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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 02-41729 (REG)
. New York, New York
ADELPHIA COMMUNICATIONS . Thursday, September 14, 2006
CORPORATION, et al, . 9:15 a.m.
. Debtor. .
.

TRANSCRIPT OF MOTION TO APPROVE CERTAIN AMENDMENTS TO DEBTORS'
EMPLOYMENT AGREEMENT WITH WILLIAM SCHLEYER AS
CHAIRMAN & CHIEF EXECUTIVE OFFICER OF ADELPHIA
BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording, transcript
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MOTION TO APPROVE CERTAIN AMENDMENTS TO DEBTORS'
EMPLOYMENT AGREEMENT WITH WILLIAM SCHLEYER AS
CHAIRMAN & CHIEF EXECUTIVE OFFICER OF ADELPHIA

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1 (Proceedings commence at 9:15 a.m.)

2 THE COURT: I think I know everybody; and, therefore,
3 I'm going to not ask people to introduce themselves before we
4 begin. But I will ask you, for the benefit of the electronic
5 recording, to identify yourselves when you speak. When you do,
6 I want you to address the following questions and concerns that
7 I have:

8 Folks, I have a concern that this situation has the
9 appearance, if not the reality, of being an economic football
10 game between the warring creditors, and that Mr. Schleyer and
11 the other executives may be being used as pawns in the
12 underlying controversy.

13 One thing that I'm going to want both sides to
14 address, but especially you, Mr. Rosen, is the nexus or
15 connection between the recoveries to various creditors under
16 the plan and the motion that is before us, especially insofar
17 as it affects incentivizing or holding onto management to
18 maximize the totality of the estate's recovery, vis-a-vis
19 things like fighting with Time Warner and Comcast on closing
20 adjustments, beating back-tax claims, and dealing with issues
21 that would seemingly be in the interest of the entire creditor
22 community -- and, for that matter, equity community,
23 irrespective.

24 I see this issue as a no-brainer, and indeed, see no
25 issues of fact vis-a-vis anybody other than Mr. Schleyer, and I

1 see aspects of the Mr. Schleyer thing as close to a no-brainer,
2 as well, particularly giving him the economic equivalent of his
3 entitlement, when good reason exists for his departure, and
4 compensation arrangements for his services going forward.

5 The matter, to the extent that it's debatable, is
6 monetizing or the providing of a cash equivalent, vis-a-vis
7 entitlements that he would have had if Adelphia had emerged as
8 a standalone company and not in the controlled, orderly
9 liquidation that we have following the sale to Time Warner and
10 Comcast.

11 I then want both sides -- not just you, Mr. Rosen, but
12 Mr. Trepper and Mr. Shiff and/or whoever is going to be
13 speaking on the matter -- to address whether I have issues of
14 fact on this for which I really need to have an evidentiary
15 hearing, or whether, on the undisputed allegations and the
16 motions -- pruning aside, of course, rhetoric by both sides --
17 I have what I need to make a determination today.

18 In that regard, I believe it is undisputed that facts
19 have taken place by consequence of the sale to Time Warner and
20 Comcast that have triggered the circumstances that would
21 warrant a departure for good reason under the original
22 employment agreement, that a notice of that character was
23 provided and that there is a seeming entitlement to what Mr.
24 Schleyer would get under those circumstances.

25 There also seems to be no dispute of fact as to a

1 continuing need for him and the folks who are also the subject
2 of this motion going forward. I think the main issue is how
3 you deal with the entitlements you would have had if Adelphia
4 had emerged as a standalone company and what it means to make
5 measures outcome-neutral.

6 I won't foreclose you from arguing anything else that
7 you folks think is important, but I need help on the extent to
8 which I have issues of fact on that, and whether anybody
9 believes there are issues of fact on anything broader than
10 that.

11 I also need to know whether, if I, you know, grant the
12 motion or deal with the motion vis-a-vis its undisputed aspects
13 and I'm forced to continue it, to deal with disputed issues of
14 fact, or if I have to deal with disputed issues of fact today,
15 what I have to work with in that regard. I have a Kronman
16 affidavit from July. I don't know if it was provided in
17 accordance with the case management order in advance, and what
18 our game plans are if there's a desire to cross-examine on that
19 affidavit. I need help from both sides on that regard.

20 It also seems to precede what I understand to have
21 been subsequent discussions between and among representatives
22 of the Creditors' Committee, on the one hand, and Mr. Schleyer
23 or his counsel on the other, which have not yet been set forth
24 in an affidavit, but where -- what the Creditors' Committee
25 said in the original joint motion about what happened does not

1 seem to be disputed. And I'll want help as to whether I can
2 draw comfort from the business judgment of the Creditors'
3 Committee, as well as the Debtors' board, in this regard. That
4 isn't, of course, as usual, to foreclose you from anything you
5 folks want to argue, but those are particular matters I want
6 you to address today.

7 Who wants to lead off? Is it going to be you, Mr.
8 Trepper, or Mr. Shiff or --

9 MR. TREPPER: Well, Your Honor, Myron Trepper for the
10 Debtors. I guess I'll lead off. And obviously, we all came
11 with prepared remarks with respect to support of the motion,
12 and I don't think that it's necessary, at this point, for an
13 opposition of the motion. I don't think it's necessary, at
14 this point, to get broadly into that.

15 I would observe, as part of the questions that you
16 just asked and wanted us to address, that we do think that, as
17 a matter of great significance here, the business judgment of
18 the board has been exercised with respect to these
19 compensation-related issues in a very, very deliberate fashion,
20 but I think it is exceedingly significant that this is a joint
21 motion. I don't have to tell you that consensus in this case
22 is a rare commodity, and this is a motion that has the full
23 imprimatur of the Official Creditors' Committee, which is, as
24 far as I know, and I know there's a been lots of finger
25 pointing and other commentary lately around here, which I'm

1 going to avoid, which is really the only statutory
2 representative of all unsecured creditors, and I'm going to
3 cede this podium, at some point, to Mr. Shiff and Mr. Ziehl,
4 because I think the Court should understand the process by
5 which the committee undertook to make determinations as to both
6 the necessity of these retention arrangements and the wisdom of
7 doing them.

8 They are -- it was a process that spanned several
9 weeks after the events of July 25th and into the summer, during
10 which negotiations took place directly, on a face-to-face
11 basis, by members of the Creditors' Committee, led by Mr.
12 Ziehl, so that we, at Adelphia, and particularly Adelphia's
13 board, could make the creditors comfortable that they were
14 getting unfiltered dialogue with the senior management.

15 It is not common in cases like this, I think, Your
16 Honor, for the debtor and its board and its advisors to
17 encourage creditor representatives to deal directly with
18 management on issues relating to management compensation. The
19 normal course is usually to have negotiators proffering to each
20 other proposals and potential outcomes and treatments for
21 executives who are being asked to stay.

22 But we felt, and the board of Adelphia felt that it
23 was critically important that the committee satisfy itself,
24 that the group that management had put together to, what I call
25 stay the course after the sale, was a group that could convey

1 exceedingly valuable benefits to the estate, and also to
2 satisfy themselves, that is the committee, that absent
3 appropriate arrangements for all members of this team, there
4 would not be either a team of cohesive, coherent management
5 executives willing to stay, and that they were committed to
6 stay only as part of the team that had been built by Mr.
7 Schleyer after he came to Adelpia.

8 So I think it is important, and it's unique in the
9 circumstance, that the business judgment that the committee,
10 which basically came to the same conclusions, obviously, that
11 the board did, the board obviously has direct, ongoing contact
12 with management, knows their value, understands their level of
13 commitment, but I think we did take a unique step here in
14 allowing creditor dialogue directly with the senior managers
15 and ultimately with anyone else they wanted to talk to.

16 So this is a product of an unusual process, which I
17 think has borne very valuable fruit for this estate. So the
18 business judgment of the committee to us, Your Honor, is a very
19 important consideration in this.

20 The joint motion, which Mr. Friedman and I told you on
21 August 12th, I think it was, was what we contemplated happening
22 when we had approval, at that point, on an interim basis, as
23 you will recall, of Ronald Cooper's arrangements with the
24 company -- departure arrangements with the company, because
25 there was clearly no longer any need for the chief operating

1 officer services, and the committee wisely concurred with us
2 that it was in the best interest of the estate to provide him
3 with his departure benefits and not incur the continuing
4 expense of his employment, when he had no assets to manage.

5 We told you on the 12th of August that the committee
6 was going to vigorously attempt to put together this package,
7 and we did. It took several weeks, and I'll just comment, as a
8 sidebar, that it's very hard to get anything done in the last
9 two or three weeks of August in any commercial enterprise in
10 this town, but people actually worked very hard at getting it
11 done during a very, very difficult period.

12 So overall, we have met our goals, that is the
13 collective goals of the debtor and the Official Creditors'
14 Committee, to wrap Mr. Schleyer's arrangements, arrangements
15 for the executive vice presidents, Ms. Wittman and Mr.
16 Sonnenberg, and a team of executives who are working with and
17 for them, and who are loyal to them, into one package for the
18 benefit of the estate, to -- and I'll be very, very careful
19 here, but to, shall we say, slice and dice this package, to
20 remove elements of it, to defer consideration of it is
21 obviously within the province of the Court. We don't think you
22 need to. We don't think you should.

23 I think I have to be careful in saying that all we are
24 asking for today is authorization to enter into continuing
25 arrangements with these employees and establish the programs we

1 outlined. They are not required to stay, absent their
2 understanding that this is a team. I cannot assure anyone
3 here, and I cannot assure the Court, that people will stay
4 under all circumstances, depending on whose arrangements are
5 approved or not. I recognize that that is a tension-building
6 comment, but it is a fact for the record. These people came as
7 a team. Mr. Schleyer is their, shall we say, quarterback, for
8 want of a better metaphor in the coming fall season, and they
9 are loyal to each other. They are loyal to him. They are
10 loyal to the board.

11 But I think we ought to recognize the other unique
12 aspect of this, which is they have no future at Adelphia. The
13 assets have been sold. They were the team that managed this
14 unusual sale, extraordinarily result. They have no opportunity
15 for continued employment. Their tenure as cable executives, at
16 least in this company, is over. There are no cable assets to
17 manage. They are relatively young in age, they're mobile, they
18 have families, and they have every intention of pursuing other
19 career opportunities.

20 We, the board, the advisors and the senior managers,
21 Mr. Schleyer, Ms. Wittman and Mr. Sonnenberg, put together a
22 program designed to, as we called it internally, do the right
23 thing. Stay the course after the sale, encourage people to
24 stay in a no-future environment for reasonable compensation, to
25 finish the job they started, and that's what this program is

1 all about. That is, a group of people who could be doing other
2 things, who could be seeking other employment, and who could be
3 getting signing bonuses elsewhere, doing what is necessary to
4 finish this out.

5 Now, it's easy for the debtor and its advisors and
6 managers to say that, but I think it's fair to say that you
7 will hear from Mr. Ziehl and Mr. Shiff, without preempting your
8 remarks, we ask them to do confirmatory due diligence on both
9 -- on all of those points, and they have, and that is why we
10 have a joint motion.

11 So I think that, from a business judgment perspective,
12 there can be no quarrel that, with the Official Creditors'
13 Committee on board, and Mr. Ziehl representing a large
14 constituent of holders who are both on and not on the committee
15 on board, and a single group, at this point, for whatever
16 reason, and I -- you know, I respect everyone's right to do
17 what they have to do for their clients and on behalf of their
18 clients, but this is not about plan voting. This is not about
19 objections to confirmation. I have tremendous respect for Mr.
20 Rosen and his firm. We've worked together on many matters.
21 We've worked on the other side. I'm sure they're going to, if
22 their clients decide to vote against the plan, mount a
23 significant challenge to confirmation.

24 THE COURT: Pause, please, Mr. Trepper. Am I correct
25 that there is nothing in the proposed arrangements that makes

1 the compensation to Mr. Schleyer go up or down, depending on
2 how creditors divvy up the pie under this plan?

3 MR. TREPPER: That is correct, Your Honor. In fact,
4 the arrangements with Mr. Schleyer, as we say in our papers,
5 are now less favorable to him than we originally proposed in
6 our motion of June 9, which was scheduled for a hearing on July
7 25th, because the committee and its representatives negotiated
8 for and obtained from Mr. Schleyer two things that were absent
9 from the last proposal.

10 The first was there is a five-million-dollar
11 discretionary bonus that we proposed that the board award Mr.
12 Schleyer upon approval of our prior motion. The committee
13 negotiated carefully with Mr. Schleyer and he agreed that that
14 discretionary bonus would be deferred until the defined term
15 emergence, so that he is incented to get a plan done and work
16 with the committees to do so.

17 THE COURT: A plan done, but without regard to a
18 particular plan?

19 MR. TREPPER: With any regard to any -- well, at this
20 point in time, we -- the Debtors have signed on to a joint
21 plan, so he will pursue the plan that the Debtors have
22 committed to, but that was not part of the bargain that was
23 struck between him and the committee.

24 The second piece of it was the Mr. Schleyer, and I
25 think Your Honor mentioned it and our commentary when we were

1 here on July 25th, that he had no absolute commitment to stay
2 after receiving his benefits. The committee has now
3 negotiated, and he has agreed to remain for a period that could
4 be up and until the 30th -- 31st of March of 2007, under
5 certain circumstances.

6 So the committee has assured itself both of Mr.
7 Schleyer's continuing willingness to work towards confirmation
8 of now the joint plan that the Debtors have filed and joined in
9 with the committee, and he is not economically incented one way
10 or another, based upon recoveries in that plan. And they also
11 have obtained his commitment to be a post-confirmation, post-
12 closing combination leader of the group that's going to deal
13 with those critical issues you mentioned, and a host of others.

14 So I think that that -- the treatment he's receiving
15 now is less favorable than he was going to receive if his
16 motion had been -- if our motion had been granted on July 25th.

17 We do note in the papers, and I don't really want to
18 get too deeply into it, the only objectors on July 25th were
19 the committee and certain members of the committee, and I think
20 that's understandable. I mean, I think that in these kind of
21 cases, where you have issues that are, what I would call broad-
22 case issues, such as executive comp, it is not uncommon for
23 creditor groups who are not part of the committee process, but
24 are represented by the committee, to defer to the committee to
25 litigate, negotiate or settle those kinds of issues.

1 There were no objections filed to the July 25th motion
2 by Mr. Rosen's group. They chose not to do it. That's their
3 choice. There were no objections filed to Mr. Cooper receiving
4 his payments in August. There were no objections when we
5 adjourned the hearings, pending the joint motion. The only
6 time we received an objection was after we had done everything
7 we could to satisfy the creditors and they were satisfied that
8 we could put together a comprehensive package.

9 It is the comprehensive package that the estate
10 fiduciaries put together that are the subject of today's
11 objection, and I think while the Court is not going to make its
12 determination on who objected when, the Court is entitled to
13 consider why the objection now, unless it is part of a pattern
14 that says, we'll wait and see what the committee comes up with
15 and then we'll second guess their business judgment, and I'm
16 not sure that that's, you know, the way we ought to run a case,
17 especially on issues such as this, which have the broad-base
18 support of the creditor community that this one does.

19 I would also note that no other creditor group, banks,
20 no equity representatives are here today opposing this relief,
21 and I think it's because it's basically sensible, and sometimes
22 we do things that are tactical. Here, we're doing things that
23 are totally sensible.

24 So that is, I hope, responsive to parts of your
25 questions.

1 The Kronman affidavit. We did not proffer any
2 declarations as part of this motion. We felt, clearly, that we
3 had developed what the Court expected us to develop and the
4 parties expected us to develop, which is a joint motion that
5 expresses the will of the creditors, as enunciated and stated
6 by their statutory representatives by their signature on the
7 joint motion.

8 Joint motions between a debtor and a Creditors'
9 Committee are not common, and we felt that that motion says
10 everything it needs to say and did not need to be supported by
11 separate affidavits.

12 The reference to the Kronman affidavit was only to
13 remind the Court that at the July 25th event, when the hearings
14 were adjourned, counsel for the Creditors' Committee requested
15 that we provide them with that which we would have proffered in
16 connection with that hearing, and we gave them a copy of the
17 Kronman affidavit.

18 We mentioned it. We did not submit it as part of this
19 record, but only to indicate that the Debtors' business
20 judgment was offered to the committee in the form of the
21 Kronman affidavit more than six weeks ago. Two months ago.

22 So if the Court -- I do not think that the Court needs
23 further evidence, and I think that you should await hearing
24 from Mr. Ziehl and Mr. Shiff with regard to this. I don't
25 think that there are any issues of fact that are really in any

1 serious dispute. I agree with you on that.

2 The issue of conversion of --

3 THE COURT: I'm agnostic on that issue at this point,
4 Mr. Trepper. I haven't formed a view one way or the other.

5 MR. TREPPER: I understand.

6 THE COURT: Continue, please.

7 MR. TREPPER: I think the issue of -- and I just want
8 to make sure I understood your question, nexus to recoveries
9 have been -- I've covered. There is no nexus to recoveries.
10 There is certainly nexus to moving the case forward and keeping
11 the group together to manage the assets.

12 Now, there is a nexus to recoveries that could, if I
13 wanted to get deeply into it, discuss with you. The nexus to
14 recoveries here is clearly what would happen if the company did
15 not have the benefit of the relief we requested here, the
16 number of people that we need, and the departure of a group of
17 people --

18 THE COURT: Of course. But the thrust of my question
19 is does this motion in any way put its thumb on the scale in
20 the disputes between the creditors? I'm not talking about
21 maximization of the estate. I plainly see that nexus.

22 MR. TREPPER: No, it does not.

23 THE COURT: And I'm not sure if there is an issue of
24 fact on that, but I need both sides to address whether this has
25 the appearance or reality of, on the one hand, incentivizing

1 Mr. Schleyer to favor the creditors who are on one side of the
2 dispute with Mr. Rosen's clients or, on the other hand, is
3 being used to punish him for the debtor having supported the --
4 or enjoined in this plan, or is in any other way being used to
5 skew the intercreditor disputes that have become the prominent
6 feature of this case.

7 MR. TREPPER: There is nothing in any of the motions,
8 Mr. Schleyer's amended contract, or any other document that
9 requires Mr. Schleyer to take any position in intercreditor
10 disputes. There is an agreement that he will continue to be
11 the CEO and the chairman of the company, and continue to manage
12 that role and continue to participate with creditors and others
13 in the Chapter 11 process. He is not obligated to appear or
14 support anybody's position. I have no idea whether someone
15 will subpoena him as a witness in any particular litigation,
16 should that eventuate, but that will be responded to should it
17 occur. But there is nothing that obligates him to support any
18 particular intercreditor position.

19 Now to the extent, Your Honor, that the plan, in and
20 of itself, that is being proffered to you and that you will
21 determine whether it will go out or not under the exclusivity
22 decisions I know you're working on now, to the extent that that
23 plan proposes a settlement of the intercreditor dispute, the
24 company, through its executives, supports that plan and,
25 therefore, supports proffering the plan as a settlement within

1 the boundaries of the neutrality issues that have pervaded this
2 case. If it gets down to either non-confirmation or litigation
3 over intercreditor issues, continued litigation, with the boxes
4 of documents around here, then Mr. Schleyer is not obligated in
5 any way, under his arrangements, to take a position one way or
6 another, other than to respond to any discovery requests, I
7 assume, and subpoenas that might be served upon him.

8 THE COURT: Okay. Anything further?

9 MR. TREPPER: I just want to make sure I've touched
10 every one of your issues. I think not, Your Honor, unless my
11 colleagues here think we've missed something. I'd like you to
12 hear -- I don't want to control the order of this, but it seems
13 proper to have the supporters of the motion comment at this
14 point.

15 THE COURT: That would be my normal practice. I'll
16 hear from Mr. Shiff or Mr. Ziehl next.

17 MR. TREPPER: Okay. And I will reserve any further
18 comment for reargument, if necessary. Thank you for your time.

19 THE COURT: Pause, please. Mr. Rosen, you're up?

20 MR. ROSEN: Yes, Your Honor. Brian Rosen, on behalf
21 of the Adelpia Senior Noteholders group.

22 Before Mr. Ziehl starts, I was just hoping that
23 perhaps we could limit the comments now to some of the basic
24 issues that you asked for, which were whether or not there are
25 any facts in dispute, rather than -- because I think Mr.

1 Trepper, to a certain extent, actually testified on behalf of
2 some of the issues set forth in the motion, and I would rather
3 deal with some of the evidentiary issues that Mr. Ziehl and Mr.
4 Shiff might address, rather than them getting into and actually
5 testifying, which it seems like Mr. Ziehl is about to do.

6 THE COURT: All right. Well, I'm going to take this
7 as if it were an opening or a legal argument, as compared and
8 contrasted to evidence, the purpose of which is to enable me to
9 determine the existence of material facts.

10 I'm going to let Mr. Ziehl speak, but I'm telling you
11 that it's not going to be as a substitute for testimony if I
12 can conclude that testimony is necessary, and that it's going
13 to be kind of like lawyers make openings at the beginning of
14 every trial, in situations where there are.

15 It is going to have one hybrid aspect, which is you're
16 going to be free to comment on the extent to which this would
17 be kind of like a summary judgment motion, where there are no
18 disputed issues of fact. I need help to ascertain what is
19 disputed and what isn't.

20 With those confines, I'm not going to put a sock in
21 your mouth, Mr. Ziehl, but I'm telling you in advance how I'm
22 going to deal with what you have to say, in accordance with
23 what Mr. Rosen just said.

24 MR. ROSEN: Thank you, Your Honor.

25 MR. ZIEHL: Your Honor, Dean Ziehl, Pachulski, Stang,

1 Ziehl, Young, Jones & Weintraub.

2 I do want to just address the process, because I was
3 personally involved in the process, and just so that the Court
4 is aware of what that was, and I was authorized by my committee
5 to participate with the Creditors' Committee in this process
6 because of their concern about the things that the Court
7 pointed to in the beginning, which is there is a need for
8 continuity here to handle certain things that are going to take
9 place over a long period of time, long after this year.

10 There are tax returns, SEC requirements. There are
11 significant -- hundreds of millions of dollars of escrows under
12 the Time Warner transaction, and my committee was very
13 concerned about how those were being handled, and although it
14 was effected by the plan process in the sense that there will
15 be a plan administrator, it was viewed by my committee and by
16 the Creditors' Committee that there's no adequate time for a
17 plan administrator, upon plan going effective, to really
18 address these issues that have to be dealt with immediately.

19 So because of those concerns --

20 THE COURT: Pause, please, Mr. Ziehl. Has that person
21 been identified?

22 MR. ZIEHL: Yes.

23 THE COURT: Or person or company?

24 MR. ZIEHL: Yeah. That person has been interviewed.

25 The Creditors' Committee and others have interviewed a whole

1 series of candidates. That person has been identified. I know
2 that that person has met with management to try to do
3 transition, but he's not employed yet and he has no authority.
4 Really, we're just trying to get a jump start, so that if and
5 when the plan gets confirmed and that person has authority, he
6 understands what some of the issues are that will have to be
7 dealt with.

8 In the near term, we have all kinds of financial
9 reporting requirements that need to be done. There are
10 tremendous tax issues that are being worked on going into this
11 fall, and also next year and beyond, in terms of claims, where
12 documents are, witnesses for the bank litigation. There are a
13 whole host of things that will need to be handled in the next
14 quarter, two quarters, three quarters, over the course of the
15 next year, and so we wanted to get that process moving.

16 The big concern that the committee had and our
17 committee had was that we don't have, on our side of the table,
18 any real institutional knowledge of the -- in the -- sort of
19 the inner workings of the debtor, and so what we did is we had
20 a series of meetings with the executive vice presidents
21 initially, the general counsel and the CFO, to begin to
22 identify for us, and this is before this person who was going
23 to be a plan administrator was even identified, to identify
24 which managers, which key people we have that are going to be
25 needed for which tasks and to start to develop a program with

1 them and what their recommendations were in terms of keeping
2 those people on. How do we incentivize them to stay on,
3 particularly the people that need to stay here a year or more,
4 some of whom have very unique skills and knowledge base, and
5 who are also extremely marketable, and as Mr. Trepper said,
6 need to be incentivized to stay in a business with no future,
7 which is the wind down of this debtor?

8 So we had a whole series of meetings. The initial
9 focus of it was really on forty-five or so key employees that
10 we were able to identify, with the assistance of the general
11 counsel and the CFO, out of approximately 300 employees that
12 will be expected to stay on during this wind-down period. And
13 then we developed various proposals and worked with them to --
14 which became the e-KERP (sic), which has been presented to the
15 Court and which I understand there's no objection to.

16 It became very clear, also during that process, that
17 we needed to have the senior management, that is the EVPs and
18 Mr. Schleyer's participation in this process, at least through
19 the end of the year, and we needed to push it into at least
20 through the first quarter of next year, because of the SEC
21 filings that have to be done and also the fact that the
22 managers, these forty-five really key people that are under
23 them, are going to be influenced tremendously by how -- whether
24 this team is together, whether they are working together, and
25 so that certainly influenced us. We had to develop a program

1 by which we could keep Mr. Schleyer and the two executive vice
2 presidents active through at least the first quarter of next
3 year, and that's how this plan was developed.

4 There were committee meetings. I was invited to
5 participate. I'm not on the committee or represent a committee
6 member, but I was invited to participate. We had a series of
7 calls --

8 THE COURT: Pause. Was there a businessperson who
9 acted as the point person in these discussions?

10 MR. ZIEHL: Yes. There was a businessperson who is a
11 member of the Creditors' Committee that participated. There
12 were others that participated, but one person, in particular.

13 And -- so there were a series of calls with the
14 committee, where we kept them up to date on the progress of the
15 negotiations. As Mr. Trepper said, we went back to Mr.
16 Schleyer and we negotiated a package for him that was somewhat
17 less favorable than what had been originally applied for, and
18 that's where we ultimately settled it. It had nothing tied to
19 a particular plan. Mr. Schleyer's comp, as Mr. Trepper said,
20 is on the effective date, and he has the deferred component,
21 which he had applied for originally, and if there is any plan -
22 - there is an emergence under any plan, ours or anyone else's,
23 he would be entitled to be compensated under that. And if
24 there is no plan, he does not get that portion of his
25 compensation until there's the distribution to creditors, but

1 not any particular creditors in any particular order. It's
2 just two creditors. And so, if there's a Chapter 7 in this
3 case, God forbid, Mr. Schleyer would not get that portion of
4 his compensation until the Chapter 7 trustee did his
5 distributions.

6 So unless the Court has any questions, that really
7 does represent the process that we went through.

8 THE COURT: Okay. Mr. Shiff, do you have anything to
9 add to what Mr. Ziehl said?

10 MR. SHIFF: Very briefly, Your Honor.

11 THE COURT: Sure. Come on up, please. Let me just
12 say, before Mr. Shiff speaks, I know I have people here on my
13 9:45 calendar. I'm going to make a judgment after we get to a
14 possible starting -- interrupting point as to whether it makes
15 sense to ask this existing hearing to pause while I get through
16 what I think is going to be a very quick calendar for all of
17 you folks, but for now I'm going to ask you all to cool your
18 heels.

19 Continue, Mr. Shiff.

20 MR. SHIFF: For the record, Adam Shiff, of Kasowitz,
21 Benson, Torres & Friedman, on behalf of the Official Committee
22 of Unsecured Creditors.

23 And, Your Honor, I certainly don't want to repeat what
24 Mr. Ziehl said, but I do think it would be helpful to sort of
25 take a step back from sort of a launching point from before

1 what Mr. Ziehl started to talk about, and put in perspective
2 where we are today with respect to this motion, as well as
3 address the specific questions that the Court outlined at the
4 beginning of the hearing.

5 As the Court will recall, the process of seeking the
6 compensation of management or post-sale management began back
7 in June, with the filing of the initial motion, and as the
8 Court will recall, the Creditors' Committee did file an
9 objection to the initial compensation motion, not as to the
10 line-level employees, but specifically as to the higher-level
11 employees, and that objection, Your Honor, was filed back on, I
12 believe it was July 21, which incidentally --

13 THE COURT: Pause, please, Mr. Shiff. When you were
14 talking about the upper-level employees, are you talking about
15 just Mr. Schleyer and Mr. Cooper --

16 MR. SHIFF: It was --

17 THE COURT: Or were Sonnenberg and --

18 MR. SHIFF: It was Mr. Schleyer and Mr. Cooper. At
19 the time, I believe what was proposed for the remainder was of
20 a smaller nature, and we had only objected to Mr. Schleyer and
21 Mr. Cooper.

22 THE COURT: Okay. Continue, please.

23 MR. SHIFF: And, Your Honor, I do mention the date,
24 July 21, because I think there was an implication or a
25 statement in the ACC -- the new ACC group's papers as to some

1 timing or linkage issues. And just so we're very clear, the
2 term sheet, incidentally, was signed up with the Debtors and
3 the committee on July 21. Subsequent to that, we did file an
4 objection to the Schleyer and Cooper retention. Subsequent to
5 that, we appeared in Court here on July 25, and told the Court
6 that we did not support compensating -- or the additional
7 compensation, under those circumstances, to Schleyer and
8 Cooper.

9 We then participated in a series of conference calls
10 with the Court, as well as a hearing, which I believe was on
11 August 8th or 9th, where we had still indicated we were not
12 prepared to support -- although at that time, we were willing
13 to move forward with Cooper and let him out. We were not
14 prepared to move forward with Schleyer.

15 At that time, Your Honor, I think we were very clear
16 to the Court that we thought any additional compensation to Mr.
17 Schleyer needed to be tied to what we called, I think, rational
18 goals, and I think those goals clearly were set out for making
19 sure that it was tied to getting distributions out to
20 creditors; and number two, ensuring that Mr. Schleyer simply
21 wasn't paid and walked out the door; and number three, related
22 to that, that Mr. Schleyer could assemble, or together with Mr.
23 Schleyer, could assemble a team to maintain the institutional
24 knowledge that we believe this senior management team,
25 including Ms. Wittman and Mr. Sonnenberg, have.

1 And Mr. Ziehl laid out some of the issues. We don't
2 need to run through them. Tax, SEC. Certainly of great
3 significance are the purchase price adjustments and continued
4 negotiations under the Time Warner agreement, which would be a
5 big source of compensation.

6 Now, Your Honor had asked the question earlier as to
7 whether or not this, you know, tips the scales in terms of a
8 plan or a particular plan. I think Mr. Trepper made the point,
9 and I think a very important point for us is we believe,
10 certainly, that having this team together will expand the pie
11 for all creditors. Whether that gets distributed under the
12 current plan in a format, in its current format, whether it's
13 under a different plan, or as Mr. Ziehl points out, quite
14 frankly, if it ends up being in a Chapter 7, quite frankly,
15 Your Honor, as our plan is currently structured, the ultimate
16 beneficiaries of additional monies that would come in, they do
17 reside -- they flow up, up to the top, to the ACC holders, so
18 we certainly had viewed this as a means of being able to expand
19 the pie overall, for whatever plan format ultimately happens,
20 and obviously, there are no assurances as to how that will turn
21 out.

22 The other item, I think, that was very important, and
23 I'm not going to comment on the specific negotiations that went
24 back and forth. I will certainly inform the Court -- well, let
25 me back up.

1 The Court had asked whether there are disputed facts
2 here as to, you know, whether or not additional evidence is
3 needed. As I read the objection that's been put forth, there
4 are questions as to whether or not this is a good deal or a bad
5 deal, if monies are being overpaid or not. Certainly I don't
6 think there have been any suggestions in any of the papers as
7 to any of the process points, and I believe, as the Court's
8 case management orders take place or exist, that those
9 statements are then generally deemed accepted as statements of
10 fact.

11 I think even if one looked beyond the four corners of
12 the document, however, I think the Court can certainly rely
13 upon the facts that the Court has seen itself, that relates to
14 the filings of the different motions, the discussions at the --

15 THE COURT: Just a minute, please. Okay. Continue,
16 please, Mr. Shiff.

17 MR. SHIFF: Yes. I mean, the fact of the filings at
18 their various times; the conference calls or chambers
19 conferences that have been held on this -- on these motions.
20 Not in its exact, current form, but at least, you know, as it
21 started, as well as the hearing before the Court on August 8th.

22 So we believe there is enough in the record, both from
23 the papers as to stuff and statements that haven't been
24 disputed, and perhaps more significantly, as to the process
25 that has unfolded before the Court, that there should -- there

1 is sufficient record here for the Court to rely upon, without
2 needing any additional discussion or evidence as to the
3 business judgment, both initially as to the -- what the board
4 did, and then subsequently, as the Creditors' Committee got
5 involved and as Mr. Ziehl has walked through, and I will not
6 belabor the point, improved both the Schleyer contract, from
7 our perspective, and very significantly, tying it into the
8 retention of the remainder of the management team.

9 Your Honor, I think with that, and with what else was
10 said by the people before me, I think simply, we don't believe
11 there's been any questions as to the process, as to what has
12 unfolded, both as to the Debtors and the committee. We think
13 there's sufficient material for the Court to rely upon and we
14 think, quite significantly, and this really, I think, touches
15 on the first issue the Court laid out, we think these programs
16 are rationally tied to what the Court had asked all of us to do
17 back on the sale hearing, which was to keep our eye on the
18 ball, maximize recoveries and try to keep these cases moving
19 and get them out of bankruptcy and get distributions to
20 creditors.

21 For those reasons, we support the motion or co-movant
22 on the motion. Unless the Court has any questions, I think I'm
23 finished.

24 THE COURT: Okay. Thank you. Mr. Rosen? Well,
25 first, before Mr. Rosen speaks, anybody who generally agrees

1 with Mr. Trepper and Mr. Shiff and Mr. Ziehl want to be heard
2 before I give Mr. Rosen a chance to respond?

3 Go ahead, Mr. Rosen.

4 MR. ROSEN: Thank you, Your Honor. Again, for the
5 record, Your Honor, Brian Rosen, Weil, Gotshal & Manges, on
6 behalf of the Adelpia Senior Noteholders group.

7 Your Honor, I take it from the three presentations
8 that have gone forward that they've addressed not only some of
9 your questions or the dispute of fact issue, but their entire
10 presentation, so in that regard, Your Honor, I will just make
11 the entire presentation, also, unless the Court wants me to
12 bifurcate it.

13 THE COURT: I think that may be wise, but let's pause
14 for a second, to see if any of your opponents disagree with
15 what you just said. I hear a conspicuous silence, so I'm going
16 to make the same assumption. Go ahead.

17 MR. ROSEN: Thank you, Your Honor.

18 First, Your Honor, I would like to say that I have to
19 disagree with what Mr. Shiff just tried to point out several
20 times, that there were no process points that were challenged.
21 In fact, that was one of the very issues that we didn't raise
22 in our papers. We talked about the process. We talked about
23 the timing, and I know that Mr. Shiff is trying now to set
24 forth --

25 THE COURT: Let -- help me understand the timing

1 you're talking about.

2 MR. ROSEN: Well --

3 THE COURT: Are you talking about the timing between
4 the time that they struck the deal and they brought it on for a
5 hearing today, or are you talking about the effort that the
6 Creditors' Committee made after this originally came before me?

7 MR. ROSEN: We're talking about the linkage between
8 the agreement that was struck and the execution of the term
9 sheet, and I know that Mr. Shiff has tried to distinguish that
10 here this morning by saying that they filed an objection after
11 the fact, and I know -- I believe it was Mr. Ziehl -- I
12 apologize -- it was Mr. Trepper who said that there was nothing
13 in the motion that said, in fact, that they had to support the
14 plan, but it was the very term sheet that Mr. Schleyer caused
15 the company to execute which said, I will support this
16 structure, and the Debtors will go forward with this kind of
17 plan, Your Honor. And then, if one takes a look at that, all
18 of a sudden you have a deal that is struck with respect to
19 compensation.

20 Your Honor, what we also have or don't have here today
21 is any testimony, because the Court, in fact, said that what
22 was going to be said were going to be in the context of opening
23 statements. We have a Kronman affidavit that was handed to me
24 by Ms. Blum this morning at approximately five minutes to nine,
25 that relates to the prior motion. There's nothing with respect

1 to this motion.

2 There is nothing on the record, Your Honor, that talks
3 about the conversion, that talks about what analysis was done
4 to take stock that could be vested over several years hence and
5 all of a sudden be given a value of 10.2 or \$10.3 million, or
6 the five-million-dollar-plus increment of cash that was also
7 going to be given.

8 There is nothing that talks about the actual
9 contribution to the process that Mr. Schleyer is going to be
10 providing. I know that people have spoken in generalities
11 about the Time Warner sale and, in fact, the Court asked about
12 those very issues, the Time Warner sale, the tax issues, but
13 what is it that Mr. Schleyer is going to be doing, other than
14 being a figurehead at the top here, Your Honor?

15 I have dealt with these very situations, as many
16 others in the courtroom have, where the assets of a company are
17 sold and you're left with a group of interest, a group of
18 claims that have to be done. And I'm also very familiar, Your
19 Honor, with mega-billion cases, where you have a CEO who does
20 not get down into the granularity of purchase price
21 adjustments. Instead, that is left for other folks.

22 So the question is, what is Mr. Schleyer going to be
23 providing, in fact, in connection with the filing of a tax
24 return? Is it Mr. Schleyer, or is it one of the staff, one of
25 the many folks who are going to be benefitting from this

1 proposal? We have no testimony on that, Your Honor. We have
2 no information that can be provided.

3 The Court asked a very good question of Mr. Ziehl.
4 Was a businessperson involved on behalf of the committees? The
5 answer was yes. The question is, who is it? Where is that
6 person? Where are they today, testifying as to what went on
7 and what was the decision-making process done by, whether it
8 was Committee I or Committee II here, Your Honor? We don't
9 have anything before the Court.

10 What we asked in our papers, Your Honor, is for a
11 little bit of time and a presentation of facts. I know that,
12 in response to the objection that we filed, we got about eight
13 pages or more of rhetoric thrown our way, and I know that the
14 Court has told me twice already that the Court reads those very
15 carefully, but really, nowhere in there did they address any of
16 the issues that we raised in our papers, and nowhere here today
17 did they do that, either.

18 All we're asking for, Your Honor, is for these people
19 to make a presentation as required by the Bankruptcy Code, by
20 applicable law, to tell us what, in fact, is being done to
21 justify this. I know that perhaps, Your Honor, these
22 amendments that were made to the Code are not applicable, but
23 are these people really going to leave? I think there might be
24 some relevance to that, Your Honor. We haven't had any of
25 that. We don't know whether Mr. Schleyer is going to leave.

1 We don't know if he's going to stay. None of that has been
2 proffered here today, Your Honor, other than a statement by Mr.
3 Trepper.

4 Likewise, as I said before, Your Honor, we don't know
5 the analysis of the economics. Why all of a sudden was this
6 equity all of a sudden worth X dollars? It makes no sense
7 without any presentation of the facts. What we said in our
8 objection, that Your Honor -- is provide something, and
9 instead, we got the rhetoric, Your Honor. No significant
10 response.

11 Your Honor asked me to address the appearance of an
12 economic football game being played between creditors and the
13 executives being pawns here, Your Honor. We're not doing any
14 of that. People question why we weren't there in the first
15 instance. Well, we thought the Creditors' Committee was there,
16 Your Honor, and we thought they had objected and they were
17 pursuing it. We were never privy, Your Honor, to the chambers
18 conferences that took place with respect to Mr. Schleyer's
19 application. We had someone in the courtroom, but every time
20 people adjourned themselves and went into chambers, Your Honor.
21 Once again --

22 THE COURT: Did you make a request, because I think
23 it's unlikely that I would have excluded you, or at least
24 anybody on your behalf, for who is restricted, if any such
25 request had been made.

1 MR. ROSEN: Your Honor, we did not. We did not make a
2 request. But we are not trying to make a play -- a football
3 game with this. In fact, it appears that the ball was put into
4 play when the term sheet was executed, when the agreement was
5 struck with respect to the compensation.

6 All we're saying, Your Honor, is prove it. Tell us
7 what is out there. Show us that there's no relationship. Show
8 us how the economics actually bear out. We haven't seen that,
9 Your Honor.

10 And we are not taking a position with respect to the
11 -- I think what Mr. Ziehl referred to as the line employees, or
12 perhaps Mr. Shiff referred to them as that. That is not our
13 point, Your Honor. We're taking it with respect to the senior
14 person here, Mr. Schleyer, what he can provide to the process
15 and what economic benefits he can actually provide in the
16 relationship.

17 As far as the nexus of recoveries to creditors and the
18 motion, Your Honor, we read the plan the same, not the Chapter
19 11 plan, but the employee plan, the same way, that it is not
20 tied to one recovery or the other. But once again, if you have
21 to take a look at the time line here, Your Honor. It's tied to
22 the endorsement and the term sheet of that proposal. So we
23 look at it that way, Your Honor. Maybe there's not a per se or
24 in writing type of endorsement, but there is something here.
25 The Court has said it's a no-brainer issue, and you were

1 concerned about the economic equivalent. That is the same
2 point that I raised here, Your Honor, the monetizing of the
3 stock to this value when, in fact, we have nothing to support
4 it. No investment banker has come forward telling us what that
5 stock would have been valued at two years down if it had vested
6 and valuing it back at present value points, Your Honor.

7 We believe that there is a need for an evidentiary
8 hearing. We believe that there are several undisputed facts.
9 There is the sale. It did occur. We saw the letter that was
10 offered by the Wachtell Lipton firm as to good reason having
11 occurred, but we don't have anything else, Your Honor. We
12 don't know if it's outcome-neutral with respect to the
13 economics. It may be with respect to the treatments under the
14 plan, but that's only as it currently exists. Once again, tie
15 it back to the term sheet, Your Honor. We don't know what that
16 -- whether it was outcome-neutral in that regard.

17 And, Your Honor, you asked, again, what is there to
18 work with? I think there's nothing here to work with. There
19 are no facts. There's no evidence. We have nothing except the
20 statements of counsel, the statements of Mr. Ziehl as to his
21 involvement in the process. We have no statements of any
22 business people. We don't have a statement of an investment
23 banker. We don't have a statement of Mr. Kronman that states
24 what the board was, in fact, doing.

25 So based upon that, Your Honor, we suggest that

1 perhaps not the Court deny this in its entirety at this time,
2 but adjourn it with respect to Mr. Schleyer, until such time as
3 they would like to have an evidentiary presentation or at least
4 take the time to provide us with the information, so that we
5 can make an informed decision, like some of the others claim
6 that they have done, and we can decide whether or not we can
7 withdraw our objection to this. Thank you, Your Honor.

8 THE COURT: Okay. I think what I would like to do is
9 take reply from anybody who wants to reply, and then I'm going
10 to get everybody who has been waiting here on the calendar be
11 heard, and then I'll take a recess and give you a decision. I
12 will take reply now.

13 MR. TREPPER: I guess first, Your Honor, as a modest
14 procedural point, we are, in essence, in the sense of Mr.
15 Schleyer's treatment, if there was ever evidence that he's part
16 of a big football game, it's just been kicked around this room.
17 Splitting him off from the team and hoping that the team will
18 stay together is, in my humble opinion, destructive, de-
19 stabilizing behavior, with no benefit to this estate and
20 absolutely no good reason to do so.

21 Recoveries to these creditors are dependent upon not
22 any longer the sale. It is the management of the assets, and
23 at this point in time, any suggestion that we now start to
24 split people off, will lead to consequence that I cannot assure
25 the Court will not occur. I don't know that they will, but

1 there is a cynical perspective here that people will simply
2 stay around, just for a paycheck, when they've worked together
3 for three years and have other opportunities, and that is a
4 bad, bad way to run this thing.

5 So on a procedural point, I think it should be
6 observed that we proposed a treatment for Mr. Schleyer in July,
7 which is now less favorable. He is also giving up any and all
8 claims he might have under his contract against the estate.
9 This is, in essence, a settlement of those claims, and the only
10 people who objected at that time are the people who are
11 supporting that settlement.

12 So we're now going to have to go -- if we follow Mr.
13 Rosen's path, we'll take the risk that this hearing will be
14 continued, that Mr. Schleyer will determine what his legal
15 rights are, that the people in the bowels of the company and
16 the senior management or who are left will recognize that they
17 are pawns in a big creditor infighting game, and they will make
18 determinations on their own, whether they want to take the
19 benefits that are offered, or whether they will leave.

20 Why we would allow -- and I must say this with due
21 respect, why we would allow a group of creditors who came late
22 to the party, did not fully participate or seek to fully
23 participate in the process, to overrule, override the business
24 judgment of their official representatives, on an issue of this
25 magnitude? It makes no sense to me.

1 So I don't want to get, at this point, into any more
2 arguments. I know about all the finger pointing that went on,
3 but we simply cannot have every issue in this case, especially
4 one that has been as fully explored, negotiated and, in fact,
5 intelligently settled by the major parties in interest, be
6 subject to continued second guessing and litigation by people
7 who have plan rights, they have objection rights and they have
8 rights to try to stop a plan they don't like. But to try to
9 deprive all other creditors of the services of a very important
10 group of people is, to me, nothing more than a leverage play,
11 and I don't think the Court should condone it.

12 THE COURT: Mr. Shiff, do you want to be heard?

13 MR. SHIFF: Very briefly, Your Honor. Your Honor, I
14 want to pick up on one point that Mr. Trepper made, and then
15 respond to one of Mr. Rosen's comments.

16 As to, I guess towards the end, Mr. Trepper, you know,
17 talked about what the consequences could be here. I think it
18 related to Mr. Rosen's comment as to what analysis has been
19 done. I think one of the things we need to bear in mind here
20 is we're not writing on a clean slate. We're not coming in out
21 of the door and saying, all right, here is someone who doesn't
22 otherwise have any entitlements; let's pay him \$16 million.

23 We have contracts that are already part of the record
24 in this case, under which Mr. Schleyer, at least arguably, and
25 I don't want to concede anything too much in case we ultimately

1 end up litigating one day, but arguably has a good claim to the
2 compensation that's being sought here.

3 THE COURT: Well, if you're talking about the ability
4 to quit for a good reason, nobody could seriously contend that
5 his responsibilities haven't changed, could they?

6 MR. SHIFF: No, Your Honor.

7 THE COURT: Okay. So he can quit for a good reason.
8 And how much does he get if he quits for a good reason?

9 MR. SHIFF: I believe that part is about five million
10 of the compensation. Five or seven. Seven, I'm sorry. Seven.

11 THE COURT: All right.

12 MR. SHIFF: Your Honor --

13 THE COURT: So kind of like the Fram oil filter
14 commercials. You can pay me now, you can pay me later.

15 MR. SHIFF: Right, Your Honor.

16 THE COURT: I mean, I guess you want -- if you want to
17 be coy, you can, but I have some difficulty seeing why he's not
18 entitled to seven million bucks.

19 MR. SHIFF: It's a tough -- it's going to be a tough
20 one. It would be a tough one. Yes. I think the seven million
21 is pretty good.

22 As to the other amounts, Your Honor, which, you know,
23 there is obviously a reading of the contract that it's only
24 available, let's say, in a standalone type of situation, I
25 think there's been a lot of colloquy, discussions on the record

1 here, throughout these cases, as to an expectation that those,
2 once the sale process had commenced, would be put on sort of an
3 equal footing. That, in other words, he wasn't going to be
4 penalized for running a sale process, as opposed to a
5 standalone process.

6 So then the issue really becomes, I think, the final
7 issue, which Mr. Rosen raised, which is well, if he was getting
8 stock, you know, even though it's the same dollar value of the
9 stock, there's potentially some discounting that might be
10 available. If that's the case, then what you're really arguing
11 about is no longer this entire package, but you're talking
12 about some potential, I'm going to use the word small. I'm not
13 trying to testify as to what it is, but we can all try to think
14 of what it would be. It's -- and it's obviously an amount a
15 lot smaller than the total grant of, let's call it the twelve
16 million -- the remainder -- the remainder of the piece.

17 And for that, Your Honor, I think it's -- that's the
18 type of business judgment calculus the Court needs to look
19 into, as to whether or not these benefits that have been
20 described before are justified by that incremental. You don't
21 need an investment banker to testify to it because it doesn't
22 matter. It really is for that --

23 THE COURT: The point is I don't need an evaluation
24 hearing. I've just got to bring it within the zone of business
25 judgment.

1 MR. SHIFF: That's the point, Your Honor, on that.
2 That's the only point I wanted to make on that.

3 As to the linkage point, just once again, I know
4 there's a lot of innuendo that can be thrown around, but I do
5 think the time line, which are the facts, are relevant. We
6 objected -- first of all, the term sheet was authorized by the
7 board. I mean, it's not Mr. Schleyer's decision as to whether
8 or not to authorize the term sheet.

9 But more importantly, subsequent to that term sheet,
10 we continued to object to his compensation. We filed a motion
11 -- an objection, rather. We appeared before Your Honor at
12 least two times, objecting to the continued compensation, and
13 we were very clear, at that point, that any compensation would
14 have to be tied to certain goals, which have already been
15 described.

16 So any innuendo or suggestion about this linkage or
17 this mystery, it's just not there. I mean, the facts are very
18 clear as to the time at which everything has occurred here, you
19 know, with respect to our appearances and our filings.

20 So I just want the record to be abundantly clear, not
21 only, quite frankly, with respect to this motion that's on and
22 the Court will do what he wants to do with, but as to, you
23 know, the other issues in this case. You know, I don't think
24 it's appropriate for this to be hanging over there, and I just
25 want -- hanging over our heads, and I just want it very clear

1 as to that these are separate processes. Yes, they all came
2 about subsequent to the Time Warner sale. That's inevitable.
3 This is the time when any of this stuff is going to happen.
4 But any suggestion that because someone or some parties don't
5 like the term sheet, therefore, every other action that takes
6 place between the committee and the debtor falls under some
7 type of question, it's just inappropriate. There are just too
8 many other things that we all have to do, and I just wanted to,
9 you know, walk the Court through that time line again. Thanks.

10 THE COURT: Thank you. All right. Has everybody had
11 a chance to speak their peace on this?

12 Okay. The folks who are here on Adelphia can either
13 stay in the courtroom, or they can go out to the hall. I'm
14 going to take the 9:45 calendar now, and then my chambers will
15 notify you when I'm ready to come back on the bench to deal
16 with Adelphia. Thank you, folks.

17 (Recess taken at 10:16 a.m.)

18 (Proceedings Resume at 11:38 a.m.)

19 THE COURT: I apologize for keeping you waiting.
20 Please be seated. Once more, I apologize for keeping you
21 waiting.

22 After hearing all of the argument and reading the
23 pleadings and briefs once more, I'm more convinced than ever
24 that Mr. Schleyer is being used as an economic football in the
25 game between the feuding creditors, and that he's a pawn in

1 their game. What this has largely, if not entirely, become is
2 a game of "gotcha" on the part of the objecting creditors. But
3 the more difficult issue I have, given the objection, is how
4 much is appropriate for approval now, given the very large
5 number of facts that are not subject to dispute, and how much
6 still might be fairly said to raise issues of fact, that would
7 have to await the conclusion of an evidentiary hearing.

8 I've reviewed the objection and, of course, the motion
9 once again, and closely examined the extent to which facts have
10 been disputed. As you know, under my Case Management Order No.
11 3, factual assertions are admitted unless disputed.

12 There was no objection, much less facts supporting the
13 objection, to any aspect of the request insofar as it affects
14 the so-called "line employees," and that aspect of the motion
15 should be, and is, granted, without further argument or
16 evidence.

17 There were no facts, or even argument, raising or
18 supporting any objection to the idea of making Mr. Schleyer's
19 compensation "outcome-neutral" with respect to the one time
20 alternatives of the sale of the company and of the standalone
21 plan. It was reasonable, and a proper exercise of business
22 judgment, to have made Mr. Schleyer's compensation outcome-
23 neutral, and I so find, based on undisputed facts. That issue
24 is now behind us.

25 There were no facts, or even any argument, raising or

1 supporting any objection to giving Mr. Schleyer the cash to
2 which he would be entitled if he resigned for good reason. Mr.
3 Schleyer has had the diminution of responsibilities that
4 triggers his entitlement to the right to quit for good reason,
5 and to the cash entitlement under his contract if he quits for
6 good reason. It was reasonable, and a proper exercise of
7 business judgment, to have proposed to give Mr. Schleyer the
8 cash to which he would be entitled if he quit in lieu of
9 forcing him to quit, and then, presumably rehiring him, and I
10 so find, based on undisputed facts. So you can say do it now
11 or wait until the end of any possible evidentiary hearing, but
12 Mr. Schleyer would be entitled to at least the \$5 million or \$7
13 million severance payment -- there has been some inconsistency
14 in the numbers that have been used before me, but the contract
15 says whatever it says -- to which he would be entitled if he
16 resigned for good reason. That issue is now behind us.

17 There were no facts, or even any argument, in the
18 opponents' papers, which is when they needed to be raised,
19 raising or supporting any objection to giving Mr. Schleyer the
20 proposed salary and bonus arrangements for his services going
21 forward, or to show any reason why the estate's substantial
22 business reasons to incentivize its employee work force to
23 maximize value and to meet the maximization of value -- needs
24 and concerns that we addressed in this hearing -- don't also
25 apply to him. The undisputed facts set forth in Paragraphs 3,

1 5, 6 and 7 of the motion make that showing. I find the salary
2 and bonus for the services going forward to be reasonable and a
3 proper exercise of business judgment. That issue, too, is now
4 behind us.

5 I also find, based on undisputed facts, that there is
6 no nexus between what consideration Mr. Schleyer gets and what
7 any group of creditors will get under any reorganization plan.
8 I also find, based on undisputed facts, that there is no nexus
9 between what consideration Mr. Schleyer gets and which or what
10 plan is confirmed.

11 I am also finding, as a mixed question of fact and
12 law, that there is no nexus or connection between the approval
13 of this motion and the consideration of matters involving
14 exclusivity, unsealing of matters now under seal, disclosure
15 statement adequacy, or conversion of the operating company
16 Debtors' cases to cases under Chapter 7, all as addressed in
17 Paragraph 5 of the objection. In other words, I've considered
18 the issues raised in Paragraph 5 of the objection, and I
19 overrule those objections. I consider them to be without
20 merit.

21 It is largely true, as the Creditors' Committee
22 argued, that the objecting bondholders' objections essentially
23 are not with respect to whether the Debtors and Creditors'
24 Committee failed to exercise business judgment in proposing the
25 modified arrangements for Mr. Schleyer, but rather whether the

1 proposed deal is a good deal or a bad deal.

2 But it is true, as the objecting bondholders noted,
3 that Mr. Ziehl's comments, which I don't doubt to be fully
4 truthful for a second, were not evidence, and I don't have a
5 testimonial affidavit from the Creditors' Committee or
6 sufficiently fleshed-out allegations in the joint motion on the
7 process and business considerations in three areas: The
8 monetizing, in the form of cash, of the former entitlement to
9 stock; the fixing of the amount of the monetization; and the
10 fact that these arrangements weren't a reward to Mr. Schleyer
11 for the Debtors' agreeing to the proposed plan, or a means to
12 cause the debtor to favor the now proposed plan, as contrasted
13 to any alternative. Frankly, I'm not sure if submitting
14 evidence of that character would be so hard for the Creditors'
15 Committee or the Debtors to do, but these three matters have
16 been put in issue to an extent that the failure to have
17 established them conclusively yet raises issues of fact. After
18 looking at the evidence very carefully, those are the only
19 issues of fact that are left, but it might be -- I'm not saying
20 it would be -- it might be reversible error if I made factual
21 findings on what the Creditors' Committee did and how it
22 addressed the issues between July and now, based solely on the
23 somewhat thin statements in Paragraph 8 of the motion and
24 elsewhere.

25 In that connection, I'm ruling that I don't have to

1 conduct a valuation hearing on what the stock might be worth; I
2 only have to find business-judgment-type consideration of what
3 was a fair cash equivalent to the former stock entitlement, in
4 order to support the business judgment rule.

5 At the conclusion of this hearing, I want you all to
6 caucus on whether an evidentiary hearing on these remaining
7 issues is really necessary. I think putting the Debtors' CEO
8 through this is humiliating and painful. I think the
9 objectors' concerns would better be addressed by raising
10 matters of the type they raised earlier this week, rather than
11 raising issues of the character they raised here, but of course
12 they do have the right to object, and to continue to object,
13 and if they do, I'll comply with my duty to fairly decide the
14 dispute.

15 While the conclusion is strong, if not compelling,
16 that the objectors are engaged in a game of "gotcha," I think -
17 - unfortunately for keeping legal fees down in these cases --
18 that the objectors succeeded in that game, and have the right
19 to require the evidentiary hearing, on certain limited issues,
20 and to require a little more evidence before the motion can be
21 granted. The most obvious person to submit that evidence would
22 be the businessperson who acted on behalf of the Creditors'
23 Committee, but I am not telling anybody how to try their case.
24 For that reason, I am granting the motion insofar as it affects
25 the line employees; making factual findings as to all of the

1 undisputed facts I have found above, making legal findings to
2 the extent that I articulated them above, which will be law of
3 the case; finding that giving Mr. Schleyer the entitlements at
4 least to the extent I've described them so far are appropriate
5 and approved; and I'm continuing the hearing with respect to
6 the remainder.

7 The Debtors and the Creditors' Committee are to settle
8 an order, if they wish, granting the partial relief that I've
9 authorized up to this point, and continuing the motion for the
10 remainder. I'm also flexible as to the mechanics by which this
11 is done, and if the Creditors' Committee -- excuse me -- and if
12 the objecting Debtors really want this to go through with an
13 evidentiary hearing and really want to press this matter, the
14 parties are to make the appropriate arrangements for an
15 evidentiary hearing at the earliest practical date.

16 Not by way of re-argument, are there any open issues?

17 MR. TREPPER: No, Your Honor. I just would like to
18 clarify. When you referred to the "line employees" in the
19 order, that is --

20 THE COURT: Everybody up to the EVPs. Mr. Sonnenberg
21 and Ms. Wittman. In other words, I guess it's everybody except
22 Mr. Schleyer.

23 MR. TREPPER: That's my question. I just wanted
24 to --

25 THE COURT: Yes, sir.

1 MR. TREPPER: I just want to make sure that the order
2 is clear.

3 THE COURT: That's correct. Everybody up to, but not
4 including, Mr. Schleyer is already approved.

5 MR. TREPPER: Yeah. And with respect to Mr. Schleyer,
6 as I understood your ruling, so we get the order right, the
7 severance entitlement on good reason can be embodied in the
8 order, as can his continuing salary arrangements.

9 THE COURT: The continuing salary, plus the bonus that
10 I think you proposed to include as part of that salary, yes.

11 MR. TREPPER: Yes. They're built in, yes.

12 THE COURT: Yes. All right. I don't expect Mr. Rosen
13 to make these calls this second, he may want to talk to his
14 constituency. But I want there to be further discussions
15 between the objectors and the proponents of this motion, with
16 word to me as promptly as possible, as to whether the objection
17 is going to be continuing and when and how you want me to hold
18 the hearing.

19 MR. ROSEN: We will do that, Your Honor.

20 With all due respect to your characterization, all we
21 asked for in the objection was information, not a game of
22 "gotcha."

23 THE COURT: All right. I'm just going to take that
24 without comment.

25 Anything else, anybody? All right. We're adjourned.

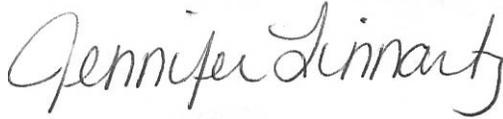
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MR. TREPPER: Thank you, Your Honor.

(Proceedings concluded at 11:53 a.m.)

CERTIFICATION

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



September 15, 2006

Jennifer Linnartz AAERT Cert. No. 339
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