late.

19 Now, some of this may have to be
20 done -- I know we're trying to set procedures
21 in place. Some of this may have to be, well,
22 let's get started, let's see what happens, and
23 let's trust that we have a lot of people here
24 who are spending a lot of the estate's money to
25 try to figure this out. I don't know if we can

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1 Adelphia Communications Corp.
2 craft or preordain how to deal with all of
3 these issues, but I do think we do need, as we
4 look through this, or as the Court goes through
5 this, to be very cognizant of the, quote,
6 leakage issue, and really to make a decision,
7 are we going to tell those potential leakage
8 parties, Hey, step up to the plate now, spend
9 as much money as everyone else is, or is there
10 a way we can carry them along for a while 'til
11 we see if they're actually going to be affected
12 by it.

13 As to the procedures itself, I
14 just wanted to point out one other item, which
15 I believe I had mentioned last time, but I do
16 think is important, and unfortunately, recent
17 events still give me some concern about it.
18 Under the procedures that are proposed, the
19 Debtors have 20 business days to set up this
20 data room. You know, without casting any --
21 either any views as to what has happened for
22 three years, what work has happened, what
23 information has been provided or not, I think
24 it's a safe assumption to believe that a lot of

25 this data is available today or to be put

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1 Adelphia Communications Corp.
2 into a data room or some other repository
3 today, and if today is next week, then that's
4 next week.

5 There -- as we had discussed at
6 the last conference, there's a whole warehouse
7 of documents in Coudersport that have been
8 identified by Weiser, who is the sort of
9 account -- forensic accountant for the
10 Creditors' Committee but really for the whole
11 group of unsecured creditors and even the
12 Equity Committee to some extent, that they've
13 identified that they'd like to see. And I just
14 think it would be in everyone's best interests,
15 no matter how we tee this up, the Debtors'
16 proposal, Arahova's proposal, the Court's gloss
17 on the two, some third-party proposal, that
18 whatever these documents are, let's not wait
19 another month to get this stuff.

20 THE COURT: Pause, please, on
21 that, Mr. Shiff, because I had originally
22 thought the same thing. I think that those of
23 us who were trained and who participated in
24 document production before computer production
25 is as common as it is now would routinely do

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1 Adelphia Communications Corp.
2 piecemeal production or hand out stuff as it
3 came along.

4 But one thing that caused me to
5 scratch my head is, when you're creating a data
6 room, do you think that piecemeal production
7 works as well when you would not have an easily
8 readily discernible way of ascertaining what
9 was in the document room when you looked it
10 once? In other words, making it unclear when
11 you'd having to go back and look at it over and
12 over again?

13 MR. SHIFF: Your Honor,
14 certainly in a perfect world with a lot of
15 time, it would probably be , quote, more

16 efficient if we just go over everything together.

17 I think, where you're talking about here,
18 waiting a full calendar month -- and again,
19 this calendar month already is two weeks later
20 than when we were here the last time and when
21 the motion was originally set to be heard.

22 I think there is enough
23 separately identifiable items -- for example --
24 and I only use this as an example. And I'm
25 sure that someone on the Debtors' side knows

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2 more about this warehouse in Coudersport and
3 will tell me why I'm wrong on this issue or why
4 it was produced yesterday and I don't know what
5 I'm talking about.

6 But just by way of example,
7 there were approximately 100 boxes, I think,
8 that were identified in Coudersport as being
9 separately related to items to the restatement.
10 If that was provided tomorrow, I don't think
11 there would be a problem, when the full data
12 room is up and searchable, and whether it's on
13 the Boies Schiller software or something
14 else -- I don't think anyone would have a
15 problem understanding that we already went
16 through those hundred boxes, we've seen that;
17 let's look at box 101 or let's look at the
18 other item. I think there's enough stuff out
19 there and coming from enough different places
20 that people are capable of going through it.

21 I think if you even think about
22 it, if you just look at the way the Debtors
23 have sort of teed up the issues as being five
24 or six discrete issues, and I know there's
25 overlap of course -- if you think about it and

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2 the way it's all set up, whether it's
3 Mr. Lauria's idea or the Debtors' idea,
4 everyone has the issue they're starting with
5 first, and, at least in theory, you probably
6 don't need all of that stuff for stage number

8 I don't want to make it more
9 difficult for the Debtors and say, You've got
10 to get everything for stage one first. But I
11 do think that if things are separately
12 identifiable enough that people can make use of
13 it, quite frankly, let them put in it there and
14 let them make it available. If the litigants
15 who are involved in this -- and, again, it's
16 not the Creditors' Committee directly -- they
17 don't want to use it, they want to wait for the
18 data room, let them do that. But let's not
19 have anything that could potentially delay it.

20 And I do think it would be
21 helpful -- I think it would be helpful for
22 everybody. And I'm sure if you want to
23 actually quiz or ask again those who are
24 litigating these issues, my guess is they will
25 share the same thoughts, because we've heard

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1 Adelphia Communications Corp.
2 from them, all of them or many of them, I
3 should say, about their frustration in getting
4 some documents to date.

5 The last point I just want to
6 touch on very briefly, and it comes as a result
7 of a comment or a series of arguments made by
8 Mr. Bennett, and that's the waiver of privilege
9 issue and maybe some issue as to how that
10 impacts on the bank litigation. Which, quite
11 frankly, I will tell you is not something I
12 thought of before I came to the court today,
13 but I'm not really sure it's an issue that we
14 all necessarily need to address today. I think
15 the issue -- and let me also back up, just
16 because I don't want to be unclear.

17 I would not suggest for a minute
18 that the White & Case firm in any way would not
19 keep people separate. I've known Mr. Lauria
20 for many years and I don't have any doubts as
21 to whether or not he would continue to keep it
22 separate. They do participate on the
23 Creditors' Committee on the basis of a wall

24 between their two different groups and their
25 two different teams.

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2 But from what I understand from
3 what they're looking from in their papers, and
4 it only comes up on page 20 of a reply that I
5 don't even think the Debtors addressed in their
6 response, was that there may have been a
7 privilege that exists already almost as a
8 matter of law. In other words, they make the
9 argument there are two debtor entities, and as
10 a result of that perhaps, the privilege has
11 gone away. I don't know if that's true as a
12 matter of law or not. I haven't fully gone
13 through it. If it is, I don't know what, if
14 anything, we can all do about it, other than
15 build protections in to protect the rest of the
16 estates.

17 But it would seem to me that --
18 and in taking a couple of the comments the
19 Court had made earlier on some of the issues
20 that arose in the context of the motion to
21 strike, this is probably something that would
22 be addressed or needs, to be addressed
23 actually, as part of whatever litigation is
24 being started. In other words, the Debtors,
25 presumably, will designate some stuff as

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2 privileged. If a party believes that that
3 stuff, either privilege has been waived because
4 as a matter of law it's been waived, then I
5 think they should bring it in so people can
6 respond. If it's an argument that it's in the
7 best interests of the estate, quote, unquote,
8 that's an issue we can all address.

9 I just don't think, sitting here
10 today at least, we are in a position to address
11 it any further. And it seems to me it's more
12 of a subsidiary issue, although an important
13 one, that will have to get addressed as we move
14 forward.

15 I think that Policy 2711 of 250
16 for today. I did say I wanted to be brief, so
17 that's all, Your Honor.

18 THE COURT: Thank you. All
19 right. Now here at 4:00 o'clock. Has
20 everybody had a chance to be heard for the
21 first time? All right. We'll take a seven
22 minute recess and then I'll hear from
23 Mr. O'Connor and Mr. Trepper.

24 (A recess was taken from 4:02 p.m.
25 to 4:16 p.m.)

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2 THE COURT: Mr. Trepper.

3 MR. TREPPER: Thank you, Your
4 Honor. I'm going to just take a couple of
5 minutes and then turn the podium over to
6 Mr. O'Connor to deal with the order.

7 I think -- a couple of things
8 that I would like to just note. As painful as
9 this process has been up to today and going
10 through today -- and I can see from Mr. Lauria
11 and Mr. Bennett in their three-point stances
12 that we're not finished with today yet. But I
13 think that the event demonstrates the need for
14 the process. We have seen an awful lot of
15 skilled lawyering and a lot discussion about
16 some very significant points.

17 Two things have come out of this
18 which are gratifying, at least to me. One is
19 that everybody has concluded, at least for
20 today, and I hope their minds don't change,
21 that, again, the value of the Time
22 Warner/Comcast transaction is critical to the
23 outcome of these cases. That is a very good
24 thing and I take everybody at their assurances
25 that that is their goal. How they get there is

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2 what this process is all about.

3 I'm going to have Mr. O'Connor
4 take you through the process issues that we've
5 tried to deal with. I want to deal with a

6 couple of points of clarification, and I
7 mean this by virtue of just wanting to clarify
8 the record.

9 Mr. Noble's comments -- and some
10 other comments, I think Mr. Kaplan and others,
11 which I sympathize with on many of these
12 issues -- that the Debtor, Adelphia, should get
13 involved, should vigorously act on behalf of
14 one or the other estates and defend or
15 prosecute. Watching what has unfolded here
16 today, you can only conclude that, were the
17 Debtor to do that at this juncture of the case,
18 it would have to be to satisfy the party making
19 the argument that you are getting involved to
20 defend my position, not to do anything other
21 than that. And that would be met immediately
22 with some arguments of conflict from the other
23 side about the Debtors' inability to do that
24 based upon the allegations of alleged conflict
25 that have brought us here today.

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1 Adelphia Communications Corp.

2 So for now, I think it's
3 abundantly clear that we need a process like
4 this, in which the Debtor is a facilitator,
5 does not at this point take positions, acts in
6 accordance with the Bankruptcy Code to
7 prosecute a plan in the fall, past the time
8 when people have to send their children back to
9 school, and to do it in a manner that is
10 designed to keep this case as on track as we
11 possibly can. And that is our intention.

12 If we have to weigh in -- and I
13 don't know what events will cause that -- on
14 potential settlement recommendations, or build
15 settlement recommendations to some proposal we
16 deliver to the warring parties, rest assured
17 that we will do that if we think it's
18 appropriate and little progress is being made.

19 We're going to encourage the
20 parties to make settlement proposals to us, to
21 the Creditors' Committee, perhaps to each
22 other, but I think it's fairly clear that until

23 there is more education of Steven and Polly of 2073 of 250

24 involved here, we're not going to be able to

25 get to that point as of today, however

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2 desirable that might be.

3 I want to clarify for Mr. Lauria

4 that when I suggested that his clients were in

5 some way -- he read into it, waiving rights

6 because they had not been privy to information

7 early on in the case, I was not suggesting it

8 as a matter of their laziness or unwillingness

9 to get involved. We have run into, in this

10 case, as you know, in the past, situations in

11 which we have ad hoc committees who have

12 members who are restricted and who are not

13 restricted. Many of the reasons why people

14 feel like they're being surprised at

15 information that is being revealed publicly

16 after it he has been prepared, finalized and

17 concluded, is because those people have stayed,

18 legitimately, for their own investment reasons,

19 outside the process and have not been willing

20 to become restricted, and now some of

21 Mr. Lauria's clients and Mr. Bennett's clients

22 have.

23 So I was not suggesting that

24 they have been in any way dilatory, but they

25 have, over the years, made a decision not to

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2 get involved because it allowed them to

3 continue to trade. And they would rely on the

4 Creditors' Committee, which at that time was

5 acting without any allegations of conflict, to

6 have the information necessary to be

7 disseminated.

8 And I will tell Your Honor that

9 during this case, if we gave information to the

10 Creditors' Committee, that if the members of

11 that committee or its advisers thought, even

12 though it was preliminary and not in final form

13 or otherwise ready for worldwide dissemination,

14 but important enough of Steven Lipman's page 274 of 250
15 delivered with all sorts of qualifying
16 comments, they could have come to us, they
17 could have come to the Court and asked for that
18 information to be disseminated in the form
19 either of public filings under the securities
20 laws or press releases.

21 So the suggestion, which sort of
22 permeated some of the comments, that people
23 were kept in the dark and there was sort of a
24 sneak attack on the intercompany issues is
25 something I just wanted to touch on.

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2 That does not in my view change
3 the fact that Mr. Lauria's clients or
4 Mr. Bennett's clients have every right to
5 engage now and to fight anew over whatever
6 issues are being developed. I just wanted to
7 clarify that for the record.

8 And lastly, I think that my
9 partner, Mr. Abrams, has been quoted by many
10 parties here as discussing issues called
11 seepage and leakage. Sounds like an
12 environmental law forum or panel. I think what
13 we're really talking about here is the fact
14 that everybody has got a different opinion on
15 how the intercompanies work; everybody's got a
16 different opinion about how the fraudulent
17 transfer claims, should they exist, come out;
18 people have different opinions and widely
19 varying opinions on substantive consolidation;
20 and, most significantly, people have widely
21 differing opinions on value. Is it the value
22 that Time Warner and Comcast have described in
23 their asset purchase agreement as the assets of
24 this company? Is it values that have been
25 derived from the sale process on cluster bids?

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2 Is it some other empirical cable industry
3 valuation matrix that controls value?

4 I will concede to you that while

5 this is primarily - of Steven R. Polley of Page 275 of 250
6 here, while this is primarily a Arahova/ACC
7 dispute, depending how those issues come out,
8 there could be effects on other debtor entities
9 and their creditors, including entities such as
10 FrontierVision, which has been discussed, and
11 other places. Right now, we don't have
12 empirical data to demonstrate that and to put
13 into evidence today, and we should not until
14 this process unfolds some more. But the
15 seepage/leakage issue is somehow dependent upon
16 the framework of what we're doing here today.

17 And those comments are all I
18 really have, other than to say I know that
19 Mr. O'Connor is going to go through a long
20 process of what the order means. I would like
21 in some way to attenuate that process just for
22 the benefit of the Court, because we can sit
23 here all day and talk about what the third line
24 and the fourth paragraph means. But perhaps we
25 might see how it evolves to see if there's

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2 anything we can do to cut that short or to
3 instruct counsel to agree on language in some
4 way to avoid the Court's having to go through
5 the burden of listening to people wordsmithing
6 a particular paragraph in an order.

7 That's my final comment. I
8 don't know if Mr. Lauria or Mr. Bennett wants
9 to speak with respect to comments that have
10 been made with respect to either of their
11 positions. Otherwise, I'd turn it over.

12 THE COURT: Let me ask
13 Mr. Lauria or Mr. Bennett if you want to speak
14 to any of the matters Mr. Trepper just
15 addressed or, I guess, your predecessors after
16 you spoke.

17 MR. LAURIA: Your Honor, I would
18 like to address a couple of comments that were
19 made, not by Mr. Trepper, but particularly by
20 Mr. Bennett.

21 THE COURT: By Mr. Bennett?

22 MR. LAURIA: Steven L. Popley of 276 of 250

23 THE COURT: Can you do it real
24 briefly? You had quite a long chance to be
25 heard the first time.

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2 MR. LAURIA: I understand. I
3 will, in fact, be very brief, Your Honor, and I
4 apologize for my long-winded opening remarks.

5 THE COURT: Come on up.

6 MR. LAURIA: Thank you, Your
7 Honor. I'm just simply going to go through
8 really chronologically and respond to a number
9 of comments that were made by --

10 THE COURT: Let me interrupt you
11 for one thing, Mr. Lauria. I'm going to tell
12 you, both you and Mr. Bennett, that I'm not
13 going to make any findings of fact or
14 conclusions of law on the merits of any of the
15 issues between the two of you guys. And while
16 I listened to your arguments as to your
17 contentions on some of the intercreditor
18 issues, and I thought it was only fair to get
19 Mr. Bennett's view of the world on those, I'm
20 not going to be deciding those today. And
21 while I'm not going to put a sock in your
22 mouth, I am going to be of the mindset that
23 it's not a productive exercise for either of
24 the two of you to be arguing the merits of your
25 respective positions at any material length at

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1 Adelphia Communications Corp.

2 this stage of the proceedings.

3 MR. LAURIA: All right. Thank
4 you for that clarification, Your Honor. That
5 may help shorten my presentation even further.

6 I did want to conclude argument
7 on the motion to strike, however, which I
8 presume is before the Court today and is going
9 to be decided.

10 THE COURT: Yes, it will be.

11 MR. LAURIA: Thank you, Your
12 Honor. Counsel suggested that we are now

13 seeking new relief under the Policy of 277 of 250
14 that is -- that the Court may just conclude
15 that the numbers contained in the amended
16 schedules are not entitled to a presumption of
17 validity as that is set forth in Bankruptcy
18 Rule 3003. And that is certainly lesser
19 included relief that we would view as something
20 that the Court can grant in connection with our
21 motion rather than just striking the schedules
22 altogether, but the Court could simply conclude
23 that the statements around the numbers and the
24 schedules are sufficiently uncommitted as to
25 make the claims either unliquidated or disputed

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2 as those concepts are defined, I guess at the
3 best place, in the instructions to Official
4 Form 6.

5 That's not to say that we're
6 abandoning our request for relief that the
7 amended schedules be stricken. We do believe
8 that they are defective and that it would be
9 appropriate under the circumstances for all the
10 reasons I went through in my opening discussion
11 for them to be stricken. We do believe that
12 acceptable lesser included relief would be to
13 simply have the Court determine that at this
14 point there is no pending presumption of
15 validity to the numbers contained in the
16 schedules and that those issues can be
17 addressed later in the litigation when the
18 parties tee up the issues however they tee them
19 up, whether it's by the filing of a proof of
20 claim and an objection to the claim, or by
21 filing the lawsuit and answer, or by the
22 procedures proposed by the Debtor or some other
23 formulation.

24 Our most important issue is that
25 substantively what has been presented in the

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1 Adelphia Communications Corp.

2 amended schedules should not be entitled to
3 presumption of validity. And I think, quite

5 response to our motion, it has, if not been
6 100 percent admitted, it's 90 percent admitted.
7 In that regard, I would only note that counsel
8 for the ACC noteholders a number of times
9 speculated as to what Debtors meant by what
10 they were saying and I think the Debtors are
11 probably the best people to talk about their
12 position as opposed to counsel for the
13 noteholders.

14 I'm just ticking off items, Your
15 Honor, in response to your comment about what
16 not to address.

17 Your Honor, to the extent that
18 counsel suggested that the approval of a cash
19 management order somehow blessed the
20 utilization of the Bank of Adelpia paradigm
21 with respect to the reshuffling of the deck as
22 to prepetition claims, I think that that is not
23 a comment that has merit. I think the cash
24 management order dealt with postpetition
25 transactions between and among the Debtors, and

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1 Adelpia Communications Corp.
2 to the extent the Bank of Adelpia structure
3 was used, there it's less problematic, because
4 unless you have a situation of administrative
5 insolvency, those issues can always be unwound
6 or dealt with in connection with ultimate
7 distributions under a plan.

8 What we have here though is, as
9 we explained in our opening argument, basically
10 a recapitalization of the Debtors' internal
11 debt structure, which we think was very
12 prejudicial to Arahova and its debtors.

13 And to a question that the Court
14 asked regarding the Debtors' statement that
15 they were not seeking protection of the
16 business judgment rule, as to that, I don't see
17 how, just on the face of it, it could be
18 established that a transaction that resulted in
19 Arahova or a subsidiary of Arahova exchanging a
20 100 cent claim for a 60 cent claim being fair

21 or part of a transaction under Chapter 11 of 250 -

22 that meets the overall fairness test that would
23 be required when you have a conflicted officer
24 making that determination. So I do think there
25 is still a problem here that has not been cured

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1 Adelphia Communications Corp.

2 or even addressed.

3 Your Honor, I grant that the
4 fiduciary duty issues is a difficult one. I'm
5 not sure that there is, at the end of the day,
6 a perfect solution. We've proposed one. There
7 may be another answer that the Court can
8 fashion that will solve the problem. I think
9 it's a serious one and I think that it was
10 underscored by counsel's comment again that, to
11 the extent that Arahova gets an independent
12 fiduciary and conflicts counsel representing it
13 with respect to this intercompany litigation,
14 that the ACC creditors would view themselves,
15 and I quote, at a grave disadvantage" if they
16 didn't also get it. I just think that
17 underscores the importance of that issue and
18 the need for a solution rather than to simply
19 brush it under the rug, as the Debtors'
20 procedures attempt to do.

21 With respect to substantive
22 consolidation, I just -- I think it is
23 important that the language that is included in
24 the procedures be addressed because it toggles.
25 It's got two alternatives addressed there:

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2 Either sub con as proposed in the plan or no
3 substantive consolidation at all. And I just
4 think if it's not an open issue, that the
5 parties and the Court can determine an
6 appropriate substantive consolidation structure
7 than what's being put on the table is put on
8 table for the purpose of obtaining some sort of
9 leverage for forcing parties into some
10 position. And I'm not sure I understand what
11 the implications are, but it doesn't seem

12 consistent with the underlying policy of
13 neutrality that the Debtor has professed with
14 respect to its intentions with respect to the
15 claim resolution process.

16 Your Honor, one reason that we
17 continue to believe that using the Federal
18 Rules of Civil Procedure and the bankruptcy
19 rules would be valuable here is to avoid some
20 of the discussion that's been percolating
21 already today about what are the implications
22 of these procedures for me, how do I
23 participate, what are the issues, how do I know
24 what's been framed and what's not been framed,
25 when do I have to get involved. The answer to

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1 Adelphia Communications Corp.
2 all of those questions is clearly provided in
3 the rules that exist, and the Debtors'
4 proposal, I think, is going to always leave
5 room for interpretive problems that may end up
6 costing us all at the end.

7 In fact, we've heard
8 constituencies saying they don't want to be
9 bound by the outcome of these procedures; they
10 want to be free to know that they don't have to
11 participate; that only, again, if it turns out
12 it has an effect on them, then they want to be
13 able to come in at confirmation and relitigate
14 issues that were addressed during this process.
15 I think that would be extraordinarily
16 inefficient and no doubt frustrating to all
17 concerned.

18 THE COURT: Mr. Lauria, I know
19 you have a position on how I should
20 characterize the disputes between you and the
21 parent noteholders, but are you aware of any
22 case that has ever held that determination of
23 the intercompany liabilities within a debtor
24 family when all those cases are before a single
25 bankruptcy judge is, indeed, a proceeding to

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1 Adelphia Communications Corp.
2 recover money or property?

3
4 didn't hear the end of your question, Your
5 Honor.

6 THE COURT: Are you aware of any
7 case that's held that determining the
8 intercompany liabilities between various
9 debtors in a jointly administered case before a
10 bankruptcy judge is a proceeding to recover
11 money or property within the meaning of 7001?

12 MR. LAURIA: I can't say that
13 I'm familiar with any case law authority on
14 that point, Your Honor.

15 THE COURT: All right. Thank
16 you.

17 MR. LAURIA: One issue that
18 would clearly -- actually, a number of issues
19 that come to mind that would clearly be solved
20 early on in the process would be issues of
21 standing when a complaint is filed. Standing
22 is an issue that would need to be addressed in
23 a responsive pleading. And what I think the
24 procedures proposed by the Debtor leave the
25 door open to is that you could be litigating

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1 Adelphia Communications Corp.
2 for a very long time and find out at the end of
3 the day that somebody's got a question about
4 your standing. You could find out that you're
5 left at the altar without the opportunity to
6 participate in the ultimate litigation of the
7 issues.

8 To that point, counsel for the
9 ACC noteholders has suggested that the Arahova
10 Ad Hoc Committee should not have standing with
11 respect to avoidance rights not only of
12 subsidiaries of Arahova, and I find that
13 comment quite perplexing. The cue point that
14 was made is how can they simultaneously be a
15 plaintiff and a defendant in the same action.

16 If you were a plaintiff and
17 defendant, they would be in two separate
18 actions, because what you're talking about is
19 multiple, separate, recoverable fraudulent

20 transfers. of Steven L. Poplis of 282 of 250

21 Our view is -- and I think it's
22 consistent with the law, is that if Arahova, at
23 a time it was insolvent or undercapitalized,
24 dividended an asset to its parent, that is per
25 se fraudulent transfer. The fact that a

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2 subsidiary of ours may have dividended to us
3 may be a separate fraudulent transfer if, in
4 fact, all of the elements of that cause of
5 action are met. I think it's a big presumption
6 to say that every transfer we made out that is
7 a fraudulent transfer recoverable by Arahova is
8 by definition a fraudulent transfer by one of
9 our subsidiaries to us.

10 And, in fact, when you look at
11 the assets and liabilities, the many
12 subsidiaries that had no independent debt, and
13 therefore it would be hard to understand how
14 you would ever get over the insolvency hurdle
15 with respect to their purported claims against
16 us. Nevertheless, I presume that, given the
17 stated interest of the ACC holders in those
18 subsidiaries so that they can assert their
19 claims, that they will be bringing those claims
20 pursuant to these procedures in some fashion
21 and that issue will get teed up.

22 The fact is that the Ad Hoc
23 Committee of Arahova Noteholders is prepared to
24 spend the money to recover what it believes
25 were fraudulent transfers out of the Arahova

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1 Adelphia Communications Corp.
2 estate. And once we've done that, if somebody
3 has the ability to push that value to a
4 different pocket below Arahova, that's the next
5 guy's responsibility.

6 Your Honor, when I was up here
7 before, you asked if there were particular
8 things I had in mind regarding the difference
9 between a contested matter in an adversary
10 proceeding from a due process perspective. And

11 there are two broad comments by the court --
12 two comments, one broad, the other specific, on
13 this particular point.

14 Number one is, I did take a few
15 minutes to confirm this in reviewing the
16 procedures proposed by the Debtor. The
17 Debtors' proposed procedures do not incorporate
18 Bankruptcy Rule 9014 and so therefore the
19 procedures are standalone procedures for how
20 this litigation is to proceed. As proposed, we
21 don't get even the protection of the procedures
22 contemplated by Bankruptcy Rule 9014, and we
23 think that that is a very serious.

24 THE COURT: I lost you. A
25 contested matter in a bankruptcy court is any

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1 Adelphia Communications Corp.
2 disputed matter in the court that isn't an
3 adversary proceeding.

4 MR. LAURIA: In fact, I would
5 love to get clarification on this point from
6 Debtors' counsel. But, in fact, the relief
7 recited in the order suggests that, pursuant to
8 105, the procedures that would otherwise be
9 applicable to these proceedings, i.e., 9014,
10 are being overwritten by the procedures that
11 the Court is approving.

12 THE COURT: Well, 105 is a
13 statute and 105(a) and 105(d), particularly, at
14 this point I will say it is argued, give the
15 Court the ability to set up means for
16 determining disputed matters to -- I forget the
17 exact words of 105(d) -- achieve efficiency and
18 fairness in a case. 9014 is rule. A rule
19 ain't a statute, but a rule addresses
20 procedural mechanisms to accomplish goals
21 authorized by statute. I'm losing you on the
22 point.

23 MR. LAURIA: Well, I guess what
24 I would like is -- at a bare minimum, I think
25 it should be made clear that 9014 applies to

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1 Adelphia Communications Corp.

2 all of the proceedings under the proposed procedures
3 if they are in fact adopted by the Court on
4 this motion.

5 And the second comment that I
6 wanted to make was that there are some
7 important rules I think that are excluded that
8 would be useful for those proceedings and the
9 Court has the power under 9014 to order
10 application of additional aspects of the 7000
11 series.

12 THE COURT: That's right. What
13 do you have in mind?

14 MR. LAURIA: In particular,
15 7016, which permits pretrial orders, I think
16 would be quite helpful. The Court can decide
17 which of 7012, 13 and 14, which address
18 third-party practice, counterclaims and the
19 establishment of defenses, should be made
20 applicable.

21 Certainly I think it would be
22 very helpful, again, for the parties to know
23 what affirmative -- one of the problems with
24 this, if you have 20 parties filing issue
25 lists, we're going to spend a lot of time

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1 Adelphia Communications Corp.
2 trying to match up opposing issues. And I
3 think it would be quite helpful if there
4 effectively was a complaint and answer
5 mechanism in this so that not only just
6 answering, you know, affirmed, denied --
7 affirmative defenses are going to come into
8 play, and I don't know how they're going to get
9 teed up. There may be counterclaims that
10 parties believe need to be asserted in response
11 to positions. And it seems to me that the
12 old-fashioned complaint and answer mechanism,
13 combined with 7012, 7013, 7014 worked pretty
14 well in getting things framed up nicely for
15 resolution.

16 7018 and 19, regarding joinder,
17 I think are probably useful. 7024, regarding
18 intervention, and arguably 7065, regarding

19 injunctive relief, probably not available to the parties. To the extent that
20 available to the parties. To the extent that
21 this litigation may actually proceed past
22 confirmation, it may be necessary for somebody
23 to seek some sort of remedy or relief to
24 preserve rights in the face of a confirmed and
25 consummating plan. So it seems to me that that
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2 probably merits consideration as well.

3 Your Honor, those are my
4 comments.

5 THE COURT: Mr. Bennett, an
6 equal opportunity.

7 MR. BENNETT: I have nothing to
8 add to our papers and my prior remarks.

9 THE COURT: Very good. Thank
10 you. Mr. O'Connor.

11 MR. O'CONNOR: Thank you. Your
12 Honor, given the lateness of the hour, I think
13 the best way for me to proceed is to try to
14 give you the Debtors' perspective on the status
15 of the current order.

16 THE COURT: Mr. O'Connor, could
17 I impose on you to pull the mike real close to
18 you?

19 MR. O'CONNOR: And as I'm doing
20 that, I think I can address the principal
21 objections that Your Honor has heard from the
22 various creditor constituencies today.

23 Needless to say, as Your Honor
24 can tell from today's hearing, trying to craft
25 a resolution process has not been an easy task.

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1 Adelphia Communications Corp.
2 I think our goal has been in good faith to try
3 to craft a neutral and fair process that
4 afforded constituents their due process rights,
5 while at the same time keeping in mind the
6 overall goal of getting these threshold issues
7 resolved in advance of confirmation and
8 permitting us to do the things we need to do to
9 close the transaction with Time Warner and

10 Comcast on time. of Steven L. Popley of 286 of 250

11 Your Honor, we've significantly
12 revised the proposed procedures as a result of
13 negotiations that we had, extended negotiations
14 that we had, principally with the Arahova
15 noteholders' counsel, as well as the ACC
16 noteholders' counsel. And in addition to that,
17 we tried to the best of our ability to take
18 into consideration the various comments that we
19 received from other creditor constituents as
20 well. And many, many times the comments were
21 contradictory, conflicting, and we did our best
22 to try to synthesize what seemed to make sense
23 from everyone's perspective.

24 One thing that's clear is that
25 the time line is significantly expanded

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1 Adelphia Communications Corp.
2 compared to what we had previously proposed.
3 We had handed out earlier -- I guess last night
4 sent to the Court a time line which I won't
5 bother to go through all the deadlines on, but
6 essentially begins this process, assuming the
7 Court were to enter an order today. And as the
8 time line reflects, if everything is maintained
9 on the current schedule, the final hearing
10 would not even begin until March 6th.

11 We think under the circumstances
12 we've done as much stretching of this schedule
13 as we can, and at the same time, have enough
14 flexibility to then complete a confirmation
15 hearing and to satisfy our obligation to Time
16 Warner and Comcast. There is not a lot of
17 extra time left. But I did want to make the
18 point that we did take into consideration
19 people's comments, and I think the schedule
20 does certainly reflect a much longer period of
21 time than we had initially contemplated.

22 One of the issues I think that
23 people -- several different creditor
24 constituents made comments about, is the notion
25 of the deemed and the notice participants. Let

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1
2 me give you just a little background on what we
3 thought we were trying to achieve there.

4 Number one, we recognized that
5 there were a number of participants who had had
6 an active in the role in the case, the official
7 committees, the unofficial committees, the
8 agents for the prepetition debtor facilities,
9 the agents for the postpetition debtor
10 facilities, the indenture trustees for the
11 various public debt instruments, and we thought
12 it made sense to include that group as a deemed
13 participant. They don't have to do anything
14 more; they would be deemed to be a participant.

15 It's unclear how many other
16 creditors might seek to participate, and that's
17 what was the thinking behind the next group,
18 the notice participants. And we did think it
19 made sense to impose a deadline by which people
20 had to request to participate, primarily
21 because if we didn't do that, we face the
22 prospect of having people complaining down the
23 road that discovery had been going on for some
24 extensive period of time, depositions had
25 occurred and they were getting in at the end

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1 Adelphia Communications Corp.
2 and we needed to make witnesses available again
3 for depositions and produce additional
4 documents. And the whole process will fall
5 apart if we didn't know fairly soon in the
6 process who intended to be a participant and
7 who didn't.

8 In terms of participants having
9 to make a showing to participate, I don't think
10 the showing that is included in the proposed
11 order is an onerous showing. The idea was
12 simply to have people indicate their desire to
13 participate, or perhaps there may be some
14 issues the Court could address as to whether it
15 makes sense for people to participate, if they
16 have got an indenture trustee or someone else
17 who is already protecting their interests.

18 But we don't take any decisions
19 in the proposed order as to whether people
20 should or should not be given a ticket to the
21 event. If there are issues about that, Your
22 Honor can decide that.

23 And, frankly, with respect to
24 110 9(b), the thought here was this is designed
25 to set up a process so that parties in interest
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1 Adelphia Communications Corp.
2 do have a place at the table, can make their
3 views known. It was not intended to shut
4 people out or foreclose parties in interest
5 from participating.

6 The other issue that's come up
7 several times in some of the objections is this
8 notion of the preliminary issue statement with
9 respect to the disputed issues. The thought
10 there was that absent people, again, indicating
11 early on what their issues were, we ran into
12 the problem that participants would then not
13 know why they were viewing documents in the
14 data room, why they were taking depositions,
15 because there wouldn't have been a document
16 that put all the participants on notice as to
17 what the issues were that were intended to be
18 litigated.

19 Now, I recognize that some
20 people have indicated that it's hard for them
21 to know initially what are their preliminary
22 issues, and that's the reason why we deem that
23 to be a preliminary issue statement. The
24 proposal, proposed order, provides that that
25 preliminary issue statement can be amended
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1 Adelphia Communications Corp.
2 without leave of the Court at any time up until
3 60 days prior to the first hearing and even
4 after that point for cause. Our thinking there
5 was that people may put in an initial
6 preliminary issue statement and in the course
7 of seeing other participants' issue statements,
8 in the course of reviewing documents in the

9 data room, in particular, by the Court, they can refine or fine-tune, if you will,
10 their issue statements to the point where they
11 will ultimately have a final issue statement
12 which can be addressed by the Court in a
13 pretrial conference before the hearing.

14
15 Now, in terms of the -- in terms
16 of the disputed issues, another, I think,
17 criticism or question was: What is the intent
18 with respect to confirmation objections. What
19 we intended was to try to highlight the
20 threshold intercreditor issues that we thought
21 needed to be resolved in advance of the
22 confirmation hearing, and those are described
23 in the motion. Those were the intercompany
24 transactions, the fraudulent conveyances, the
25 substantive consolidation issues and the

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1 Adelphia Communications Corp.

2 allocation of various value in the Time Warner
3 deal, costs of the Government settlement and
4 tax costs and other costs. Those were
5 identified as the principal issues that we
6 thought, as a threshold matter, couldn't wait
7 'til confirmation to be resolved.

8 This was not intended to be a
9 process to cover any and all confirmation
10 objections that creditors might have. There is
11 nothing in the proposal that would foreclose
12 anyone from filing a confirmation objection
13 with the following caveat: Certainly, to the
14 extent as a result of litigation of the
15 disputed issues, the Court issues rulings on
16 those issues, the order intends that those
17 rulings would have the fullest preclusive
18 effect available under the law such that
19 someone, I suppose, could go ahead and file an
20 objection to confirmation, but if the
21 underlying dispute that's the subject of that
22 objection was litigated as a part of this
23 process and Your Honor made a ruling, I would
24 not think we would be relitigating that issue
25 again at confirmation. The point is that those

1 Adelphia Communications Corp.
2 issues are being litigated here. To the extent
3 they have a preclusive effect on all
4 participants and all parties in interest in the
5 case to the extent they don't participate,
6 those are being decided.

7 Now, to the extent -- there are
8 other confirmation objections that are
9 unrelated to these issues. Those issues would
10 be dealt with both in the discovery process and
11 at confirmation separately.

12 Let me address the virtual data
13 room. I want to make sure that we're clear to
14 everyone today, as well as the Court, that --
15 the reason we described what our obligations
16 would be with respect to the virtual data room.
17 And primarily what we said was, there were
18 certain things we were committing to be able to
19 do. Number one, when we receive document
20 requests, the Debtors would put responsive
21 documents into the data room, indicate that
22 they had done that, or if for some reason they
23 objected to it, whether it was on the ground of
24 privilege or relevance, we would let the
25 participants know so that people were in a

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1 Adelphia Communications Corp.
2 position if they disagreed with what the Debtor
3 had done, to go to Your Honor if we couldn't
4 reach agreement.

5 We also committed, as additional
6 document requests are served on the Debtors,
7 again, to supplement that data room to the
8 extent that we produce additional documents
9 and, again, to notify the participants that we
10 had done that, or if we had not done it, the
11 basis for our decision not to do it.

12 We also have provisions that
13 deal with third-party discovery. To the extent
14 that any of the participants obtained discovery
15 from another participant or from a third party,
16 they are to provide us with that discovery and

17 the Debtors will understand the responsibility
18 of, again, assuring that those documents find
19 their way into the data room.

20 One of the issues that we have
21 is exactly what is going to go into the data
22 room and in what form or what format. And here
23 is why the order at the moment says that we
24 have committed at the very least to put those
25 documents in the data room, at least in the

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1 Adelphia Communications Corp.

2 form that they're kept in the usual course of
3 business of the Debtors, which is one of the
4 two options that we have under Rule 7034.

5 We have also told people that we
6 would in good faith attempt to do something
7 better than that, that we would attempt to have
8 those documents put in in a fashion that they
9 are as fully searchable as possible, coded as
10 greatly as possible to facilitate their use.

11 Now I want to explain to the
12 Court for the moment the basic -- the basic
13 areas of documents that we've been able to
14 identify so far that we think make sense to put
15 in the data room and some of the issues that we
16 have and why we need further conferences with
17 various participants and some assistance before
18 we can state with specificity exactly what will
19 go in the data room and in what format.

20 Previously, we've produced to a
21 number of the creditor constituencies the
22 so-called nine gigabyte hard drive that
23 contains all of the 7 million intercompany
24 transactions that were -- that the parties are
25 fighting about. In addition to that, there are

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1 Adelphia Communications Corp.

2 electronic files on the concordant system that
3 we've also made available to various creditor
4 constituents.

5 These documents, I would say,
6 after the 7 million transactions themselves,
7 are probably the next most important documents

8 in the sense that they consist of various

9 e-mails, spreadsheets and other analyses by the
10 people at the company, the people who were
11 involved in the process of reviewing the
12 intercompany transactions and analyzing them.

13 It will be simple, again, to
14 have the nine gigabyte intercompany
15 transactions and these electronic files put in
16 the data room, so they are there -- those are
17 the first priorities.

18 In addition, the next priority
19 is that there is a series of file cabinets that
20 are maintained in Coudersport that comprise
21 approximately 50 boxes of documents which are
22 specifically related to the restatement of the
23 intercompany transactions. Now, those
24 documents are indexed quite specifically and
25 are coded according to an index of restatement

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1 Adelphia Communications Corp.
2 issues, such that every document is coded in
3 some fashion as to how it relates to one of the
4 numerous restatement issues. Those documents,
5 we are certain everyone is going to want to
6 review, and we have already begun the task. A
7 vendor is out at the company now, actually
8 scanning those documents so they can be put
9 into the data room as promptly as possible.

10 THE COURT: That comes closer to
11 Mr. Shiff's comment. Do you think that could
12 be done quicker than 20 days?

13 MR. O'CONNOR: Your Honor, I
14 think it's going to take at least a week to
15 scan the documents. Those documents, we should
16 be able to code, if you will, or put them into
17 the data room having the code. So it's just
18 like someone going to the file drawers and
19 looking at the index of restatement issues and
20 then going to find which of those documents
21 relate to those. I believe that we should be
22 able to do accomplish exactly the same thing
23 electronically in the data room. Now, whether
24 or not we can get all that done within a

25 week -- that's what our goal is, of course, obviously

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1 Adelphia Communications Corp.

2 we'll try to do it just as quickly as we can.

3 But I want to raise two other
4 issues so that everyone is aware of the two
5 other issues. There are -- in addition to
6 those documents, we have the actual
7 transactions, the intercompany transactions
8 themselves, all of the memoranda, e-mails and
9 spreadsheets related to the analysis of those
10 transactions, and the 50 boxes of the
11 specifically coded restatement issue documents.

12 There are 3,300 boxes of
13 documents in the warehouse at Coudersport that
14 are the records specifically of the accounting
15 department. Those documents are indexed and we
16 have previously provided a copy of that index,
17 again, to a number of the creditors. We are
18 going to need some assistance from participants
19 in telling us, after they've reviewed this
20 index, which documents they think really need
21 to go into the data room. Because if we don't
22 get some assistance with that, the 3,300
23 boxes -- just to give you a sense of the cost
24 and the timing to scan those documents and then
25 to code them, the typical vendor and the vendor

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1 Adelphia Communications Corp.

2 that we have a quote from, it will cost
3 approximately 75 cents a page to scan so that
4 they're searchable, as well as host those
5 documents. So if you're talking about 3,300
6 boxes, the approximate cost of that is about
7 \$5.5 million just to scan and put those
8 documents in the data room.

9 If you wanted those documents
10 coded, the standard market price is \$1.20 a
11 document. And that would be the code for --
12 with the addressee, the sender, cc recipients
13 and some other codes. If you did that, that's
14 another \$1.4 million.

15 In total, you're talking about

16 approximately \$6 million. Steven L. Peltz of Page 294 of 250
17 participants decided they thought all 3,300
18 accounting document boxes had to go into the
19 data room.

20 In terms of timing, that will
21 take a fairly long period of time. That is not
22 something that can be done within the 20 days.
23 What we attempted to do is to put in the data
24 room the first three series of documents which
25 we think are the most important documents. The

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1 Adelphia Communications Corp.
2 remainder of those documents, as I said, we
3 need some help from participants in terms of
4 what they really think they need.

5 Now, to make matters just more
6 complicated, in addition to the 3,300
7 documents, there's approximately 17,000
8 additional boxes of documents in Cowdersport.
9 We think that the vast majority of those
10 documents are not relevant to what we've called
11 the disputed issues. For example, there's
12 probably about 13 or 14,000 boxes of documents
13 that relate to human resources, corporate
14 development, customer care, simply copies of
15 checks.

16 On the other hand, there are
17 about 2,000 boxes of legal documents, including
18 documents related to the Government's
19 investigation and the Covington investigation
20 as well as another 750 boxes of legal files.
21 Now, I could certainly see some of the parties
22 saying that those documents may be relevant to
23 some of these issues, particularly the
24 subscriber transfers. And, unfortunately,
25 those documents are -- those boxes are not

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1 Adelphia Communications Corp.
2 indexed. We have a general category of what
3 they contain, but they are not indexed.

4 I do think that the majority, if
5 not all of the documents in the 2,000 boxes
6 that relate to the Department of Justice and

7 the Covington files of Steven R. Pollock of 250

8 contained in this Amici data base that you've
9 heard so much about.

10 And we recognize that people
11 have had complaints about the Amici database.
12 But in looking at the Amici database, there are
13 approximately 2.3 million documents in that
14 database. If we were to attempt to take those
15 documents out of that database, code them,
16 because they're not coded in the Amici database
17 that I was talking about a moment ago, again,
18 you're talking about an extensive period of
19 time and, again, \$1.20 or so a document to code
20 those, so you're talking about another four or
21 \$5 million.

22 So there's a considerable amount
23 of money that's involved here. And I
24 understand that we're talking about a \$17
25 billion transaction, and five or \$10 million in
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1 Adelphia Communications Corp.
2 that context may not be as much as normally one
3 would think --

4 THE COURT: It's sure money I'd
5 rather put into the pockets of creditors.

6 MR. O'CONNOR: Yes. That's the
7 point, Your Honor. What we wound up doing in
8 the proposed order is again to say that we are
9 committed to putting all the documents in, at
10 least in the course that they're kept, and we
11 want to confer with the various participants,
12 try to get an agreement to the extent we can,
13 on the additional documents that people think
14 really need to go into the data room and to get
15 that done as quickly as we can, and if we can't
16 do that consensually, we may have to come back
17 to Your Honor to try to address some of those
18 issues.

19 THE COURT: All right. Keep
20 going.

21 MR. O'CONNOR: Now, in terms of
22 the -- some of the other objections to the
23 proposal, there was quite a bit of colloquy

24 about, again, do we need to have an adversary
25 proceedings, do we need complaints and answers.

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1 Adelphia Communications Corp.

2 And here is what we thought about that, Your
3 Honor. Number one, I think Your Honor's point
4 was a good one. What we are dealing with here
5 are intercreditor claims and potential claims
6 being asserted between debtors, all being
7 jointly administered by Your Honor. We're not
8 talking about bringing claims against third
9 parties outside the estate. And I think for
10 that reason, the need for an adversary
11 proceeding is probably not necessary.

12 Now, that doesn't mean that, for
13 example, the various rules under Part VII are
14 not applicable. I thought it was implicit in
15 the fact that the various disputes being
16 resolved here are disputes within bankruptcy,
17 that they are contested matters. We didn't put
18 that into the order, but I think we're quite
19 comfortable in saying we do assume that Rule
20 9014 applies, and as a result of that, the vast
21 bulk of the rules in Part VII apply. And, in
22 addition, 9014 provides that the Court can at
23 any time direct that the other parts of Rule 7
24 apply.

25 So if Your Honor decides, as a

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1 Adelphia Communications Corp.

2 request from parties along the way, that
3 there's some need to have other parts of the
4 Part VII rules apply, Your Honor is free to do
5 that. And parties can argue at that time that
6 they ought to apply or they should not apply.

7 Frankly, what we thought we were
8 doing here, by staying away from the technical
9 rules of complaints and answers, was actually
10 allowing more parties to have access to the
11 process than might otherwise be the case.

12 THE COURT: So I don't need to
13 get a dozen motions to intervene, by way of
14 example.

7 people an extra five days before they had to do
8 that.

9 Again, I think this is just the
10 situation where you go and you look at the back
11 end of this time line, you're into March
12 already. And we tried the best we could to
13 accommodate all the various stages along the
14 way and we thought it was a fair process.

15 Your Honor, several people
16 suggested that you hold a pretrial conference.
17 We did have a pretrial conference built into
18 the order; I think we have it set for 21 days
19 before each hearing. And our thinking there
20 was, at that pretrial conference, the parties
21 would again refine precisely what would be
22 tried at that hearing. For example, with the
23 Court's assistance, the specific issues could
24 be delineated, the questions about burdens of
25 proof could be addressed, allocations of time

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1 Adelphia Communications Corp.
2 as to how many participants would be involved,
3 and how the hearing would be shared among
4 participants with similar interests.

5 THE COURT: Would you have a
6 problem -- forgive me for interrupting,
7 Mr. O'Connor. Would you have a problem -- I
8 think you said that was 21 days before -- if
9 the day before each of those pretrial
10 conferences I said I want a pretrial order?

11 MR. O'CONNOR: No, Your Honor.

12 The other point I was going to
13 make on this. One of the provisions of our
14 proposed order, it's paragraph 11A, provides
15 that, you know, to the extent not inconsistent
16 with -- Case Management Order number 3 and your
17 administrative procedure order govern. So to
18 the extent that there are any obligations which
19 we did not particularly include here -- for
20 example, you'll note that we didn't have
21 anything in here about whether direct testimony
22 would be taken by declaration or live

23 testimony, assuming that the case management
24 order would apply. So that the dates for
25 providing the Court with trial exhibits,

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1 Adelphia Communications Corp.
2 deposition designations, and I would think also
3 a pretrial order, would be governed by that as
4 well.

5 One of the hard things here was,
6 we tried to put together a framework which was
7 broad enough to cover the basic threshold
8 issues but did not try to anticipate in advance
9 every conceivable possible deadline such that
10 it became so cumbersome that it was unworkable.

11 So I think to answer Your
12 Honor's question, we certainly would have no
13 problem with that, and we think to the extent
14 your case management order or administrative
15 procedures order contains additional
16 requirements, for example, exhibits and
17 designation examples and whatnot, that those
18 obviously govern. And also the order, of
19 course, provides that Your Honor may amend or
20 modify the order sua sponte or at the request
21 any party.

22 So I think we've tried to build
23 in a sufficient amount of flexibility that if
24 the need arises and participants can
25 demonstrate cause to do that, Your Honor

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1 Adelphia Communications Corp.
2 certainly has the authority and discretion to
3 do that.

4 Now, hearings. There was some
5 discussion also about the sequencing of
6 hearings. And, frankly, the way the current
7 order is drafted, that was not the way we had
8 initially started. Initially we thought the
9 first hearing would be all the intercompany
10 transactions, and that was going to the merit
11 of them, the amount of them, their
12 characterization, their priorities.

13 And really at the request of the

14 Arahova noteholders during the negotiations, they contended that, Well, wait a
15 negotiations, they contended that, Well, wait a
16 minute. There may be some of those
17 intercompany transactions that we might be able
18 to say, Hey, we never got that consideration or
19 we didn't get the right consideration and we
20 don't have to get to the level of whether or
21 not -- how they get characterized. They ought
22 to be avoided, period.

23 So as a result of that, we
24 decided, okay, that sounds like it might make
25 some sense. There may be some threshold

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1 Adelphia Communications Corp.
2 intercompany transactions that you don't have
3 to get to the issues of validity,
4 prioritization and whatever.

5 THE COURT: Of course that's the
6 mirror image of the point which Mr. Bennett
7 made, which, if I understood him correctly, was
8 the extent to which a transaction might be a
9 fraudulent conveyance could depend in part on
10 surrounding transactions and/or the extent that
11 the property was transferred on account of a
12 real obligation or liability.

13 MR. O'CONNOR: That is true.
14 And, frankly, Mr. Bennett, during the
15 negotiations, advocated to have all the
16 intercompany transactions dealt with first.
17 And this, again, was a compromise that we
18 reached before we lost the support of Arahova.
19 To Mr. Bennett's credit, he continued to
20 support the Debtors' view even though his
21 preferred view would have been to --

22 THE COURT: But did Arahova
23 agree to sign onto this if you agreed to make
24 that concession?

25 MR. O'CONNOR: No, Your Honor.

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1 Adelphia Communications Corp.
2 By Thursday night at 6:00 o'clock of last week,
3 it became clear no matter what concessions we
4 made in the order, they would not sign off

5 because they wanted to resolve the matter to
6 object to the process in its entirety, not the
7 order.

8 MR. LAURIA: Your Honor, we were
9 having settlement negotiations.

10 THE COURT: I don't want to get
11 into Rule 408 stuff. However, I do have the
12 concern that each of you, Mr. Lauria and you,
13 Mr. Bennett, have fair points to make vis-a-vis
14 the chicken and egg issue on these fraudulent
15 conveyances and the determination of the
16 liabilities. And one thing I'm considering,
17 and I think I'm just going to decide it,
18 because I've heard, God, I don't know how much
19 argument today, whether issues number one and
20 two should be combined so that neither of you
21 is prejudiced by my delay in considering the
22 other one.

23 MR. O'CONNOR: Your Honor, if I
24 can just interject on that?

25 THE COURT: Yes, sir.

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1 Adelfphia Communications Corp.

2 MR. O'CONNOR: Our thought in a
3 way on that was you could combine the two
4 hearings. And, again, I guess it's still the
5 chicken and egg, but perhaps there may be some
6 transactions that the parties could take the
7 position it would be clear that you could
8 address the avoidability issue first without
9 having to address the underlying issues of the
10 validity and characterization. Whether that
11 turns out to be the case or not, I don't know,
12 but I'm thinking one hearing. There might be a
13 number of transactions that you would address
14 first, perhaps the same thing, but collapsed in
15 one hearing.

16 MR. LAURIA: Your Honor, if I
17 may comment?

18 THE COURT: I want to hear from
19 Mr. O'Connor and then I'll determine the extent
20 to which I want to hear from other people. The
21 way I understand the order now, I'm supposed to

22 be pumping out these Stevens. By the way, and I
23 guess -- I mean, I guess I have the ability
24 ultimately to do what I think is best and to
25 say, Thank you folks, but I'm going to do what
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1 Adelphia Communications Corp.

2 I think is best.

3 I have to tell you that it is
4 possible that some of the fraudulent conveyance
5 issues could moot some of the others, but the
6 converse is also true and it's especially true
7 that it might be irresponsible for me to decide
8 one issue without doing a stop, look and listen
9 as to having heard the second issue.

10 MR. O'CONNOR: One suggestion I
11 would have on that, Your Honor, is: We also
12 have the mechanism built in here for monthly
13 conferences to monitor the process as well as
14 that pretrial conference. And it would seem to
15 me that, through the combination of those
16 conferences, perhaps the parties could address
17 those issues and Your Honor could make a
18 decision at that point in time, later, after
19 the parties had the benefit of discovery, as to
20 whether in fact it does make sense to pursue
21 one of these hearings sooner than the other.

22 THE COURT: Okay. Keep going,
23 please, Mr. O'Connor.

24 MR. O'CONNOR: So those, Your
25 Honor, would be the first two hearings. The
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1 Adelphia Communications Corp.

2 third hearing would be the hearing on any other
3 fraudulent conveyance or asset ownership
4 claims. And then the fourth hearing would be
5 various allocation issues. And, again, I think
6 the only issue that -- or objection we've heard
7 on that is that some parties, primarily Arahova
8 again, would like to see the allocation issues
9 resolved sooner than the schedule that we have
10 them on.

11 Hearing number five, substantive
12 consolidation, and then hearing number six, to

13 the extent that they of Steven. Policy of 2028 of 250
14 prior hearings, any other disputed issues.

15 Now, again, that was not
16 intended to be a broad invitation for people to
17 ask Your Honor to decide some other unrelated
18 confirmation issues. The idea was that there
19 may be some tail left over from one of these
20 other hearings or some very related issue that
21 had been set forth in the participants'
22 disputed issue statements. And this would
23 allow Your Honor to do two things. One, at the
24 pretrial conference prior to that hearing, Your
25 Honor could decide whether it made sense to

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1 Adelphia Communications Corp.
2 address those issues now or defer them to
3 confirmation, and then if you decide to go
4 forward with them, to adjudicate them in the
5 context of that sixth hearing.

6 THE COURT: Mr. O'Connor, if
7 this was in the papers, which it may well have
8 been, and I missed it, forgive me. Under our
9 existing timetable, what kind of a time gap are
10 we talking about between the conclusion of
11 hearing number six and the confirmation
12 hearing, assuming you've gotten your votes?

13 MR. O'CONNOR: I don't think we
14 set in the papers a particular date for the
15 confirmation hearing.

16 THE COURT: I guess I should say
17 the first day of the confirmation hearing.

18 MR. O'CONNOR: I'm sorry, Your
19 Honor?

20 THE COURT: I guess I should say
21 the first day of the confirmation hearing.

22 MR. O'CONNOR: Yes, Your Honor.
23 Since we haven't scheduled the confirmation
24 hearing, we did not indicate a date for that.
25 I'm assuming that we would want to have the

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1 Adelphia Communications Corp.
2 confirmation hearing probably as soon as we
3 could after the conclusion of these various

4 hearings, but we did not have a hearing on the merits of Stevens' Petition, Page 204 of 250

5 THE COURT: Okay.

6 MR. O'CONNOR: Your Honor,

7 again, on burdens of proof, we do have a
8 provision in the order that allows all the
9 participants, just like any other litigation,
10 to make arguments about who bears the burden of
11 proof and that the Court will make that
12 determination. It would make sense to me that
13 would be one of the items that would be
14 addressed at the pretrial conference before
15 each one of the hearings.

16 And one other I think important
17 point, and I don't think there have been any
18 objections about this, we tried to make it
19 clear in the procedures that the remedies that
20 we were talking about here in connection with
21 any of these disputed issues were limited to
22 the reallocation, if you will, of the
23 distributable value from debtor to debtor under
24 our plan or under any plan that was proposed to
25 implement a Time Warner/Comcast deal. As a

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1 Adelphia Communications Corp.

2 result of that, what the proposed order
3 provides is that if for some reason that that
4 plan is -- either confirmation is denied or if
5 the Debtor were to withdraw that plan, any of
6 the participants could come back to Your Honor
7 and ask that Your Honor order some additional
8 relief, presumably, for example, actually
9 getting assets back that had been transferred,
10 or the value of those assets, and that they
11 could, of course, ask Your Honor to rely as the
12 law of the case on the findings of fact and
13 conclusions of law that you had made in the
14 course of your rulings on the disputed issues.
15 But absent that situation, the only remedy
16 we're talking about is a reallocation of the
17 value within the distributed value under the
18 plan.

19 And finally, Your Honor, there
20 are a series of -- series of reservations of

21 rights which we think should be by of 250
22 everyone's interests here. Number one, the
23 Debtors specifically reserve the right to
24 compromise any of these disputes, either by a
25 9019 motion or in the context of the plan. The
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1 Adelphia Communications Corp.
2 Debtors do reserve the right to take positions
3 on any of these issues at the appropriate time
4 if that becomes appropriate. And, again as a
5 reservation, that any participant who
6 participates in the process is not assuming any
7 fiduciary duty to anyone other than their own
8 clients. And on 503 again, the parties reserve
9 the right to make applications, but the Debtors
10 and other participants have reserved the right
11 to object.

12 I think, Your Honor, that takes
13 us through the basic parameters of the proposed
14 order and I think addresses the primary issues
15 that were raised, at least today, and I'm happy
16 to answer any other questions that Your Honor
17 may have.

18 THE COURT: No. I kind of
19 interrupted you as we went along.

20 MR. O'CONNOR: Your Honor, one
21 other point. On the Department of Justice
22 files, I'm reminded that we may also have to
23 deal with the issue of the Government's request
24 that these documents that are in what they call
25 the evidence cage are supposed to be
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1 Adelphia Communications Corp.
2 sequestered, and we'll have to address that
3 issue as well to the extent that, any of those
4 documents, parties would like to have those
5 documents placed into the data room.

6 THE COURT: All right. It's
7 been a long day. We're going to take a recess
8 now. I can't tell you how quickly I'll be back
9 with a decision. I'm going to try to give you
10 one tonight. I think that you can feel safe if
11 you go out for drinks, phone calls, whatever,

12 you can stay at least until 6:00. I
13 would ask that after 6:00 o'clock, you be
14 available to be called into the courtroom.
15 I'll try to give you a decision as quickly as
16 circumstances permit.

17 You can tell the marshals
18 downstairs that I'm giving you all cell phone
19 waivers if you want to bring your phones up,
20 but I expect that you're going to turn them off
21 before you walk into this courtroom. I'll see
22 you as soon as possible.

23 (A recess was taken from 5:25 p.m. to
24 7:27 p.m.)

25 THE COURT: Have seats,

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1 Adelphia Communications Corp.
2 everybody. I apologize for keeping you waiting
3 so long.

4 The Arahova bondholders' motion
5 for STN authority to prosecute the fraudulent
6 conveyance claims they wish to assert is
7 denied. Their motion to strike the Debtors'
8 schedules is denied, though with a
9 clarification as to the way that I will regard
10 the schedules.

11 I see people are putting their
12 hands up to their ears. Is my microphone not
13 working?

14 MR. MASSEL: It is, Your Honor.
15 That's much better.

16 THE COURT: All right. And the
17 Debtors' Motion for an Order in Aid of
18 Confirmation is granted, though with some
19 adjustments in the schedule, and parties'
20 rights to participate. In my view, entry of
21 the order at the Debtors' request is essential
22 to permit a full and fair litigation of the
23 intercreditor issues, which, if not dealt with
24 in an expeditious fashion, consistent, of
25 course, with due process, could materially spin

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1 Adelphia Communications Corp.
2 out of control and raise a material risk of

3 adverse consequences of Steven's Policy of 250
4 stakeholders in this case. The proposed order,
5 at least as modified by the mechanisms I will
6 require, will balance the needs and concerns of
7 litigants to make each and every one of the
8 arguments they would need to make and make the
9 evidentiary showings they would wish to make
10 consistent with not destroying the Time Warner
11 deal and bringing down the recoveries for all
12 of the many stakeholders in this case.

13 Preliminarily, I note that the
14 issues on these three motions are intertwined.
15 In material part, they deal not with whether
16 issues and concerns of the parties will be
17 addressed by this Court, or whether decisions
18 the Debtors made with respect to scheduling
19 intercompany liabilities would be binding on
20 affected creditors. Rather, the matters before
21 me today deal with how the issues of concern
22 should be addressed, and, in particular, what
23 is the best way to get all of the issues
24 decided that need to be decided, consistent
25 with due process, and, equally importantly, as

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1 Adelphia Communications Corp.

2 I have noted, preserving the value in this case
3 for the many stakeholders in this case, some of
4 whom have a stake in the Arahova bondholders'/
5 parent bondholders' controversy and even more
6 of whom do not.

7 In material part, I come out the
8 way I do not because I consider issues unworthy
9 of judicial scrutiny, but because I think it's
10 of the highest importance that we keep our eye
11 on the ball and that we not let these
12 intercreditor disputes explode in a way that
13 could cause Adelphia's reorganization to spin
14 out of control.

15 Turning first to the STN motion.
16 As the Debtors have not joined in the Arahova
17 noteholders' motion and, indeed, oppose it,
18 this motion is governed by the Second Circuit's
19 decision in Unsecured Creditors' Committee of

20 Debtor STN Enterprises v. Polley (No. 85-250
21 Enterprises) 779 F2d, 901, Second Circuit 1985.
22 That decision requires the Court to consider
23 whether the debtor has unjustifiably declined
24 bring the suit itself and whether an action
25 asserting the claims is likely to benefit the

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1 Adelphia Communications Corp.
2 reorganization estate. Here I am not in in a
3 position to make either of those findings and,
4 in fact, must conclude exactly to the contrary.

5 First, I find that the Debtors
6 did not unjustifiably decline to bring the
7 action. They properly perceived that the
8 issues the Arahova noteholders wished to raise,
9 while deserving of judicial scrutiny, were more
10 efficiently and justly considered in the
11 context of the totality of the issues that have
12 given rise to intercreditor disputes and
13 represented only a subset of the issues
14 involving the rights and obligations of the
15 Arahova Debtors' estates.

16 The Debtors also concluded,
17 appropriately, that allowing the stakeholders
18 in the respective estates to raise the issues
19 the Arahova noteholders wished to raise would
20 ensure that they were appropriately litigated
21 without requiring the Debtors to choose sides
22 between one competing creditor group or
23 another. As the Equity Committee properly
24 observed in its opposition to the Arahova
25 noteholders' motion, STN addresses the

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1 Adelphia Communications Corp.
2 possibility that by reason of debtor neglect or
3 misconduct, meritorious litigation would never
4 be prosecuted. Here, of course, all of the
5 issues would be litigated and the Debtors would
6 not be standing in the way of whatever
7 entitlements the Arahova debtors or the Arahova
8 noteholders would otherwise have.

9 Secondly, I find that delegating
10 the Arahova noteholders the right to bring

11 these claims in the manner that the Arahova
12 noteholders desire, especially given their
13 disinclination to address all of the issues
14 that could potentially impact on the Arahova
15 debtors' estates, would not be in the interests
16 of either the Arahova debtors or all of the
17 other debtors in these very complex chapter 11
18 cases.

19 The issues that the Arahova
20 noteholders asked me to deputize them to pursue
21 are inextricably intertwined with the other
22 intercompany issues that need to be addressed
23 by this Court. The Debtors have proposed a
24 specific mechanism for investigating and
25 prosecuting the rights of the Arahova debtors

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1 Adelphia Communications Corp.
2 as part of a much more comprehensive and less
3 selective review of all of the rights and
4 obligations of the various debtors as between
5 each other and of the totality of the many
6 intercreditor disputes that exist in this case.

7 The Arahova noteholders'
8 proposal to deputize themselves as the
9 representative of one of the estate's many
10 debtors to prosecute the subset of the relevant
11 issues that they want to address, is not in the
12 interests of any of the estates, including, by
13 the way, the Arahova estates, particularly
14 since doing so would seemingly have the effect,
15 if not the purpose, of requiring Arahova and
16 perhaps other Adelphia debtors to bear the
17 expense of the Arahova noteholders' litigation,
18 a matter that, if ever appropriate, could and
19 should instead be considered in a 503(b)
20 application for substantial contribution at the
21 end of the case, after we ascertain the extent
22 to which the Arahova noteholders' efforts
23 benefited any of the debtors, and in order to
24 be fair, it would probably, if not certainly,
25 also require deputizing I don't know how many

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1 Adelphia Communications Corp.

2 other representatives of the Debtors, such
3 as, by way of example, the parent noteholders
4 who might have been impacted by transfers in
5 the other direction or wish to bring similar
6 claims.

7 The Debtors' approach is much
8 more efficient and comprehensive and is fully
9 consistent with the due process rights of the
10 Arahova noteholders in the world of the Second
11 Circuit in *Comodore*, which applied STN in a
12 situation where the debtor consented to the
13 deputization of an estate representative.
14 Prosecution by the Arahova noteholders of the
15 claims they ask me to deputize them for under
16 STN authority would be neither necessary nor
17 beneficial.

18 Turning now to the schedule
19 amendments. The Arahova noteholders' motion to
20 strike the Debtors' schedules is likely denied,
21 though I think I should clarify what that
22 means. First, the facts, which in the respects
23 I set them forth here, are undisputed. Quite a
24 while ago, back in July 2003, two years ago,
25 each debtor prepared and filed its schedules of

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1 Adelphia Communications Corp.
2 assets and liabilities. There were duly
3 signed, and complied, insofar as the the record
4 reflects, with the requirement of the official
5 form, that being Official Form 6, which, as
6 many parties noted, is in any event subject
7 only to substantial compliance. They
8 recognized then that they were still reviewing
9 prepetition intercompany accounts which then
10 had not been finalized, and the fact that they
11 thereafter amend them to include information
12 relating to intercompany account balances.
13 Insofar as I'm aware, nobody complained about
14 the initial schedules and statements or the
15 form by which the information was presented.

16 In January 2005, the Debtors
17 filed amendments to the schedules listing each
18 debtor's intercompany payable or receivable

19 with Adelphia Cablevision, L.P., et al. also refer
20 to as the Bank of Adelphia. The Debtors
21 described previously articulated views and
22 legal arguments regarding how parties in
23 interest might characterize and treat the
24 intercompany transactions. Once more, to my
25 knowledge, nobody complained with the form of
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1 Adelphia Communications Corp.

2 the Debtors' amendment.

3 The Debtors then filed another
4 amendment to the schedules, the May 2005
5 intercompany statement, and this has been
6 attacked not just for its substance, which I
7 find understandable and a matter of fair
8 debate, but also for its form, which I find
9 inexplicable and unjustified. The May 2005
10 schedule amendments, like the January 2005
11 schedule amendments, were executed by Scott
12 MacDonald, the chief accounting officer and a
13 senior vice president for each of the Debtors.
14 As noted in the global notes, For
15 administrative convenience only the Debtors
16 filed a consolidated schedule in these jointly
17 administered cases.

18 As far as I'm concerned, this
19 should be all about substance rather than form,
20 but I'll take a moment to talk about form.
21 There is no official form relating to schedule
22 amendments so I cannot understand how the
23 Arahova noteholders can be complaining about a
24 failure to follow an official form. I reject
25 the argument for that reason. But even if the
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1 Adelphia Communications Corp.

2 official form requirement for an initial filing
3 were deemed to spill over to amendments, I
4 cannot find fault with the amendments as a
5 matter of form.

6 Federal Rule of Bankruptcy
7 Procedure 9009 provides: "The Official Forms
8 prescribed by the Judicial Conference of the
9 United States shall be observed and used with

10 alterations as may be appropriate. Previously
11 "appropriate" encompasses a great variety of
12 different needs to modify them, and I will
13 expressly find that the amendments here were
14 appropriate given the needs of the Debtors to
15 address matters which were hangovers from the
16 Rigas era.

17 Likewise, the advisory committee
18 notes to Rule 9009 state: "The use of the
19 Official Forms has generally been held subject
20 to a 'rule of substantial compliance.'" Here
21 the May 2005 schedule amendments showed, among
22 other things, the name of each creditor, the
23 amount of each claim, how the Debtors' cash
24 management system operates, informing creditors
25 of the basis of the claims, significant issues

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1 Adelphia Communications Corp.
2 with the intercompany obligations, that the
3 claims between Adelphia Cablevision and other
4 Debtors were netted and therefore subject to
5 setoff, that they arose prior to the
6 commencement of these chapter 11 cases and were
7 presented on a net basis because such claims
8 are between each debtor and Adelphia
9 Cablevision, and that significant disputes
10 exist between creditors of the Arahova and
11 Adelphia parent debtor groups regarding
12 numerous issues that is much more than
13 substantial compliance.

14 Again addressing matters of form
15 before we reach matters of substance, I also
16 find unpersuasive the point that they were
17 certified once by Adelphia's senior vice
18 president and chief accounting officer rather
19 than -- I assume the suggestion is 240 separate
20 times. His certification, which was under
21 penalty of perjury, was, quote, on behalf of
22 Adelphia Communications Corporation and its
23 debtor affiliates, collectively the Debtors,
24 emphasis on the latter clause. He was also a
25 senior officer of Arahova. And again

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1 Adelphia Communications Corp. 250

2 addressing the matter of form, the argument
3 that the Debtors had to list the liabilities
4 they themselves had determined to exist as,
5 quote, disputed, quote, strikes me as just
6 silly, especially when they said that
7 significant disputes exist between creditors of
8 the Arahova and holding company debtor groups
9 regarding numerous issues.

10 Now let's turn to substance,
11 which in my view is much more important. And
12 in that connection, we have to use some common
13 sense here. In nearly every large chapter 11
14 case, the financial records are complex and we
15 need to keep our eye on the ball, requiring the
16 debtors to make information available to
17 creditors and other stakeholders so those folks
18 have the information they need to protect their
19 rights. That plainly was done here. And here,
20 we especially have to use some common sense.
21 As the Arahova bondholders themselves observed,
22 the Debtors arrived in this court riding a
23 waive of chaos and controversy precipitated by
24 the wrongdoing and fraudulent conduct of former
25 management. The Debtors' records in this case

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1 Adelphia Communications Corp.

2 were the product of years of management under
3 the Rigases' watch, and everybody in this room
4 agrees that the accounting during that period
5 was dubious at best, reflecting thousands of
6 person hours of effort to figure out what
7 proper statements of assets and liabilities
8 should show and what would be proper when
9 appropriately audited.

10 Without dispute, the schedules
11 prepared by the Debtors' new management stated
12 unequivocally that the intercompany statements
13 were subject to review and restatement as a
14 result of the continuing audit efforts. And I
15 wonder how anybody could fault the Debtors, and
16 I certainly will not, for having their
17 certifier say, after new management and the

18 auditor had done the Steven L. Kelly of 2/14 of 250 that they
19 were accurate to the best of his knowledge.

20 The historic facts, what money
21 went into or out of the Bank of Adelpia and
22 what assets and liabilities were transferred
23 from one entity to another, are not likely to
24 be disputed or to be disputed in any material
25 way. What we are really talking about is their

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1 Adelpia Communications Corp.
2 characterization, significance and the extent
3 to which one or more debtors might be able to
4 bring avoidance actions against other debtors
5 in the estate. The Debtors have expressly
6 acknowledged that the Arahova noteholders'
7 committee still will be able to litigate, among
8 other things, the validity, characterization
9 and amount of the intercompany transactions and
10 will be able to prosecute any alleged
11 fraudulent conveyance claims related to the
12 transferred-in subsidiaries. I'm referring to
13 paragraph 46 of the objection. Though the
14 Debtors didn't say so explicitly, I assume that
15 such observation applies equally to other
16 stakeholders with an interest in the
17 intercreditor disputes, and in any event, I
18 will direct that and make that clear.

19 To the same effect, the Debtors
20 stated: "The parties recently have discussed
21 whether the intercompany balances listed in the
22 May 2005 Intercompany schedule are entitled to
23 a presumption of validity. The Debtors believe
24 that their efforts justify such a presumption
25 as to the specific amount of each transaction.

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1 Adelpia Communications Corp.
2 However, beyond the quantification of the
3 Intercompany Transactions, the Debtors believe
4 that the issues raised in the Global Notes and
5 [the Debtors' response to the Arahova
6 Noteholders' Motion] require that the
7 presumption not be extended to intercreditor
8 issues regarding (a) the proper

9 characteriazation and of Steven Kelley of the company
10 Transactions, and (b) whether such intercompany
11 balances (or portions thereof) are avoidable,
12 give rise to enforceable or allowable claims,
13 or should be disregarded.

14 That approach has much to
15 commend it, but, as Mr. Bennet properly
16 observed, the Arahova noteholders' motion asks
17 merely for an order striking the schedules and
18 did not, at least in express terms, also ask
19 for an advisory opinion on how I would treat
20 the schedules if the motion were denied.

21 While it is possible that an
22 issue of that character could, as suggested by
23 Mr. Lauria, be regarded as a lesser form of
24 relief, I think it's more consistent with the
25 interest of due process to make that issue,

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1 Adelphia Communications Corp.

2 which plainly is of substantial importance to
3 both of the two sides in the intercreditor
4 disputes, subject to as much due process as I
5 can provide. Thus, I will not go so far as to
6 definitively rule today that the Debtors'
7 approach in accordance with the language that I
8 just read will be the way we will proceed going
9 forward, though I will ask the Arahova
10 noteholders and the parent noteholders, if they
11 cannot agree on the matter, that is, if they
12 can't agree on how much or how little of the
13 Debtors' proposal they think makes sense, to
14 address in later proceedings whether the
15 Debtors' proposal is unwarranted.

16 I have indicated that the
17 Debtors' approach has much to commend it, but I
18 am not going to close the door to further
19 consideration of that issue, and at such time
20 as it is addressed, if you can't agree upon it,
21 I will not take the position against either
22 side that my feelings today on the issue should
23 be regarded as law of the case. Any kind of
24 finding that requires some extraordinary basis
25 for overturning it or anything of that sort I

1 Adelphia Communications Corp.

2 will consider ab initio.

3 Importantly, as a matter of
4 substance, perhaps most importantly as a matter
5 of substance, the Motion in Aid of Confirmation
6 recognizes the different creditor perspectives
7 involved, and provides a full, free and fair
8 opportunity for the Arahova bondholders, the
9 parent bondholders and anyone else with a stake
10 in the controversy to litigate over what is
11 really important, what conclusions I should
12 draw from the historic transactions, and to
13 what extent I should conclude that value went
14 from one debtor or debtor group to another in
15 one or more avoidable transactions.

16 Debtors and Pricewaterhouse put
17 great effort in the preparation of the
18 schedules relating to intercompany obligations,
19 and I am not of a mind to abandon all that they
20 accomplished as a result of that effort. The
21 Debtors leaned over backwards to avoid legal
22 conclusions or binding determinations as a
23 consequence of their analysis of the historic
24 transactions, and it would be foolish, in my
25 view, and unduly expensive to stakeholders, to

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1 Adelphia Communications Corp.

2 have a do-over of all of that work. Since I
3 find that there were no material deficiencies
4 of either form or substance in the preparation
5 of the schedule amendments, the second motion
6 is denied.

7 Now turning to the motion in aid
8 of confirmation. Section 105(a) of the Code
9 provides in relevant part: "The court may
10 issue any order, process, or judgment that is
11 necessary or appropriate to carry out the
12 provisions of this title."

13 Even more to the point, Section
14 105(d) of the Code provides in relevant part:
15 "The court, on its own motion or on the request
16 of a party in interest may (1) hold a

17 conference regarding any case proceedings
18 under this title after notice to the parties in
19 interest; and

20 (2) unless inconsistent with
21 another provision of this title or with
22 applicable Federal Rules of Bankruptcy
23 Procedure, issue an order at any such
24 conference prescribing such limitations and
25 conditions as the court deems appropriate to

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1 Adelphia Communications Corp.
2 ensure that the case is handled expeditiously
3 and economically."

4 I agree with those who say that
5 section 105(a) can't be used to trump
6 provisions of the Code and at least arguably
7 the bankruptcy rules. And section 105(d) says
8 so explicitly. But 105(d) makes clear that,
9 where substantive or procedural rights are not
10 affected, a court has express authority to
11 enter orders to help ensure that the case is
12 handled expeditiously and economically. And
13 that goes in spades in my view, where the
14 consequences of not handling the case
15 expeditiously and economically could cause
16 billions of dollars of losses to creditors and
17 other stakeholders.

18 There's been much discussion as
19 to whether the issues to be decided could be
20 heard only in an adversary proceeding with the
21 considerably greater delay and risk of the loss
22 of the Time Warner/Comcast transaction that
23 such would entail. But after expressly
24 focusing on the matter, it is plain to me that
25 in order to decide the intercreditor issues we

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1 Adelphia Communications Corp.
2 need to decide in this case, an adversary
3 proceeding is not required. That's plainly so
4 in my view for several separate reasons.

5 First, Arahova's argument
6 depends on a particular characterization of the
7 intercreditor disputes to which I cannot

8 subscribe. The issue under the old Act, of great bulk
9 of the intercreditor disputes is the extent, if
10 any, to which any one of the debtors or debtor
11 silos owes money to another, and to a lesser
12 extent, determining what are or are not assets
13 of the various debtors inter se. After those
14 issues are determined, it may turn out that
15 there have been fraudulent conveyances, but the
16 issue as to the extent to which fraudulent
17 conveyances were made cannot be separated from
18 determining the extent to which liabilities
19 were owing in one direction or another.

20 Determining issues of that
21 character is a contested matter. For those of
22 us like me, who are old enough to have
23 practiced under the old Act, it is a matter
24 within the historic summary jurisdiction of the
25 bankruptcy court invoking its historic in rem

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1 Adelphia Communications Corp.
2 jurisdiction. It involves property within the
3 constructive possession of the estate, and, to
4 be more precise, the constructive possession of
5 the court.

6 In contrast to an effort to
7 recover money or property from an outsider,
8 which historically required a plenary action,
9 when it comes to recovering property, an
10 adversary proceeding is the successor to the
11 old plenary action when the bankruptcy court's
12 jurisdiction was expanded with the enactment of
13 the 1978 Act. For more background in that
14 area, you can see the Second Circuit's decision
15 in Caldor, Term Loan Lenders Committee v.
16 Caldor, where the Second Circuit ruled that it
17 was not going to give people who wished to be
18 heard in an adversary proceeding any less
19 rights than they would have if the issues
20 before the court were litigated under the
21 umbrella of the bankruptcy case itself.

22 Thus, the issues that need to be
23 decided, when appropriately analyzed, do not
24 constitute an action to recover money or

25 property under Federal Bankruptcy Rule 7001.

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2 As I noted, all the parties in this case are
3 debtors in my court, subject to my in rem
4 jurisdiction and are litigating to determine
5 the proper amounts of assets and liabilities of
6 the respective estates in a manner akin to the
7 summary jurisdiction I would have had if I were
8 a referee considering those old issues under
9 the old Act.

10 We're not trying to bring in
11 anything into the estate from a third party. I
12 asked Mr. Lauria if he knew of any authority
13 supporting the notion that an adversary
14 proceeding was necessary to adjudicate asset
15 and liability disputes as between debtors
16 already before the court, and he knew of none.
17 I likewise know of none.

18 Secondly, even if this were
19 subject to Bankruptcy Rule 7001, this Court
20 could properly adjudicate these issues even
21 without the commencement of an adversary
22 proceeding, at least under circumstances such
23 as those here, with the same due process and
24 array of procedural protections as provided.
25 Collier on Bankruptcy provides that,

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2 Notwithstanding the requirements of Rule 7001,
3 in cases where no prejudice to the parties has
4 arisen or where no objection to the procedural
5 defect has been lodged, certain courts allow
6 matters to proceed by way of motion under Rule
7 9014 rather than as an adversary proceeding.
8 See 10 Collier, paragraph 7001.01. That's, of
9 course, from the 15th edition revised. Collier
10 continues that other courts do not --

11 And, of course, here there has
12 been a timely objection. But the Arahova
13 noteholders, have not, in my view,
14 satisfactorily addressed the lack of prejudice
15 to them in litigating these issues in the form

16 the Debtors propose on the part of Steven R. Polley, and the
17 material prejudice to the other stakeholders in
18 this case that could be the consequence of my
19 insistence upon adversary proceeding
20 formalities.

21 There is precedent in the New
22 York bankruptcy courts for permitting matters
23 subject to Rule 7001 to be heard as contested
24 matters in the absence of prejudice to the
25 litigants. See, In re Metiom, 301 B.R. 634 at

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1 Adelphia Communications Corp.
2 page 639, a decision of Judge Drain of this
3 court, and the cases cited therein. Judge
4 Drain had a claims objection subject to Rule
5 9014 but which became subject to Rule 7001 when
6 relief was sought in the objection that was
7 covered under Rule 7001. Judge Drain ruled,
8 "Instead, when one of the types of relief
9 specified in Bankruptcy Rule 7001 is raised in
10 a claim objection, the objection automatically
11 becomes more than a contested matter under
12 Bankruptcy Rule 9014; the parties automatically
13 become subject to the adversary proceeding
14 rules set forth in Part VII of the Bankruptcy
15 Rules, which the court may direct the parties
16 to meet in various ways. Such compliance may
17 or may not in the court's discretion require
18 the filing of a complaint but should not" --
19 and he emphasized "not," emphasis in the
20 original -- "require the elevation of form over
21 substance to prejudice a party if the matter
22 can proceed on the merits consistent with Part
23 VII.

24 Similarly, in In Re Friedman,
25 Judge Gerling of the Northern District of New

0313

1 Adelphia Communications Corp.
2 York noted, in a case where a matter involving
3 the disallowance of a claim turned out also to
4 involve a declaratory judgment regarding the
5 validity or extent of a lien which was also
6 subject to Rule 7001, "where the rights of the

7 affected parties have been properly protected
8 and the parties have had an opportunity to be
9 heard, form will not be elevated over substance
10 and the matter will be allowed to proceed on
11 the merits as originally filed." See also, In
12 Re Command Services, Inc., 102 B.R. 905 at page
13 908, another decision of the Northern District
14 Bankruptcy Court and the cases cited therein.

15 Here, in my view, the rights of
16 affected parties will be more than adequately
17 protected and they will have extensive
18 opportunity to be heard, and the due process
19 protections, both those originally proposed by
20 the Debtors and those to be added by me, would
21 be enormous. That is particularly so since I
22 will require pretrial orders which will do far
23 more to ensure that the issues are crystallized
24 and people have notice of the issues and the
25 prospective evidence than they would have by

0314

1 Adelphia Communications Corp.
2 reason of an exchange of complaints and
3 answers. I will not elevate form over
4 substance, particularly when there would be no
5 prejudice to the litigants in the intercreditor
6 disputes. And ironically, as I've noted, there
7 would be prejudice, potentially devastating
8 prejudice, to thousands of stakeholders in this
9 case if we did not proceed by contested matter
10 by reason of the resulting delay, which would
11 raise a serious risk of the loss of billions of
12 dollars of value from the Time Warner and
13 Comcast transaction. It would be wonderful if
14 the intercreditor disputes could be resolved
15 consensually, but as the Debtors properly
16 noted, at this juncture we have no alternative
17 but to proceed in the way the Debtors propose
18 or we're going to jeopardize the recoveries for
19 all.

20 The schedule we're talking about
21 will require people work hard, possibly very
22 hard, for the next seven months. But the work
23 to be done can be done in that time with no

24 material adverse effect on the business of Steven L. Roy of 250

25 fairness. It differs very little from that

0315

1 Adelphia Communications Corp.
2 required under the rocket docket run in other
3 courts.

4 I will accordingly approve the
5 Debtors' motion subject to some adjustments
6 that I consider desirable for increased
7 fairness. One, as I noted, is pretrial orders.
8 They will be required -- unless waived by all
9 of the litigants concerned, they will be
10 required one day before the pretrial conference
11 is scheduled with respect to the issues they
12 address. I will also confirm, to the extent my
13 analysis hasn't already done so, that the
14 parties will have all of the rights that they
15 do in contested matters, including the rights
16 to invoke such rules of the Federal Rules of
17 Civil Procedure, most obviously the discovery
18 rules that 9014 incorporates.

19 I'm also making this ruling now
20 without prejudice to parties' rights to ask me
21 to make other rules applicable too, as rule
22 9014 expressly authorizes me to do, but I'm
23 telling you now that I will be wary of such
24 requests if I believe that they're inconsistent
25 with the interests of the estate in getting an

0316

1 Adelphia Communications Corp.
2 expeditious determination of the issues that
3 need to be decided and, I will be particularly
4 wary of them if they tend to delay the
5 proceedings and impair the stakeholders'
6 interest in preserving the Time Warner/Comcast
7 deal.

8 Another section, 1109(b)
9 protections. As you all know, 1109(b) provides
10 parties in interest with the right to appear
11 and be heard on any issue, and I share some of
12 the concerns articulated by Mr. Kaplan and I
13 believe some others, with respect to that. The
14 ability of everybody in this room appear and be

15 heard in this controversy, I think it is going to be
16 going to most likely involve only the Arahova
17 noteholders and the parent noteholders, is a
18 matter of considerable importance to me because
19 I think that has been respected under 1109(b)
20 and at least impliedly by the Second Circuit in
21 Term Loan Lenders v. Caldor.

22 But as I noted in oral argument,
23 to make the right to appear and be heard
24 meaningful, you've got to say something. I
25 think it will be of great importance to the

0317

1 Adelphia Communications Corp.

2 parties that people file issue statements so
3 that others can respond to issues of concern
4 and address them in discovery if wanted, and in
5 briefs -- I said "if wanted." I mean if
6 warranted -- and in briefs if warranted.

7 But I will not link the rights
8 to sit in and listen to depositions or to view
9 documents in the document depository with the
10 filing of such issue statements. However, if
11 people want to do more than listen and examine
12 documents, such as if they want to question at
13 depositions or to submit papers to me, they
14 will have to file issue statements, because
15 fairness to everybody else in the case is going
16 to require knowing what those parties are
17 trying to show, to give them an opportunity, if
18 they have a different view of the world, to
19 respond. This approach, which balances the
20 need of folks who believe they won't be
21 affected adversely, Mr. Brozman, by way of
22 example, to monitor the proceedings and act in
23 their interests. But I am telling you that if
24 you find the need, which will be your right, to
25 shift from being a bystander or spectator on

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1 Adelphia Communications Corp.

2 the one hand, to be a participate on the other,
3 I'm going to require the issue statements.

4 I also want to emphasize, with
5 respect to those who have automatic standing or

6 who are getting standing by Polley of 224 of 250
7 that is, automatic standing because the Debtor
8 has already agreed to give it to them, that, as
9 I ruled in an earlier proceeding in this case,
10 when the -- I think it was when the Equity
11 Committee sought to intervene in the adversary
12 proceeding brought by the Creditors' Committee
13 against the banks, 285 B.R. 848, implementing
14 the Second Circuit's intervention decision in
15 Term Loan Holder Committee, the ability of a
16 party to be heard or to participate does not
17 deprive the Court of measures to maintain
18 control to ensure that matters don't get out of
19 hand. I then noted also that parties with the
20 ability to appear and be heard by reason of
21 their rights under 1109(b) do not necessarily
22 have the ability to assert control over the
23 underlying claims. As I there noted, courts
24 may control the proceedings before them even
25 after intervention and, if necessary, limit

0319

1 Adelphia Communications Corp.

2 actions by intervenors or require coordination
3 in the interests of judicial economy, avoiding
4 harassment or excessive burdens or otherwise in
5 the interests of justice.

6 I am optimistic that there would
7 be no need or occasion for me to apply the
8 principles that I set forth there, but I just
9 want people to keep in mind that, although I do
10 believe that it is desirable in a case of this
11 complexity and with the spillover issues that
12 we have here, to be somewhat more generous in
13 allowing people to observe and be heard and, if
14 need be, participate, I'm going to be mindful
15 of that principle.

16 Attorney/client privilege. I
17 certainly see no basis now for finding a waiver
18 of applicable attorney/client privileges on
19 this record. I will, as Mr. Shiff suggested,
20 leave requests for finding such a waiver for
21 another day, if and when a suitable record for
22 a ruling on such an issue has been developed,

23 and after the Debtors, and the Policy of the Committee
24 and other interested parties have a chance to
25 be heard.

0320

1 Adelphia Communications Corp.
2 Business judgment issues have
3 been discussed at some length, principally in
4 connection with schedules and statements
5 possibly in connection with this. I do not
6 regard any of the Debtors' positions that have
7 been taken here to have been violative or to
8 have invoked the business judgment rule, or to
9 be violative of any duties under the business
10 judgment rule, or any of their other fiduciary
11 duties, and certainly they have not acted in a
12 conflict position which would invoke or require
13 me to focus on the absolute fairness rule. To
14 the contrary, the criticisms voiced at the
15 Debtors -- and in this room there have been
16 positions on just about every side of every
17 issue, so I'm talking about a subset of the
18 entire body of comments. But the criticisms
19 that have been principally leveled at the
20 Debtors have not been that they have acted
21 adversely to one estate for the benefit of
22 another estate, but they have elected to take a
23 position of neutrality in the potential issues
24 between debtors, which, it is argued, perhaps
25 with some force, could, if decided in certain

0321

1 Adelphia Communications Corp.
2 ways, have effects on intercreditor disputes.
3 There's been a lot of talk about the Debtors'
4 neutrality in connection with such issues, but
5 while, as I noted in the status conference, a
6 debtor may take sides in such disputes and
7 debtors not infrequently do, no statutory or
8 case law has been brought to my attention
9 suggesting that Debtors must choose sides in
10 intercreditor disputes and I'm aware of none,
11 at least in a situation where the creditors
12 with an interest in the outcome have both a
13 large enough amount in controversy to suggest

14 vigorous negotiation and/or litigation, have
15 skilled counsel to present their positions, and
16 have the will to press their respective
17 positions.

18 Debtor advocacy as to the
19 intercreditor disputes is, at the least, not
20 required. It might even be counterproductive.
21 The Arahova bondholders themselves note in
22 several places at paragraph 17 of their
23 opposition that the Debtors have a duty to
24 maximize the value of the estate, and their
25 efforts to do that and, in particular, to avoid

0322

1 Adelphia Communications Corp.
2 taking sides in the intercreditor disputes and
3 to try to bring in value for the good of
4 everybody in this room, are at the least not
5 inconsistent with that goal.

6 A few miscellaneous points. The
7 Debtors are to use their best efforts to get
8 documents and/or data into the data room as
9 soon as possible even if it means piecemeal
10 production. People who want to get at those
11 documents, if they choose to get them before
12 all of the documents are in the room or all the
13 of the data is in the room, will, of course,
14 have to take the risk that they may have to do
15 stuff twice or that their searches might not be
16 as efficient as they might otherwise be.

17 Several parties have expressed a
18 concern that their issues, which would be
19 confirmation issues, could be swept up or
20 affected in some way by the intercreditor
21 disputes and that they could be prejudiced
22 because issues where they thought they were
23 unaffected could turn out to have been decided
24 in a way that adversely affects their interest.
25 I understand the concern as a conceptual

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1 Adelphia Communications Corp.
2 matter, but I think it's unlikely to be of
3 realization. I think I can tell the difference
4 between confirmation issues and intercreditor

5 issues and I think of Steven. Right? Even
6 easier after issue statements have been filed.

7 I'll tell you folks right now
8 that I regard the appropriate interest rate
9 issues that Mr. Pohl raised as a confirmation
10 issue and not an intercreditor issue and that I
11 think he can rest assured that, if he doesn't
12 participate in the intercreditor disputes, I'm
13 not going to say that his rights were affected
14 on the interest rate issue. Likewise, I think
15 the class action plaintiffs had some concerns
16 in this regard, and I must say that their
17 issues, are not, in my view, within the
18 penumbra of these intercreditor issues as well.
19 Likewise, I think the non-agent bank group --
20 if I've articulated the parties incorrectly,
21 they can correct me -- the issues that they
22 raise are not within the penumbra of the
23 intercreditor issues. I think a good way of
24 looking at it is by the six issues that were
25 identified in the Debtors' motion and as those

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1 Adelphia Communications Corp.
2 issues will be expanded upon and clarified by
3 the issue statements to be filed by the
4 parties.

5 To be sure, if it's what it
6 takes to preserve opportunities to be heard and
7 to preserve due process, I will lean over
8 backwards to ensure that people who believe
9 they have only confirmation issues are not
10 prejudiced by what goes on as we go forward
11 with the intercreditor disputes. But I don't
12 think I'm going to need to apply such a loose
13 standard because I think it's going to be
14 pretty clear as we go forward what is and is
15 not encompassed within that array of issues.

16 I've reviewed the Debtors'
17 schedules and I think on the whole it is the
18 best that anybody could hope to do. On the one
19 hand, seven months is a long time. On the
20 other hand, I fully recognize that we have a
21 lot of work to do. On the whole, it is

22 approved. I believe of Steven L. Bolton of 20228 of 250
23 neutrality that the Debtors showed is
24 appropriate on my part, at least at this stage,
25 in teeing up issues for determination that are
0325

1 Adelphia Communications Corp.

2 matters of dispute between the Arahova
3 noteholders and the parent noteholders. In
4 particular, issues 1 and 2, which involve, on
5 the one hand, avoidance actions, and on the
6 other hand, the determination of intercompany
7 liabilities, are going to be very difficult to
8 decide without consideration of the other issue
9 that's substantially the same.

10 So I'm authorizing and directing
11 counsel for the Arahova noteholders, the parent
12 noteholders and the Debtors, with the
13 assistance of the Creditors' Committee if they
14 want to get involved as a mediator or as a
15 facilitator, to work out a method so that
16 issues 1 and 2 can be considered in a way so
17 that I don't have to decide either of those
18 issues without getting the parties' input on
19 the other one. I think that the present
20 schedule unduly would favor Arahova, but if I
21 were to flip-flop them, it would favor the
22 parent bondholders, and I don't want to do
23 either one of those. I'm flexible as to the
24 mechanics, but that's the concept I want you to
25 implement. I want you to do it insofar as
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1 Adelphia Communications Corp.

2 possible without changing the remainder of this
3 schedule.

4 I've spoken at great length
5 already, and it's obviously quite late this
6 evening. I want you all to know that my
7 failure to address other issues does not mean
8 that I haven't considered them. It means only
9 that I consider them sufficiently repetitive,
10 immaterial or otherwise unworthy of discussion
11 that I don't need to expressly address them
12 now. To the extent any other objections were

13 articulated that I haven't typically covered,
14 they're rejected.

15 I am going to so order the
16 record because I want you folks to get to work
17 right away. However, Mr. O'Connor, I would
18 like you or your designee to make revisions in
19 the proposed order consistent with this ruling
20 and to get them in for consideration by me at
21 your earliest reasonable convenience. Given
22 the number of parties, I think it's impractical
23 to ask that you try to caucus with everybody in
24 this room. Instead, I'm going to ask you to
25 caucus only with Mr. Bennett, Mr. Lauria, and

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1 Adelphia Communications Corp.
2 if Mr. Shiff wants to get involved, Mr. Shiff
3 or his designee, to work on the form of the
4 order. And if you can't resolve it
5 consensually as amongst those folks, to settle
6 it on one business day's notice, 24 hours'
7 notice, by hand or fax or e-mail.

8 It's been a long day. Good
9 evening. Have a good night.

10 MR. TREPPER: Your Honor, at the
11 risk of prolonging an already long day, but
12 everybody is here, I just want to make sure
13 that we have an understanding of your calendar
14 requirement with all these other burdens. We
15 would propose to, at this point, schedule a
16 hearing on a disclosure statements for the week
17 of September 19th, which puts us between Labor
18 Day and the Jewish holidays. I cannot tell you
19 with certainty that we're going to hold that
20 hearing on that date, but we need to start
21 moving on the Time Warner side of the
22 transaction as well. So I was hopeful that --
23 we will be submitting an order in that regard,
24 but I wanted the major players here to know it.

25 THE COURT: Is that

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1 Adelphia Communications Corp.
2 September 19th, you said?

3 MR. TREPPER: The week of

4 September 19th. September 19th of the first
5 day of the week. We haven't had a chance to
6 check --

7 THE COURT: Have any of your
8 shop talked to my chambers about the schedule?

9 MR. TREPPER: Not the dates. I
10 didn't know what the schedule was.

11 THE COURT: I can do some, but
12 not all, scheduling matters in Ms. Blum's
13 absence. I can do a lot of things as a judge,
14 but there are limits to my powers. Would it be
15 helpful to everybody in this room if we did a
16 first check on what's in my scheduling book
17 right here on spot?

18 MR. TREPPER: It's fine either
19 way, Judge. I don't want to hold people; I
20 know the hour is late. But I wanted to make
21 sure we got this on the record.

22 THE COURT: Stand by.

23 Mr. Trepper, do you think you
24 can do it in a single day?

25 MR. TREPPER: I doubt it, Judge.

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1 Adelfia Communications Corp.
2 You've never known me to be anything but
3 direct.

4 THE COURT: You got Global
5 Crossing done in a single day, but Global
6 Crossing was not anywhere near as
7 confrontational as this case.

8 MR. TREPPER: Well, even a
9 description of the resolution process will be a
10 matter of dispute in the disclosure statement.

11 THE COURT: I'll bounce stuff
12 off my calendar and give you the 20th and the
13 21st if that meets your needs.

14 MR. TREPPER: Thank you. We
15 will be submitting an order and circulating it.

16 THE COURT: Very good. All
17 right. Have a good evening, folks. We're
18 adjourned.

19 (Time noted: 8:24 p.m.)

20

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22
23
24
25
0330

1 Adelphia Communications Corp.

2
3 C E R T I F I C A T E

4 STATE OF NEW YORK)
)°
5 COUNTY OF NEW YORK)

6 I, KATHLEEN A. KEEFE, a Registered
7 Professional Reporter and Notary Public in
8 and for the State of New York do hereby certify:

9 I reported the proceedings in the within
10 entitled matter, and that the within transcript
11 is a true record of such proceedings.

12 I further certify that I am not related,
13 by blood or marriage, to any of the parties in this
14 matter and that I am in no way interested in the
15 outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this 29th day of July, 2005.

18
19
20 KATHLEEN A. KEEFE, R.P.R.

21 oOo
22
23
24
25

Exhibit 8 Filed Under Seal

Exhibit 9 Filed Under Seal

Exhibit 10 Filed Under Seal

Exhibit 11

AO 88 (Rev. 11/91) Subpoena in a Civil

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

SUBPOENA IN A CIVIL CASE

Civil Action Nos. 04-CV-6095T, 6547T (WDNY)

EASTMAN KODAK COMPANY, Plaintiff,

v.

SONY CORPORATION, SONY CORPORATION OF AMERICA, SONY ELECTRONICS INC., SONY ERICSSON MOBILE COMMUNICATIONS AB and SONY ERICSSON MOBILE COMMUNICATIONS (USA) INC., Defendants.

SONY CORPORATION and SONY ELECTRONICS INC., Plaintiffs,

v.

EASTMAN KODAK COMPANY, Defendant.

To: Apple Computer, Inc.
c/o Richard J. Lutton, Jr., Esq.
1 Infinite Loop, MS: 3-PAT
Cupertino, CA 95014

YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

The testimony will be recorded by stenographic means and may also be recorded by audio and/or videotape.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

See Schedule A attached to this subpoena for requested documents.

Please send documents to:

PLACE: Lerner, David, Littenberg, Krumholz & Mentlik, LLP DATE AND TIME: 9/16/05
600 South Avenue West
Westfield, NJ 07090

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

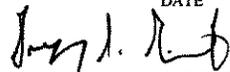
PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

 8/12/05

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Gregory S. Gewirtz, Attorney for Sony Corporation
Lerner, David, Littenberg, Krumholz & Mentlik, LLP
600 South Avenue West
Westfield, NJ 07090
Tel: 908 654 5000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

AO 88 (11/91) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE A

DEFINITIONS

In addition to the definitions set forth in the Federal Rules of Civil Procedure, the following definitions apply to each request set forth herein, and are deemed to be incorporated in each of said requests:

1. "Apple" shall mean individually and collectively, Apple Computer Inc., and any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies or corporations, and all officers, directors, shareholders, employees, agents, representatives, counsel and all other persons acting or purporting to act or that had acted or purported to have acted on their behalf.

2. "Kodak" shall mean individually and collectively, Defendant Eastman Kodak Company and any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies or corporations, and all officers, directors, shareholders, employees, agents, representatives, counsel and all other persons acting or purporting to act or that had acted or purported to have acted on their behalf.

3. "Digital Cameras" shall mean digital cameras and devices incorporating digital cameras, which existed as conceptual devices, prototype devices, work-in-progress devices, noncommercialized devices and/or commercialized devices, as of December 31, 1997.

4. The terms "persons" and "parties" includes, without limiting the generality of their meaning, a natural person, corporation, association, company, firm, unincorporated division or other business entity, partnership, joint venture, trust, estate, agency, department or bureau, governmental or judicial person, or legal entity.

5. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34 of the Federal Rules of Civil Procedure, and shall include any writing, report, memorandum, file, communication, computer transmission, computer or electronically stored material (stored in any medium); e-mail, correspondence, study, telegram, telex, agenda, minutes, bulletin, instruction, literature, memorandum of conversations, notes, notebook, diary, data sheet, work sheet, recording, tape, drawing, graph, index, chart, telephone log or record, photograph, phonographic record, other data compilation (written, recorded, printed, transcribed, punched, taped, or filed), other graphic matter, or any other communication or representation (including letters, words, pictures, sounds, or symbols or combinations thereof), including any drafts of the foregoing items and any copy or reproduction of any of the foregoing items upon which any notation, work, figure or form is recorded or has been made which does not appear on the original, or as to whose existence, either past or present, the responding party has any knowledge or information.

6. The phrase "refer or relates to" includes reflecting, constituting, containing, embodying, describing, analyzing, identifying, stating, evidencing, referring to, relating to, concerning, involving, dealing with, or bearing on (whether legally, factually, or otherwise), or in any way relevant to within the Federal Rules of Civil Procedure, in whole or in part.

7. The term "communications" include all forms of transmission of information, in the form of facts, ideas, inquiries, or otherwise, whether oral or in writing or in some other medium.

8. The terms "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible, and each shall include the other whenever such

construction will serve to bring within the scope of these requests any information that would not otherwise be brought within their scope.

DOCUMENT REQUESTS

1. All documents and things that refer or relate to the research and development of Apple's Digital Cameras, including, but not limited to, conception and reduction to practice documents, presentations, project overviews, product features, technical specifications, proposals, marketing plans, schematic diagrams, block diagrams, lab notebooks, prototypes, and progress reports.

2. All documents and things that refer or relate to all communications, meetings, discussions, development efforts, or correspondence with Kodak relating to Apple or Kodak Digital Cameras.

3. All documents and things that refer or relate to all communications, meetings, development, joint development or correspondence with Sanyo, Chinon or Tamron relating to the Digital Cameras of any of these companies.

4. All documents and things that refer or relate to Digital Cameras with the following Apple project or Digital Camera names/models: Adam, Phobos, Aspen, QuickTake, Venus and Nimbus.

5. All documents and things from the files or records of persons with or formerly with Apple, that refer or relate to the research and development of Apple's Digital Cameras.

Exhibit 12

EXHIBIT 12

U.S. Patent Number	Patent Issuance Date	Patent Application Publication Date¹	Latest Date Statute of Limitations Ran²
5,493,335	February 20, 1996	N/A	February 20, 2000
5,828,406	October 27, 1998	N/A	October 27, 2002
6,147,703	November 14, 2000	N/A	November 14, 2004
6,292,218 ³	September 18, 2001	N/A	September 18, 2005
6,441,854	August 27, 2002	August 23, 2001	August 23, 2005
6,879,342 ⁴	April 12, 2005	N/A	April 12, 2009
7,210,161 ⁵	April 24, 2007	September 20, 2001	September 20, 2005
7,453,605 ⁶	November 18, 2008	September 6, 2001	September 6, 2005
7,742,084 ⁷	June 22, 2010	August 2, 2001	August 2, 2005
7,936,391 ⁸	May 3, 2011	August 2, 2001	August 2, 2005

¹ The “patent application publication date” is the date the patent application was published, or the date the parent patent application was published.

² The “latest date statute of limitations ran” is four years after the “patent application publication date,” or the patent issuance date if the patent application was not published. As set forth in Debtors’ Motion and Memorandum of Law, the longest applicable statute of limitations for Apple’s ownership claims is four years. (*See* Memorandum at 14-15 & n.8.)

³ U.S. Patent No. 6,292,218 is a division of application No. 08/367,399, filed on December 30, 1994.

⁴ U.S. Patent No. 6,879,342 is a division of application No. 08/769,573, filed on December 19, 1996.

⁵ U.S. Patent No. 7,210,161 is a continuation of application No. 09/004,046, filed on January 7, 1998.

⁶ U.S. Patent No. 7,453,605 is a continuation of application No. 09/821,152, filed on March 29, 2001, which is a continuation of application No. 08/977,382, filed on November 24, 1997.

⁷ U.S. Patent No. 7,742,084 is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on January 7, 1998.

⁸ U.S. Patent No. 7,936,391 is a continuation of application No. 11/692,224, filed on March 28, 2007, which is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on January 7, 1998.

Exhibit 13

EXHIBIT 13

U.S. Patent Number	Patent Issuance Date	Patent Application Publication Date¹	Date that Rebuttable Presumption of Laches Applies Under <i>Mahmood</i>²
5,493,335	February 20, 1996	N/A	February 20, 2002
5,828,406	October 27, 1998	N/A	October 27, 2004
6,147,703	November 14, 2000	N/A	November 14, 2006
6,292,218 ³	September 18, 2001	N/A	September 18, 2007
6,441,854	August 27, 2002	August 23, 2001	August 23, 2007
6,879,342 ⁴	April 12, 2005	N/A	April 12, 2011
7,210,161 ⁵	April 24, 2007	September 20, 2001	September 20, 2007
7,453,605 ⁶	November 18, 2008	September 6, 2001	September 6, 2007
7,742,084 ⁷	June 22, 2010	August 2, 2001	August 2, 2007
7,936,391 ⁸	May 3, 2011	August 2, 2001	August 2, 2007

¹ The “patent application publication date” is the date the patent application was published, or the date the parent patent application was published.

² The “date that rebuttable presumption of laches applies under *Mahmood*” is six years after the date “when the purported inventor has actual or constructive notice of a patent application that omitted him as inventor . . . or that such an application is forthcoming.” *Mahmood v. Research in Motion, Ltd.*, 2012 WL 242836, at *7 (S.D.N.Y. Jan. 24, 2012). (*See also* Memorandum at 20-22.)

³ U.S. Patent No. 6,292,218 is a division of application No. 08/367,399, filed on December 30, 1994.

⁴ U.S. Patent No. 6,879,342 is a division of application No. 08/769,573, filed on December 19, 1996.

⁵ U.S. Patent No. 7,210,161 is a continuation of application No. 09/004,046, filed on January 7, 1998.

⁶ U.S. Patent No. 7,453,605 is a continuation of application No. 09/821,152, filed on March 29, 2001, which is a continuation of application No. 08/977,382, filed on November 24, 1997.

⁷ U.S. Patent No. 7,742,084 is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on January 7, 1998.

⁸ U.S. Patent No. 7,936,391 is a continuation of application No. 11/692,224, filed on March 28, 2007, which is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on January 7, 1998.

Exhibit 14 Filed Under Seal

Exhibit 15 Filed Under Seal

Exhibit 16 Filed Under Seal

Exhibit 17 Filed Under Seal

Exhibit 18 Filed Under Seal