

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3
4 IN RE: . Case No. 05-17923 (ASH)
5 .
6 DELTA AIR LINES, INC., et al, . (Jointly Administered)
7 .
8 . New York, New York
9 . Wednesday, April 25, 2007
10 Debtors. . 2:31 p.m.
11

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13 TRANSCRIPT OF CONFIRMATION HEARING
14 BEFORE THE HONORABLE ADLAI S. HARDIN
15 UNITED STATES BANKRUPTCY JUDGE

16
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1 (Proceedings commence at 2:31 p.m.)

2 THE COURT: Good afternoon.

3 COUNSEL: Good afternoon. Good afternoon, Your Honor.

4 THE COURT: Mr. Huebner.

5 MR. HUEBNER: Good afternoon, Your Honor.

6 THE COURT: You're the captain of the ship here, and
7 you have the floor.

8 MR. HUEBNER: Good afternoon, Your Honor, as I hope to
9 say for the very last time while my clients are in fact debtors
10 and debtors-in-possession. I am Marshall Huebner of Davis,
11 Polk & Wardwell here on behalf of Delta Air Lines and its
12 debtor affiliates.

13 Your Honor, I surely don't wish to be unduly
14 presumptuous or confident about the outcome of today's hearing,
15 nor to offend the remaining objectors. But since once things
16 get going, they will surely take on a life of their own, I
17 thought it appropriate to first, prior to turning to our four
18 unresolved objections say a few things about this case and the
19 people integrally connected to it.

20 As Your Honor knows, Delta Air Lines filed for Chapter
21 11 relief on September 14th, 2005, just over nineteen months
22 ago. At that time it was far from certain what Delta's future
23 would look like, what level of success its reorganization would
24 realize, and when and possibly even whether it would emerge
25 from Chapter 11.

1 From where we sit today, Your Honor, I think it is
2 fair to say that Delta's Chapter 11 has been a resounding
3 success of the very highest order and a credit to us all.

4 The trading value of unsecured claims in this case has
5 almost quadrupled since the petition date, representing a
6 value creation for creditors in the many billions of dollars.

7 Delta has been able to save its non-pilot pension
8 plan, protecting almost 90,000 people and their dependents.

9 While the road was, at times, rough, Delta was able to
10 reach consensual accommodations with all of its unions and
11 retiree groups as to extremely complex and difficult issues
12 relating to active employees, pensions, and health benefits.

13 Delta was also able, consensually, to restructure a
14 great number of its contracts and bring its costs in line with
15 fair, appropriate, and market rates.

16 Delta was also able to work consensually with its
17 creditors' committee and its retiree committees on virtually
18 every issue in this case.

19 Indeed, Your Honor, if I had to pick only one word, I
20 think the word "consensual" would likely be the single-most
21 appropriate word to describe these proceedings, for as Your
22 Honor knows all too well, as opposed to the typical Chapter 11
23 mega-case with seemingly endless omnibus hearings, most with
24 multiple contested matters, the Delta case was different.

25 In our case, not only did omnibus hearings not contain

1 dozens of matters, most contained no matters, for over sixty
2 percent of the hearings scheduled in this case were canceled
3 entirely because there was not a solitary matter left for you
4 to resolve. Of the relatively few omnibus hearings that were
5 actually held, I'm not sure that any had more than one or two
6 matters remaining for this Court's resolution. At the
7 disclosure statement hearing, Your Honor, you jokingly chided
8 us that, in resolving so much, we had made your job as a judge
9 very dull.

10 While it is true that lawyers often extol and look
11 forward to their various battles of adequacy to clashes of
12 metal, mind, and mouth, in fact you paid us a compliment of the
13 highest order, for in being able to find complex corporate
14 solutions to a bewildering array of difficult problems, we have
15 in fact all served these estates well.

16 As one final indicator, Your Honor, of how these cases
17 have gone, after over nineteen months in Chapter 11, there are
18 a grand total of two appeals; perhaps three as of this morning,
19 pending in this entire case, all where we've prevailed below;
20 one by a pro se plaintiff who Your Honor found to be a
21 vexatious litigant. In fact, Your Honor, we joked that our
22 working assumption, which in fact has been a remarkably
23 accurate predictor of judicial outcome, is that if you oppose
24 Delta, you must be wrong.

25 Your Honor, I would be remiss if I did not, at least

1 for a moment or two, focus at the confirmation hearing on
2 exactly who you have to blame for making your job so dull, and
3 who in particular we have to thank for making our jobs so
4 rewarding.

5 First and foremost, there is the client itself, for in
6 fact, as I believe Your Honor has come to appreciate -- and I
7 know that I certainly have -- Delta Air Lines, founded seventy-
8 eight years ago as a small crop-dusting operation, is not just
9 a company; in fact, it is something much more special: It is a
10 living, breathing organism with a culture and needs and even
11 feelings. And we have been remarkably blessed with a
12 management team that truly understood this culture and what it
13 took to diagnose it, operate on it, resuscitate it, and lead it
14 back to viability.

15 In doing so, Your Honor, as the press has widely
16 reported, the management team that led this case behaved rather
17 differently than virtually all other management teams running
18 cases of similar size and scope, both in their extraordinary
19 level of dedication to the enterprise and their remarkably
20 disciplined personal restraint and responsibility and in
21 understanding how to lead Delta through the dire straights of
22 Chapter 11.

23 With us in the courtroom, Your Honor, today, is the
24 true captain of the ship, Mr. Jerry Grinstein, the CEO of Delta
25 Air Lines and in every sense the captain. It has been a true

1 honor and a privilege to watch him in action and to learn from
2 him, something that I do not say lightly. His stewardship of
3 this company will, I predict, be talked about and remembered
4 for a very long time to come.

5 Also with us, Your Honor, who you've seen on the
6 witness stand and repeatedly found excellent and credible, is
7 Mr. Edward Bastian, Delta's Chief Financial Officer. Mr.
8 Bastian has been the second guiding hand on this restructuring,
9 negotiating to completion most of the most important and
10 sensitive deals and initiatives, and keeping all of us pesky
11 professionals in check on the arduous road away from perdition.

12 And to complete today's Delta trinity, we have with us
13 John Varley, Deputy General Counsel, the internal Delta lawyer,
14 who 24/7 headed up the legal aspects of this monster and often
15 helped beat both me and Delta into shape and submission.

16 Please permit me just for a moment to talk about my
17 own team, for I believe the team at Davis Polk that has now
18 been working for more than three years on this assignment has
19 been truly remarkable. One of the very best parts of this
20 assignment -- in fact, for me, perhaps even its very epigy --
21 has been to watch my colleagues learn and grow from this
22 fantastic odyssey and experience. It would be dangerous to
23 single any people out, but there are many that I would if it
24 were appropriate to do so. Our daily awareness, Your Honor,
25 that more than 80,000 lives, livelihoods, pensions, and

1 critical benefit packages rested on the success of our
2 collective endeavors was a daily motivator and driver for the
3 team at Davis Polk and many others in this courtroom to perform
4 at the very highest levels of dedication and professionalism,
5 and that, I believe, they most certainly did.

6 And then there is our creditors' committee. So often
7 an adversary of Chapter 11 debtors, our creditors' committee
8 was a remarkably constructive helpmate and catalyst for much of
9 the work that had to be performed. The lead professionals of
10 the creditors' committee, who most of the time were the face of
11 the committee to us, performed extraordinary yeoman service,
12 often matching us when necessary hour for hour, night for
13 night, weekend for weekend, to slog through what had to be
14 done. In particular, Your Honor, here in court today are Lisa
15 Beckerman and David Botter of the Akin Gump firm, two people
16 with whom I have greatly deepened my friendship and respect as
17 these cases have developed.

18 The committee's and our own financial advisors,
19 including my close friends and valued colleagues at Blackstone,
20 as well as the committee's advisors and our other financial
21 advisors, also pulled their huge oars. And I know that Delta
22 and its professionals are grateful to them for their efforts as
23 well.

24 Finally, we are not the only law firm. There is, of
25 course, Debevoise & Plimpton here today, headed by Richard Hahn

1 and Mike Wiles, who drew, shall we just say, quite the straw by
2 taking on the aircraft work.

3 And finally, Your Honor, one brief thought before I
4 move directly to today's agenda, for I think it is fitting that
5 we take stock from one last angle of what has been collectively
6 accomplished.

7 It has been widely reported that Delta is the tenth-
8 biggest Chapter 11 in the history of the United States. I
9 believe that when it was filed, which may still be true now --
10 that I'm not sure about -- it was the largest proceeding
11 pending in the United States.

12 In September and October 2005, Delta managed to
13 secure, with no new collateral, \$2.5 billion of DIP financing.
14 At the time, it was the largest DIP facility ever raised in the
15 United States. During the case, Delta also succeeded in
16 defending itself against a ten-billion-dollar hostile takeover
17 attempt from U.S. Airways, the largest hostile takeover attempt
18 ever tried in Chapter 11 in the United States. That a third
19 party in the financial markets were willing to finance a ten-
20 billion-dollar takeover offer comprised of 6 billion of cash
21 and billions of publicly traded securities for a company that
22 only months earlier had some doubting its very ability to
23 survive at all is a staggering testament to the achievement of
24 this team.

25 And finally, Your Honor, unless I am mistaken, Delta's

1 equity value at emergence, estimated at between 9.4 and \$12
2 billion, will be the highest equity value of any entity ever to
3 leave the protective harbor of Chapter 11.

4 Thus, it is with no small sense of satisfaction, and
5 as the spokesman for a very great number of people that I stand
6 here today to begin the confirmation hearing that will
7 hopefully mark the end of Delta's rehabilitative stay in
8 Chapter 11. And now to today's events.

9 Your Honor, I am extremely pleased to report that, as
10 reflected in the updated agenda letter, there are a total of
11 four unresolved objections to confirmation. Out of more than
12 210,000 possible objectors, there are four. And of the four
13 remaining objections, three constitute one-page pro se letters
14 by individuals. Please allow me to address those first.

15 The first objection is a letter from Mr. J. Anthony
16 Guajardo, a stockholder who laments that the common stock of
17 old Delta is being canceled under the plan and that he, quote,
18 "does not want to lose his investment." We reached out to him,
19 as we reach out to all objectors and parties; big or small, pro
20 se or represented, to try to talk to him about his objection,
21 and I respect the fact that he chose not to withdraw it.

22 But as Your Honor is aware, the billions of dollars of
23 creditor claims in Delta Classes Four, Five, and Six are all
24 impaired under the plan. And under the strictures of the
25 absolute priority rule, the holders of common stock in old

1 Delta may not lawfully receive any distributions thereunder.
2 Moreover, the recovery of stockholders, which admittedly is
3 zero, is not less than their projected recovery in the
4 liquidation; also zero. We wish there were value for equity,
5 Your Honor, but there is not. And we ask that this objection
6 be overruled.

7 I don't know if anyone is here to speak to it.

8 THE COURT: Does anybody want to speak in respect of
9 that objection?

10 (No verbal response.)

11 THE COURT: All right. Well, I will overrule that
12 objection. The Bankruptcy Code is a reflection of social
13 policy in our capitalist system. One aspect of the Bankruptcy
14 Code provision that is terribly important is the so-called
15 "absolute priority rule," under which no class of interest,
16 whether creditor or equity, in an entity in bankruptcy can
17 receive anything unless all classes higher are paid in full.
18 In this case, the creditors will not be paid in full; and
19 therefore, there simply is nothing for equity. That's a matter
20 of great regret, without a doubt, but it's the law and it is
21 the way we have chosen to deal with bankruptcy in this country,
22 and it's the only way. So I overrule that objection.

23 MR. HUEBNER: Thank you, Your Honor.

24 The second pro se objection is from Lavern Kelly Lusk.
25 Ms. Lusk, whose claim is the subject of a pending objection by

1 Delta, appears to object in that the plan denies her due
2 process rights by having prevented her from voting on the plan.
3 We contacted Ms. Lusk, as well, and explained to her that the
4 reason she was not allowed to vote on the plan was because the
5 Court's approved solicitation procedures in this case, as is
6 entirely typical in Chapter 11, provide that claimholders whose
7 claims are the subject of a dispute don't vote unless they file
8 a 3018 motion. Neither she, nor any other party objected to
9 this Court's fully noticed order approving the solicitation
10 procedures that in fact so provided. Moreover, Your Honor,
11 given overwhelming acceptance rates on the plan votes and the
12 many billions of dollars of voted claims, her vote could not
13 possibly have made a difference. That is what we understood
14 her one-paragraph objection to be. And, Your Honor, we also
15 ask that this second objection to confirmation be overruled.

16 THE COURT: Is Ms. Lusk here and wish to be heard?

17 (No verbal response.)

18 THE COURT: I will overrule that objection for the
19 reasons that you've articulated.

20 MR. HUEBNER: Thank you, Your Honor.

21 The third pro se objection, which I believe has the
22 same exact text; it has the same exact one paragraph as that of
23 Ms. Lusk, is from Ms. Dana Mehen. Davis Polk also contacted
24 Ms. Mehen, and it appears that her putative objection to the
25 plan is, in substance, a response to a pending objection --

1 (Announcement in courtroom.)

2 (Laughter.)

3 THE COURT: Sorry about that.

4 (Announcement in courtroom continues.)

5 MR. HUEBNER: Your Honor, is there such a thing as
6 "normal activity" in this building?

7 (Laughter.)

8 THE COURT: Oxymoron.

9 MR. HUEBNER: I don't know.

10 Your Honor, the debtors respectfully submit that Ms.
11 Mehen's objection is not a true plan objection, but that, to
12 the extent that it is, we ask that it be overruled for the
13 reasons aforementioned.

14 THE COURT: I overrule it.

15 MR. HUEBNER: Thank you, Your Honor.

16 Before I turn to the sole remaining objection, I first
17 need to fulfill my responsibility and address some of the
18 objections that were resolved. While we did manage to simply
19 talk a great many parties out of objecting entirely, some
20 requested subtle changes to the plan or the confirmation
21 hearing to satisfy their concerns; others requested
22 representations on the record as a way to address their issues.
23 So please allow me to take a few moments and catalog certain of
24 these resolved objections and the measures that were taken to
25 address them and, where necessary, to make representations on

1 the record. They are as follows:

2 A number of counter-parties, including airports at
3 Greenville and Puerto Rico, filed objections to confirmation
4 that are actually, quote, "treatment objections," meaning that
5 they object to the terms of the proposed assumption rejection
6 of various agreements with the debtors. We contacted those
7 counter-parties and they each agreed with us that their
8 objections would be considered treatment objections and not, in
9 fact, objections to confirmation. These treatment objections,
10 each will be resolved pursuant to the procedures described in
11 Section 10.5(c) of the plan for resolving treatment objections.

12 Next, the debtors agreed with the Official Committee
13 of Unsecured Creditors to clarify that Section 17.5(d)(viii) of
14 the plan, which gives the post-effective-date committee power
15 and standing to participate in, quote, "actions under or
16 pursuant to the aircraft claims objections procedures order,"
17 will also be deemed to give the post-effective-date committee
18 power and standing to participate with respect to claims under
19 the debtors leverage aircraft lease financing arrangements.
20 While I've stayed way far away from aircraft, I think that not
21 everything is going to be resolved under that procedures order,
22 so this sort of says that things that are going to be resolved
23 otherwise are within the same ambit as originally contemplated.

24 THE COURT: Got it.

25 MR. HUEBNER: We have reached an agreement with the

1 City of Atlanta with respect to executory contracts and leases
2 assumed by the debtors that resolved Atlanta's concerns.

3 We also reached an agreement with the United States
4 Government on a number of issues concerning the plan.

5 To resolve concerns that Marriott had with respect to
6 the treatment of certain aircraft agreements, the debtors
7 agreed to make the following statement on the record:

8 Section 6.6 of the plan does not itself effect a
9 release, satisfaction, or discharge of any of the debtors'
10 obligations under the lease relating to Aircraft N-140-LL.
11 Instead, any assumption or rejection of the lease governing N-
12 140-LL will be governed by and effected pursuant to Article X
13 of the plan and related definitions used therein.

14 Things like this, of course, are what attract young
15 people to become lawyers.

16 Marriott, as owner-participant for Aircraft N-140-LL,
17 reserves all of its rights as provided for under the termsheet
18 order, including any rights to object to the restructurings, to
19 be effected pursuant thereto.

20 Next, Your Honor, an agreement was reached with the
21 Smith plaintiffs. Delta has settled a class action lawsuit for
22 an allowed unsecured claim in the amount of \$4.5 million, which
23 claim will be classified and treated in Delta Class Four. This
24 settlement is subject to final documentation and will
25 thereafter be submitted to the Court for approval. Having

1 reached the settlement, the Smith plaintiffs have no further
2 objection to the plan.

3 Your Honor, the debtors have also reached agreement
4 with a great number of taxing authorities concerning various
5 tax issues, including the Arizona Department of Revenue; the
6 Georgia Department of Revenue; Salt Lake County; local Texas
7 tax authorities including Bexar County, Dallas County, El Paso,
8 Harris County, Irving ISD, Nueces County, Tarrant County, the
9 City of Memphis, and Multnomah County, Oregon.

10 Further, Your Honor, to reserve the concerns of
11 National City Bank and National City Commercial Capital
12 Company, LLC, regarding the disputed claims reserves provided
13 for in the plan, the debtors have agreed to state the following
14 on the record at today's hearing:

15 With regard to unliquidated aircraft equipment claims
16 to be reserved for pursuant to the disputed claims reserve
17 notice, the debtors confirm that the disputed claims reserves
18 were not calculated, assuming the TIA claims are duplicative of
19 SLV claims.

20 More generally, in performing the calculations for the
21 disputed claims reserves, the debtors, in consultation with the
22 creditors' committee, kept in mind that the purpose of the
23 reserves is to ensure that there are sufficient shares to
24 distribute on account of unsecured claims that may become
25 allowed after emergence.

1 Given the methodology used to set reserves, as set
2 forth in the notice, the debtors believe that a cushion exists
3 in the reserves above and beyond the amount of unsecured claims
4 that the debtors reasonably believe will ultimately be allowed
5 as part of the post-emergence claims resolution process. The
6 disputed claims reserve includes shares based on the debtors'
7 good-faith analysis of rejection claims arising out of
8 contracts and leases that the debtors know that they will be
9 seeking to reject.

10 And with regard to the ability of the debtors to agree
11 with a holder to reserve for less than 100 percent of the filed
12 amount of the holder's claim, the debtors have not now entered
13 into any such limiting agreements. And if we ever enter into
14 such an agreement, we will agree that, as a condition to doing
15 so, the potential claimholder will have to agree that its
16 potential distribution on account of the relevant claim cannot
17 exceed the capped reserve amount. That's NatCity.

18 The City of Los Angeles, about whom you will be
19 hearing more in the future, agreed to withdraw its objection to
20 confirmation of the plan after Delta agreed to include the
21 following language in the confirmation order:

22 Notwithstanding the -- and then it's a reference to
23 the jurisdictional provision of the order -- and except for all
24 matters with respect to: (1), the assumption and assignment or
25 rejection of executory contracts and unexpired leases; (2),

1 Adversary Proceeding 07-01561, entitled "Delta Air Lines, Inc.
2 v. City of Los Angeles, et al; and (3), the allowance,
3 disallowance, liquidation, classification, priority, or
4 estimation of any claim, the parties agree that the Court shall
5 have no jurisdiction over, X, the post-effective date ordinary
6 course conduct of any party in connection with the operation of
7 the LAX and/or Ontario Airports that is unrelated to matters
8 (1), (2), and (3) above; or, Y, claims of causes of action
9 unrelated to (1), (2), or (3) above; and to the extent arising
10 after the effective date, in connection with the operation of
11 the LAX and/or Ontario Airports.

12 You might have thought that that was enough, but it's
13 not, because we also had to agree that I would read into the
14 record the following illustrative examples -- illustrative list
15 of examples of items under which the matters described in X or
16 Y could arise. In other words, while there's an explicit
17 understanding that nothing could limit (1), (2), or (3), which
18 are within the Court's jurisdiction, here are some examples of
19 the kinds of things that could arise under X or Y, if not
20 limited and within (1), (2), or (3). Here we go:

21 One -- by the way, you guys should really appreciate
22 me a lot more now because you understand what we actually have
23 to do all day to resolve all these objections.

24 (Laughter.)

25 MR. HUEBNER: One --

1 UNIDENTIFIED: I could listen to you all day.

2 (Laughter.)

3 MR. HUEBNER: Well, you're going to be, so that's a
4 good thing.

5 (Laughter.)

6 MR. HUEBNER: One, the lease between the City of Los
7 Angeles and Delta covering terminal facilities at Los Angeles
8 International Airport dated 11/7/85, and the assignment
9 facility sublease indenture guarantees a contingent lease
10 agreement relating thereto. Check.

11 Any use and lease agreement at Ontario.

12 Any air carrier operating permits.

13 Any licensing agreements, permits, leases, or other
14 agreements at Ontario or LAX related to the use of space or
15 facilities, whether on an exclusive or nonexclusive basis.

16 Fees for terminal rent, land rent, landing fees,
17 baggage cart fees -- that one was important -- maintenance and
18 operation, bus fees, inspection fees, custodial surcharge,
19 badge billing, unreported plane parking, city occupancy or
20 other taxes, administrative and joint use fees, U.S. Customs
21 fees and/or permits or licenses at LAX or Ontario.

22 Issues respecting expired leases, month-to-month
23 leases, tenancies-at-will, or any other relationship respecting
24 tenancies or occupation of space.

25 Environmental damage at LAX or Ontario.

1 The operation of aircraft at LAX or Ontario.
2 Use of space or facilities at LAX or Ontario.
3 Other ordinary course of business operations at LAX or
4 Ontario.

5 Any faithful performance guarantees or passenger
6 facility charges required in connection with these matters,
7 transactions or contracts.

8 Any transaction, contract, or agreement replacing any
9 of the foregoing.

10 And last, but not least, any present or future related
11 ancillary or incorporated agreements, contracts, resolutions,
12 regulations related to these matters, transactions, or
13 contracts.

14 (Laughter.)

15 MR. HUEBNER: Okay. I'm eighty for eighty.

16 That concludes, Your Honor, my promised
17 representations on the record and the objections that were
18 resolved that needed mention as part of the resolution.

19 Your Honor, finally, I thought it might -- I shouldn't
20 say "finally," that won't come for awhile. I thought it might
21 also make sense to very briefly summarize the primary changes
22 to the plan since it was sent out for a vote in late February.
23 They are very minor, Your Honor, and rather few in number.

24 As the docket reflects, Your Honor, on Monday, at
25 around noon, we filed, among other things, a black-line of the

1 plan containing these minor changes, our proposed form of
2 confirmation order, a brief in support of confirmation, a reply
3 to the remaining non-aircraft objections, and while there are
4 no longer anymore, a reply to the remaining aircraft
5 objections. We also filed the Coleman, Blackstone, and
6 Sullivan declarations.

7 And I should note, before I forget, I would like to
8 move those three declarations into evidence, which I --

9 THE COURT: Any objection?

10 (No verbal response.)

11 THE COURT: Received.

12 MR. HUEBNER: Thank you, Your Honor.

13 (Coleman, Blackstone, and Sullivan Declarations received in
14 evidence.)

15 MR. HUEBNER: In addition to certain technical and
16 ministerial fixes, we have made the following modifications to
17 the plan -- and I should also confirm on the record that there
18 are no further changes at all to the plan since Monday's black-
19 line was filed.

20 We've removed the prohibition against allowing federal
21 penalty claims.

22 Certain modifications were made to bring the plan up
23 to date with the March 2nd, 2007 modification to the Comair --
24 to the collective bargaining agreement between Comair and the
25 airline pilots in the service of Comair, represented by ALPA.

1 Certain changes to the plan were made to account for
2 the CVG settlement agreement dated March 8th, 2007, and the
3 note to be issued pursuant thereto. The effectiveness of this
4 settlement, as the plan modifications make absolutely clear, is
5 contingent on, among other things, this Court's order approving
6 the CVG settlement agreement not being stayed.

7 An amendment to the PBGC settlement agreement was
8 incorporated into the plan, along with an explanation that the
9 PBGC will receive cash instead of notes, pursuant to and as
10 contemplated by the PBGC settlement agreement.

11 A provision was added to the plan allowing Wilmington
12 Trust Company to receive certain reasonable fees and expenses
13 in its capacity as indenture trustee.

14 Certain necessary provisions regarding the
15 monetization of the ALPA claim and the ALPA-Comair claim were
16 added. These provisions explain that Delta -- that certain
17 Delta and Comair pilots have made arrangements whereby they
18 will receive cash on account of their allocation of the ALPA
19 claim or ALPA-Comair claim in lieu of the new common stock that
20 would otherwise be distributed to them.

21 Further, Your Honor, certain aspects of the securities
22 law exemptions with respect to the PBGC and the ALPA claim and
23 the ALPA-Comair claim were detailed. Clarifications were made
24 to the types of claims for which proofs of claim do not have to
25 be filed by the, quote, "other administrative claim bar date."

1 Certain negotiated clarifications were made to the
2 description of the debtors' obligations to continue retiree
3 health and welfare benefits, including to describe which
4 documents govern the continuation of such benefits.

5 Certain clarifications and carve-outs were made to the
6 discharge and injunction section of the plan, including a
7 limited carve-out to the injunction against set-off for
8 particular requesting taxing authorities.

9 That covers the plan changes.

10 Additionally, I think I probably should highlight for
11 the Court just a very few of the provisions in the proposed
12 form of confirmation order.

13 I should also note for the benefit of all in court
14 that the only changes that have been made since the version
15 filed on Monday are changes made to protect the CVG -- "to
16 protect," and we'll talk about that in a few minutes -- the CVG
17 ten percent objecting bondholders, and de minimis changes made
18 at the request of certain aircraft parties. And I believe that
19 we have and made available black-lines in court of those few
20 changed pages.

21 As to the confirmation order, it provides for certain
22 agreements with counter-parties to resolve their objections or
23 potential objections to confirmation.

24 Certain clarifications and modifications to Section
25 6.6 of the plan and Schedule 6.6(a) thereto, relating to the

1 cancellation of old aircraft securities have been made to
2 assuage concerns raised by certain aircraft parties.

3 Further details regarding the new credit facility have
4 been provided.

5 The confirmation order now includes a provision
6 regarding the approval of the new ad hoc committee aircraft
7 notes, which will be issued pursuant to termsheets or
8 restructuring agreements related to certain post-petition
9 aircraft agreements.

10 The order also provides additional detail regarding
11 securities law exemptions related to the new Delta plan
12 securities and any securities to be issued pursuant to or in
13 connection with a post-petition aircraft agreement that exempts
14 such securities from registration.

15 The order provides the details of the procedures the
16 debtors will use to calculate the disputed claims reserves as
17 set forth in the debtors' for determining disputed claims
18 reserves filed on April 5th, 2007, including that the debtors
19 will generally reserve for disputed claims on a dollar-for-
20 dollar basis.

21 A paragraph was added confirming and authorizing the
22 cancellation of a rabbi trust that was set up about twenty
23 years ago and has about a million or a million and a quarter, I
24 think, dollars in it. Those assets will revert to Delta.

25 The order sets forth procedures for withholding on

1 plan distributions to former employees of the debtors. Delta
2 generally expects to withhold federal income taxes at certain
3 flat rates, and it also sets forth mechanics for sales of stock
4 to satisfy withholding obligations. Delta has consulted with
5 the IRS on these procedures.

6 Your Honor, at very long last, that brings us to what
7 is quite literally the only confirmation objection remaining
8 filed by one tiny group out of the literally hundreds of
9 thousands of parties who could have taken issue with Delta's
10 plan: The ten-percent CVG bondholders.

11 As a reminder from last week's hearing, this group is
12 comprised of a total of five parties, three of whom did not
13 even own one penny of these bonds until after January 1, 2006
14 and who collectively purchased ninety-four percent of their
15 holdings after January 1, 2006.

16 It is a group of five who are sophisticated
17 individuals, many self-described bankruptcy experts, who
18 collectively own far, far less than one-half of one percent of
19 the general unsecured claims in these cases. Each of their
20 arguments in their confirmation objection is utterly without
21 merit and, indeed, several dance hither and yon on the very
22 borders of frivolity.

23 In the face of 97.35 percent in number, and 89.19
24 percent in amount of the CVG bondholders who voted in favor of
25 the plan, in the face of a settlement directed in writing by

1 the majority bondholders executed by the indenture trustee,
2 approved by this Court, and voted on by over 500 CVG
3 bondholders, this group of five raises various arguments
4 seeking to defeat confirmation.

5 Let me first dispatch the argument that is perhaps
6 both the most offensive and the most ridiculous. In Part 1(d)
7 of their objection, the bondholders allege that, quote:
8 "By entering into the settlement agreement with the
9 full knowledge that the indenture trustee was
10 breaching both the indenture and his fiduciary duty to
11 the holders of the bonds, the debtors flagrantly,
12 willingly and knowingly violated the good-faith
13 requirement of 1129(a)(3)."

14 Unfortunately for them, Your Honor, we won the hearing
15 and this Court found that we and UMB and KCAB were quite
16 correct that there was authority to enter into the settlement
17 agreement.

18 So, Your Honor, I guess what it means is if Delta is
19 guilty of willful, knowing, and flagrant bad faith for so
20 construing the situation, perhaps you are, as well. I don't
21 think anything else need be said on what is, in fact, a direct
22 collateral attack on a different order: The CVG approval
23 order.

24 I should also note, Your Honor, that it could never be
25 true, even had we lost the CVG hearing, that a simple dispute

1 about the meaning of an indenture and applicable law and the
2 position taken by multiple parties could be a flagrant,
3 knowing, willful exercise in bad faith. Shame on them.

4 They next allege that Delta did not provide sufficient
5 disclosure to them with respect to the possible treatment of
6 Kenton County bonds, and that this purported inadequacy of
7 their disclosure renders the plan unconfirmable under Section
8 1123(3) of the Bankruptcy Code. This allegation is flagrantly,
9 willfully, and knowingly amazing.

10 First of all, they must have just not read the
11 disclosure statement, for had they done so, they would have
12 actually learned that the debtors told the whole world, and I
13 quote, that they, quote:

14 "-- may elect to enter into and seek Bankruptcy Court
15 approval of a settlement agreement resolving and/or
16 restructuring its obligations related to municipal
17 bond agreements. If such a settlement is reached and
18 approved by the Bankruptcy Court, the treatment of the
19 parties to such settlement and the holders of the
20 municipal bonds subject to a settled municipal bond
21 agreement shall receive payments in accordance with
22 the terms and conditions of such settlement."

23 And that is, of course, exactly what happened here.
24 We reached a settlement, and their treatment is pursuant to
25 that settlement.

1 Moreover, Your Honor, on Pages 56 and 57 of the
2 disclosure statement, there are three full paragraphs of
3 detailed disclosures about the history of the Kenton County
4 bond situation and about our laborious dance towards a
5 settlement. Among the disclosures in these paragraphs was the
6 following, and I quote:

7 "Recently, negotiations to finalize the settlement
8 appear to have reached an impasse, and there is no
9 assurance that a settlement is still possible. In
10 light of the impasse, Delta has re-noticed the
11 Cincinnati rejection motion for a hearing on February
12 22, 2007. If the Cincinnati rejection motion is
13 approved by the Bankruptcy Court, Delta has expressed
14 a willingness to enter into new agreements with KCAB
15 that would allow Delta to occupy a reduced amount of
16 space in certain facilities constructed with the
17 proceeds of the KCAB Series 1992 bonds. It is Delta's
18 position that if the Cincinnati rejection motion is
19 approved, the KCAB trustee will be entitled to a
20 rejection claim that is subject to the limitation on
21 lease rejection damages provided in 502(b) of the
22 Bankruptcy Code. It is KCAB's trustee's position that
23 the KCAB's trustee's claims will not be so limited."

24 There was perfect disclosure about where we were,
25 where we were going, and how it was to be effectuated. But,

1 Your Honor, that's not even a tiny fraction of the disclosure
2 that they actually got.

3 As this Court may remember, the disclosure statement
4 objection deadline was January 25. And as I think you probably
5 do remember, on February 7th at the hearing, I told you that
6 there was no one left in the world with a disclosure statement
7 concern.

8 The Rule 2019 statement filed by these ten-percent
9 bondholders makes clear that every single one of them was
10 already a creditor prior to February 7th, 2007. They are
11 sophisticated parties, and I can assure you that they know
12 their way around a bankruptcy courtroom. Did they raise any
13 issues with our disclosure statement? No. Did they file an
14 objection? No. Did they even contact us informally? No. Did
15 we hear one peep about not knowing what was going on about the
16 deal, about inadequacies in disclosure before their April 9th,
17 2007 plan objection? Of course not, for this objection to,
18 quote, "inadequate disclosure" is totally insincere.

19 First of all, as the cases say -- and those are in our
20 brief -- it's waived.

21 Second of all, the notion that this particular group
22 was prejudiced by a lack of clarity or knowledge about what
23 their proposed treatment was is laughable. The CVG settlement
24 agreement was announced in open court at the February 22nd
25 hearing, the hearing in which two of the five bondholders

1 attended in person. It was then immediately and amply
2 publicized by the media. This was six weeks before the voting
3 deadline and nine days before they even got their ballots.

4 Two, the very next day, on February 23rd, 2007, also
5 more than six weeks before the voting deadline, the bond
6 trustee electronically posted to its website notice of the
7 settlement agreement and its key terms. And here is the
8 kicker: They hired counsel that day. I guess they got enough
9 disclosure by February 23rd, six weeks before they had to vote,
10 to figure out that they were getting plan treatment, that they
11 really didn't like it, and that they wanted to hire White &
12 Case to try to make sure it did not happen.

13 Once the settlement agreement was fully finalized, the
14 settlement agreement and other documents, including a detailed
15 motion, were publicly filed on the docket on March 8th, 2007,
16 and disclosed to the general public in Delta's SEC filings on
17 Form 8K. This motion was twenty-four descriptive pages long
18 and the attached exhibits weighed in at an astonishing 352
19 pages. I note that this exceeds the length of the entire Delta
20 disclosure statement by a fair number of pages. These filings,
21 Your Honor, including an 8K, were more than four weeks before
22 the voting deadline on the plan.

23 So how could the objectors possibly sign a pleading
24 saying that his clients didn't know enough about what was
25 proposed to even vote on the plan, that they didn't know what

1 they were going to get under the settlement agreement?

2 Honestly, I don't know.

3 Moreover, Your Honor, notices of the settlement
4 agreement were sent to all 1992 bondholders on or about March
5 13th, 2007. That very same day, still almost four weeks before
6 the voting deadline, the ten-percent bondholders filed a
7 preliminary objection to the settlement agreement weighing in
8 at sixteen pages with twenty-five pages of exhibits. This
9 shatters any possible conceivable question that they, quote,
10 "did not understand the deal and did not know what they were
11 getting." They understood it with perfect crystalline clarity
12 weeks before they had to vote. They just don't like the deal.
13 And that's okay.

14 The fact that the ten-percent bondholders had time to
15 form a committee, raise funds, retain counsel, file an
16 extensive preliminary objection, reach an agreement on
17 discovery, conduct depositions, get thousands of pages of
18 documents, and fully participate in last week's hearing utterly
19 belies any possible suggestion, any possible suggestion, that
20 these five bondholders were prejudiced by insufficient
21 disclosure of what the debtors were proposing.

22 The ten-percent bondholders' next objection is that
23 the settlement agreement was, quote, "a material modification
24 of the plan," and that because it was a material modification,
25 Delta is obligated to re-solicit the entire plan; I guess to,

1 again, see if we can get overwhelmingly more than all the
2 majorities required by every possible voting group.

3 They are wrong for several reasons.

4 One, the settlement agreement is not a material
5 modification of the plans of reorganization for these mammoth
6 debtors.

7 And two, a re-solicitation of the Kenton County
8 bondholders would have no possible effect on the overall vote
9 results and, of course, is totally not warranted because, among
10 other things, they had full notice when they voted.

11 First, materiality. As discussed last week, the
12 claims allowed for all Kenton County Bondholders -- not just
13 them, all of them, the whole issuance -- under the settlement
14 agreement are less than two percent of the many billions of
15 dollars of pre-petition unsecured claims in this case. And, of
16 course, the claims of the ten-percent bondholders are only ten
17 percent of that two percent.

18 Moreover, the value of the settlement agreement is
19 within a very small number of percentage points of what they
20 actually wish they had had, which is a full claim. As we heard
21 last week, argument and some testimony, when you add up all the
22 pieces and you turn them into a claim equivalent, it gets you
23 to the economic equivalent of something like ninety-five to
24 ninety-eight percent of the full four-hundred-and-seventeen-
25 million-dollar claim against Delta they wish they had.

1 Leaving aside those rather obvious economic and timing
2 points, it is important to note that the concept of an
3 impermissible material amendment requires us to look not only
4 at their very small size and lack of materiality, but more
5 importantly -- and you can look at their own brief for this
6 because it's so clear -- the cases say that the degree of
7 notice received by the party objecting, whether they were
8 prejudiced by not having advanced knowledge of a purported
9 change to a plan, that's what the section and the case law talk
10 about.

11 Did the debtor issue one set of disclosure promising X
12 and then, right before the confirmation hearing, say that,
13 instead, they were going to do Y? And did people have no
14 notice of that? And is it the case that when they voted for X,
15 X is so different from Y that the votes shouldn't count any
16 more? Read their brief. I couldn't have written it better.
17 No one voted for X. By the time any of these people voted,
18 they knew exactly what was proposed, which was exactly what the
19 disclosure statement presaged would happen if we reached a
20 settlement. It is impossible under the very law they cite for
21 them to ever prove that 1127 has been violated by what happened
22 here.

23 As another Bankruptcy Court observed in the American
24 Solar King case, and quote,
25 "A modification is material if it so affects a

1 creditor or interest holder who accepted the plan that
2 such entity, if it knew of the modification, would be
3 likely to reconsider its vote, it's acceptance." 90
4 B.R. 808, at 824.

5 Here, as I've already discussed probably at too much
6 length, each and every 1992 bondholder had full extensive
7 written notice of the settlement agreement weeks and weeks
8 before the voting deadline. And these guys had way, way, way
9 more than that. Remember, he only represents his clients. And
10 for his clients, of all people, to allege that they didn't know
11 and that their votes -- it's just beyond the pale.

12 Indeed, Mr. Cunningham signed a pleading detailing and
13 excoriating the settlement agreement on March 13th, 2007, four
14 weeks before the voting deadline. How can he possibly say that
15 his clients did not have knowledge of the modifications that
16 were proposed?

17 Now maybe he'll come up here, I don't know, and say,
18 you know, Your Honor, it's true, the bondholders got lots of
19 notice about the settlement, they got electronic postings and
20 Bloomberg tear sheets and the 8K, and they got the motion and
21 they got the notice, and all that kind of stuff, but maybe they
22 voted before any of that, maybe they all voted before. It
23 can't be true.

24 First of all, the first notices went out, and he was
25 even retained before they got their ballots. So it's like

1 logically and technically impossible.

2 Two, they had weeks to change their vote. The
3 solicitation procedures say, if you vote and then you want to
4 change it, no problem. And I don't think the master ballots
5 were even tabulated until close to the very end.

6 And, three, his clients, and that's the only people he
7 speaks for, I'm going to take a flier on this one: I don't
8 think they voted yes and forgot to change their votes. I just
9 don't think so.

10 Now maybe he'll say something else. Maybe he'll say,
11 ah, but when they voted, they thought they would get a full
12 claim and that the settlement agreement would be defeated, so
13 they didn't, like, know what they were voting on. Poppycock.
14 One: The disclosure statement expressly said, as I read to you
15 before, we are fighting with the bond trustee, we're going to
16 try to get a settlement, their claims we absolutely think are
17 capped, and if we cut a settlement, the treatment you get will
18 be the settlement treatment. And, of course, that's exactly,
19 exactly what has happened.

20 Two, how is this any different than if we had actually
21 cut the deal a month earlier before the plan and we put into
22 the plan that this is the treatment you're going to get? He
23 would be standing exactly where he is today: I voted no; I'm
24 very upset; I don;t like my treatment. In fact, he'd have less
25 and fewer due process rights and fewer opportunities to come

1 complain because he wouldn't have had a whole hearing last week
2 where he could try to shoot down the deal on a stand-alone
3 basis.

4 And exactly as here, Your Honor, they would have voted
5 whichever way they want to, as is their right, they would have
6 come to court today and argued that the consideration is
7 illegal or that the plan misclassified them, or any of the
8 arguments they raise. So let's not dally at all over the
9 chimera that because the deal was in a separate document,
10 because we happened to not agree to the deal until after
11 hundreds of thousands of disclosure statements were already
12 going out, that somehow that inherently means there was
13 inadequate disclosure.

14 Your Honor, their next argument is that they deserve
15 their own class just for them. Your Honor, to press this novel
16 argument, Mr. Cunningham essentially argues to you that any
17 time that a creditor is given a claim less than what they hoped
18 for or expected, they deserve their own class. He tells you,
19 we thought we had a full claim, an uncapped claim, and we got
20 less than that, so we're totally different and deserve our own
21 class.

22 As we point out in our papers, this, quote,
23 "interpretation" of 1123(a)(4) is totally unprecedented. They
24 cite not one case that supports this theory, which, of course,
25 is totally incompatible with any sense of possibly

1 administering a large Chapter 11 case because, if followed, it
2 would require dozens, if not hundreds, of classes for Delta's
3 reorganization.

4 First of all, there is no merit to their claim that
5 they are not, quote, "substantially similar," which is, of
6 course, the test, to other claimholders in Delta Class Four.
7 Your Honor, gerrymandering cases are almost all where the
8 debtor tried to put someone in their own class, not where they
9 put them where they belonged in the main class.

10 The debtors have grouped all non-retiree holders of
11 general unsecured claims greater than \$2,000 into Delta Class
12 Four. Among these claims, Your Honor, are thousands of other
13 claims that are extraordinarily similar to those of the CVG
14 bondholders, including many claims by holders of other airport
15 revenue bond structures with airport leases rejected or
16 restructured by the debtors. You heard a lot last week about
17 this is totally unique, totally unprecedented: Totally untrue.

18 Indeed, Your Honor, there are literally hundreds and
19 hundreds of other non-CVG ARB bondholders in Delta Class Four
20 even excluding not only Mr. Cunningham's five clients, but the
21 500-plus other CVG bondholders. And, Your Honor, every one of
22 those many hundreds of ARB bondholders happily voted in Class
23 Four, and not one of them thinks that they were misclassified.

24 In addition to the Kenton County, the CVG bondholders,
25 Your Honor, the other holders of ARB bond claims in Class Four

1 include the ARBs from Portland Airport, Hillsboro County 1993,
2 Mass Port, DFW 1993, DFW 1991, Fulton County 1998, Fulton
3 County 1992. Not one of the holders of these bonds has raised
4 any issue about their classification.

5 In fact, Your Honor, just to put a few more nails in
6 this coffin, I asked our voting agent last night to look at the
7 voting results of these facilities. And the results were very
8 interesting. Even not counting the votes of any of the CVG
9 bondholders, 1,244 ARB bondholders all classified in Delta
10 Class Four voted in favor of the plan, and twenty-six voted
11 against. That's a voting percentage of 97.95 percent of all
12 voting ARB bondholders in favor within Class Four.

13 If you include the CVG bondholders, who of course also
14 voted overwhelmingly in favor of the plan in Class Four, 1,731
15 ARB bondholders with claims in Class Four voted in favor of our
16 plan, and eighty-five voted against. Not one classification
17 objection.

18 And, for the record, Your Honor, just to take one
19 group of those, the Mass Port revenue bonds also in Class Four,
20 as Your Honor may remember, those claims were allowed pursuant,
21 just like these claims, to a Court-approved settlement
22 agreement that gave the Mass Port ARB bondholders an allowed
23 claim and a new lease with Delta at the airport.

24 In addition to the ARB bond claims, which are
25 unbelievably similar, there are billions of dollars of other

1 claims that are also substantially similar: Publicly traded
2 securities claims on Delta corporate bonds and other complex
3 financial structures associated with certain publicly traded
4 aircraft financing facilities.

5 And, finally, Your Honor, lest they try to argue lack
6 of similarity from a different direction, there are billions of
7 dollars of claims in Class Four that, just like the 1992
8 bondholder settlement, got a Delta Class Four claim, a general
9 allowed unsecured claim, and other consideration pursuant to
10 settlement agreements presented to and approved by this Court.
11 You know these deals well. There's the ALPA deal, big claim,
12 and a note; the PBGC deal, big claim and a note; the Mass Port
13 ARB bond deal, claim and a lease; Gabe Gourmet claim and a
14 contract; Republic Airways, Mesa Air Group, thousands of Delta
15 retirees; claim and a new benefits package. Those Class Four
16 claims total more than \$5 billion.

17 Your Honor, this is entirely typical in Chapter 11
18 cases that debtors have grouped these claims, in fact virtually
19 all general unsecured claims, against the Delta debtors into
20 Delta Class Four with an eye to the maxim, and now I quote the
21 DC Circuit, that, quote, "Logistics and fairness dictate
22 consolidation rather than proliferation of classes." AOV
23 Industries, 792 F.2d 1140 at 1151.

24 Moreover, Your Honor, to talk about law just for
25 another minute, the debtors have, and I quote, "considerable

1 discretion" to make plan classifications, as the Eleventh
2 Circuit said in *In Re Holywell Corp.*, 913 F.2d 873. Our
3 classifications are appropriate, Your Honor, unless it can be
4 shown that they were inherently unreasonable or illegitimate.

5 Your Honor, as I think everyone knows, the debtors'
6 classification was neither unreasonable nor illegitimate. In
7 fact, it was entirely reasonable, entirely legitimate.

8 First off, the trustee, and this is easy to forget in
9 the shuffle, and the majority bondholders wanted a Class Four
10 claim. That was part of the settlement agreement. We get a
11 two-hundred-sixty-million-dollar general unsecured claim that
12 is not treated worse or differently than the other general
13 unsecured claims classified under the plan. It's right in the
14 settlement agreement, and it's approved by this Court's order.

15 So, first of all, or maybe twelfth of all, I don't
16 know where I am at this point, that is what their agent
17 negotiated and they are bound.

18 Second, the timing of the settlement, it just wasn't
19 reached until after the plan was out for a vote, and the
20 landslide vote by the CVG bondholders themselves conclusively
21 proved that there is no possible legitimate allegation that we
22 put them in Class Four to try to bury a no vote and have it
23 swept away by a larger yes vote.

24 Your Honor, this settlement agreement was directed by
25 sixty percent of the bondholders before we even came out of the

1 gate. We knew we were done with the vote before we started
2 because we had sixty percent the day the settlement agreement
3 was signed before it was even publicized. It was unthinkable
4 that we would not have carried the CVG class had it been a
5 stand-alone class by an overwhelming margin. And, as we say in
6 our brief and cite cases, if there is no prejudice, there is no
7 legitimate confirmation objection.

8 Finally, Your Honor, time has passed and there were
9 votes, and there was an objection period for the settlement
10 agreement. And what did we end up with? Five bondholders out
11 of more than 500 voting bondholders. And they were the only
12 ones here last week, also. I think that tells you everything
13 you need to know about whether we tried to improperly
14 disenfranchise people who, as a group, are desperately opposing
15 a deal signed by the majority bondholders and supported
16 strongly by the indenture trustee as fiduciary for all.

17 I am almost done addressing their objection, Your
18 Honor. But before I turn to the releases, I want to be very
19 clear about one last thing. Mr. Cunningham's clients are not,
20 as he has alleged, receiving worse treatment than other
21 creditors in Delta Class Four. If anything, we believe they
22 have likely received far better treatment; in our minds,
23 potentially as much as three to five times as much as what they
24 might have ended up with under the Code. For, as you know, we
25 believe their claims are capped under 502(b)(6), and could be

1 as little as 75 million as opposed to the 260 million in claim
2 and 85 million in notes and cash that they are receiving.

3 So, Your Honor, for many different reasons, they have
4 absolutely no legitimate objection about classification. Among
5 other things, Your Honor, and I don't know how to rank them,
6 but because this point on some level might address this entire
7 hearing, the ten-percent bondholders should be deemed under
8 this Court's CVG approval order to have consented by being
9 bound by their agent to their plan treatment, as well as their
10 classification. For this is precisely what was agreed to in
11 the settlement agreement, and this Court's order of yesterday
12 provides that it binds all 1992 bondholders.

13 That said, though, Your Honor, as I think is clear, we
14 have many, many, many arguments independent of the argument
15 that yesterday's order relates to today's.

16 Finally, Your Honor, let me address the end of their
17 brief, which is the, quote, "releases" that they complain of.
18 I'm not going to say much about the debtor releases. And to be
19 clear, those are the releases that the debtor itself has given.
20 It has said, I will not sue the following people for the
21 following things.

22 Your Honor, I think Pages 24 through 27 of our reply
23 brief make it rather resoundingly clear that these debtor
24 releases given by Delta are entirely standard, quite -- in
25 fact, rather narrow, and well within the boundaries of both

1 Bankruptcy and applicable Delaware law. We know of no
2 meritorious causes of action being waived against any of these
3 parties and it is well within our rights to provide waivers
4 that we believe are in the estate's best interests.

5 Moreover, Your Honor, I'm not really sure why Mr.
6 Cunningham has any legitimate concern about the debtor releases
7 because they have no possible effect on him. He wants to go
8 sue people. Why are we relevant to that?

9 Moreover, Your Honor, every other creditor in this
10 case, including our Official Creditors' Committee which is the
11 fiduciary for all unsecured creditors, has no problem
12 whatsoever with the releases Delta has decided to give.
13 Indeed, Your Honor, the releases he is very in fact angered by,
14 because he openly told us this last week, very up-front about
15 it, he wants to sue KCAB and he wants to sue the indenture
16 trustee. Those releases were granted in the settlement order,
17 not in this confirmation order, which he is once again seeking
18 to collaterally attack by objecting today.

19 I also note, Your Honor, and I'm interested in hearing
20 his response to this one, that the debtor releases contained in
21 our plan I believe are actually a little bit narrower than the
22 equally-standard, equally-non-controversial, equally-
23 uninteresting debtor releases that his firm, White & Case,
24 recently brought before the Bankruptcy Court in their mega
25 case, Mirant.

1 Finally, Your Honor, the last argument raised by Mr.
2 Cunningham is his incredibly misleading assertion that the plan
3 contains, using the term from his brief, quote, "third-party
4 releases" that he believes are, quote, "barred under the
5 Bankruptcy Code."

6 As I hope Your Honor well knows from our response,
7 what the plan actually contains are entirely voluntary creditor
8 releases, the validity of which was in fact explicitly endorsed
9 by the Second Circuit in *Metromedia*. Every single creditor who
10 voted on the plan had the right to opt out of these voluntary
11 releases by merely checking a box on their ballot. And the
12 proof is in the pudding. Over seventy-four percent of all
13 voting Delta Class Four creditors, including I might note over
14 forty-eight percent of the Kenton County bondholders, which, by
15 the way, proves that Kenton County bondholders like us more
16 than anyone else likes us, they did opt out of the releases.
17 This was not a case where somewhere way in the back, there was
18 some, you know, skeevy or hidden or unartfully worded
19 opportunity to opt out that you couldn't understand. Seventy-
20 four percent opted out and did not give them. Can't get much
21 more voluntary than that.

22 I should also note that in addition to being green-
23 lighted by the Second Circuit in *Metromedia*, which I believe
24 they mis-cite, similar check-the-box releases were recently
25 upheld by Judge Gropper in *Oneida* and by Judge Gerber in

1 Adelphia -- which I believe, again, they mis-cite as being an
2 anti-release case. In fact, it says explicitly that creditor
3 consent to the releases makes them just fine.

4 Your Honor, as to the text of their confirmation
5 objection, that completes my presentation, but I do need to
6 address one last thing.

7 Mr. Cunningham advised me, it was either yesterday or
8 possibly the day before, that despite the fact that we have
9 substantially narrowed our request for a very limited
10 adjustment of the ten-day stay of the confirmation order that
11 might otherwise be applicable under Rules 3020(e), 6004 and
12 related rules, he, nonetheless, would not agree and would be
13 opposing that.

14 Your Honor, as Mr. Cunningham expressly represented to
15 this Court as recently as Monday, his concern is equitable
16 mootness. He apparently is concerned, which I respect, that we
17 will close the CVG settlement transaction, give out all the
18 stuff to all these many CVG bondholders, and that his then-
19 argument on appeal that the CVG settlement was illegal and
20 should not have been allowed to go through might be rendered
21 equitably moot. I think we are always fair, so here's what we
22 did.

23 First of all, we agreed yesterday, as Your Honor
24 knows, that the CVG settlement order could not go effective at
25 all until next Thursday, May 3rd, at ten o'clock, giving him

1 nine days. We also, as Your Honor knows, agreed to be heard
2 tomorrow morning at 8:30, which is pretty gosh-darn fast, on
3 his motion for a stay, which clearly they've been working on
4 and, frankly, until very recently, we were not.

5 We then made changes that, I said much earlier in my
6 overly-long presentation, that we made changes. The only
7 changes to the confirmation order made since Monday were
8 changes to protect the CVG dissident objecting bondholders. So
9 here's what we did.

10 We changed Paragraph 115 of the confirmation order,
11 making it clear that we will not go effective on any aspect of
12 the plan until Monday, May 30th, but of course, that's not
13 actually what prejudices him. What prejudices him is not Delta
14 paying off its DIP facility and exiting, it's the CVG
15 settlement that they find so anathema closing and going
16 effective. So we also agree in the confirmation order that
17 we're, of course, not in any way overriding or affecting
18 yesterday's agreement to not do anything on the CVG settlement
19 until May 3rd at 10.

20 So let me be very clear, so that the record is clear
21 and any concerns of prejudice are addressed. Delta, KCAB, and
22 UMB will not close the CVG settlement agreement. We will not
23 sign the new contracts. We will not make distributions on the
24 two-hundred-and-sixty-million-dollar claim. We will not give
25 out the eighty-five-million-dollar subject-to-adjustment note

1 until Thursday morning, May 3rd, at 10 a.m. And that's what
2 our order says. And, I quote, Paragraph 115:
3 "In accordance with Bankruptcy Rules 3020(e), 6004(h)
4 and 6004(d), and notwithstanding any other provision
5 of the Code or the rules, this confirmation order
6 shall be stayed until 9 a.m. on Monday, April 30th,
7 2007, and shall be effective at that time without
8 further order of this Court, provided, however, that
9 nothing herein shall affect or supersede that
10 provisions of the approval order relating to the CVG
11 settlement agreement, providing that no distributions
12 pursuant to the CVG settlement agreement shall be made
13 prior to 10 a.m., Prevailing Eastern Time, on May 3rd,
14 2007."

15 Now as, of course, Your Honor remembers, since it was
16 only yesterday, Mr. Cunningham expressly agreed yesterday --
17 yesterday that with the companion CVG approval order, he was
18 fine with nearly identical language, saying that the CVG
19 settlement transaction cannot be closed until Thursday, May 3rd
20 at 10 a.m. It is not clear to me how he can get up today and
21 argue that he's prejudiced, given that we've said we're not
22 even going to come out of bankruptcy until Monday, which
23 doesn't affect him at all, and we're not going to close the CVG
24 settlement at all until Thursday, and that if he gets a stay of
25 the CVG settlement, we won't close it at all until a Court

1 allows us to.

2 Your Honor, to be even more protective of Mr.
3 Cunningham, we also revised Paragraph 61(e) of the proposed
4 confirmation order, which discusses the CVG notes that would be
5 issued pursuant to the CVG settlement agreement, and make clear
6 in that provision also that the distributions provided for in
7 the CVG settlement agreement will only be made if this Court's
8 order approving the settlement agreement is not stayed.

9 In doing so, Your Honor, we have made it absolutely
10 clear, indeed beyond preventure [sic], that nothing in the
11 confirmation order's effectiveness, nothing about Delta
12 emerging from Chapter 11 and paying off other debts and claims,
13 could possibly moot their appeals or even impact their issue if
14 they get a stay of the CVG settlement, which is the transaction
15 they believe is improper.

16 Your Honor, just to be clear, should Mr. Cunningham
17 not prevail in his argument early tomorrow morning before this
18 Court seeking a stay, he has the rest of Thursday, Friday,
19 Saturday, Sunday, Monday, Tuesday and Wednesday to seek an
20 emergency hearing and find a time that he and I can both
21 attend. All we're asking, Your Honor, is that as relevant to
22 Mr. Cunningham, the ten-day period otherwise applicable under
23 these rules be cut back by a paltry two days, to effectively
24 give him an eight-day period. And, of course, as to the rest
25 of the plan, although it has no effect on him, even that is

1 five days.

2 Your Honor, there's no prejudice for three reasons
3 that I'll quickly review.

4 One, yesterday he told you that May 3rd at 10 was
5 enough time for him.

6 Two, given how we've reworded the confirmation order,
7 I don't see how there's any possible prejudice from the rest of
8 this mammoth plan of reorganization going effective. Equitable
9 mootness, as Your Honor well knows, is a concern that the egg
10 gets scrambled. Mr. Cunningham's egg is the CVG settlement
11 agreement. That egg will not be scrambled. Its shell won't
12 even be cracked by anything in the confirmation order. It's
13 the closing of the CVG settlement that gives him the risk he's
14 afraid of, and for that, he has until next Thursday.

15 Moreover, Your Honor, while the few days we need back
16 under our proposal mean nothing for Mr. Cunningham, for I would
17 bet my eyeteeth that he will be able to get to the District
18 Court in far, far fewer than eight days, many much lesser firms
19 could do it in one day.

20 The harm and cost to these estates if we cannot move
21 forward as scheduled on our emergence from Chapter 11 are
22 exceedingly great. As Mr. Cunningham correctly told you
23 yesterday, the purpose of these ten-day provisions, unless
24 altered, is to make sure he has enough time to seek a stay
25 pending appeal. He has enough time and we all know that. He

1 has already filed his notice of appeal. He called me last
2 night, I think his brief on appeal is half written. He asked
3 us for different things about it already. There's no prejudice
4 here.

5 But by contrast to the lack of prejudice to him and
6 his five clients owning well under one-half of one percent of
7 the debt, the prejudice, cost, harm and risk to Delta and its
8 tens of thousands of employees, tens of thousands of retirees,
9 hundreds of thousands of parties in interest, and billions of
10 dollars in claimants, will be enormous.

11 For this, Your Honor, I would like to briefly proffer
12 the testimony of Mr. Edward Bastian, who lay into the cost and
13 the harms of Delta not being able to close its exit facility on
14 Monday and emerge from Chapter 11, and to begin making
15 distributions on May 3rd, an emergence date that has been
16 announced and planned for many, many weeks, if not several
17 months.

18 Mr. Bastian, if called to testify, would testify that
19 the debtors' DIP facility is significantly more expensive than
20 its exit facility, and that the difference in interest paid to
21 the lenders for every day they remain in Chapter 11 is
22 \$300,000, or \$2.1 million a week, \$9,300,000 a month. He would
23 further testify that any delay will also increase the cost of
24 Chapter 11 professionals, approximately \$8 million a month, a
25 very large portion of which is expected to stop on the

1 effective date.

2 Among other things, according to the terms of the
3 plan, all three official committees disband only on the
4 effective date, with many of their hourly and monthly
5 professionals ceasing to accrue fees, except to a limited
6 extent.

7 Mr. Bastian would further testify as to various
8 financing and capital markets risks for, of course, the
9 debtors' exit financing facility cannot close until the
10 debtors' exit. What this means is that a closing delay will
11 expose the debtors to the potential risk that an external event
12 could occur during this delay period. For example, a market
13 disruption, a fuel spike, a health scare, God forbid a
14 terrorist event, that could cause the exit facility lenders to
15 alter the terms of the commitment, or possibly even walk away
16 from their commitment.

17 Altered terms could expose Delta to increased interest
18 rates, re-tranching, including reducing the revolver and
19 increasing the other much more expensive tranches, reduced or
20 restricted availability, more onerous financial covenants,
21 among other changes. Each of these risks, Your Honor, taken
22 alone has the potential for costing Delta, in some cases, tens
23 of millions of dollars over the life of the loan for, of
24 course, once the loan is fixed, it governs for its entire life.

25 Mr. Bastian would further elucidate with a few

1 examples. For example, due to strong investor demand given
2 current market conditions, Delta was recently able to decrease
3 pricing by twenty-five basis points and improve the structure
4 of the loan. If the emergence is delayed and the market
5 changes back, we could lose the benefit of these recent
6 improvements, which alone would cost the company \$47 million
7 over the life of the loan. Secondly, Your Honor, if the
8 lenders were to exercise their contractual rights to increase
9 pricing within an agreed range, that could cost an additional
10 \$47.5 million over the life of the loan.

11 Further, Your Honor, he would tell you that our exit
12 facility includes a one-billion-dollar revolving line of
13 credit. Revolvers, of course, offer tremendous savings to
14 borrowers because the lines are undrawn, so you pay a much,
15 much smaller ticking fee and not full-freight interest on a
16 funded loan. If a market disruption occurs before we close and
17 the company, for example, loses half of the benefit of the
18 revolver, it would cost an additional \$40 million in additional
19 interest expense. These changes, Your Honor, alone could add
20 up to \$286 million over the life of the facility.

21 Your Honor, separate and apart from the exit facility
22 costs, Mr. Bastian would testify that a delay in emergence
23 could also expose Delta to potential material changes to the
24 conditions of the capital markets because Delta's terms for
25 raising financing and accessing the capital markets are both

1 very susceptible to these risks.

2 Your Honor, wholly and apart from the guaranteed
3 interest arbitrage of \$10 a month more interest to the DIP
4 lenders, and totally apart from the risk of the facility being
5 repriced and locked in in a way that could cost Delta hundreds
6 of millions of dollars, although hopefully, and frankly
7 probably, less than that, is the very substantial soft and hard
8 other costs of not being able to close on schedule. For, Your
9 Honor, there is a very important reason Delta needs to close
10 and emerge from Chapter 11 on April 30th, and has spent very
11 substantial sums and efforts in getting ready to do so.

12 Your Honor, there's something called fresh-start
13 accounting. It is required by GAAP, which requires a company
14 emerging from bankruptcy to revalue all of its assets in
15 connection with its emergency from Chapter 11. Mr. Bastian
16 would testify that it would be incredibly expensive and
17 burdensome for Delta to try to emerge from Chapter 11 in the
18 middle of a month. This is so because he would tell you that
19 Delta's inventory systems must be locked down in order to
20 perform this required asset evaluation at emergence. At the
21 normal month end, the SAP system, which is their system, locks
22 down the data and allows for retrospective adjustments and
23 simultaneous current-month operations. But, Your Honor, in the
24 middle of the month, this system does not allow for this to
25 take place. Any lock-down would freeze access to current

1 operations, while a mid-month evaluation for fresh-start
2 accounting would be performed.

3 Among other things, Your Honor, currently all parts
4 requisitions, as you know, we fly lots of airplanes and
5 airplanes use lots of parts, and that's part of what would have
6 to be valued in fresh-start accounting. So if you had to shut
7 down the system mid-month, he would tell you that currently,
8 under the normal state of affairs, parts requisition and
9 distribution logistics are handled electronically, but if we
10 had to do it mid-month, Delta's technical operations center
11 would be forced to discontinue normal maintenance operations
12 because they could not access the system. Thousands of part
13 orders that need to be placed each day would literally have to
14 be handled with a pencil and paper outside the electronic
15 system. Reconciliation back into the system would take several
16 months, and the transition to manual processing creates
17 potential risks to fleet deployment, on-time performance, FAA
18 regulatory compliance and scheduled reliability.

19 Your Honor, the hard and soft costs, totally
20 independent of financing and capital markets of missing April
21 30th as our emergence date would be extremely substantial.

22 Finally, Your Honor, Mr. Bastian would address
23 marketing and other direct emergence expenses. And, Your
24 Honor, I want to be clear. Until Mr. Cunningham told me,
25 either yesterday or the day before, that he would try to get a

1 stay pending appeal of confirmation and keep us from emerging,
2 no one in the whole world ever gave us a glimmer of reason to
3 believe that they would be trying to stop us from coming out of
4 Chapter 11. So entirely in good faith, based on the facts as
5 they knew them and the positions of the parties, Delta planned
6 a very substantial media and marketing campaign to revitalize
7 the company and the brand in connection with its emergence.
8 Mr. Bastian would finally testify that a delay, even of a small
9 number of days, would harm this extensive re-brand, re-launched
10 marketing campaign and force the cancellation of numerous
11 planned events and initiatives around the company.

12 Along with many other harms and costs, Delta has
13 planned sales and marketing activities with over \$10 million
14 committed in advertising and marketing dollars for the opening
15 weeks of its campaign.

16 Your Honor, that would end my proffer of Mr. Bastian's
17 testimony on the very definite harms and the very, very serious
18 possible harms from Delta not emerging as expected.

19 Your Honor, one more piece of context, and then I will
20 close. We are seeking a very small change to an entirely
21 discretionary provision. Practically the whole known universe,
22 literally hundreds of thousands of people and entities, would
23 benefit and receive higher value and suffer much less risk if
24 Delta emerges from Chapter 11 five days from now, on Monday,
25 April 30th, and commences making distributions to unsecured

1 pre-petition creditors eight days from now, on Thursday, May
2 3rd.

3 So who opposes this? Five small recent bondholders
4 who do not, in fact, I honestly believe, legitimately have a
5 problem with confirmation, or with Delta's emergence from
6 Chapter 11. What I believe they want is to try to shoot down,
7 and it's okay, yesterday's order, and to overturn last week's
8 hearing, despite, of course, the vast majority of bondholder
9 support for that settlement. And let them try, for that is
10 fair. Let them try to get a stay of the CVG order, for if that
11 order is stayed, they have all the relief they need. We can't
12 close their settlement. And if it's ultimately found that this
13 Court was in error, that settlement will never close, they will
14 never have been harmed by it and we are back to the drawing
15 board.

16 But to seek a stay of this order, and for today's
17 purposes, to try to oppose Delta's expressed intention to
18 emerge from Chapter 11 as the only objector to confirmation, to
19 oppose the very same May 3rd date that they agreed to
20 yesterday, that is nothing worse and nothing better than legal
21 and economic terrorism. Given how we have reworked the
22 confirmation order and scaled back our request and addressed
23 all their concerns and given them the eight days on
24 distributions and, for the record, Your Honor, I made
25 substantial further offers to them last night, which were all

1 rejected in a snap, to make it totally, absolutely, unthinkably
2 clear they could not be prejudiced by our mere emergence from
3 Chapter 11, but they're not interested. I look forward to
4 seeing how they can sign papers alleging that Delta's mere
5 emergence from Chapter 11 causes them irreparable harm if they
6 get a stay of the CVG order.

7 And finally, Your Honor, finally there is the law on
8 this, which happily, is even more favorable to us than the
9 facts. Rule 3020(e) provides that:

10 "An order confirming a plan is stayed until the
11 expiration of ten days after entry of the order,
12 unless the Court orders otherwise.

13 It was promulgated by the Supreme Court as part of the
14 nineteen nine amendments [sic], along with Rule 6004(g), a
15 companion opinion that applies to sale and use of property.

16 Identically, 6004(g) provides that it's ten days,
17 unless the Court orders otherwise. Quite notably, neither rule
18 requires a finding of irreparable harm, nor even a finding of
19 substantial harm, nor even a showing of cause. They don't even
20 say, for a cause shown, the Court can shorten the period. They
21 just say, if the Court otherwise orders.

22 The advisory committee note for these rules, which Mr.
23 Cunningham selectively quoted during yesterday's teleconference
24 hearing, confirmed the discretionary nature of the rule. To be
25 sure, as Mr. Cunningham noted, the purpose of the rule is to

1 permit parties, quote, "sufficient time to request a stay
2 pending appeal," and as I've already stated, and I believe to
3 be correct, Mr. Cunningham and his very large and sophisticated
4 firm have way, way, way more than enough time to seek a stay
5 pending appeal. Among other things, he's already filed his
6 notice of appeal, we're on for tomorrow morning, and his appeal
7 papers appear to be moving along.

8 Moreover, Your Honor, appellants in this district have
9 been able to protect their appellate rights with a small
10 fraction of the time that Delta has proposed for Mr. Cunningham
11 under its confirmation order. For example, Your Honor, in the
12 case of Sunbeam, Judge Gonzalez granted a stay until 5 p.m. on
13 the same day for an appellant, Oak Tree, to seek a stay pending
14 appeal from the District Court. That was about a six-hour
15 stay. In that case, they actually got a stay hearing in the
16 District Court at 4:30 the same day. But we are not, of
17 course, asking Mr. Cunningham to move with anywhere near that
18 rate of speed.

19 Moreover, Your Honor, the rest of the advisory
20 committee note makes it clear, the part he did not read, that
21 the Court may, in its discretion, order that the rule is not
22 applicable, so the plan may be implemented and distributions
23 may be made immediately. I apologize. I'm quoting directly
24 now from the advisory committee. Alternatively, the Court may
25 order that the stay under Rule 3020 is for a fixed period of

1 less than ten days. Close the quote.

2 Your Honor, the relief sought by Delta is absolutely,
3 completely consistent with the language and spirit of the rule,
4 the full language of the advisory committee note and, I'm very
5 happy to report, all of the reported decisions.

6 The case law in Rule 3020, Your Honor, is decided thin
7 because generally, frankly, debtors get a complete waiver and
8 it's not an issue and people move on and close. Not all the
9 time, but a lot of the time.

10 But, Your Honor, there actually is published case law,
11 including at the Circuit level, on Rule 6004(g), the sister
12 rule enacted at the same time, for the same policy, with the
13 absolutely identical language. In these published decisions,
14 Your Honor, Courts have unanimously confirmed the completely
15 discretionary nature of this virtually identical rule. Indeed,
16 Your Honor, and we looked very, very hard, we found no case in
17 any jurisdiction where any Bankruptcy Court has ever been
18 overruled for a complete waiver, or any waiver of these rules,
19 and that is because it is entirely discretionary.

20 For example, in Perry Hollow Management, the First
21 Circuit, in 2002, a disgruntled creditor alleged that the
22 Bankruptcy Court had erred in a complete waiver, total waiver,
23 close immediately. The First Circuit said no, as long as
24 they're presenting, quote, "factual bases for the waiver,"
25 which in this case, I note, included -- basically constituted

1 storage fees for some golf carts, that the complete waiver was
2 proper, and I quote, "The Bankruptcy Court properly acted
3 within its discretion."

4 In another Appellate decision, In Re Second Grand
5 Traverse School, the Sixth Circuit, in 2004, again allowed an
6 immediate closing, a complete waiver of the rule, and confirmed
7 that it is within the sound discretion of the Bankruptcy Court.

8 Finally, Your Honor, in this district, in In Re
9 Singer in 2000, Judge Marrero held again, in perfect accord,
10 the decisions to waive, not even shorten, just waive the ten-
11 day period under 6004(g) should not be disturbed unless the
12 District Court, quote, "finds that the Bankruptcy Court's
13 related factual findings are ... clearly erroneous," and also
14 noted that the findings are entitled to, quote, "great
15 deference."

16 So, Your Honor, with all due respect to Mr.
17 Cunningham, I think that there is absolutely no possible
18 question that the highly protective, and I think thoughtful way
19 that we have retooled and limited the request for the waiver is
20 entirely, absolutely, positively, overwhelmingly appropriate.
21 We're not seeking a flat waiver to close immediately and moot
22 his appeal. We never were. As I represented to the Court
23 yesterday, we never were to close this until next Thursday, and
24 he has all the time in the world.

25 Your Honor, in sum, Delta's plan of reorganization is

1 supported by something like 99.99 percent of the entities to
2 this proceeding. All three official committees and every other
3 one of its hundreds of thousands of parties of interest,
4 besides the five clients of Mr. Cunningham, ask that the
5 confirmation order be entered or have no objection.

6 We therefore ask that the confirmation order be
7 entered as filed, possibly with one exception, which is that
8 this Court find, based on the proffer of testimony that became
9 necessary as of yesterday, that Delta would suffer very
10 substantial harm and great cost if it were not able to exit
11 bankruptcy as planned on Monday, April 30th, and commence
12 creditor distributions on Thursday, May 3rd.

13 THE COURT: Your proposed order provides for that. Is
14 that right?

15 MR. HUEBNER: It does, Your Honor.

16 THE COURT: All right. I have one question.

17 MR. HUEBNER: Yes, sir?

18 THE COURT: What does "CVG" stand for?

19 (Laughter.)

20 MR. HUEBNER: Your Honor --

21 THE COURT: I can't find it anywhere.

22 MR. HUEBNER: -- airports each have airport codes.

23 THE COURT: Oh.

24 MR. HUEBNER: So if you look your tickets, it will
25 say, like, you know, ORD or TLV or, in our case, JFK and LGA

1 are easier to figure out. CVG is the official airport code.

2 THE COURT: I'm greatly relieved.

3 (Laughter.)

4 THE COURT: Thank you, sir.

5 Mr. Cunningham?

6 MR. CUNNINGHAM: Thank you, Your Honor. John
7 Cunningham, of White & Case, on behalf of the Ad Hoc Committee
8 of Kenton County Bondholders.

9 Your Honor, I'm pleased to announce to the Court and
10 to the parties here in the courtroom that I will be mercifully
11 and comparatively brief, compared to what I can only describe
12 as the opening argument of Mr. Huebner on our objection. I can
13 also report to Your Honor that we have, in fact, filed a notice
14 of appeal with respect to Your Honor's order of yesterday, so
15 jurisdictionally, that is with the District Court, so I will
16 not be trying to rehash any of the arguments that were a part
17 of last week's hearing.

18 THE COURT: All right.

19 MR. CUNNINGHAM: That being said, Your Honor, I do
20 have the housekeeping matter, for purposes of the record, on
21 what just gets admitted into evidence. We are not looking to
22 admit a single piece of evidence other than the binders that we
23 offered into the record at last week's hearing, and I have
24 those binders. We tried to get Delta to agree to them. They
25 agreed to them last week. Again, there are copies of the

1 indenture, the guarantee, the lease, and the like. There were
2 sixteen exhibits, Your Honor. I don't know if today they have
3 objection to having it be part of the record today, but I would
4 like to have those be formed as part of the record if the Court
5 takes judicial notice of what was up last week.

6 There were also three deposition transcripts, Your
7 Honor, one of Delta, one of UMB, the indenture trustee, and one
8 of KCAB in which both parties designated with highlights
9 certain portions of that transcript. It is that same binder
10 with the same highlighted language from both us and them that
11 we would want, again, just to form part of the record of the
12 hearing in connection with our objection.

13 Does Delta have any objection?

14 MR. HUEBNER: Your Honor, I believe that we and UMB
15 and KCAB expressed a view on this in e-mail exchanges, which is
16 our view is that that was a completely different hearing about
17 completely different things. In fact, Mr. Cunningham's e-mail
18 asked to consolidate the records of the two hearings, which we
19 think, frankly, is an attempt to suggest to the Court above
20 that, really, this is one big hearing with a shared record and,
21 frankly, a further attempt to disrupt our confirmation.

22 We're not saying the documents that we thought were
23 legally admissible, authentic, appropriate business records,
24 actual copies have become not so since last week. But I think
25 we, and I believe the other parties, do disagree that we have a

1 right to take the entire evidentiary record of a different
2 hearing with witnesses and the possibility of witnesses and the
3 like, and just say, that's all also the record of the
4 confirmation hearing. So, you know, I'm not the world's
5 biggest expert on litigation procedure, but it's not at all
6 clear to me why, merely because we did not disagree with their
7 admissibility to a different hearing on which both an order and
8 an opinion has been entered, that he's allowed to -- most of
9 these documents, Your Honor, he never even referred to in last
10 week's hearing. I went -- when he e-mailed me, I didn't just
11 say no. I opened the binder and I read them. And there are
12 things that he never referred to, never in his pleadings, never
13 at the hearing at all. Why the record of this hearing, which
14 again, was requested for the first time I believe yesterday,
15 should now have all his documents from a different hearing
16 added into it, I'm just not sure is procedurally at all
17 appropriate.

18 MR. CUNNINGHAM: Your Honor, the reason it's relevant
19 is because his argument is that the settlement is incorporated
20 into the plan. And it's kind of a chicken-and-egg problem that
21 I have. I recognize Your Honor signed a settlement order. But
22 if he stands there and says it's now part of the plan, I don't
23 know how for record purposes I can now stand here if that same
24 settlement is not. These are not controversial documents.
25 They didn't object last week. It's just for the record. I

1 don't see any prejudice on their end. And I will be referring,
2 at least to a couple of the statements that were made in the
3 transcript, it will be very short but they are admissions that
4 I think are relevant, Your Honor.

5 THE COURT: Okay. Well, I don't know that it really
6 makes any difference other than to burden the record. On the
7 other hand, I take it that to the extent that you feel that
8 you're aggrieved by the CVG settlement and my order approving
9 it, and that that is a material ground for your opposition, in
10 fact, it's the principal ground for your opposition, I believe,
11 to the plan and to confirmation of the plan, I will deem the
12 same materials to be part of the record for this plan. I think
13 it makes no material difference, but if that -- if you think
14 that's necessary to preserve the record that you wish to make
15 and argue in the Appellate Court, I will grant that.

16 MR. CUNNINGHAM: I appreciate that, Your Honor. Thank
17 you.

18 MR. HUEBNER: Could I just ask, then, that -- we've
19 been clear on the record that we believe that these are
20 separate hearings. But if his entire binder -- and, in fact,
21 we said whatever you want to use, just tell us and I'm sure
22 we'll be fine with it. He decided not to answer any of those
23 e-mails. But if he's going to move his entire binder into the
24 record, then I want the record to be very clear, and we do not
25 agree that it is appropriate, and we believe these hearings

1 have completely different records, and I think we have no
2 choice since, if we're using last week's stuff, to ask that to
3 the extent relevant, we ask to preserve any of our rights that
4 all our binders from last week be able to be used in the same
5 symmetrical way.

6 THE COURT: Granted. Granted.

7 MR. CUNNINGHAM: Of course. No objection.

8 THE COURT: Okay.

9 MR. CUNNINGHAM: Your Honor, again, to go briefly,
10 rather than take his points in order, what I did to just
11 expedite things was to take his reply and the headings he used,
12 go to the points, I'll make my points, if Your Honor has
13 questions we can go through it.

14 The first one was an issue of standing saying I don't
15 have standing to even be here, Your Honor. That argument was
16 basically tied to the guarantee that the trustee had entered
17 into, and the fact that the trustee filed the proof of claim.
18 Your Honor, as I did mention last week, Bankruptcy Rule
19 3003(c)(5) provides that an indenture trustee file a protected
20 proof of claim on behalf of all bondholders. He's not filing
21 it on his own. He's filing for the benefit of the bondholders.
22 I do believe we are a creditor. I believe we have -- we're a
23 party in interest under Section 1109. We have the right to be
24 heard. Clearly, if the settlement is being incorporated into
25 the plan which is their words in their settlement motion, our

1 rights and our bonds are being impacted. And I think we have
2 standing, Constitutional standing and the like.

3 I think, also, in the Allied Owners Corporation case,
4 Second Circuit -- it's an old case, it was under the old
5 Bankruptcy Act, 74 F.2d 201. But, there, it made clear --

6 THE COURT: Let me interrupt you on this point.

7 MR. CUNNINGHAM: Oh, sure.

8 THE COURT: Without ruling that the individual
9 bondholders have individual personal claims against Delta under
10 the guarantee, which I think are expressly excluded under the
11 guarantee, nonetheless, I am viewing the bondholder -- your
12 clients' objections on the merits. I viewed your clients'
13 objections on the merits with regard to the settlement, the CVG
14 settlement, and I will treat your objections to confirmation on
15 the merits whether you've got standing or not.

16 MR. CUNNINGHAM: Thank you, Your Honor. I'll move on.

17 THE COURT: All right.

18 MR. CUNNINGHAM: Thank you.

19 The next argument was their argument that the
20 disclosure statement was adequate. We made the argument, Your
21 Honor, under Bankruptcy Code Section 1123(a)(3) which requires
22 a plan to specify a class of impaired claims. They did specify
23 a class of impaired claims. It's all unsecured claims in Class
24 Four. Again, as we did argue, we believed that they were going
25 to radically modify and what I believe restructure the bonds,

1 which I believe the settlement is. It's -- in my view, it's an
2 exchange offer: Tender your bonds, you get new consideration.
3 That that is different treatment from what the other unsecured
4 creditors in Class Four are getting. I believe we needed to be
5 separately classified. That's why I made the 1123(a)(3)
6 argument; again, with them saying that this is being
7 incorporated as part of the plan.

8 I think the settlement clearly impairs our bonds
9 without our consent, because, obviously, we didn't consent to
10 the exchange offer. And, again, if it doesn't -- if you don't
11 meet 1123(a)(3), then, by definition, you haven't met
12 1129(a)(2), which requires you to meet the provisions of the
13 Bankruptcy Code for confirmation requirements.

14 THE COURT: Is your point here that the bonds -- your
15 bonds, or rather, the 1992 bondholders, should have had their
16 own separate class?

17 MR. CUNNINGHAM: Yes, only because if that's -- if
18 this settlement is being incorporated as part of the deal, we
19 didn't have notice in terms of a disclosure statement in which
20 they said, you are voting on the settlement as part of the
21 plan. And if they were going to do that, they would separately
22 classify us, allow us to vote. I think, Your Honor, to --
23 under such a class, they could impair what rights and claims
24 that we had vis-a-vis Delta. I still believe our rights and
25 claims vis-a-vis third parties, such as our issue with KCAB and

1 UMB, are not subject to them binding us under a plan.

2 But I do believe what the settlement did, the exchange
3 offer element of it, was something that should have been part
4 of a class. And I do believe my issue on the adequacy of
5 disclosure is there needs to be adequate information if this is
6 going to be part of the plan process. The settlement motion
7 itself did not go out under an 1125 order in which this Court
8 found that to be adequate disclosure to tell the bondholders
9 that they knew that they were going to be voting on the plan in
10 conjunction with the settlement. The very limited quote I will
11 tell Your Honor in Delta's deposition that we took -- this was
12 on April 10th, so it's fairly recent -- we asked them:

13 "Let me ask again" --

14 And this is Mr. Tourney (phonetic) at Delta.

15 "Let me ask again so there will be no question," is
16 our question.

17 "Did you ever discuss with UMB and/or the trustee in
18 the course of negotiations, including the settlement, as part
19 of Delta's plan of reorganization in allowing the bondholders
20 themselves to vote on the settlement?

21 "Answer: That was never discussed that I recall."

22 This is two weeks ago.

23 "Was there ever a discussion at all about allowing
24 bondholders to vote on the settlement?"

25 "Mr. McClammy: Objection to form. You can answer."

1 "Answer: There was, to my knowledge. That was not
2 discussed."

3 So that's Delta, Your Honor.

4 Turning to UMB, our indenture trustee --

5 THE COURT: You're focusing on the power to vote on
6 the settlement as opposed to the power to vote on the plan?

7 MR. CUNNINGHAM: Well, that question went to the
8 settlement --

9 THE COURT: Because the bondholders were given the
10 right to vote under the plan. Is that correct? That's
11 correct, isn't it, Mr. Huebner?

12 MR. HUEBNER: Not only that, but it was in our
13 disclosure statement hearing where, again, they did not appear,
14 Mr. Kannel did appear and was going to object, and we settled
15 it by saying that whether we agreed -- we will agree on a vote
16 that they could get in Delta Class Four. That's exactly right.
17 Your Honor, your memory is perfect. The language he just read
18 said, did you get to vote on the settlement agreement; answer,
19 no, we never contemplated that. Darned right. You don't vote
20 on a settlement agreement in bankruptcy; you vote on the plan,
21 and you object to the settlement agreement, and that's what
22 happened here.

23 MR. CUNNINGHAM: Again:

24 "Did you ever discuss in the course of negotiations
25 with the trustee, including the settlement as part of Delta's

1 plan of reorganization, allowing the bondholders themselves to
2 vote on the settlement?"

3 Well, if the settlement is being incorporated in the
4 plan, and Delta is saying they didn't believe the bondholders
5 were voting on the settlement when they vote on the plan, that
6 directly is contrary to I can say much of what Mr. Huebner has
7 been arguing here today, and also in his reply brief.

8 I won't read, Your Honor, UMB's statements. I'll just
9 point it out in the record. It was the transcript of Mr.
10 Bramwell, Page 219, Lines 13 to 25, and Page 220, 1 through 4,
11 which was similar.

12 Your Honor, the next point in their reply was that
13 Delta does not believe any re-solicitation was required. We
14 believe, as we said in our objection, that it was a material
15 modification, that they intended to incorporate the settlement
16 as part of the plan. We believe that this coercive exchange
17 offer, as we deem it because it was coercive on us, was a
18 material modification of the plan under 1127(c). There was no
19 mention in the original disclosure statement that our trustee,
20 our fiduciary, was going to issue a binding settlement that
21 would bind my clients without their consent. And we believe,
22 therefore, that -- if they're saying it was incorporated in the
23 plan. I recognize the settlement -- if they're just talking
24 about the settlement, that stands alone. That's last week.
25 But if we're now talking about the plan, that it's incorporated

1 in, then we do believe the modification was material. We
2 believe 1127(c) -- Section 1127(c) applies.

3 We also believe, Your Honor, notwithstanding what Mr.
4 Huebner said earlier, we do believe we're getting less than
5 what the unsecured creditors are getting. We have a four-
6 hundred-seventeen-million-dollar claim. That claim is not
7 being allowed in full. We believe the plan -- the
8 consideration for the settlement is less than if that claim
9 were allowed in full. I know Mr. Huebner says, Judge, we have
10 this great 502(b)(6) cap argument that we were to set on the
11 guarantee. But, you know, I recognize that's a legal issue,
12 but we believe we are going to be in the right on that issue.
13 We believe that the treatment under the settlement is less than
14 what we were getting as compared to other unsecured creditors.
15 That's why we made an argument that if we're in Class Four, we
16 were getting disparate treatment, and we believe the Bankruptcy
17 Code requires that you can't give that type of disparate
18 treatment.

19 That is the next argument. He said the treatment is
20 not different from other Delta Class Four creditors. Again, I
21 just went through that argument, Your Honor.

22 We did raise the issue of good faith, Your Honor,
23 under 1129(a)(3). I recognize Your Honor has granted their
24 motion, and I do not have the benefit of Your Honor's decision.
25 We have the order. I haven't yet seen the decision. I know it

1 -- there it is. So I recognize in granting that, I'm not going
2 to belabor on the good-faith issue.

3 My issue on good faith was more of if you were going
4 to, what I use, incorporate this as part of the plan, why
5 didn't you just put it in as part of the plan and allow people
6 to vote, why did you do the dual track and then say after the
7 fact in a paragraph that it's incorporated into the plan? I
8 would note that Your Honor's order yesterday didn't say that
9 your order approving the settlement incorporated it in the
10 plan. There was a section that said the note that would be
11 issued would be treated under the plan and, in fact, Mr.
12 Huebner is correct. He made modifications. I looked at it
13 with respect to the settlement, but they are really to
14 facilitate the note being issued if the settlement is
15 consummated. It doesn't say, as he said in his settlement
16 motion, that it's -- the whole settlement is incorporated in
17 the plan. It's if the 9019 settlement closes the plan provides
18 the note can be issued; if it doesn't close, the note won't be
19 issued. Again, that's the way we view it. Again, I'll move
20 off of the good-faith argument, Your Honor.

21 I think we're down to the last, or I should say
22 second-to-last issue, which is the issue of releases. The
23 issue of releases, Your Honor, is something that is of
24 paramount importance to my clients. We believe the Metromedia
25 case does establish the applicable legal standard here in the

1 Second Circuit. And what we are concerned --

2 THE COURT: I wasn't sure of that because you didn't
3 cite it in your briefs.

4 MR. CUNNINGHAM: We did cite it, Your Honor.

5 THE COURT: You did?

6 MR. CUNNINGHAM: Metromedia? We did, in our
7 objection.

8 THE COURT: All right.

9 MR. CUNNINGHAM: Our biggest concern is not, as Mr.
10 Huebner said, that there are optional voluntary releases. If
11 that were true, I agree that Metromedia says you have the right
12 --

13 THE COURT: What release are you concerned about?

14 MR. CUNNINGHAM: We are concerned when he says that
15 this is incorporated into the plan that he's talking about the
16 mandatory non-voluntary releases that we have been forced to
17 give under the settlement --

18 THE COURT: In the settlement agreement?

19 MR. CUNNINGHAM: Correct.

20 THE COURT: Right.

21 MR. CUNNINGHAM: But when he says it's incorporated --

22 THE COURT: So that's the release issue that you're
23 talking about?

24 MR. CUNNINGHAM: Correct, Your Honor.

25 THE COURT: Okay.

1 MR. CUNNINGHAM: And we recognize we have the ability
2 to address that issue as part of the appeal of the settlement
3 order.

4 THE COURT: Right.

5 MR. CUNNINGHAM: The concern that we had just from --
6 just lawyering, Metromedia says if there are plan releases and
7 that you don't somehow --

8 THE COURT: Let me make sure I understand. You are
9 not objecting to the plan releases, but only to the settlement
10 agreement release?

11 MR. CUNNINGHAM: With respect to the debtors'
12 releasing of claims, as Mr. Huebner said, no, we're not going
13 to object to that, Your Honor. What we're concerned about is
14 our claims that we have against non-debtors being released,
15 which we know has been joined as part of the settlement order.

16 THE COURT: Which one, by the way?

17 MR. CUNNINGHAM: Excuse me?

18 THE COURT: Which non-debtors?

19 MR. CUNNINGHAM: Expressly, UMB, our trustee, our
20 fiduciary, as Mr. Huebner called him, and KCAB.

21 THE COURT: Okay.

22 MR. CUNNINGHAM: And so we recognize if it's the
23 release issue then we're just -- we're going to join issue on
24 that as part of the settlement order. When he says it's been
25 incorporated into the plan, my fear, Your Honor, for the

1 record, is that Metromedia says, if you don't seek a stay and a
2 stay pending appeal and it's part of the plan and you didn't
3 try to stop the train from going by, you're going to be
4 prejudiced and you could be equitably moot.

5 I heard Mr. Huebner say he's got some language. It's
6 not the same language he told me yesterday. I'm still talking
7 to my litigators about what he was actually trying to
8 accomplish and we can go through it. But if he can get me
9 comfortable that, at the end of the day, what we're talking
10 about here is that issue of releases, because we do intend,
11 Your Honor, if the settlement is overturned, we do fully intend
12 to pursue our rights against the non-debtors I just described.

13 THE COURT: Right.

14 MR. CUNNINGHAM: So the key was we just didn't want to
15 be prejudiced by not saying anything about the plan, having him
16 say on Monday, it's consummated, we didn't seek an appeal or a
17 stay, that he would say, you're mooted out, whether
18 Constitutional mootness, equitable mootness. We did not want
19 to be prejudiced. I can't say I'm fighting the fight in the
20 District Court on the settlement motion and then not do
21 anything on the plan if he says it's incorporated in the plan.

22 THE COURT: I understand.

23 MR. CUNNINGHAM: And that really goes -- Your Honor, I
24 guess the one issue we did have, and this was a concern I had
25 in looking at the plan, there is an exculpation provision in

1 the plan for non-debtors. One of the exculpations is for the
2 municipal indenture trustees, in this case, UMB. And it's an
3 exculpation that's in the plan. Again, I view exculpations as
4 -- I know they're limited because they talk about in connection
5 with the plan and negotiations in the plan, et cetera. But if
6 he's saying, again, the settlement is part of the plan, I don't
7 want to in the future have UMB overturn the settlement order,
8 have to come back and say the plan exculpation that they got,
9 which I think is extraordinary given that they are not an
10 indenture trustee of any bond issued by Delta, they are a
11 third-party indenture trustee with bonds issued by KCAB, but
12 they got put into an exculpation. I believe in the case law
13 that's inappropriate. I was concerned that that exculpation
14 could somehow limit me under the plan in terms of future
15 rights, if I prevail on appeal in the future.

16 THE COURT: All right.

17 MR. CUNNINGHAM: And I guess the ten-day stay issue,
18 Your Honor, it does go to his issue about the form of order.
19 If I can get comfortable with the record, I think Mr. Huebner
20 has said, and I will take his statements to heart that what he
21 has said on the record will be binding on him, is that our beef
22 is with the settlement order. That's where we can go. If we
23 get relief there, we'll get relief there. It's not going to be
24 impacted by the plan and what happens in the plan. I'm
25 comforted by that language. And if we can work on his

1 additional language in the order, Your Honor, I think that will
2 address my concern about the prejudicial effect of the
3 confirmation order on my clients.

4 THE COURT: All right.

5 MR. CUNNINGHAM: And that really isn't my plan
6 objections, Your Honor.

7 THE COURT: Anybody else need to be heard on any of
8 these issues?

9 MR. BOTTER: Good afternoon, Your Honor. David
10 Botter, Akin, Gump, Strauss, Hauer & Feld, on behalf of the
11 Official Committee of Unsecured Creditors.

12 Your Honor, I don't want to be heard directly on the
13 issues. I just want to let Your Honor know, as we stated in
14 our brief, that the Official Committee fully supports
15 confirmation of this plan. As Mr. Huebner did, I'd like to
16 thank a few people before Your Honor goes forward.

17 First, I'd like to thank Your Honor for your patience
18 and guidance in these cases.

19 Secondly, Your Honor, I'd like to thank my clients,
20 the official committee itself, and our exceptional co-
21 professionals, Mesirow Consulting, and Houlihan Lokey, as well
22 as my Akin Gump team, for all of our tireless efforts.
23 Remember, the official committee is made up of creditors who
24 represent the interests of all of the unsecured creditors in
25 these cases. And, frankly, I think, Your Honor, that my

1 clients spent an awful lot of time doing a yeoman's effort in a
2 tremendous case and a tremendous result.

3 Your Honor, I'd also like to thank Delta, its very
4 dedicated executives and employees, and their very talented
5 professionals.

6 Finally, Your Honor, I'd like to thank my friend and
7 colleague Mr. Huebner who, once again, has covered every single
8 detail --

9 (Laughter.)

10 MR. BOTTER: -- and has thereby again made my
11 preparation and outline irrelevant.

12 (Laughter.)

13 MR. BOTTER: Again, Your Honor, the official committee
14 fully supports and urges this Court to confirm the plan of
15 reorganization for this very highly successful and consensual
16 case, and wishes Delta the best of luck in the future.

17 Thank you, Your Honor.

18 THE COURT: Thank you. Anyone else? All right.

19 MR. HUEBNER: I may be able to solve at least one of
20 his problems, Your Honor, which may make the appeal and
21 tomorrow's hearing go more easily. What I was trying to
22 convince him of last night, and I am happy to represent and be
23 bound to, is that it is Delta's view that if they succeed in
24 getting a stay of the CVG settlement agreement, and that
25 settlement agreement order entered by the Court yesterday does

1 not go effective, that they preserve their rights and that I
2 think that we would not argue that their appeal trying to stop
3 the CVG settlement agreement itself has become moot by the rest
4 of the reorganization and the rest of the distributions going
5 effective. So I meant what I said. I respect his right to
6 seek a stay tomorrow before this Court and up on appeal of the
7 CVG settlement order, but I think we have, in fact, structured
8 it so that he doesn't need and certainly has no right to, as a
9 matter of law, a stay of these massive mammoth debtors emerging
10 from Chapter 11 and completing their track back to financial
11 health and viability.

12 THE COURT: Okay. Well, this is my ruling on the
13 objection that has been filed on behalf of the five bondholders
14 who have objected.

15 I will overrule the objection. Like Mr. Botter, I
16 could not possibly articulate more clearly or more
17 comprehensively the grounds on which I would overrule all of
18 the different points raised by Mr. Cunningham's clients to
19 confirmation of this plan than Mr. Huebner did, and I'm not
20 going to attempt to repeat what Mr. Huebner said. I agree with
21 the points made by Mr. Huebner. I overrule the objection point
22 by point on those grounds.

23 Most of those grounds have been addressed in my
24 decision, which I finally have completed today following our
25 hearing last Thursday on the debtors' Rule 9019 motion seeking

1 approval of the settlement in connection with the CVG matter.
2 I have copies for the counsel that were involved in that here,
3 and it has been docketed, I understand. There is no need for
4 me to repeat what is in my decision.

5 I'm pausing for a moment to look over my notes of the
6 several points covered by Mr. Cunningham, and I really don't
7 think that there is anything I need to add to what I have said
8 in my now published decision regarding the settlement and Mr.
9 Huebner's very comprehensive points in rebuttal on all of the
10 various arguments:

11 The separate class argument.

12 The adequacy of disclosure argument, which in fact has
13 been dealt with in my decision.

14 The question of whether or not there should be a vote
15 or should have been a vote on the settlement, which, in any
16 event is, as pointed out in the decision, clearly rendered
17 academic in view of the vote on the plan, which, as far as the
18 bondholders were concerned, was inevitably and only a vote on
19 the settlement, since the bondholders have no interest under
20 the plan other than as bondholders and under the settlement.

21 The question of disparate treatment. In essence, the
22 settlement was no more, nor less than the settlement of a
23 claim; a settlement of a claim asserted by the bond trustee on
24 behalf of the bondholders, a claim which, under the indenture,
25 only the bond trustee had jurisdiction to assert, and only the

1 bond trustee had the power under the indenture to settle,
2 albeit subject to the written direction of a majority in amount
3 of the bonds. All that is covered in my decision.

4 The settlement simply resolved a claim after a great
5 deal of controversy in many, many months of negotiations. Like
6 any other settlement of a claim, it resulted in a claim in
7 bankruptcy. That claim in bankruptcy, by being included in
8 Class Four along with all other creditor claims of like
9 character, did not receive disparate treatment under the plan.
10 The claim that resulted from the approval of the settlement
11 received exactly the same and will receive exactly the same
12 treatment as the treatment accorded under the plan to all other
13 like creditors. There is no disparity in treatment.

14 The question of releases -- which my questions to Mr.
15 Cunningham, I think, and his answers, rather, have made clear --
16 -- relates not to the settlement -- excuse me, the releases
17 under the confirmation under the plan, but rather solely to the
18 release under the settlement agreement, has been dealt with, I
19 believe, sufficiently in my written decision.

20 The bottom line is it is a very tailored narrow
21 release amongst three parties -- four parties, excuse me:
22 Delta, KCAB, and the bond trustee, as the parties to the
23 settlement agreement, and the bondholders who are bound by the
24 settlement agreement and the activities and conduct of their
25 bond trustee under the terms of the indenture and the case law.

1 The release is no more, nor less than that which is
2 necessary to, in effect, effectuate the settlement and to
3 preclude further litigation of precisely the same issues which
4 were resolved by the settlement agreement. That is a very
5 narrow release; it does not implicate any of the concerns
6 reflected in the decision of the Second Circuit in the
7 Metromedia Fiber Network case, with which I am familiar.

8 So for the reasons that have been articulated in the
9 decision which I have issued today on the settlement agreement
10 and those expounded and articulated very comprehensively and
11 clearly by Mr. Huebner, I overrule all of the objections by the
12 five objecting bondholders to confirmation of the debtors'
13 plan, and I will sign the confirmation order as it has been or
14 will be tendered to me, including with respect to the stay
15 matter.

16 I want, myself, to add my voice to those of counsel in
17 expressing my enormous admiration for and great accolades to
18 the principals and the professionals who have brought about a
19 truly extraordinary result in this enormous Chapter 11 case.
20 This case, like all bankruptcy cases, all reorganization cases,
21 has required sacrifice by all of the constituencies:
22 Creditors, the personnel of the companies -- of the company and
23 the debtors, from the Chairman and CEO of Delta on down.

24 In an era where there is enormous public concern over
25 executive compensation, the leadership reflected in this

1 company reflects precisely the opposite ethic as the kind of
2 overcompensation that has attracted hostility in the press, and
3 I say that from the CEO on down. It's hard to imagine any
4 finer leadership in terms of bringing about an extraordinary
5 result for all of the affected constituencies; that is, all
6 that could possibly have had a good result, obviously equity
7 could not. Hard to imagine more effective leadership than the
8 leadership of this company, and that leadership has done so at
9 a great personal economic sacrifice. Exceptional.

10 The professionals also have done simply an amazing,
11 amazing job. When I gave that backhanded compliment that Mr.
12 Huebner referred to before about having made my job very dull,
13 I most assuredly meant it as a compliment. I've never been in
14 a case, large or small, where there was the potential for such
15 controversy and where the resolution rate has been simply
16 astronomical. It's extraordinary. Needless to say, I'm
17 grateful. Although I do love my job, and I love controversy.

18 (Laughter.)

19 THE COURT: But it -- this case seems to be a paradigm
20 of the concept of consensus, which really is the basis for
21 Chapter 11 under our system of bankruptcy law, so bravo to all
22 concerned.

23 I will sign the order.

24 Is our business concluded?

25 MR. HUEBNER: It is, Your Honor. I took your remarks

1 to mean that I should and can add a finding that says that the
2 debtors have made a showing of substantial economic and
3 operational harm and risk if the --

4 THE COURT: Oh, absolutely. Absolutely. The showing
5 was, shall we say, over the top.

6 (Laughter.)

7 MR. HUEBNER: Some might say that will go on my
8 tombstone.

9 (Laughter.)

10 THE COURT: It was a very powerful showing, and
11 there's no doubt about it.

12 MR. HUEBNER: Thank you.

13 THE COURT: Now do you have an order?

14 MR. HUEBNER: Your Honor, we do have a form of order.
15 We also have the technology here that will enable us to have
16 that very last factual finding about the showing of colossal
17 harm and prejudice, and I'll be able to --

18 THE COURT: All right. Well, I think that should most
19 assuredly be added if it's not in there now. It's entirely
20 appropriate.

21 Are we done then?

22 MR. HUEBNER: We are, Your Honor.

23 THE COURT: Again, and thank you, and accolades to all
24 concerned. Thank you.

25 COUNSEL: Thank you, Your Honor. Thank you, Judge.

1 THE COURT: Good day. The Court is in recess.

2 (Proceedings concluded at 4:35 p.m.)

3 *****

4 CERTIFICATION

5 I certify that the foregoing is a correct transcript from
6 the electronic sound recording of the proceedings in the above-
7 entitled matter to the best of my knowledge and ability.

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April 25, 2007

14 _____
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