

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re: : 05-17923 (PCB)
: :
DELTA AIRLINES INC., et al, : One Bowling Green
: New York, New York
: :
Debtors. : October 27, 2005
-----X

TRANSCRIPT OF HEARING ON MOTIONS
BEFORE THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: RICHARD HAHN, ESQ.
MICHAEL E. WILES, ESQ.
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

For Delta: MARSHALL SCOTT HUEBNER, ESQ.
THOMAS A. TORMEY, ESQ.
SHARON KATZ, ESQ.
Davis, Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

For the Ad Hoc Comm.: RONALD J. SILVERMAN, ESQ.
Bingham, McCutchen, LLP
399 Park Avenue
New York, New York 10022

For DP3: DEAN BOOTH, ESQ.
Schreeder, Wheeler & Flint, LLP
1600 Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303

For the APA: BRUCE H. SIMON, ESQ.
Cohen, Weiss & Simon, LLP
330 West 42nd Street
New York, New York 10036

(Appearances continued on next page)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

APPEARANCES CONTINUED:

For Bank of New York: LEO T. CROWLEY, ESQ.
Pillsbury, Winthrop, Shaw & Pittman
540 Broadway
New York, New York 10036

For Aircraft Financiers: MICHAEL J. EDELMAN, ESQ.
Vedder, Price, Kaufman & Kammholz
805 Third Avenue
New York, New York 10022

For RAIC: EVAN M. JONES, ESQ.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071

For DALRC: DEAN M. GLOSTER, ESQ.
Farella Braun & Martel, LLP
235 Montgomery Street
San Francisco, California 94104

For Official Committee: DAVID H. BOTTER, ESQ.
LISA BECKERMAN, ESQ.
Akin, Gump, Strauss, Hauer & Feld, LLP
590 Madison Avenue
New York, New York 10022

For GE Commercial: RICHARD P. KRASNOW, ESQ.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, New York 10153

For Shanska Bldg: MARK B. CONLAN, ESQ.
Gibbons, Del Deo, Dolan, Griffinger
& Vecchione
One Riverfront Plaza
Newark, New Jersey 07102

For Jim Dean Johnson: ROBERT D. NOSEK, ESQ.
Silverman, Perlstein & Acampora, LLP
100 Jericho Quadrangle
Jericho, New York 11753

(Appearances continued on next page)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

For Interface: PETER ZISSER, ESQ.
Holland & Knight
195 Broadway, 24th Floor
New York, New York 10007

For DALRC: PETER N. WANG, ESQ.
Foley & Lardner, LLP
90 Park Avenue
New York, New York 10016

For Kathleen LaManna: CORRINE L. BURNICK, ESQ.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, Connecticut 06103

For Bank of New York: EDWARD P. ZUKJOWSKI, ESQ.

For Puerto Rico Ports: CARMEN D. CONDE TORRES, ESQ.
C. Conde & Associates
254 San Jose Street
San Juan, Puerto Rico 00901

For PNC Leasing: SCOTT M. ESTERBROOK, ESQ.
Reed Smith LLP
2500 One Liberty Plaza
1650 Market Street
Philadelphia, PA 19103

Court Transcriber: SHARI RIEMER
TypeWrite Word Processing Service
356 Eltingville Boulevard
Staten Island, New York 10312

1 THE COURT: You may be seated. I'm going to take
2 some of the agenda in the order that it's on there and I'm
3 going to take some of the agenda not.

4 The first matter is your uncontested matters. That's
5 your passenger facility charges for San Francisco, Denver,
6 Greater Orlando, Metropolitan Nashville, Los Angeles, Palm
7 Beach International. Yes?

8 MR. HUEBNER: Yes, Your Honor. That is our global
9 PFC motion. I'm happy to report that all the objections have
10 been resolved. It is fully consensual. We can either just
11 submit an order or if you'd like I can explain the changes.

12 THE COURT: Well, I really don't want you to explain
13 it to me, no. I'm afraid I've read it a little too many times.

14 MR. HUEBNER: Terrific, Your Honor.

15 THE COURT: A rejection of certain executory
16 contracts. Again, there was no objection and I'm assuming that
17 there's no opposition now.

18 MR. HUEBNER: We know of none, Your Honor.

19 THE COURT: Merrill Lynch letter of credit
20 authorization motion.

21 MR. HUEBNER: Your Honor, the only thing I would say
22 to that, the Creditors Committee did ask us to note which we
23 were happy to. The only fees that are being approved at this
24 moment in time unless the bigger deal goes forward are the
25 legal fees of the outside professionals, the law firm working,

1 the law firm Cadwalader working for Merrill Lynch. The
2 Committee asked us to clarify and of course we're happy to that
3 if the Committee ultimately has a problem with the
4 reasonableness of any of those fees that they can of course
5 bring that to the Court's attention and argue that the legal
6 fees of Merrill Lynch's outside counsel were too high. Since
7 we hope and trust the fees will be reasonable, we don't
8 anticipate being back here but that's the only thing we were
9 asked to add. Other than that, the motion is entirely
10 uncontested as far as we know.

11 THE COURT: 2001 EETC stipulation.

12 MR. HUEBNER: That's being handled by Debevoise &
13 Plimpton. So if I concede the podium for a moment.

14 MR. WILES: Your Honor, there was one objection. It
15 was withdrawn.

16 THE COURT: Well, if you're going to be the person
17 talking you ought to be closer to the front. You guys just got
18 to put your little stickers down. This is solely for the
19 debtor.

20 MR. WILES: No objection, Your Honor.

21 THE COURT: There's no problem with that one?

22 MR. WILES: Yes. There's no objection to that one.
23 I'm Michael Wiles from Debevoise.

24 THE COURT: The limited objection of BL Savings was
25 withdrawn?

1 MR. WILES: That's correct.

2 THE COURT: So you have an order which -- who's going
3 to --

4 [Pause in proceedings.]

5 THE COURT: Chicago ARB payment.

6 MR. HUEBNER: Yes, Your Honor. Sharon Katz also of
7 the Davis Polk firm is here to discuss the airport revenue bond
8 related motions.

9 MS. KATZ: Your Honor, in addition to the Chicago ARB
10 motion --

11 THE COURT: Let's take the one that's not -- there's
12 no objection to first.

13 MS. KATZ: Well, there are no objections now to Mass
14 Court as well.

15 THE COURT: Do you think you can do this in the order
16 that I asked you to?

17 MS. KATZ: I certainly can.

18 THE COURT: One at a time.

19 MS. KATZ: Surely. There is no objection. There was
20 no objection to the Chicago order and we have submitted an
21 order that has been approved.

22 THE COURT: So now we have the Mass RAB payments and
23 you're telling me that I had two responses, one from Mass Port
24 and one from the Bank of New York, that those have been
25 resolved.

1 MS. KATZ: They have, Your Honor, and we have an
2 agreed upon order with respect to that as well. Thank you.

3 THE COURT: You're welcome.

4 MR. HUEBNER: Your Honor, the only uncontested
5 matter --

6 THE COURT: Wait. I have --

7 MR. HUEBNER: Sorry.

8 THE COURT: I want to get to a particular matter. I
9 want to get to the motion to compel assumption or rejection of
10 Interface agreement.

11 MR. HUEBNER: Yes, Your Honor. I do have a factual
12 update on that one which may make it easier.

13 THE COURT: Yes.

14 MR. HUEBNER: We served on Interface a notice of
15 cancellation of the contract which we are entitled to cancel at
16 will on 120 days notice. Interface and the debtors agreed that
17 the contract will be deemed terminated as of February 21, 2006,
18 and with that the parties are happy to adjourn the motion
19 although my guess it will not be coming back in light of the
20 fact that we've sent a notice of termination.

21 THE COURT: Well, that's just what I was going to
22 tell you. If you didn't like them that's what you ought to do.

23 MR. HUEBNER: And we did, Your Honor.

24 THE COURT: So I guess you and I are both on the same
25 page on that. That was why I was going to have it because it

1 really doesn't seem to me to be anything to do except to tell
2 you read the contract.

3 MR. HUEBNER: Yes, Your Honor. You had pointed out
4 at the two hearings ago that clients contemplated that we would
5 give them good lead time and we've had and we did.

6 THE COURT: It's a six-year contract. It's two one
7 year renewals and this is -- the second renewal started in the
8 middle of September and you're within your rights to do that.

9 MR. HUEBNER: Exactly, Your Honor. So I think that
10 that actually addresses unless I'm missing something all now
11 eight uncontested matters, seven of which we'll have orders and
12 Interface will not being it's being adjourned indefinitely.

13 Your Honor, the one item -- obviously we are entirely
14 at the Court's pleasure, but I would note that the final item
15 on for today's hearing was listed at the end only because it's
16 a separate adversary proceeding but that, in fact, is extremely
17 time sensitive from Delta's perspective.

18 THE COURT: But, you know, you can put these in any
19 order you want.

20 MR. HUEBNER: Yes, Your Honor, and we would have
21 actually put it first but because it was a separately filed
22 adversary proceeding --

23 THE COURT: What I'm saying to you is I'm not aware
24 of any rules and regulations from my Chambers that dictate
25 where you put things.

1 MR. HUEBNER: Fair enough, Your Honor. If you could
2 deem Page Number 11 renumbered as Page Number 3 and have them
3 next on the agenda.

4 THE COURT: Wait. No, because now we're going to
5 take this -- I want to spend fifteen minutes taking these
6 Appointment of Retired Pilots Committee, Appointment of Retired
7 Non-Pilots Committee and the application to retain counsel.
8 Hard to retain counsel when you haven't been appointed a
9 Committee yet.

10 MR. HUEBNER: That is our view, Your Honor.

11 THE COURT: Who is here for the Retired Non-Pilot
12 Employees Committee?

13 MR. GLOSTER: Good afternoon, Your Honor. Dean
14 Gloster of Farella Braun & Martel, pro hac application pending.

15 THE COURT: Now, as I understand your organization it
16 does not deal with the pilots but it does deal with retirees.

17 MR. GLOSTER: Yes, Your Honor.

18 THE COURT: And it deals with the medical insurance
19 that's available to the retirees; right?

20 MR. GLOSTER: That is correct, Your Honor.

21 THE COURT: I believe, although I may be mistaken,
22 that almost all retirees -- well, they have all -- they all
23 either have medical insurance or were given the option to get
24 it and didn't choose to.

25 MR. GLOSTER: That is essentially my understanding as

1 well, Your Honor.

2 THE COURT: Now, are they entitled to accident
3 insurance, disability, death, anything else?

4 MR. GLOSTER: Yes, Your Honor. There are a couple of
5 different programs. There is a -- there is a small amount of
6 insurance that they're allowed and then there is a separate
7 trust which is a disability and survivorship trust which is not
8 Delta but which was funded by Delta and there's a different
9 plan and program so that retirees get certain amount of life
10 insurance from Delta. Then they're eligible for a medical
11 benefits program from Delta. Many of the non-pilots elect not
12 to take that benefits program because they want to save Delta
13 money and because they get coverage through their spouses.
14 Then there's a separate disability and survivorship trust which
15 provides disability and survivorship benefits.

16 THE COURT: Well, to what degree does your
17 organization have a concern with the precise provisions of the
18 insurance, the medical insurance policy?

19 MR. GLOSTER: Our organization was formed two years
20 ago in anticipation of Delta financial troubles either in or
21 outside bankruptcy to educate retired workers and to work with
22 initially Delta about pension reform legislation to mobilize
23 its former retirees and to advocate for them and to prepare for
24 a Delta bankruptcy so that if and when Delta filed bankruptcy
25 there were knowledgeable people who had given a great deal of

1 thought on how to protect retiree benefits under Section 1114
2 of the Bankruptcy Code.

3 THE COURT: You do understand that 1114 has
4 absolutely nothing to do with pension benefits?

5 MR. GLOSTER: Absolutely, Your Honor. The
6 legislation is clear and Your Honor has also been absolutely
7 clear about that.

8 THE COURT: But now let's get back to the question I
9 asked you. Do the people in your organization have an interest
10 in exactly what provisions there are in the medical insurance?

11 MR. GLOSTER: Absolutely, Your Honor, because the
12 nature of the benefits and the nature particularly for early
13 retirees for whom Delta has agreed to pay in ERMO and Pension
14 Plus and in some of the other programs all or almost all of the
15 premiums, the nature of the medical coverage provided to those
16 people is quite important because either they get a great deal
17 of medical coverage at Delta expense or they do not. For
18 individual retirees, for example to look at Delta's proposed
19 changes, for many of them -- for the sickest retirees they
20 would triple the deductible and increase the out-of-pocket
21 medical costs for \$\$3,000.00 and many of those retirees --

22 THE COURT: Wait. You mean the first \$250.00 or
23 \$350.00?

24 MR. GLOSTER: Well, if you had family coverage, Your
25 Honor, so that if you --

1 THE COURT: Okay. You're saying that we multiply.

2 MR. GLOSTER: It would go from \$450.00 deductible to
3 \$1,500.00 deductible and once again that is assuming that you
4 had the enhanced medical because you were one of these early
5 retirees who had accepted prior -- a prior early retirement
6 program from Delta.

7 THE COURT: How early were these people allowed to
8 retire?

9 MR. GLOSTER: Your Honor, many of them retired quite
10 early because they got as part of these programs five
11 additional years service. So that there are people in their
12 fifties, people in their sixties, people in their seventies and
13 people I think probably took retirement -- I suppose you could
14 retirement in your late forties, but it was people who took
15 early retirement for the company under these specific programs
16 where Delta said we have to reduce our costs, we have to reduce
17 our payroll, and there are six or seven early retirement
18 programs that Delta has rolled out since 1993.

19 THE COURT: Because the information that's available
20 to me in the various books says that for 2004 Delta health care
21 costs for all beneficiaries was \$580 million. It then says
22 that for retired beneficiaries Delta paid \$150 million and then
23 it says per retiree primary participant \$5,800.00. That
24 number, however, is completely inaccurate because they then go
25 on to say that 1.5 percent of the total number of plan

1 beneficiaries accounted for almost one-third of the total claim
2 costs and that 5.5 percent of the plan beneficiaries accounted
3 for 55 percent of the claim costs.

4 They say for the same -- the 42 percent of the
5 beneficiaries were the lowest claims accounted for only 3
6 percent of the claim costs. So what you have is a small
7 percentage incurring -- it actually works out to be about
8 \$80,000.00 if you spread it evenly, and a large percentage
9 incurring very little.

10 Now, whereas -- why I say this is wrong is because
11 what they gave on the per retiree primary participant is an
12 average and in the context of this case you need a median
13 because -- I don't know whether there's anybody here from Delta
14 that can give us what the largest claims were, but --

15 MR. GLOSTER: I think, Your Honor, they had sent a
16 letter to Chambers listing the ten largest claims and those
17 march down from about \$1 million to about \$500,000.00.

18 THE COURT: Okay.

19 MR. GLOSTER: But that was what was provided by
20 Delta. One of our issues about appointment of a Committee,
21 Your Honor, is the same concern you're expressing, which is
22 when Delta changes retiree medical benefits one of the
23 requirements that they're obligated to meet under Section 1114
24 is that they have to provide reasonable information about what
25 the benefits are. You and I are in the same position, Your

1 Honor. We see these things and some of these numbers don't
2 make sense to us.

3 THE COURT: Well, they make sense. It's just that
4 they're not completely usable. Now, it seems to me, and I may
5 just be thinking of something that's totally undoable, is that
6 what it is that retirees and active beneficiaries are most
7 concerned about is the million dollar hospital bill, the
8 \$500,000.00 hospital bill, the large bills.

9 Wait. Just be quiet for a minute.

10 I am wondering whether or not it would be possible
11 for Delta to purchase through London Insurers or otherwise some
12 sort of major medical, super major medical coverage such that
13 those claims actually didn't go into the pool and that there
14 was some additional premium that might be paid for those size
15 claims.

16 MR. GLOSTER: Your Honor, the retirees have a very
17 different interest. That might be a great way for Delta to
18 save money or to save --

19 THE COURT: I'm not talking about Delta saving money.
20 What I'm talking about is leaving Delta with the money to
21 continue to have a health benefit for the vast majority of
22 their employees.

23 MR. GLOSTER: Correct.

24 THE COURT: Because it is a very small minority of
25 its employees who use most of the money.

1 MR. GLOSTER: Your Honor, as you point out, most of
2 the retirees who are not pilots live on a monthly income which
3 is less than it cost to have me at the hearing this afternoon.
4 People, most of them have less than \$2,000.00 a month and many
5 of them --

6 THE COURT: I know and I'm trying to -- I'm not
7 trying to tell you anything that has to be done today. It is
8 my view that almost every matter requires two hearings. I'm
9 saying that to me that because of the fact that so much of the
10 money is going to such a small percentage I think there ought
11 to be a way that we ought to be able to get that small
12 percentage taken care of in some way that doesn't necessarily
13 create as much of a problem as it does when it's taken care of
14 as part of the plan being paid directly by Delta. That is that
15 -- I mean, for example, I have an excess major medical policy
16 from the ABA and I think what I'm thinking in terms of is is
17 there some way to create maybe an excess major medical policy
18 that might be useful.

19 MR. GLOSTER: Your Honor, we are absolutely on the
20 same page and we have the same thought. I was struck by those
21 numbers as well particularly after the letter was delivered to
22 your Chambers and that's why we want an 1114 Committee, Your
23 Honor, so that we can negotiate with the debtor. I mean the
24 debtor is saying it wants to make a bunch of changes that will
25 impact ordinary retirees and they're going to save \$1 million a

1 month on that. There have to be more creative ways to save
2 Delta money without causing the devastation for individual
3 retirees that their current proposal is.

4 THE COURT: Well, one of the things that they're
5 planning to do is to create that gap between \$2,500.00 and some
6 other number that's the same gap that Medicare is going to
7 create on prescription drugs.

8 MR. GLOSTER: Right. After negotiation with us, Your
9 Honor, they had agreed not to implement that particular change
10 for January 1. So after negotiation with our group, four hours
11 before they filed this bankruptcy, they agreed that they would
12 not impose that change starting January 1. They reserved the
13 right to roll out that change at a later time.

14 But, Your Honor, what -- I think we're in violent
15 agreement with Your Honor that there ought to be a negotiation
16 about appropriate saving money for Delta that doesn't cause
17 devastation for the average ordinary retiree.

18 THE COURT: This is what I'm trying to talk to you
19 about. I'm trying to talk to you about something that may be
20 able to be created that would -- I don't know whether you got
21 it when you were a kid or not. Do you remember the insurance
22 they sent around when you were a kid that said you lost both
23 eyes or one hand and the arm above the joint on the other side?

24 MR. GLOSTER: And you know exactly what your body
25 part was worth.

1 THE COURT: Right. I'm suggesting that maybe there
2 is the possibility of something of that sort that might work to
3 reduce costs.

4 At any rate, this is what I am concerned about. I am
5 very concerned that if I put a committee in -- now, the Code
6 says that I can appoint somebody upon a motion if the debtor
7 seeks to modify or not pay the retiree benefits and I'm not
8 clear that either one of those is true because I believe that
9 Delta in fact has reserved the right to modify but I think
10 that -- then goes on to say that I can appoint someone.

11 Let me just see where I am. I lost track of where I
12 was.

13 It says or if the Court otherwise determines it is
14 appropriate to serve is appropriate for those persons receiving
15 any retiree benefits not covered by a collective bargaining
16 agreement.

17 Now, it seems to me that it is your group that is the
18 group that it's not covered by a collective bargaining
19 agreement. It has potentially a number of different interests
20 among the group but that it would be preferable from the point
21 of view of the Court and preferable I hope from the point of
22 view of the debtor and others that your organization and the
23 individuals who I don't think we need a nine member committee.

24 I really don't. I think we could do it with four or five.
25 Would be the focus for creating ideas, focusing on how things

1 work with Medicare because Medicare is primary.

2 MR. GLOSTER: Exactly.

3 THE COURT: And that -- but that we need to stay
4 focused on that particular subject.

5 MR. GLOSTER: And we will absolutely focus on that
6 subject with a laser light contensity, Your Honor. Our
7 committee includes Bob Adams who is the former head of HR who
8 knew those benefits inside and out and prior to that was at Pan
9 Am and dealt with the bankruptcy issues. It includes Maurice
10 Worth who is former chief operating officer.

11 THE COURT: How long had he been with them?

12 MR. GLOSTER: He had been with Pan Am quite a while.
13 I think we --

14 THE COURT: Maybe back into the sixties?

15 MR. GLOSTER: I believe so. My client --

16 THE COURT: I wonder if he was there when I was in
17 the big anti-trust litigation.

18 MR. GLOSTER: I don't know, Your Honor.

19 THE COURT: I understand that during the course of
20 the document production that they found in Pan Am's papers a
21 picture of the globe with a line down the middle with one said
22 Pan Am.

23 MR. GLOSTER: Sort of like the Spanish and the
24 Portuguese dividing up the world.

25 THE COURT: Right.

1 MR. GLOSTER: But I think, Your Honor, he was
2 probably not involved in that as the head of HR.

3 Let me just suggest, Your Honor, we have got a
4 committee and frankly we have done exactly what you have
5 suggested, Your Honor. Prior to the bankruptcy we negotiated
6 with the debtor and we got -- we brought them people who
7 actually from the outside from the Hartford group offered a
8 wide range of medical plans and programs and supplemental
9 coverage that would have solved that problem with the Medicare
10 Plan B --

11 THE COURT: All I'm saying to you is that --

12 MR. GLOSTER: And that's our goal in this bankruptcy.

13 THE COURT: That's what I see your people's ability
14 to be and what I see your people's importance to be because
15 there are so many of you and you're not unionized.

16 MR. GLOSTER: And, Your Honor, the benefits we're
17 talking about are life and death. The e-mails that we get and
18 Cathy Cohen, our chair, who has talked to literally thousands
19 of retirees and the anxiety that they have about --

20 THE COURT: Well, I think that -- I don't think that
21 most of them are going to be bothered by the tier four group
22 problem.

23 MR. GLOSTER: No. That is not an issue. It's okay
24 they can charge a lot more money for baldness medications or
25 Viagra. We have no issue with that. We think that those can

1 go up if we just save the rest of the benefits.

2 THE COURT: I wasn't sure in the way it was written
3 because they didn't say this which is there was a difference
4 between a generic and an over-the-counter. In some plans
5 you're not allowed to buy the brand name product if there's a
6 generic and they made no reference to generics. They made
7 reference to over-the-counter products and I'm not really
8 clear -- I'm not really clear whether people think that in fact
9 the over-the-counter antihistamines function as well as or
10 similar to the brand name ones, but -- which was the only other
11 drug that I think was on the list.

12 MR. GLOSTER: Right. But I think Your Honor's point
13 is to arrive at an intelligent choice the retirees ought to
14 have an official committee so that we can have a dialogue with
15 the debtor about changes that make sense and come up with
16 something that really makes sense both for Delta and for the
17 individual retirees. Historically, Delta has had a non-union
18 work force other than the pilots and it's not used to having a
19 dialogue. It's used to imposing changes and it slows things
20 down when you have to talk but it's critical.

21 THE COURT: One of the things that they have which I
22 doubt your people actually -- many of them probably don't even
23 know it exists but it exists. They have a formulary and drugs
24 that are on the formulary are easier to get than drugs that
25 aren't on the formulary. I think that drugs are one of the

1 things that are of particular concern to many people and where
2 reviewing how that goes and whether there's other ways to deal
3 with it or whatever --

4 MR. GLOSTER: Exactly.

5 THE COURT: -- may be important. I don't know
6 because after all if you have high blood pressure and you don't
7 take your high blood pressure medication regularly you will
8 likely have a stroke or a heart attack.

9 MR. GLOSTER: That's exactly right, Your Honor. If
10 you have to make a decision because those drugs are too
11 expensive or are not covered and you're making \$1,100.00 a
12 month then for -- when you have 23,500 non-pilot employees --

13 THE COURT: To some degree I mean I can remember
14 there was an article in the New York Times about some woman
15 that wasn't doing stuff because she was taking a fairly
16 expensive anti-inflammatory. I've taken that anti-inflammatory
17 because -- before I had my knees replaced and I never found any
18 of them worked much better than Aleve. I think people get sold
19 into thinking that some drugs are better than other drugs and I
20 think that that's part of something that -- I actually found it
21 kind of surprising when I looked at how much money was being
22 spent by such a small number of people to think that there they
23 were sending you out a thing that said well, why don't you just
24 keep yourself in good health.

25 MR. GLOSTER: Exactly. I don't think those people

1 had the option of not taking medical -- not using the medical
2 system.

3 THE COURT: That's my thoughts.

4 MR. GLOSTER: So, Your Honor, what we would request
5 is the appointment of a committee and we will work diligently
6 with the debtor to seek to arrive at changes that make sense
7 that don't create an unfair burden on individual retirees and
8 we're prepared to be creative and constructive and we've got
9 people with wide-ranging expertise.

10 THE COURT: As I say, I think they have to also work
11 well with Medicare even though we're not entirely clear what it
12 is that Medicare is going to be doing.

13 MR. GLOSTER: Exactly, Your Honor. Those are things
14 that we've looked very carefully at and in fairness to the
15 debtor they have discussed with us prior to the bankruptcy
16 about -- because the debtor is very interested in --

17 THE COURT: For example, I don't know why Medicare is
18 going to require that you pay part of the premium. I don't
19 know what they're going to ask you to pay. Now, can you pay
20 that with your co-pay on the Delta insurance? I don't know.

21 MR. GLOSTER: I think, Your Honor, that -- I think in
22 fairness to the debtor I think their plan is to coordinate
23 retiree coverage with what coverage is available under
24 Medicare. This critical issue really is to make sure that it's
25 done right and that's what our committee wants to do.

1 THE COURT: This is why I would like you to appoint
2 the committee appointed and this is why I would like to appoint
3 your organization to be -- that it not be just those
4 individuals, that it be the organization although it will be
5 your individuals that would be -- I would think that probably a
6 committee of about five would be -- we usually try to get an
7 odd number so that --

8 MR. GLOSTER: Thank you, Your Honor. If I could just
9 make one suggestion. If we could expand that number from five
10 to at least seven because really there's some people with
11 extraordinary skill sets that we have and we want to make
12 maximum use of those people.

13 THE COURT: Since -- well, it has been and it
14 probably actually still is my right to appoint this committee
15 because you filed before the change. It may be that it's
16 something the U.S. Trustee needs to look into for me and we
17 need to look at it at another time.

18 MR. GLOSTER: Well, Your Honor, if I could just --

19 THE COURT: The change that was made in the new code
20 was United States Trustee shall appoint any such committee.

21 MR. GLOSTER: Yes. But, Your Honor, that's not
22 effective for any case filed before October 17th.

23 THE COURT: Sir, I just said that.

24 MR. GLOSTER: Sorry.

25 THE COURT: On the other hand, that doesn't mean I

1 can't ask the U.S. Trustee to make a recommendation to me
2 because normally we don't interview -- we have not been in the
3 practice of interviewing people. We've now been in the
4 practice of talking about these various issues and I have
5 enough things to do that it would be -- make more sense for me
6 to let her take care of a job that she knows how to do very
7 well rather than me take care of a job that's on the job
8 training.

9 MR. GLOSTER: Absolutely. Then what I would suggest,
10 Your Honor, is if we could work with the U.S. Trustee and
11 submit a joint form of order.

12 THE COURT: Come back in a week or two or whatever.

13 MR. HUEBNER: Your Honor, could the debtors be heard
14 for just a moment on this because there's a lot of colloquy
15 going forth and there's a lot we'd like to advise the Court on
16 about the facts of the programs.

17 THE COURT: No. I don't want to know anything more
18 about the facts of the programs. You gave me more facts about
19 these programs than I would have liked to have read.

20 MR. HUEBNER: There are about just three that I think
21 are very critical.

22 THE COURT: What? Okay. No artificial -- no
23 contraceptive medications. No conception medications. I'm
24 sorry. What? What other three?

25 MR. HUEBNER: If I may, Your Honor, a few brief

1 points I think are very important. One, the United States
2 Trustee like the debtors and like the committee supports an
3 1114 committee being appointed at this time, one that is
4 representative and one that includes substantial D or C or
5 representation as well as others.

6 Two --

7 THE COURT: Who are the others?

8 MR. HUEBNER: Well, Your Honor, we were in the
9 middle --

10 THE COURT: Who are the others?

11 MR. HUEBNER: Our revised proposal, Your Honor, is
12 that there be a committee of nine members of which there would
13 be two pilots --

14 THE COURT: I'm not prepared to put any pilots on the
15 committee.

16 MR. HUEBNER: Okay. Well, if I can go on for just a
17 moment then, Your Honor, to answer some of the other things
18 that you raised in the colloquy.

19 THE COURT: Okay.

20 MR. HUEBNER: Number two, Mr. Gloster repeatedly
21 referred to the fact that prior to the Chapter 11 Delta
22 negotiated with DALRC --

23 THE COURT: Look, if you want to get to what you want
24 to get to we're never going to get there. You sat down and you
25 had a chit-chat. I don't care if you want to call that

1 negotiation, having a chit-chat, whatever. The fact of the
2 matter is that as part and parcel of attempting to deal with
3 Delta's problems --

4 MR. HUEBNER: Yes, Your Honor.

5 THE COURT: -- it does seem relevant to attempt to
6 figure out whether we have maximized our bang for the buck on
7 the health insurance.

8 MR. HUEBNER: We agree, Your Honor, and that's why we
9 talk not only to DALRC and not only to ALPA and not only to DP3
10 but to other groups and people that have experience and
11 expertise in helping us how to figure out exactly how to --

12 THE COURT: Well, don't you think that after they get
13 together and meet then you can sit and talk to them?

14 MR. HUEBNER: We do, Your Honor. The concern that we
15 have which was expressed in our papers is twofold. One, that
16 Delta is weary of the administrative expense and burden of
17 having to deal with multiple groups for which it is paying.

18 THE COURT: I never told you I was going to have
19 multiple groups.

20 MR. HUEBNER: Understood, Your Honor.

21 The second is that some of the things that were
22 talked about that Your Honor raised, for example, that no one
23 should lose their coverage especially the sickest people,
24 that's exactly right. Unlike a lot of companies that cap their
25 health care costs like capping the benefits, that's not what --

1 THE COURT: I understand that but if you could find a
2 way to run in a cap that didn't cost that much and you got it
3 from somebody else you might be able to keep the no cap and
4 still be able to keep your insurance indefinitely.

5 MR. HUEBNER: We agree, Your Honor, and exactly what
6 Delta explored and has been exploring not only by listening to
7 groups such as DALRC but by working with its very experienced
8 HR department and their consulting experts is exactly trying to
9 figure out how to get the most bang for the buck. That's
10 different than saying that benefits that are not vested and
11 that every court ever except one said that as long as they
12 reserved its right to change it can.

13 THE COURT: I never said any of those things and
14 we're wasting time. That's all we're doing is we're wasting
15 time. The fact is that I didn't appoint a committee because
16 you had made changes or modifications that were improper. I
17 can appoint a committee because I think that they would form a
18 useful function in connection with the case because there are
19 certain issues and in this case there are a number of issues
20 with respect to health care.

21 MR. HUEBNER: Your Honor, one of the reasons that we
22 did not object to a committee being formed now even though as
23 we said in our papers we are not currently planning in the near
24 term to make changes that require an 1114 committee. It's
25 precisely because we share the view that having a dialogue with

1 people and getting input from them even before you're legally
2 obligated to is simply the right way to do things and often
3 ends up with a better outcome.

4 Our concern based on what we've heard so far today is
5 only that DP3 and ALPA and others are still --

6 THE COURT: You want to know something?

7 MR. HUEBNER: Yes, Your Honor.

8 THE COURT: DP3 isn't anything at all like -- your
9 members are not at all like the members of the committee that I
10 have just directed. Ain't one of them living on one or
11 \$2,000.00 a month unless they have a hard drinking problem or
12 unless they gamble. They're coming from a totally different
13 financial direction. They want to know how big can they make
14 their -- can they make their side of the story.

15 Now, this is why I don't think they need a committee.
16 I think they've already got somebody who can come in and help
17 them keep that million dollar ball up in the air and I'm not
18 interested in having them be part of a group that's dealing
19 with people who are at a seriously different economic level.

20 MR. HUEBNER: I understand, Your Honor. Here's
21 the --

22 THE COURT: To me if they walked away and you gave
23 them no health insurance they could replace it.

24 MR. HUEBNER: The problem --

25 THE COURT: If you walk away these people, they get

1 Medicare. That's it.

2 MR. HUEBNER: The problem that we have which I think
3 is not a trivial one is I think all parties agree that if and
4 when it is time for Delta to modify contractually promised
5 retiree benefits because ALPA has declined to serve as the
6 authorized representative of the pilots --

7 THE COURT: I didn't notice that there was anything
8 at all, anything at all in 1114 that said I couldn't appoint
9 multiple committees and I couldn't do it different -- at
10 different times. As far as I'm concerned right now I think it
11 would be most useful for the pilots to make a schedule of who's
12 covered by what by year because they've got 1993s, they've got
13 1994s, and their complications are figuring out who is covered
14 by -- how many people are covered by individual plans. To me
15 until they figure that out --

16 MR. HUEBNER: Your Honor, we certainly share your
17 view of the law. Obviously it is I think clear beyond -- that
18 should Your Honor desire to appoint multiple committees under
19 1114 you could. I guess what we're doing is we --

20 THE COURT: You know something? What I think is
21 this. Let me just give you this. Pick four or five of the
22 paralegals sitting in the back of the room and I walk into the
23 room and I say where are we going to begin. They say to me
24 anywhere you want, Judge.

25 MR. HUEBNER: Yes, Your Honor.

1 THE COURT: And I believe that any one of those
2 pilots walks into that room is going to say I'm the boss man
3 directly or indirectly and I don't need a boss man pilot in
4 that room. I need people who are dealing with each other who
5 have the same financial situations and the pilots just don't.
6 I'm not saying they don't have health problems. I'm not trying
7 to say that at all, but I'm saying what they're talking about
8 is so beyond what these people are contemplating that I really
9 don't think it's useful for them to be in there. That's my
10 personal view of the situation.

11 I think it would be much more useful for the pilots
12 at this point to try to create the proper schedules that show
13 who's covered by which plan so that they know how many people
14 there are -- they're going to be covered by X or Y or Z because
15 they have what I would call both a pre-retirement problem, a
16 post-retirement problem. Then that one person on their
17 committee that's 41. Now, I don't think that person is retired
18 but maybe he is.

19 MR. HUEBNER: Your Honor, I think obviously given
20 that you are the boss we will so do. My understanding,
21 therefore, is that the open enrollment changes that we
22 contemplate which do not take away anybody's major medical
23 coverage do not --

24 THE COURT: But look at what it says. It says number
25 three that I can appoint somebody if I think it's necessary and

1 appropriate.

2 MR. HUEBNER: Right.

3 THE COURT: I think it's necessary and appropriate
4 even if it all it is is a vehicle for you to have talks with
5 them about why you're not going to do something.

6 MR. HUEBNER: Right. I guess the question is, Your
7 Honor, is it fair to say that's subsumed within the colloquy
8 that we've had that the open enrollment changes that we believe
9 are firmly outside the scope of 1114 which are in fact rather
10 time sensitive are things that we can proceed with while
11 simultaneously --

12 THE COURT: What I'm saying to you is D says the --
13 if the Court otherwise determines that it is appropriate I can
14 appoint somebody.

15 MR. HUEBNER: Yes, Your Honor. It says --

16 THE COURT: It doesn't say if you seek to modify, did
17 not pay or if the Court otherwise determines that it is
18 appropriate. So I'm making this determination --

19 MR. HUEBNER: We agree, Your Honor.

20 THE COURT: -- as it otherwise determines.

21 MR. HUEBNER: Understood.

22 THE COURT: However, you don't have before me any
23 motion for me to find that you're not making a change. I only
24 have, and you're telling me that you have you reserved your
25 rights. If somebody thinks you've made a change that's not

1 appropriate they're welcome to file a motion but I'm not going
2 to sit here and tell you that they are or not because I don't
3 have a motion before me.

4 MR. HUEBNER: Your Honor, the reason we responded
5 procedurally the way that we did is that many other courts have
6 actually viewed it as a threshold issue in deciding whether to
7 appoint an 1114 committee.

8 THE COURT: But they have viewed it from a
9 perspective that is different than mine. I have a perspective
10 on your non-unionized, non-pilot retirees who are in
11 financially very, very different position than your pilots and
12 that they are not individually in a position to deal with this
13 and many of them may not even be in a position to really
14 understand what some of these issues are.

15 So I didn't appoint it for those two reasons and so
16 maybe I'm misreading the section, but I think it says I can
17 form it because I think it would be a good idea.

18 MR. HUEBNER: Your Honor, we do think it says that
19 and I'm not arguing that point at all. That's duly noted which
20 is you can appoint a committee if we seek to stop retiree
21 benefits covered by the section or as you otherwise deem
22 appropriate.

23 THE COURT: I'm saying I deem it appropriate because
24 I think that there are -- because of the changes being made in
25 Medicare and because of the -- I don't know that it's odd, but

1 the surprising way it works out that so much of the money goes
2 to so few that there is -- that there is something for people
3 to talk about and there is something for people to come to
4 grips with. Whether they're coming to grips with the fact that
5 your way is the only way; maybe, but I doubt that that's --

6 MR. HUEBNER: Your Honor, we're --

7 THE COURT: They have sort of gotten over probably.
8 It's thirty days into the case. They started to get
9 bankrupted; right? They started to get a little bit more
10 like --

11 MR. HUEBNER: Insolvency is insolvency.

12 THE COURT: Right.

13 MR. HUEBNER: We understand, Your Honor, and again
14 we're happy to continue to work with them and frankly with
15 people who are not official to have dialogues and figure out
16 the best ways that inflict the least pain on people. We
17 understand that these are real people. We all have frankly
18 parents and grandparents and people that need medical
19 attention.

20 My point is a much more narrow one. You're ruling
21 now behind us and accepted that we will work with DALRC's
22 membership in a group of five as an official committee for the
23 present and figure out the rest later.

24 THE COURT: I think he asked me for seven. Yes?

25 MR. GLOSTER: Yes, Your Honor. That would be

1 preferable.

2 THE COURT: Well, I will go for seven unless the U.S.
3 Trustee's Office tells me that that really doesn't make it for
4 a good committee.

5 MR. HUEBNER: I don't think we have a particular
6 problem with the number of people in the room. I don't know if
7 the U.S. Trustee --

8 THE COURT: Well, there's no place for them to sit.

9 MR. GLOSTER: Your Honor, if I could speak for just a
10 moment. I have spoken to the U.S. Trustee and --

11 THE COURT: I'm really -- this is really more than
12 enough on this subject. You want to get through something
13 else. It's now a quarter of four and we're not going to get on
14 to the next things.

15 MR. HUEBNER: Your Honor, for the record, does that
16 mean that the pilot -- the DP3 motion for a pilot committee is
17 denied?

18 THE COURT: They haven't actually stood up so I
19 haven't actually formally said no but I could.

20 MR. HUEBNER: I'm just trying to --

21 MR. CHRISTY: Your Honor, I move to adjourn the
22 hearing on DP3s, Your Honor. We've heard your suggestion --

23 THE COURT: I honestly think that it's premature if
24 I'm going to appoint anybody because I'm not sure what you have
25 got sorted out, who is affected by what in terms of the health

1 insurance and it may be that most of your people wouldn't be
2 affected anyway.

3 MR. HUEBNER: For the present that's right. Since
4 most pilots have the CBA protections, we think that many pilot
5 retirees other than the ones that chose the Delta family care
6 plan in fact have benefits that are within the scope of 1114's
7 protections.

8 MR. CHRISTY: Your Honor, what I would suggest is you
9 asked to get some facts which we can gather that information at
10 the appropriate time and recalendar our motion.

11 THE COURT: That's fine. At that point if you have
12 appropriate facts and then show that you got any reasonable
13 numbers of people to be discussed, I'm glad to let you in the
14 door.

15 MR. CHRISTY: Yes, Your Honor.

16 MR. HUEBNER: At that time we might move to add them
17 to the existing committee or we'll just --

18 THE COURT: Absolutely. I'm just saying right now I
19 think that I've got it divided the way I want it.

20 MR. HUEBNER: Terrific.

21 MR. GLOSTER: Thank you, Your Honor. Two very brief
22 things. One, we will work with the U.S. Trustee to have the
23 U.S. Trustee designate the seven people from the DALRC and
24 submit an order.

25 Second, Your Honor, as you point out, the debtor has

1 not made a motion that it can change retiree medical benefits.

2 THE COURT: That doesn't mean it can't. I mean do
3 you understand something? They say that they have reserved the
4 right to do that in their plans and if that's correct then they
5 can change them.

6 MR. GLOSTER: Well, Your Honor, our reading of the
7 statute and numerous cases agree and in fact they're briefed
8 today is inaccurate. Collier agrees with our readings of that.

9 MR. HUEBNER: That is not correct.

10 MR. GLOSTER: They have contractual but --

11 THE COURT: Sir, sir --

12 MR. GLOSTER: -- they are revocable.

13 THE COURT: I'm not going to get into this issue
14 today.

15 MR. GLOSTER: Thank you, Your Honor

16 THE COURT: Thank you.

17 MR. GLOSTER: Thank you.

18 THE COURT: Now, let me ask you a question about
19 these 110 motions. Why aren't you able to reach an agreement
20 on them?

21 MR. HUEBNER: Your Honor, those are not Davis Polk,
22 motions. Those are being held by Debevoise & Plimpton because
23 they are aircraft related. So I will turn the podium over to
24 Mr. Hahn.

25 MR. HAHN: Your Honor --

1 THE COURT: I don't want to take more than just a
2 couple of minutes, but what I don't understand is don't you
3 think you have to pay what it is that the lease or the lending
4 agreement says.

5 MR. HAHN: Absolutely, Your Honor. In the event that
6 we make an election under 1110(a) to keep the plane and comply
7 with our obligations under it, and I don't think there's any
8 dispute, Your Honor, with the parties over that. We have, in
9 fact, in dialogue with the objectors made both in connection
10 with our omnibus response some changes to the proposed order
11 and some additional ones subsequently and I am under -- I am
12 told four of the objections have been withdrawn.

13 I believe the remaining objections are primarily
14 focused on the issue of confidentiality, the redacting of
15 confidential commercial information from the 1110(b)
16 stipulations.

17 THE COURT: Well, then I don't really care what you
18 do with that. You can go down and talk to Kathleen about how
19 many she wants to put under seal. There's all kinds of things
20 to deal with that.

21 MR. HAHN: We've made in our response an alternative
22 proposal to --

23 THE COURT: I don't care. You want to know
24 something? I wouldn't know whether the number you picked was
25 right or wrong. I mean I will confess this. I will read the

1 applications to figure out what you think you're doing and
2 whether or not I think the legal position is correct, but there
3 is no way that I'm going to figure out whether the numbers are
4 right, whether they're reverse, inverse, interest rates or
5 whatever. If you guys can't do that right, that's it.

6 MR. HAHN: We didn't expect you to do that, Your
7 Honor, or to --

8 THE COURT: But what I'm saying is I don't care what
9 the numbers are. That means I couldn't care less if I never
10 saw them. You could put it through the little machine and put
11 one of those lift up things that nobody could see. I'm just
12 saying you could send it down with no blanks filled in and send
13 me a letter to put in the trash can. I really don't care and I
14 don't really think that for the most part members or anybody
15 else's business.

16 MR. HAHN: What we proposed, Your Honor, and I think
17 it would -- it responds to this is to simply file the slips
18 with the numbers redacted, the confidential commercial
19 information redacted so we don't have to trouble the clerk's
20 office with sealing issues and we don't have to trouble you
21 with calculations.

22 THE COURT: I think that's correct. I just think
23 however that you ought to keep one signed copy that's not
24 redacted somewhere.

25 MR. HAHN: I suspect both the debtor and the other

1 parties to the stipulations will both insist on having at least
2 one.

3 THE COURT: You can put them in our own vaults.

4 MR. HAHN: We would be happy to do that, Your Honor.

5 THE COURT: So now you're all taken care of; right?

6 MR. HAHN: Can we --

7 THE COURT: You're all taken care of, right. Why
8 not?

9 MR. CROWLEY: I'd like to be heard on this, Your
10 Honor.

11 THE COURT: Why? What do you want to be heard about?

12 MR. CROWLEY: Your Honor, Leo Crowley from the Bank
13 of New York as indenture trustee.

14 The problem is I'm a fiduciary for public bondholders
15 or my client is and as I understand the proposal they're
16 expecting us to sign a business transaction without disclosing
17 it to our bondholders and without bondholder input --

18 THE COURT: I don't really care. If you think you
19 can't do it that way then you're going to have to tell them you
20 can't do it that way.

21 MR. CROWLEY: Can't do it that way, okay. He knows I
22 can't. He knows I can't.

23 MR. HAHN: Your Honor, we've said to Mr. Crowley and
24 to others that if we need their signature on something and
25 they're unprepared to sign it with a confidentiality provision

1 in it we will have a decision to make. We will either get the
2 signature or we won't get the confidentiality.

3 THE COURT: You could get the signatures from the
4 other people under confidential -- you can get the second level
5 of signatures confidential.

6 MR. HAHN: Your Honor, the cash has to come through
7 me and I have to distribute the cash for my client as the
8 public bondholders. How am I supposed to tell them how much
9 cash they're getting and why if I can't tell them what the deal
10 is. It's their collateral.

11 THE COURT: Wait, wait.

12 MR. HAHN: They're telling me that I can't --

13 THE COURT: How come they're public? Why don't --
14 why they don't know anybody that they're supposed to be bearer
15 bonds like they do in Europe.

16 MR. CROWLEY: No, they're not -- there are three
17 names, Your Honor.

18 THE COURT: I don't understand it. I mean they're
19 supposed to know better. Seriously, they are in street name.

20 MR. CROWLEY: Yes, they are.

21 THE COURT: Then truthfully you don't have much of a
22 problem because you find out who the street name people are and
23 you just give them this subletter and --

24 MR. CROWLEY: I don't have -- if an agreement is
25 entered into with respect to the collateral in in one of these

1 transactions the normal protocol since it relates to the very
2 collateral that secures that public debt is to tell the holders
3 of the debt what has happened to their collateral. They're
4 trying to prevent me from fulfilling a fiduciary --

5 THE COURT: How many holders are there?

6 MR. CROWLEY: I don't know. The DTCs which is the
7 one we gave you the prospectus from we've got forms back. We
8 put out a notice through DTC shortly after the petition date.
9 We got forms back from some people who say they own \$10,000.00
10 worth of bonds. I have no way of knowing how many holders
11 there are, Your Honor, because --

12 THE COURT: Well, you can go to Seedin [Ph.] and ask
13 them.

14 MR. CROWLEY: What they'll give you -- I've done that
15 in many deals and what they give you is they give you what's
16 called a participant's list, but all that does is list all of
17 the broker dealers that are holding those securities. It
18 doesn't tell you who the underlying beneficial owners are. So
19 the idea that we're supposed to enter into a transaction that
20 is significant from the standpoint --

21 THE COURT: Do you really think that he would make
22 you do that?

23 MR. CROWLEY: Make me --

24 THE COURT: Enter into the transaction like that.
25 Now, I can see Harry Margolis doing something like that.

1 MR. CROWLEY: Well, I hope not, Your Honor, I guess
2 is the best way to put it.

3 THE COURT: You don't remember Harry. Harry when we
4 were in the old building, he used to stand out in the hall
5 right after appearing and he'd scream at whoever was there
6 until whatever it was he wanted he thought he had gotten
7 solved.

8 Now, if you can't solve it you're going to have to
9 solve it. I mean obviously I can't decide today what the right
10 answer is because I don't have all of the information.

11 MR. HAHN: Your Honor, there is nothing in the order
12 that compels Bank of New York to sign a stipulation of any sort
13 whether it's because they don't like the confidentiality
14 provision or for some other reason. So there is nothing that
15 impedes Mr. Crowley's client's ability to say because I feel I
16 must convey this information on a non-confidential basis to
17 other people you can't have my signature unless you agree to
18 that.

19 What Mr. Crowley would like to do is the reverse, to
20 compel me today to give up the right to ask for that
21 confidentiality agreement.

22 THE COURT: I'm saying I'm not going to make a
23 decision today because I'm not going to imitate Harry Margolis
24 who would stand in the hall and scream at you until one of you
25 gave up. Right?

1 MR. HAHN: Again, I never met Harry.

2 THE COURT: You just have to know Harry to know.

3 MR. HAHN: Your Honor, as a point of clarification.

4 Does this mean Your Honor --

5 THE COURT: If I had the right papers and I could see
6 all of the different little things I might be in a position to
7 make a decision but I don't have any of those things.

8 MR. HAHN: What papers does Your Honor --

9 THE COURT: I don't know but I'm saying I don't -- I
10 have never seen his documents. I don't know what your
11 documents say. I don't know what you're settling. I don't
12 know -- I don't know anything about anything. So I can't
13 decide about anything.

14 MR. HAHN: I think the order as we proposed it, Your
15 Honor, doesn't require you to confront those issues today. All
16 it says --

17 THE COURT: Then fine. If it doesn't and he agrees
18 it doesn't then I'll sign the order today and then he'll decide
19 what he wants to do with you.

20 MR. HAHN: All the order says is we don't have to
21 give him anything unless he agrees to a confidentiality
22 provision. It doesn't say he must or that his documents
23 require it.

24 THE COURT: Well, but see I don't know that I should
25 even make a finding as to him that he -- well, I'm saying I

1 think the whole thing is beyond my capacity to make a finding
2 about it today. I don't have enough information.

3 MR. HAHN: Your Honor, our concern --

4 THE COURT: As to anybody such as him, what's your
5 problem?

6 MR. HAHN: My problem, Your Honor, is that -- as I
7 mentioned, there's commercial, confidential commercial
8 information in the stipulation.

9 THE COURT: I understand that.

10 MR. HAHN: If I give it -- if I'm compelled to give
11 it to Mr. Crowley's client on a non-confidential basis as far
12 as I'm concerned it's then available to everybody.

13 THE COURT: I understand exactly what you're saying
14 to me. I don't know what right you have to insist upon that.
15 I don't know even what it is that -- why you think it's so
16 confidential. I mean are you giving him half of what he wants,
17 are you giving him two-thirds of what he wants. I don't know.
18 I don't even know -- I don't know what part of what it is that
19 it is that's even confidential.

20 MR. HAHN: Your Honor, I'd be happy to address that.
21 The information includes such items as the payment terms
22 during the period of the 1110 extension, the length of the
23 extension, the density of the aircraft involved and the other
24 economic terms, and the authority we believe for keeping that
25 information confidential is Section 107(b) which we believe

1 provides that for commercial confidential information --

2 THE COURT: But if he can't keep it confidential
3 because he's supposed to tell it to people I need to see his
4 agreement.

5 MR. HAHN: We have no obligation to give him the
6 information, Your Honor, is our concern.

7 THE COURT: Wait, wait. You're not getting it.
8 You're making a deal with him; right?

9 MR. HAHN: I may not be making a deal with him. All
10 I'm saying is --

11 THE COURT: I have to take a break because you're
12 making my head go spinning.

13 THE CLERK: All rise.
14 (Off the record and reconvened.)

15 THE COURT: You may be seated.

16 Now we're taking the adversary proceeding which if we
17 don't take everything else we'll fail.

18 MR. HUEBNER: It is a serious matter, Your Honor.
19 The 1110 parties as you had addressed are out in the hallway
20 trying to get closer but --

21 THE COURT: I'm not worried about that. You tell me
22 that this --

23 MR. HUEBNER: It's true. But the 1110, Your Honor, I
24 was asked --

25 THE COURT: Sir, if you keep repeating what you're

1 saying we'll never get finished with anything.

2 MR. HUEBNER: I'm not repeating anything, Your Honor.

3 THE COURT: You are. I know that they're out there.

4 MR. HUEBNER: That's not what I was going to say.

5 THE COURT: I know that if I leave the bench before
6 they come back in you're going to start screaming.

7 MR. HUEBNER: Thank you, Your Honor.

8 MS. KATZ: Good afternoon, Your Honor. I'm Sharon
9 Katz on behalf of the debtor. We're here on an adversary
10 proceeding that the debtor has brought against three parties,
11 the City of Los Angeles, a conduit financing corporation called
12 Short Term Drake, and the trustee of the Los Angeles airport
13 bonds.

14 This matter involves airport revenue bonds but it is
15 different than the two that Your Honor considered earlier this
16 afternoon. In those two matters involving Mass Port in Chicago
17 where we --

18 THE COURT: I didn't consider them.

19 MS. KATZ: Well --

20 THE COURT: They got settled.

21 MS. KATZ: They did get settled, Your Honor, but let
22 me --

23 THE COURT: So I didn't consider them.

24 MS. KATZ: All right. Well, they are different in
25 any event. In those matters there is a current benefit to the

1 estate that arises from the payment of the debt service that is
2 being made.

3 THE COURT: To where they get to use the airports.

4 MS. KATZ: Well, no. Actually, Your Honor, the
5 benefits are different than that. One benefit had to do with
6 in the Mass Port bonds getting access to a \$12 million
7 construction fund in order to complete construction of the
8 facility and in the case of Chicago the benefit is that the
9 parties are able to engage in a negotiation that is expected to
10 yield significant liquidity to the debtor, liquidity that is
11 urgently needed.

12 In this instance, however, in the case of Los
13 Angeles, a payment would simply be payment to a pre-petition
14 creditor of a pre-petition debt with no current benefit to the
15 estate. It would --

16 THE COURT: Well, except that it's part of the --
17 you're right in the middle of the forty year term; right?

18 MS. KATZ: We are in the middle of a term. However,
19 these payments that --

20 THE COURT: But you admit that you're using the space
21 that we're talking about.

22 MS. KATZ: Well, we're using the space that is the
23 subject of the lease. These payments are being made pursuant
24 to a different document.

25 THE COURT: I understand that, but what I'm saying is

1 the space which the entire set of transactions concerns is
2 space that you are using.

3 MS. KATZ: That is correct, and we are paying the
4 rent due under that lease for that space and keeping current on
5 that.

6 THE COURT: Wait, wait. Then you need to explain the
7 facts to me a little better because I did not get that there
8 was a two payment situation here. It seemed to me that there
9 was essentially a one payment situation in which you made the
10 payment under the lease and somebody else made it against the
11 bonds.

12 MS. KATZ: Actually, Your Honor, here there is a
13 lease, a ground lease for property with the City and rent
14 payments are made to the City of Los Angeles for that.

15 THE COURT: How much?

16 MS. KATZ: I'm sorry. I don't have the answer to
17 that question, Your Honor.

18 THE COURT: Is it a big amount of money, a little
19 amount of money?

20 MS. KATZ: It's based on fair market value of the
21 property as determined by the City.

22 THE COURT: Over what period of time?

23 MS. KATZ: I think they do a determination every five
24 years of the fair market value of the property.

25 THE COURT: That doesn't help me. I mean I'm sorry

1 to say it really doesn't help me because --

2 MS. KATZ: They're paid monthly, Your Honor.

3 THE COURT: If it's paid monthly then you still have
4 to figure out what -- are you figuring out the thing monthly or
5 yearly?

6 MS. KATZ: In any event, Your Honor --

7 THE COURT: So that the debtor pays ground -- is the
8 ground lessee and pays money to the City of Los Angeles --

9 MS. KATZ: To the City.

10 THE COURT: -- but you don't know how much it is.

11 MS. KATZ: I don't know how much it is as we stand
12 here. I'm sorry.

13 THE COURT: There's nobody here that knows how much
14 it is; right?

15 MS. KATZ: The City is here. I don't know if they
16 know the answer to that question.

17 In addition, Your Honor, what happened was there was
18 a partial assignment of the lease made --

19 THE COURT: Wait. Who signed the lease?

20 MS. KATZ: I'm sorry. Delta -- Western originally
21 signed the lease. Western is Delta's predecessor.

22 THE COURT: You say there's a partial assignment of
23 the lease.

24 MS. KATZ: Yes. Delta then --

25 THE COURT: You can assign the lease -- the ground

1 lease from either side.

2 MS. KATZ: Delta made a partial assignment of its
3 rights under that leasehold, partial assignment to the RAIC.

4 THE COURT: Who's RAIC?

5 MS. KATZ: The RAIC is a conduit financing facility.
6 It is a not-for-profit corporation established by the City for
7 the purpose of doing financings of tax free bonds. And then
8 the RAIC subleased those same rights back to Western, of course
9 now Delta. Pursuant to that document that's labeled a
10 sublease, Delta pays to the bondholders debt payments.

11 THE COURT: Of how much?

12 MS. KATZ: Those payments, the debt payments amount
13 to approximately \$1.5 million twice a year. In approximately
14 ten years --

15 THE COURT: Wait. Could you just wait?

16 MS. KATZ: Sure.

17 THE COURT: You either don't know what I need or
18 you're talking too fast for me to write down what you do know.
19 One per twice a year. Okay.

20 MS. KATZ: In approximately ten years --

21 THE COURT: The bonds will be paid off.

22 MS. KATZ: Well, no. Then there will be a balloon
23 payment due, balloon payments will be due which will pay down
24 the principal. Right now they're just for the next ten years
25 will be paying just interest on the bonds.

1 THE COURT: These were \$98 million worth of bonds?

2 MS. KATZ: Right now some of them have been paid
3 down.

4 THE COURT: I understand that. But I mean we're
5 talking about that bond issue.

6 MS. KATZ: Originally, yes. It's now \$47 million
7 outstanding.

8 THE COURT: And these bonds are due to RAIC?

9 MS. KATZ: Well, RAIC is the conduit. They don't
10 actually get the money. The money goes to the trustee who pays
11 it to the bondholder.

12 THE COURT: Who's the trustee?

13 MS. KATZ: The trustee is Bank of New York.

14 THE COURT: Okay. That money goes to the Bank of New
15 York. Then what does the Bank of New York do with it?

16 MS. KATZ: They distribute it to the bondholders.

17 THE COURT: Isn't RAIC the bondholders?

18 MS. KATZ: No. RAIC is not. It's simply a conduit.
19 It's not even a real entity. It's a corporate shell that
20 exists for the purpose --

21 THE COURT: If it's a corporate shell it is a real
22 entity. It just is very thin.

23 MS. KATZ: It's a very thin entity, Your Honor, that
24 exists for the purpose of enabling the City to issue tax free
25 municipal debt.

1 THE COURT: Now, what part of this do you not want to
2 have to pay?

3 MS. KATZ: We do not want to have to pay the debt
4 payments, the interest on the bonds.

5 THE COURT: That would be how much?

6 MS. KATZ: \$1.5 million -- approximately \$1.5 million
7 is due December 1 and then there are similar payments due every
8 six months.

9 THE COURT: Why is it so important that I do this
10 today if the payments aren't due until December 1?

11 MS. KATZ: I'm sorry.

12 THE COURT: I was told that it was --

13 MS. KATZ: I'm sorry.

14 THE COURT: -- that it was a mega emergency.

15 MS. KATZ: I misspoke, Your Honor. It's November 1.

16 THE COURT: November 1 is --

17 MS. KATZ: Next week.

18 THE COURT: -- Tuesday, next Tuesday.

19 [Pause in proceedings.]

20 THE COURT: I mean without knowing how much the lease
21 payments are I don't even have any -- I can't even begin to --

22 MS. KATZ: Your Honor, if I could. The lease
23 payments really are irrelevant here and as a matter of fact the
24 City itself issued a press release in which it acknowledged
25 that the lease payments were irrelevant. It stated the

1 following. When the adversary proceeding was filed and the
2 motion was filed it said that that pertains only to bonds
3 issued by the RAIC which is independent of Los Angeles World
4 Airports. Regardless of how the Court rules on the request
5 that is before you, Your Honor, there will be no affect on
6 lease payments or landing fees --

7 THE COURT: I understand what they're saying.
8 They're saying you're still going to have to pay them.

9 MS. KATZ: No, that's not what they're saying, Your
10 Honor. They recognize that there are two separate leases.

11 THE COURT: I understand that but I'm trying to find
12 out something. How much do you have to pay monthly on the
13 ground lease because what they're saying is it doesn't affect
14 us because we're going to pay them the ground lease.

15 MS. KATZ: That's correct, Your Honor. We are going
16 to pay on the ground lease. I don't know the number.

17 THE COURT: But I'm trying to find out how much.

18 MS. KATZ: I know, Your Honor, and I apologize. I do
19 not have that number.

20 THE COURT: I'm going to take my book and I'll go see
21 if I can find a number here because without knowing that I
22 can't do anything.

23 THE CLERK: All rise.

24 (Off the record and reconvened.)

25 THE COURT: You may be seated.

1 Now, what's the rent?

2 MS. KATZ: The rent, Your Honor -- this is an
3 approximate number. We actually think this is low. It's
4 approximately \$5.7 million annually which is paid in monthly
5 installments of approximately \$475,000.00 a month.

6 MR. COHEN: Your Honor, I apologize. Mark Cohen from
7 LAX. Our knowledge is about --

8 THE COURT: Are you from the airport or do you just
9 live there?

10 MR. COHEN: I represent the airport. I also live in
11 Los Angeles.

12 THE COURT: I thought maybe you lived in the airport.

13 MR. COHEN: No. I've sometimes been stuck there.

14 THE COURT: My daughter insists it's possible to live
15 in an airport.

16 MR. COHEN: I think they made a movie about that.

17 MS. KATZ: They made a movie about that.

18 THE COURT: I explained to her that I very carefully
19 asked the people at JFK whether you could live at JFK and they
20 told me you couldn't.

21 MR. COHEN: In any event --

22 THE COURT: She didn't run away from home.

23 MR. COHEN: Your Honor, I believe -- our
24 information is that the rent is about \$850,000.00 a month.

25 THE COURT: Now, I take it that somebody's view is

1 that is actually an approximately fair rental for the ground as
2 if empty --

3 MS. KATZ: No, Your Honor, I'm sorry. Not as if
4 empty. This is -- actually the lease with the City sets out
5 the demised premises. Some of that is ground space. Some of
6 that is buildings and then I'm looking on Page 5 it -- the
7 document indicates that with respect to the square footage
8 areas that are set forth in this document these are pre-
9 construction and pre-modification spaces. It says all square
10 footages are approximate and shall be --

11 THE COURT: But I'm asking -- I mean a ground lease
12 is per se for the ground only.

13 MS. KATZ: We referred to it as the ground lease. It
14 could be the true lease. It does and did include certain
15 buildings.

16 THE COURT: It's not really a pure ground lease.

17 MS. KATZ: Correct. On Page 5 of the lease there's
18 an indication that the footages are approximate and shall be
19 corrected to actual square footages upon completion.

20 THE COURT: Does that document require what was then
21 Western is now Delta put anything up on the ground?

22 MS. KATZ: They did make improvements on that space.

23 THE COURT: I understand they did. I'm asking you
24 whether this document required it.

25 MS. KATZ: This is the document pursuant to which

1 they did it. I have to look if you're asking specifically did
2 it require it. I have to look at that language.

3 We believe it contemplates it but does not require
4 it.

5 [Pause in proceedings.]

6 THE COURT: Well, if I understand the situation
7 correctly, unless you pay the amount that you're supposed to
8 pay to the City of Los Angeles and the amount that you're
9 supposed to pay to the Bank of New York, you're not paying the
10 full cost of your occupancy because the bonds were used to
11 rehabilitate the facilities so that they could be used by the
12 airline which was then Western.

13 MS. KATZ: Your Honor, if I could go back. I don't
14 agree. If I could go back to --

15 THE COURT: How can you not agree?

16 MS. KATZ: I'm going to explain it to you. You go
17 back to Page 5 of the ground lease which is Exhibit 3, and I
18 believe --

19 THE COURT: It's almost impossible to find it
20 considering there's no tabs, but it's all right. I can --

21 MS. KATZ: I can hand up this one, Your Honor.

22 THE COURT: That's all right. I think I've got the
23 lease -- I've got the lease at least. Where on Page 3?

24 MS. KATZ: On Page 5.

25 THE COURT: Okay.

1 MS. KATZ: The original lease indicates that there
2 was certain existing properties --

3 THE COURT: I'm not saying that it doesn't.

4 MS. KATZ: I understand.

5 THE COURT: But I'm saying to you they weren't what
6 you used the \$96 million for.

7 MS. KATZ: We used the \$96 million to make
8 improvements on that property. However, under the terms of
9 this lease once those improvements were made the actual square
10 footages or the categories of demised premises were increased.

11 THE COURT: But you don't understand. You're not
12 paying attention to what I'm trying to say to you. I buy a
13 piece of property. The lot has six chicken coops on it and I
14 also put a house on it. The person that I borrowed the money
15 from to put the house on the property doesn't care about the
16 chicken coops but I got to be paying the guy for the ground and
17 I get to be paying the mortgage and that's what you were doing.
18 You bought from them, you take from them under a lease
19 property that had some chicken coops on it and you didn't think
20 they were nice enough so you borrowed \$98 million or \$96
21 million and fancied them up.

22 So when you put them together, the cost of the
23 property is the two together because their \$98 million went to
24 put the improvements on the property and the rent is for the
25 use of the land that you got the improvements on.

1 MS. KATZ: Your Honor, we are paying to the City rent
2 which covers those improvements.

3 THE COURT: No, it doesn't.

4 MS. KATZ: Well, Your Honor --

5 THE COURT: I mean it doesn't. If it does it would
6 be the most unusual lease I have ever seen.

7 MS. KATZ: Page 5 --

8 THE COURT: Because it wouldn't then be any reason
9 for some of you to be paying the money to somebody else.

10 MS. KATZ: We are repaying as debt service the money
11 that was borrowed to the bondholders and we are paying rent on
12 the property including the improvements, and Page 5 indicates
13 that those square footages for the demised premises would be
14 adjusted when the premises were completed and the construction
15 was completed that such correction shall be made by the parties
16 without the need for formal amendment to this lease and with an
17 appropriate adjustment in rental.

18 THE COURT: But nobody was renting to you the things
19 that were on those square footages like the counters, like
20 other things.

21 [Pause in proceedings.]

22 MS. KATZ: Your Honor, with respect to the mortgage,
23 that is a mortgage and it is separate and it is covered by a
24 separate document and a separate arrangement, a financing
25 arrangement.

1 THE COURT: Well, all I can tell you is as far as I
2 can see from this unless you're paying both of them you're not
3 paying what is the fair price for what you have because it's
4 certainly not embodied in the rent that's being paid to LAX.

5 MR. TORMEY: Your Honor, Tom Tormey for Davis Polk.

6 If I could just address the mortgage point. We think
7 that you have it exactly right. There are in fact -- there is
8 a mortgage. We're not sure that it's perfected and we're not
9 sure it's exactly -- what exactly the mortgage is, but there's
10 also a lease.

11 Just to step back for a second, the difference here
12 is the way the bankruptcy code treats the two categories of
13 documents. The lease is required to be paid currently in cash
14 during the case. So we're out in -- we're paying cash to the
15 City and we acknowledge our obligation to continue doing that.

16 The mortgage is a financing and it's debt and it
17 waits to the end of the case. It may be fully secured. We're
18 still looking at that. It probably isn't but that's a
19 completely separate obligation.

20 THE COURT: You're asking me today for an injunction
21 and I don't think you've met the standard. It's that simple.
22 It may be that one night we can get further along in this
23 thing, you'll explain to me why it is that you should only have
24 to pay half of it, but right now it doesn't seem that way to
25 me.

1 MS. KATZ: Your Honor, 365(d)(c)(3) says that you
2 only have to pay the true lease payments and we are paying the
3 true lease payments. It is our position that the mortgage or
4 the debt service, however you want to refer to it, is not a
5 true lease payment. To have to pay it and risk because it puts
6 us at great risk if we do not, but to have to pay it and go
7 forward with the matter means that we are going to be paying
8 pre-petition bondholders, pre-petition bondholders debt service
9 payments that will put them --

10 THE COURT: You're paying how much money a month?

11 MS. KATZ: For the rent?

12 THE COURT: No, for the bond service.

13 MS. KATZ: It's \$1.5 million every six months.

14 THE COURT: Good. Then you can pay \$1.5 million for
15 those six months because I'm not going to grant you a
16 preliminary injunction because I'm not satisfied that the
17 situation warrants one. This is not the normal kind of a
18 situation where you grant a preliminary injunction which what
19 you want to do is to, in essence, have the whole lawsuit
20 resolved in the first five minutes of the case. It's money but
21 that's what it is. It's money.

22 MS. KATZ: Your Honor -- okay.

23 MR. TORMEY: Thank you, Your Honor. Your Honor, we
24 our concern is not just getting an injunction. Our concern
25 here is we need -- if you are going to require us to pay what

1 we regard as pre-petition debt we believe we need an
2 affirmative order from you to pay or our view is that we
3 shouldn't have to pay this once we pay it in this case, and we
4 have other structures that are similar to this, Your Honor.

5 THE COURT: Do you realize that you can only give me
6 so many volumes a week for me to read? I was given three large
7 volumes this week and the thing that you thought was most
8 important you put at the very, very end. Why am I supposed to
9 start at the end instead of the beginning? Am I getting a
10 letter that says if you don't read anything else just read
11 this? I'm not getting the cases.

12 You're asking me in the space of less than a week to
13 decide a major issue where it just can't be decided that
14 quickly and it can't be decided -- I understand what you're
15 saying but I also understand that PCH also said when you undid
16 something you treated it as an equitable lease.

17 MR. TORMEY: Yes.

18 THE COURT: So --

19 MR. TORMEY: An equitable mortgage.

20 THE COURT: An equitable mortgage. So I'm saying to
21 you only when you put these two things together do you have the
22 whole of what went in to create the cost and without really
23 having somebody explain to me in great detail how this
24 transaction is put together without having hours to look at all
25 of the documents and see how they're put together you can't

1 really expect that you're going to have your entire lawsuit
2 decided on the first hearing.

3 MR. TORMEY: I understand, Your Honor. As it
4 happens, the bondholders in this case have filed
5 contemporaneously with the response on this motion a motion for
6 adequate protection, seeking adequate protection in the event
7 that you in fact that they're secured. That motion I think is
8 going to be heard on November 10th and what I would suggest is
9 that we just do a standstill until November 10th.

10 THE COURT: I don't give -- sorry. You can do
11 whatever standstills you want. You can stand still in the
12 middle of my hall, you can stand still downstairs, you can
13 stand still wherever. I can't make anybody give you a
14 standstill.

15 MR. TORMEY: Your Honor, our concern is this. If we
16 do not make this payment because it's pre-petition debt --

17 THE COURT: Well, then why don't you pay it because I
18 haven't said you shouldn't and -- if I wanted to tell you not
19 to pay it I would have told you not to pay it. Therefore, it's
20 therefore okay for you to pay it.

21 MR. TORMEY: Your Honor, this is an issue goes not
22 just to LA but to other structures and --

23 THE COURT: Do you understand? Do you have any small
24 children, sir?

25 MR. HUEBNER: He does, Your Honor.

1 THE COURT: How small?

2 MR. TORMEY: One is eighteen months and one is four
3 on Saturday.

4 THE COURT: Eighteen months doesn't count, but four
5 is good enough. Daddy, I want some ice cream. Daddy, I got to
6 have ice cream. Daddy, where is my ice cream. Daddy, you
7 forgot the chocolate puffs. Daddy, where is my chocolate
8 puffs. Daddy, you didn't give me a spoon. Daddy, daddy, he's
9 trying to take my ice cream. Daddy, he's trying to blow it
10 upside down.

11 I mean you're going on and on and on and on and on.
12 The fact of the matter is just because you gave that kid a bowl
13 of ice cream today doesn't mean you have to give another kid a
14 bowl of ice cream tomorrow.

15 Now, if you want to get something clear I don't
16 understand why anybody is giving me copies of transcripts from
17 some other judge's court. As far as I'm concerned what I put
18 on my record stays on my record. That's the way it goes. It's
19 not intended to be distributed as a decision. If I wanted to
20 distribute it as a decision I'd write it out. I mean it's
21 meant to control the matter before me at this minute. If I
22 don't give you the preliminary injunction here it doesn't mean
23 I have to do anything else in any other time. You asked me for
24 a preliminary injunction. You have to show probable cause on
25 the merits and I'm not prepared to find that you've done that.

1 MR. BOTTER: Your Honor, David Botter, Akin, Gump,
2 Strauss, Howard & Feld on behalf of the Official Committee. I
3 have one point to make, Your Honor.

4 I have a five-year old. So that would qualify as a
5 small child. Your Honor, you made a point about the bowl of
6 ice cream. The only concern that I have with your order which
7 essentially allows the debtor to make this payment is that we
8 can take that bowl of ice cream back if Your Honor determines
9 during the adversary proceeding that in fact this lease should
10 be recharacterized as a secured financing.

11 THE COURT: Well, can I ask a question? What comes
12 before a preliminary injunction?

13 MR. BOTTER: Restraint.

14 THE COURT: Temporary restraining order. So why does
15 anybody ask me for a preliminary injunction? It's the wrong
16 relief to be asking me for.

17 MR. HUEBNER: Your Honor, I think our concern is that
18 there are no cure periods at all in the lease.

19 THE COURT: I'm asking you --

20 MR. HUEBNER: If we did not make the payment because
21 we believe we cannot they could terminate the lease the next
22 day with no notice.

23 THE COURT: I don't really care.

24 MR. HUEBNER: That's why we --

25 THE COURT: I'm telling you there's a big difference

1 between asking me for a temporary restraining order or a
2 mandatory injunction and asking for a preliminary injunction.
3 The standards are totally different.

4 MR. HUEBNER: Your Honor, it sounds like part of the
5 problem and the first month of the case decides needs many
6 apologies to many people is that the sheer number of momentous
7 things that we have thrown or have thrown at Chambers has, in
8 fact, been unreasonable. Can I make a suggestion to possibly
9 resolve this?

10 THE COURT: I make a suggestion that you go take your
11 bankruptcy code and go look at Rule 65 and I'll take another
12 little recess and have a little more of my Diet Coke and then
13 you'll make another motion.

14 THE CLERK: All rise.

15 MR. HUEBNER: Thank you, Your Honor.

16 (Off the record and reconvened.)

17 THE COURT: You may be seated.

18 MS. KATZ: May I proceed, Your Honor?

19 THE COURT: Yes.

20 MS. KATZ: The debtor would like to make an
21 application for a temporary restraining order pursuant to Rule
22 7065 of the Rules of Bankruptcy Procedure. We believe that it
23 clearly appears from specific facts shown by the complaint that
24 this -- the bond payment that is due to be made on November 1st
25 is a pre-petition debt obligation and should not be made, that

1 in the event that is not made and it turns out that the debtor
2 is incorrect in its characterization, the debtor then risks
3 irreparable harm as a result of possibly losing its facility.
4 Certainly the improvements to the facility which are covered by
5 the facility sublease because there is no cure period.
6 Actually, there's a five day cure period but that cure period
7 will run automatically. There is no notice that is required
8 for that cure period and it will run and the debtor could be if
9 it is wrong evicted from that property.

10 THE COURT: Okay. Well, let me hear your adversary.

11 MR. JONES: Thank you, Your Honor. Evan Jones of
12 O'Melveny & Myers representing the RAIC.

13 The thin strawman I think were the debtor's
14 characterizations. Your Honor, I'm going to deal with the oral
15 TRO motion first and then I will get to the substance.

16 The oral TRO motion is clearly improper. The rule
17 requires that such a motion be based upon a verified complaint
18 or affidavits, neither of which exists here. Furthermore, Your
19 Honor, the rule specifically indicates that a TRO is to be
20 considered by the Court if it is not possible to have a timely
21 hearing on the preliminary injunction. They filed a motion for
22 a preliminary injunction. We're here. We are prepared to and
23 in fact the rule goes on to say we are entitled to a hearing on
24 the preliminary injunction to determine whether they have met
25 the standards. The rule indicates that is to take precedence

1 over all other matters including, Your Honor, I think motions
2 under Rule 1013 -- excuse me, Section 1013, 1014 and 1110.

3 Your Honor, the rule indicates that they can only
4 obtain a TRO just by the way, Your Honor, as the Second Circuit
5 has indicated if they show irreparable harm by the way the TRO
6 rule says there has to be an imminent risk of irreparable harm.

7 The case law is very clear that if all they have to do to
8 avoid proposed harm or threatened harm is to pay money there is
9 no irreparable harm. They actually cited those cases
10 themselves, Your Honor, in their motion for a preliminary
11 injunction when they argued that there was no harm to those
12 entitled to these lease payments because all we were losing was
13 money.

14 All they need to do to avoid this supposed harm of
15 potentially defaulting under their agreements and potentially
16 suffering results which by the way, Your Honor, as we note in
17 our papers are subject to the automatic stay. So we can't do
18 anything. There's no threat of an irreparable harm here, but
19 all they need to do is pay \$1.5 million.

20 Now, Your Honor, I don't have a lot of cases with me
21 on TRO hearings because we didn't come here for a TRO hearing,
22 but I do have plenty of cases on preliminary injunctions. The
23 Second Circuit has indicated before considering a preliminary
24 injunction the Court needs to weigh the harms to the parties
25 and needs to examine the harm to the public interest. In that

1 respect, Your Honor, the evidence which is before the Court --
2 again, Your Honor, I want to emphasize, we don't have any
3 evidence, not one quit of evidence on the merits from this
4 debtor. They haven't even authenticated the documents
5 properly, Your Honor. They chose to bring this preliminary
6 injunction motion. They chose how to proceed. They're not
7 entitled to suddenly say well, we want to switch it to a TRO
8 and we want to just dispose of the requirements for a TRO. But
9 what the evidence before this Court shows, Your Honor, is that
10 Los Angeles International Airport as the debtor argues is
11 essential to their distribution system or their system
12 entirely.

13 But, Your Honor, it goes far beyond that. The
14 declaration of Mr. Ryan, which we filed, demonstrates that that
15 airport is responsible for over \$71 billion in commerce to
16 Southern California each year. The declaration filed by Mr.
17 Ryan indicates that my client, their strawman which is
18 incorporated to help raise financing -- actually, it's not to
19 raise financing. It's to improve the airport is engaged --

20 THE COURT: But you can't do unless you've got money.

21 MR. JONES: That's correct, Your Honor. Is engaged
22 in constant financing efforts to improve that airport. The
23 declaration indicates, in fact, they're engaged in one right
24 now with regard to the fuel distribution system. The
25 declaration indicates --

1 THE COURT: That must be interesting.

2 MR. JONES: Your Honor, given that there have been
3 various attempted terrorist attacks there, we take fuel
4 seriously.

5 THE COURT: I wouldn't imagine that you would. I
6 mean after all you didn't have any lights for a while. Next
7 it's going to be the cold north California or the -- what do
8 you mean we can't drive cars in California.

9 MR. JONES: But, Your Honor, in all seriousness, the
10 declaration makes clear that if the payments to RAIC from which
11 it pays the bonds -- by the way, Your Honor, that's the first
12 factual misstatement I want to correct and there are bunch of
13 them. The first one I want to correct here is this debtor does
14 not pay a cent on those bonds. This debtor does not pay on
15 those bonds. This debtor pays RAIC under what is labeled a
16 lease agreement. RAIC turns around and pays the bonds for the
17 financing it obtained to build improvements. When Your Honor
18 spoke of the chicken coops and they wanted a house, that's
19 exactly what happened. In 1985 there was a facility there that
20 had chicken coops and LAX, RAIC and the debtor's predecessor
21 wanted to have a house there. RAIC went out and borrowed money
22 to do that.

23 As the California cases note, it is very common where
24 a landlord wants to improve his property for the landlord to go
25 out and borrow money based upon the stream of rental income

1 that it gets from the improvements, the declaration of Mr. Ryan
2 and the declaration of Mr. Leeds indicate that that's exactly
3 what we did and that that was for fair market value. Your
4 Honor, that's the second factual misstatement that the debtor
5 has made in their papers with no basis. They say that the
6 leaseback under which RAIC rents the house back to the airline
7 is not at fair market value. There's no suggestion of that in
8 any evidence they provide and in fact the only evidence is
9 quite to the contrary. Mr. Leeds testifies under oath that
10 that lease is at fair market value.

11 Your Honor, the third misstatement I want to address.
12 Counsel said that there's a bullet payment under that lease.
13 Counsel even admitted during a break, Your Honor, counsel
14 misspoke. There was a bullet payment in the San Francisco
15 airline lease that the Seventh Circuit United States decision
16 addressed. There's no bullet payment here.

17 THE COURT: It didn't look to me like there was one
18 but then I -- I just read them. I don't get to write them.

19 MR. JONES: Well, Your Honor's exactly correct.

20 Now, Your Honor, what are the facts here. Well,
21 first I want to address, and we did in our papers, is there
22 even a judicial dispute -- justiciable dispute, excuse me, Your
23 Honor, it's late. Justiciable dispute here. The folks sitting
24 on this side of the room never heard from the debtor until they
25 sued us. We didn't go to them and say you must pay the rent.

1 We didn't go to them and say this is a real lease. We didn't
2 go to them and say if you don't we're going to seek relief from
3 stay so we can invoke all these remedies that you say you're
4 terrified of. We're sitting in Los Angeles and we got hauled
5 into court for what is a pure and simple advisory opinion.
6 They've told you they want you to rule that if they don't pay
7 the rent, which by the way, Your Honor, there's nothing in
8 their papers that says we aren't going to pay the rent; they
9 just say if we don't then the people on this side of the room
10 might argue that this is a lease. If they did they might --

11 THE COURT: It's really surprising why they would
12 argue that it was a lease.

13 MR. JONES: I'm sorry, Your Honor.

14 THE COURT: I said it's really surprising why they
15 might argue that it was a lease just because that's what it's
16 called.

17 MR. JONES: That's what it's called and Your Honor in
18 fact -- the facts show that that is what it is in form. But,
19 Your Honor, the case law makes clear, the best case I thought
20 was the one where the potential draftee came into court and
21 said under this draft regulation they may draft me and ship me
22 off to Vietnam and the court said you know what, until they
23 draft you you don't have a case or controversy that this court
24 can address. That's exactly where we are today, Your Honor.
25 We have made no demands upon them. By the way, Your Honor,

1 that distinguishes this case from the Circuit Wise decision
2 they cite where the court held if you come into court and you
3 say order them to pay you have to prove that you have a lease.

4 Now, Your Honor, Mr. Johnston if he comes back on his
5 adequate protection motion I'm sure will point out that there
6 are five decisions to the contrary. Circuit Wise is the only
7 one that says that, but even if Circuit Wise is correct that's
8 not where we are. We have sought no relief from this Court.
9 We haven't even been served with this complaint. We haven't
10 answered --

11 THE COURT: That's one of the most interesting
12 aspects of the federal rules is that you can get a TRO or a
13 preliminary injunction without service of the complaint. But
14 you can also do that in state court, but I still think it's
15 fascinating to think that you don't have to serve the summons
16 first.

17 MR. JONES: Your Honor, I agree with you although
18 again Rule 65 says you have to make efforts to contact --

19 THE COURT: I'm not saying that, but I'm saying it's
20 very clear you don't have to have actually served the summons
21 and there are actions under the CPLR that you can commence by
22 serving an order to show cause.

23 MR. JONES: That's true and that's the same in
24 California, Your Honor.

25 THE COURT: I just think it's unusual.

1 MR. JONES: But, Your Honor, the case law makes very
2 clear that precisely because for the reasons Your Honor
3 mentioned we don't have any discovery here, we don't have an
4 answer. The only facts that are in evidence are those that
5 were put in by the defendants. Your Honor asked how big is
6 this payment you don't want to make. They don't even know. It
7 takes them forty-five minutes to get an estimate.

8 Now, Your Honor -- by the way, Your Honor, the point
9 there is the case law says that the court should be very
10 hesitant to grant a preliminary injunction because the facts
11 aren't known. Your Honor, I would again --

12 THE COURT: Except if you believe there is fraud or
13 misconduct or they are prohibiting.

14 MR. JONES: Your Honor, I would agree. I don't think
15 anyone suggested fraud.

16 THE COURT: I'm just saying that the one situation in
17 which I think the federal rules are very liberal is in allowing
18 you to get a TRO where there is the threat that things will
19 disappear.

20 MR. JONES: That's correct, Your Honor. Your Honor,
21 to continue. The case law, I believe, is clear and again I
22 haven't had a chance to research the TRO case law although I've
23 dealt with TROs before. The case law is clear that not only do
24 they have to show an imminent risk of harm but they have to
25 show a probability of success on the merit. Let's start with

1 the harm.

2 THE COURT: That I would say to you that with respect
3 to a TRO the probable success on the merits standard is much
4 lessened. That is that the harm is greater -- is the greater
5 side of it in the -- that's because it only lasts for ten days.

6 MR. JONES: Your Honor, I would note the Second
7 Circuit does have decisions which deal with the preliminary
8 injunction. A TRO of course is just a type of preliminary
9 injunction. It is a preliminary injunction granted before the
10 other party is able to respond.

11 THE COURT: How about the idea that a preliminary
12 injunction is just a temporary restraining order that lasts
13 longer?

14 MR. JONES: Your Honor, I'm a strawman. I've very
15 flexible on names. But, Your Honor --

16 THE COURT: It's just getting late. That's all.

17 MR. JONES: I understand.

18 Your Honor, again, the case law is very clear. A
19 mere monetary loss is not irreparable harm. The automatic stay
20 bars what they say they're going to do. They claim they face
21 this Hobson's choice. We had three different counsel stand up
22 and say Your Honor, we can't pay them. The code forbids us.
23 Well, Your Honor pointed out they -- and they say it's
24 impossible. They achieved this afternoon. The first thing
25 they achieved was the impossible and they did it without

1 objection. They came in and they said we have these lease
2 arrangements and they're subject to dispute because that's what
3 their stipulation say. They are subject to dispute over
4 whether they are leases or financing and we want to pay them
5 with a reservation of rights. Your Honor, we told them a week
6 ago that we were prepared to entertain that. They have
7 accomplished the impossible. They can put themselves --

8 THE COURT: They have accomplished the impossible.
9 They have taken an agreement with their adversary and kicked it
10 in the butt. We all have to sit here instead of you just
11 having had an agreement with them? I should charge them for my
12 time.

13 MR. JONES: Your Honor, they go on and they say, well
14 not only can we not pay under a reservation of rights, which
15 again is what they're doing in Chicago and Boston, and we've
16 offered them, but they say we might have to assume this in
17 sixty days. Well, Your Honor, two things there. I don't think
18 they can look at the court with a straight face and say you
19 never granted an extension --

20 THE COURT: I certainly believe that the new code and
21 the length of time that there is to assume have all come to the
22 conclusion that we are not going to write any decisions on that
23 subject but that if anybody thinks we're going to limit it to
24 that number of days they've got another thing coming. Second
25 Circuit in Klein's Leepman [Ph.] is very clear that they

1 understood why you can't do it.

2 MR. JONES: Your Honor, again, I probably shouldn't
3 use this term since I'm now the strawman, but I would submit
4 that's a strawman.

5 THE COURT: You're not a strawman.

6 MR. JONES: Well, Your Honor, I like the thinner
7 part. I'm going to report that to my wife.

8 But, Your Honor, they can't argue to you that you
9 wouldn't grant an extension of that sixty-day time. In fact,
10 again, we've told them we would agree to that and also, Your
11 Honor, that's grounds for a motion to extend, not a preliminary
12 injunction. So they haven't shown any real harm here other
13 than they might have to pay \$1.5 million and the case law makes
14 clear paying \$1.5 million is not irreparable harm.

15 Now, I mention the other side. If Your Honor enjoins
16 this payment, whether you call it a TRO, a preliminary
17 injunction or thoughts from the bench, my client will not be
18 able to raise financing to improve LAX as it does every day.
19 Will we be able to get money some other way? I don't know the
20 answer to that.

21 THE COURT: Well, yes, you do. How many Brinks
22 trucks go out there every single day?

23 MR. JONES: Your Honor, that's not in any of my
24 declarations. But, again, I do know that --

25 THE COURT: I mean certainly lots and lots of money

1 goes out there every day.

2 MR. JONES: I agree with you and it costs lots and
3 lots of money to run that facility.

4 Your Honor, I want to turn very briefly to the merits
5 because I do think that whether the standards are different on
6 a TRO which is supposed to come before the Court before a
7 preliminary injunction can be heard. When counsel --

8 THE COURT: That's true. That's true.

9 MR. JONES: When counsel can't be found and can't
10 appear we're all sitting here -- we've flown out from LA.
11 We're waiting for our preliminary injunction hearing and so,
12 Your Honor, I want to turn to the merits and I want to -- first
13 I want to go through the facts because I think there have been
14 some misimpressions given.

15 Your Honor had it exactly right. In 1985 LAX owned
16 chicken coops and their lessee said chicken coops are nice but
17 we want a house. LAX went to its strawman, RAIC, and said go
18 out and build them a house and the way we did that and the way
19 that California courts note in the Desert Springs case -- by
20 the way, the District Court noted in the United Airlines case
21 the way we did that is the way most landlords so. They say to
22 a lender, his bondholders, we will pledge to you the stream of
23 income here that we are going to get from leasing. Again, Your
24 Honor, that's what the documents says it is from leasing these
25 facilities to the airline.

1 Now, Your Honor, they say it's not a fair market
2 rent. But, again, the documents, the declarations, the
3 evidence, Mr. Leeds --

4 THE COURT: But it's obvious that \$5 million to LAX
5 is not a fair rent for what they get there at the airport.
6 That is, that is the proper rent for what it was before they
7 made it into a house.

8 MR. JONES: Your Honor --

9 THE COURT: Whereas the rent that you're talking
10 about which becomes the bond money --

11 MR. JONES: Yes, Your Honor.

12 THE COURT: -- is the rent that covers the new
13 building.

14 MR. JONES: That's correct. Your Honor, the only
15 point I quibble with, and -- I don't personally know the
16 answer. All I know is the documents say that the ground lease
17 rent that the debtor went off to try and figure out what it was
18 that is paid is in fact the fair market rent for the chicken
19 coops.

20 THE COURT: But it was at the day that the lease was
21 entered into and it was and it is the fair market rent for what
22 it was they owned at that moment.

23 MR. JONES: That's correct, Your Honor. Again, Your
24 Honor --

25 THE COURT: I mean obviously any piece of land in Los

1 Angeles has gone up in value in ten years.

2 MR. JONES: But, Your Honor, again the ground lease
3 provides for that. The ground rental -- by the way, this was
4 another misstatement. The ground rental escalates according to
5 fair market value.

6 THE COURT: All I'm saying is that to me I don't see
7 where you're paying for what you're getting as the lessee
8 unless you're paying for what you get from LAX as well as what
9 you get from Raffee [Ph.]. Maybe you're too old for Raffee,
10 but --

11 MR. JONES: Your Honor, I have three small children
12 and I remember Raffee as well as Barney.

13 THE COURT: Which one drove you crazier?

14 MR. JONES: I'm going to take the Fifth at this
15 point.

16 Your Honor, but Your Honor is absolutely correct.
17 They pay fair market rent for the chicken coops directly to
18 LAX. They pay fair market rent for the house directly to RAIC.
19 Now, Your Honor --

20 THE COURT: And at the end of forty years LAX get
21 back what it has and you get back whatever you have --

22 MR. JONES: They get nothing. That, Your Honor --

23 THE COURT: And the debtor gets nothing.

24 MR. JONES: That's correct. That is a critical point
25 when we get to the substance here. This is one of two things.

1 It's either an integrated deal in which case it's a slam dunk
2 case. At the end of forty years there isn't a bargain purchase
3 option. There isn't a purchase option. There's nothing. At
4 the end of forty years on whatever the date is in 2025 it all
5 goes back to the City who I'm a strawman for. They don't get
6 to keep anything. No circumstances, not a bargain purchase,
7 not a fair market purchase, not time stand still is the only
8 way they keep it. In 2025 it comes back and there's not a case
9 out there I suggest, Your Honor, that says where a punitive
10 borrower gives up the property at the end of the deal -- and by
11 the way, Your Honor, the property has to have real value then.

12 Your Honor has obviously observed the real property
13 continues to have value until our big earthquake. The
14 facilities that were built, the house --

15 THE COURT: Are you sure? It might not be on the bad
16 fault.

17 MR. JONES: I hope not, Your Honor. I land there a
18 lot.

19 Your Honor, the facilities, the house that were built
20 with the borrowed money, we have a declaration from Mr. Pan
21 that the Internal Revenue Code regulations that require -- that
22 we -- that RAIC borrowed the money under require that when
23 those improvements come back to the City that at least twenty
24 percent of the value of those improvements remain. So it's not
25 a case where we have a disguised lease and you just use up the

1 property, a twenty year lease on a car or something. There's
2 real value there when it comes back. Every single case says
3 that that's a real lease.

4 Now, Your Honor, again -- and that's all in Mr. Pan's
5 declaration. The declaration of Mr. Leeds establishes that t's
6 a fair market value lease and that's another point that the
7 courts have said is a point that goes to showing that it's a
8 real lease.

9 By the way, Your Honor, you mentioned and I'm sorry I
10 skipped over it. I'm trying to hurry here. The first thing we
11 start with is California law says that a document that says
12 it's a lease that has an estate for years to the exclusion of
13 others is presumptively a lease and there is a strong burden
14 that must be overcome to show it's anything but a lease. The
15 only way the debtor tries to overcome that burden is misstating
16 without any evidence and says it's not fair market value. It's
17 not in the evidence.

18 There are other facts, Your Honor, that they also
19 misstate. They said -- I mentioned earlier they claim there's
20 a bullet payment. It's not in the evidence. They claim that
21 there's a hell or high water --

22 THE COURT: It's not just in the evidence. It's not
23 in the papers that I could find.

24 MR. JONES: Well, it's not a fact.

25 Your Honor, the other thing they say is they say

1 there's a hell or high water clause but there's not. The
2 documents say if that property can't be used as an airport any
3 more or if there's a fire, their obligations go away.

4 Now, by the way, Your Honor, I do want to note in
5 that context because I was talking with one of my real estate
6 partners and they said well, you know Evan, most real building
7 leases now do have hell or high water clauses and I cite, Your
8 Honor, to the Pay Car case and the Miller --

9 THE COURT: That's true but that is -- it started
10 probably about 19 -- 2001. I mean we're really talking about
11 some major changes in people's thinking with the inability to
12 get terrorism insurance.

13 MR. JONES: Your Honor, I hate to disagree but the
14 Pay Car case which was well before that said -- and Miller &
15 Star, which is the leading California real property treatise
16 said that the rational is if I'm the landlord and I'm leasing
17 my building to you I tell you go get business interruption
18 insurance, go buy your own insurance, I'm not getting in the
19 middle of this. By the way, Your Honor, I'm sure you've seen
20 millions of triple net leases out there. Plain vanilla leases
21 --

22 THE COURT: Honestly I'm not old enough to read
23 millions of leases. I have reviewed quite a few, quite a few.

24 MR. JONES: Your Honor, plain vanilla leases now in
25 fact do have that provision but, again, there isn't a hell or

1 high waters provision here. So, Your Honor, what do we have?
2 Well, we have on the one hand the debtor says it's irreparable
3 harm because if I take the action I want to take -- let me put
4 it another way. To avoid these risks that they tell us are
5 going to happen without relief from the stay, Your Honor, by
6 the way, I might have to pay \$1.5 million. We may have come
7 close to that today, Your Honor, in this hearing but that is
8 not irreparable harm to this debtor.

9 THE COURT: I don't know why people like to keep
10 sitting through these hearings but they seem to. I think
11 they're afraid they're going to miss something.

12 MR. JONES: Your Honor, you balance that on the other
13 side against the risk to the financing and operations of LAX
14 which the declarations say account for four percent of the
15 product of all of California, one airport. If you go to
16 Disneyland, Your Honor, you will land at LAX. If you ship
17 goods to Los Angeles unless they're going by ship, if you ship
18 goods --

19 THE COURT: But sometimes if I'm going to New York I
20 go to LAX anyway.

21 MR. JONES: We will keep a warm spot there for you,
22 Your Honor. You can live in our airport as long as you want.

23 THE COURT: I just won't fly Jet Blue and I won't
24 have the problem.

25 MR. JONES: Your Honor, they don't have irreparable

1 harm. They don't have a case on the merits. The damage to my
2 client which is in the business of building things and raising
3 money to build things at LAX is huge and the direct damage to
4 the public interest of keeping LAX operating efficiently and
5 economically would be directly impacted by any injunction,
6 whatever Your Honor calls it, and therefore, Your Honor, an
7 injunction should not --

8 THE COURT: And having brilliant landing surfaces.

9 MR. JONES: I'd have to consult with my partners
10 whether we started shining the runways yet, but we raised a lot
11 of money to keep it running.

12 THE COURT: No, but they must be absolutely level.

13 MR. JONES: That is certainly true and I will tell
14 you from my own personal experience they have to be completely
15 clean because if you suck a pebble into one of those jet
16 engines it's bad.

17 Your Honor, unless the Court has questions, I'm --

18 THE COURT: I really don't. Thank you.

19 MR. JONES: Thank you, Your Honor.

20 MR. JOHNSTON: Good evening, Your Honor. Jim
21 Johnston on behalf of the Bank of New York which --

22 THE COURT: Let's not go too long.

23 MR. JOHNSTON: Your Honor, I was going to say I had a
24 nice long presentation that I can now tear up because I have
25 very, very little to add to what Mr. Jones said and if you have

1 the mind now that you believe that the motion should be denied

2 --

3 THE COURT: I think it's important that you're having
4 flown from California that you say something.

5 MR. JOHNSTON: I will say very little.

6 THE COURT: What would your client think if they read
7 the transcript and there wasn't anything that you said in it?

8 MR. JOHNSTON: My client would be absolutely pleased
9 by a denial of this motion whether it's a TRO or a preliminary
10 injunction. I don't get paid by the word.

11 I just wanted to point out at its most basic level
12 here the situation boils down to this. I think Your Honor
13 touched on this earlier. The debtors want to use and consume
14 property that they don't own. They concededly don't own in any
15 way, shape or form and they don't want to pay for it. My
16 client has an interest in that property. For today's purposes
17 it really doesn't matter whether you call it an interest as a
18 sublessor or secured creditor. It exists. I don't think
19 anybody disputes that it exists.

20 The debtors are depleting the value of that property
21 interest every passing day. The bankruptcy code requires the
22 debtors to pay for their use or give the property back. There
23 was a mention earlier like it was some sort of sinister thing
24 to the motion for adequate protection that we had filed. We
25 made that motion in the alternative. If for some reason Your

1 Honor saw fit to grant a preliminary injunction today and we
2 made it to point out that if the debtors aren't paying rent --

3 THE COURT: What days is that on for?

4 MR. JOHNSTON: The next hearing date but I will note,
5 Your Honor, that if the debtors make their lease payment we'll
6 withdraw the motion.

7 THE COURT: That would be a nice idea.

8 MR. JOHNSTON: All that we are looking for is current
9 payment of rent.

10 In addition to Mr. Jones' presentation, I just want
11 to focus on the statute here. You can set aside all of the
12 requirements for injunctive relief or TROs. Those aren't met
13 here. But there's a more fundamental point and that's the
14 bankruptcy code through Section 365(d)(3) simply requires
15 payment under an agreement like the sublease here. It takes
16 the form of a lease and it has all the hallmarks of a lease and
17 that payment is required unless and until there's a judicial
18 determination that the agreement does not qualify as a lease
19 under the bankruptcy code.

20 To reach that conclusion you really need to look no
21 further than this Court's decision from quite a while ago in
22 Wedtech reported at 72 B.R. 464. The Court there was
23 confronted with facts very similar to these. A debtor had
24 filed an adversary proceeding seeking a declaration that an
25 agreement that it was a party to was not a true lease and then

1 it asked to be relieved of paying rent under that agreement
2 while the litigation was pending. The Court found the debtor's
3 complaint to have been filed in good faith. It went so far as
4 to note that the complaint appeared to have merit, but it held
5 that this did not give the debtor right not to pay its rent
6 while the litigation was ongoing.

7 The Court specifically and unequivocally held, and
8 I'll quote here "A court may not authorize a debtor to delay
9 its compliance with Section 365(d)(3)." That's what we're
10 talking about here. I don't think there's any authority and
11 there's certainly been no showing to relieve the debtors from
12 the payment of their clear and undisputed obligations under
13 this lease until the litigation is concluded.

14 Thank you, Your Honor.

15 THE COURT: Again, anybody else here?

16 MR. COHEN: Marc Cohen, Your Honor, Kaye Scholer
17 representing the City of Los Angeles, Los Angeles World
18 Airports. I'll take two minutes or less, Your Honor.

19 The uncontradicted testimony of the CFO of the
20 airports, Mr. Pan, was that this was a lease, that the
21 facilities sublease was a lease. Paragraph 11 of his
22 declaration, the critical point that was required to satisfy
23 the IRS requirements for the tax exemption was that the
24 transaction have sufficient provisions in it to insure that
25 there could be no misunderstanding that it was a lease as

1 opposed to a financing transaction for the benefit of Western.
2 It was certainly the City's intention that the facility
3 sublease be a lease which intention was and is consistent with
4 the City's paramount goals in the operations and ownership of
5 LAX and its other airports.

6 The third whereas clause, Your Honor, of the ground
7 lease says "Whereas lessee is engaged in the business of
8 commercial air transportations of persons, cargo, property and
9 mail as a scheduled air carrier and desires to lease from City
10 certain premises at airport consisting of certain portions of
11 previously existing terminal facilities and additional terminal
12 areas and facilities at airport including, but not limited to,
13 those facilities which it -- " which is the lessee "anticipates
14 expanding, remodelling and constructing or has already
15 constructed all to be financed by the Regional Airports
16 Improvement Corporation (hereinafter RAIC) or through other
17 means available to lessee." These were integrated documents,
18 Your Honor. It was everyone's intention at that time to make
19 use of the financing available by RAIC or some other similar
20 means to make improvements at the airport, improvements that
21 the City would own at the end of the lease.

22 Thank you.

23 MS. KATZ: Your Honor, if I could just respond.
24 First, in response to something that Mr. Jones said which I'm
25 sure he -- it was an erroneous misstatement on his part. Delta

1 has not been saying it does not want to pay the true rent. I
2 think you indicated Delta didn't even know the amount that it
3 didn't want to pay when we were trying to determine what the
4 amount of the true rent was. Of course, as we tried to make
5 clear --

6 THE COURT: I don't think that's the way he was using
7 the words true rent.

8 MS. KATZ: In any event, I think we've made it clear
9 that we were looking to pay that amount and are paying that
10 amount which according to the City's calculation is over \$9
11 million a year.

12 As Mr. Cohen just said, the improvements were
13 financed through the RAIC. This was not an ordinary landlord -
14 - it is not an ordinary landlord-tenant relationship between
15 the RAIC and Delta. The rent is based upon -- the rent under
16 the facility sublease, the amounts paid to the bondholders
17 through the RAIC is based upon the cost of capital use to
18 acquire those assets. The transaction is labeled a lease in
19 order to secure tax advantages and it is very common for
20 municipalities to label transactions leases purely for the
21 purpose of securing tax advantages but that does not make it a
22 lease. The substance of the agreement here is that it is a
23 financing agreement.

24 Delta has taken on the responsibilities normally
25 reserved for a lessor. The RAIC has never conveyed any true

1 property rights to Delta. RAIC -- the only property rights
2 that RAIC has are the ones that Delta originally conveyed to it
3 and that were conveyed back.

4 Finally, the interest that was transferred to the
5 RAIC was based upon the RAIC's promise to issue bonds for Delta
6 to do this construction. It was not based upon a market rate.

7 We think that this analysis is not altered because as I say
8 they argue that it was -- the structure was required for tax
9 purposes. We don't think that the nature of this as a
10 financing is altered by the existence of the conditional lease.

11 The conditional release is related to a default under the true
12 lease between the City and Delta and that lease is not at issue
13 here.

14 Your Honor, Delta has made a good faith assertion
15 that the arrangement here is a financing and we believe our
16 papers demonstrate a likelihood of success on the merits. If
17 Delta pays the debt service pursuant to 365(d)(3) or pursuant
18 to your order in the absence of some finding of current benefit
19 to this estate, and we do not believe there is, it will simply
20 be advantaging these bondholders over others who are similarly
21 situated and to avoid the anomalous result of 365(d)(3) being
22 used to advantage pre-petition debtholders. Courts in this
23 Circuit have held that where the debtor raises a good faith
24 claim that a document purporting to be a lease in fact is not a
25 true lease and the debtor should not be required to make those

1 payments, current payments under 365 unless and until the
2 dispute is resolved and then of course resolved in the
3 creditor's favor.

4 Now, where is the irreparable harm. There's been a
5 lot of discussion about this. By the way, this very situation,
6 Your Honor, arose in the United Airlines bankruptcy in this
7 very same context and the Court there entered the type of order
8 that we're seeking here. The problem is this. If Delta
9 doesn't pay and Delta is wrong, and while we don't believe
10 we're going to be wrong, it's certainly possible. We
11 acknowledge that possibility. There's no sure thing in the
12 world. So if we are wrong and the court later finds that this
13 arrangement with the RAIC and the trustee is a true lease then
14 absent protection from this Court -- and I'm going to describe
15 what that protection should be, Delta would be in breach of the
16 lease and would have an opportunity to cure. So the net result
17 of that --

18 THE COURT: That's not true. It has five days to
19 cure.

20 MS. KATZ: Well, those five days start to run as of
21 November 1.

22 THE COURT: I really don't think we need to keep
23 going because I am not going to issue a preliminary injunction.
24 I'm not going to issue a temporary restraining order. I do
25 not believe that it is clear beyond doubt that the lease -- the

1 second lease, that is the one that involves RAIC is not a true
2 lease. I think that there is a lot of reason to believe that
3 it is in fact a true lease. The term of the lease that
4 involves LAX is forty years. The term of the other lease is
5 forty years. There's no right to renew. There's obviously
6 going to be residual value of some sort to what's been put
7 there and this is I think as was said a -- not really an
8 irreparable injury case because it only involves money.

9 I realize that there are other cases that Delta has
10 but I myself don't think that any case can be decided except on
11 its own facts and I don't know that the documents that create
12 the situations in other cases are in fact the same and if
13 they're not the same they may not have the same result, but in
14 this instance it does appear to me that Delta is a party to two
15 leases and it is the combination of the two which give them the
16 rights that they have and that the second lease is not -- while
17 it may have some characteristics of a lease that has no value,
18 the fact is that the money that's being paid on that lease is
19 very substantial and it intends to pay down the -- ultimately
20 pay down the bonds. It's ultimately the money that the debtor
21 pays to RAIC which pays down the bonds.

22 So for that reason I'm going to deny the request --

23 MS. KATZ: Your Honor, may I --

24 THE COURT: -- for a preliminary injunction.

25 MS. KATZ: May I ask Your Honor that the Court would

1 direct that the payment be made so that the payment is being
2 made pursuant to the court order and that we --

3 THE COURT: I have no idea why I should direct that
4 you make that payment. You can do what you like. I mean I
5 don't know what it is you think you're going to get out of -- I
6 guess this is what bothers me. You seem to want something out
7 of my directing you to make that payment and I don't see what
8 it is that you get out of it. So I don't know what it is --
9 what basis you have other than saying well, Judge, you might be
10 wrong in which case I'd suggest you go upstairs tomorrow. The
11 only reason for me to direct the payment is somehow -- I don't
12 understand it.

13 MS. KATZ: Your Honor, we believe that it is a pre-
14 petition debt. We understand it's a --

15 THE COURT: Oh, please, give me my little violin. I
16 have never heard in all of the time that I've been doing this,
17 and believe me it's a long time, anybody telling me that they
18 had to have an order to be able to pay something after they had
19 a hearing when everybody in the whole world was here and it was
20 clear that I had refused to preclude you from paying it that
21 somehow you have to have an order in order to pay it. I don't
22 think so.

23 MS. KATZ: Thank you, Your Honor.

24 THE COURT: I think it's really clear that if you
25 paid it that it would not be a problem.

1 MS. KATZ: Thank you, Your Honor.

2 THE COURT: We don't usually sign orders directing
3 payments unless there's been a problem with somebody not paying
4 it.

5 Now, I don't know when we're due again.

6 MR. JONES: Your Honor, may we withdraw?

7 THE COURT: I just wanted to see if I could tell you
8 what day we were going to be here again.

9 MR. JONES: I think we have a status conference
10 November 29th on the answer, Your Honor.

11 THE COURT: I'm not talking about that. I think I
12 have a Delta day on the 10th. Yes, maybe?

13 MS. KATZ: Yes.

14 MR. HAHN: Your Honor, we were hoping to impose on
15 you for just a little bit longer with respect to the 1110
16 procedures order. While you were hearing the adversary
17 proceeding we met with the eight objectors in the hall and I'm
18 happy to report have reached a resolution with --

19 THE COURT: With seven of them?

20 MR. HAHN: Seven of them, yes, Your Honor. How did
21 you know that?

22 THE COURT: This thing you get as a judge where you
23 just sort of know and when they just want to bother you a
24 little bit that they have more than just a little bit of
25 bothering that they have.

1 MR. HAHN: I wish I could tell you it was eight, Your
2 Honor. We tried.

3 THE COURT: Okay. Well, then what do I need to know
4 about the seven?

5 MR. HAHN: I can report that Mr. Crowley who you
6 heard earlier is among the seven happy objectors. We have
7 resolved his concerns about confidentiality agreements. We
8 will withdraw the paragraph from the order that provides for
9 distribution of the unredacted stipulations only upon receipt
10 of a confidentiality agreement. That issue will be simply
11 negotiated among the parties at a later date.

12 THE COURT: Okay. So now who do you have that's left
13 over?

14 MR. HAHN: I believe the one objector remaining is
15 Mr. Silverman on behalf of the Ad Hoc Committee. He should
16 speak for himself but I think his remaining issue is the
17 redaction of the filed stipulations. We believe --

18 THE COURT: Why do you care?

19 MR. HAHN: Why do we care about redactions?

20 THE COURT: I want to ask him why he cares. You
21 didn't get a chance to say anything yet today.

22 MR. SILVERMAN: Thank you, Your Honor. Ron Silverman
23 from Bingham McCutchen.

24 I do feel lucky and special to be here as the last
25 one objecting at the end of the day. So I shall be brief but

1 thank you.

2 The situation is not a hard one to understand. Delta
3 is in Chapter 11. We don't know what will happen six months,
4 twelve months, what this company will look like upon exit.
5 What flights, what routes it flies, whether it merges,
6 liquidates, reorganizes, et cetera. Right now Delta is in
7 Chapter 11 and they want to negotiate changes to the deals on
8 an interim basis with their aircraft parties and we represent
9 people who have an interest in over a hundred planes and \$1.6
10 billion. So it's a substantial group that's got a serious
11 concern and a position about this.

12 So Delta is coming to us or will come to us and say
13 we'd like to change the fields on an interim basis. These
14 creditors will say well, how is Delta doing, what's it going to
15 look like, what financial condition, what operational condition
16 --

17 THE COURT: You know what I'm going to tell you?
18 What's it going to look like? Can you give me that word? I'm
19 going to say no, I can't tell you what it's going to look like
20 because we haven't gotten over the hump yet. We're climbing
21 Mt. Everest here and it's going to take at least another six to
22 nine months to get to the top and once we get to the top we
23 will be able to see what it will look like and then we'll go
24 sloping down the slide and we'll be able to know what it looks
25 like. But I mean honestly there's nothing you can tell anybody

1 about what it looks like.

2 MR. SILVERMAN: But, Your Honor, there may be. See,
3 in a company like Delta where what it does with its airplanes
4 that's like a significant, a substantial component of what it's
5 financial and operational presence and being is. If you redact
6 that information of what it's doing with all of its planes then
7 the people --

8 THE COURT: It's really simple. It's trying to lower
9 the price on all of the goods.

10 MR. SILVERMAN: You're right, Your Honor. If the
11 creditors see that and think that that makes sense and it's
12 going to be viable they may say great, let's negotiate a deal
13 because they're in Chapter 11. I'm not a new money lender.
14 I'm stuck here and you don't have to accept my planes but --

15 THE COURT: What I'm saying to you is I don't know
16 that right now it makes any difference to you to know that
17 information. I mean I don't think that Delta has been making
18 it a big secret that they've got planes they want to get rid
19 of, that they've got planes that they just assume they didn't
20 have and your people will get paid or they won't, and I
21 don't --

22 MR. SILVERMAN: But they're asking us, Your Honor, in
23 the interim to cut some interim deal perhaps. That's what --
24 if they don't there will be --

25 THE COURT: Then the only thing you can do is to look

1 to see if that deal might make sense.

2 MR. SILVERMAN: We would like --

3 THE COURT: The only way you can look to see if that
4 deal might make sense is to go out and see what you could get
5 for that plane from somebody else.

6 MR. SILVERMAN: But that's --

7 THE COURT: That's really basically the only way you
8 can make a deal here.

9 MR. SILVERMAN: Your Honor, you may say --

10 THE COURT: Why don't you ask Donald, the big D.

11 MR. SILVERMAN: Look, Your Honor, we think when
12 you're in Chapter 11 you're supposed to have visibility into
13 big picture financial stuff.

14 THE COURT: I'm not disagreeing with you but I think
15 that one of the problems here is they need confidentiality in
16 order to be able to make a few more deals and if they let too
17 many people know the deals they were able to make with the last
18 one they're not going to be able to make any more deals.

19 MR. SILVERMAN: That's not right, Your Honor. In
20 other cases they have done that, but rather than make a
21 blanket --

22 THE COURT: I know that but I mean, you know, isn't
23 that part of the whole thing. If you were -- if they weren't
24 in Chapter 11 you wouldn't have any chance at all of finding
25 out what they've done.

1 MR. SILVERMAN: No, but that's -- that is a perfect
2 point. If we're not in Chapter 11 we can decide if we want to
3 make a new deal with them and if we don't like it and they're
4 not going to --

5 THE COURT: If you are here you can make the same
6 decision.

7 MR. SILVERMAN: No, no. What I meant, Your Honor,
8 was you're entitled -- if they say you're not going to find out
9 about all the financial terms of their deals but do you want to
10 lend them money, do you want to lease them planes, that's your
11 decision, should you do it or not.

12 THE COURT: What I'm saying to you is you already
13 leased them the planes.

14 MR. SILVERMAN: Correct and we're stuck

15 THE COURT: The question is they don't want to pay
16 you as much as they agreed to pay you.

17 MR. SILVERMAN: Correct.

18 THE COURT: If they're just trying to pay you for a
19 little Cessna and they get a 747 it's real easy for you to tell
20 them that's the wrong price.

21 MR. SILVERMAN: But, Your Honor, they may say look,
22 let's defer the payments for a while. Let's lower them for a
23 little while and we'd like to be able to say hum, if we think
24 this plan makes sense over all that's great, but if not --

25 THE COURT: We don't have a plan. If we had a plan I

1 could understand what you're talking about, but we don't have
2 one. I mean we still got these pilots --

3 MR. SILVERMAN: I should have used the word --

4 THE COURT: -- that are making \$1 million when they
5 retire. We've still got all kinds of things that have to be
6 resolved. As I say, there's enough of a market for planes
7 that --

8 MR. SILVERMAN: The market changes but why force
9 people to say look, reject these planes now because the concern
10 is without this kind of disclosure they may say look, I'd
11 rather take the plane now because the market in the future
12 might be worse.

13 THE COURT: You know something, then he's going to
14 have to decide what he wants to do.

15 MR. SILVERMAN: Well, the other way --

16 THE COURT: If your guys decide they want to take the
17 plane then he's going to have to decide what to do and I'm not
18 going to make them tell you now what the deals were. They've
19 got enough other planes that they would like to figure out how
20 to dispose of and sealed bids are not an unusual thing with
21 respect to things where there's only so many people that want
22 to buy them.

23 MR. SILVERMAN: The other way to do it is not order
24 one size fits all redaction, make this without prejudice to any
25 particular creditor coming in and saying hey, if I'm doing a

1 deal with you that one has got to be redacted. You might find
2 out you get three people saying that but the vast market
3 doesn't and this way --

4 THE COURT: And I'm saying to you they're not going
5 to tell you and I'm not going to make them tell you.

6 MR. SILVERMAN: Thank you, Your Honor.

7 THE COURT: Do we have anything else we need to do
8 today?

9 MR. HAHN: No, Your Honor. We will submit an order
10 reflecting the changes agreed with this other seven --

11 THE COURT: Okay. I have one person here standing
12 with a pad.

13 MR. HAHN: I believe Mr. Edelman just wants me to
14 make clear that one of the changes to the order that we've
15 agreed to is that in the filed 1110(b) stipulations the tail
16 number and engine identification numbers will not be redacted.
17 They will be disclosed so people --

18 THE COURT: That's fine. That's good. Then they can
19 tell what kind of plane it is to be able to find their
20 comparable.

21 MR. HAHN: That's exactly right. Thank you very
22 much, Your Honor.

23 THE COURT: Thank you.

24 THE CLERK: All rise.

25 * * * * *

1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

4

5

6

Shari Riemer

7

Dated: 11/1/05

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24