

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: . Case No. 04-27848 MBM
.
ACR MANAGEMENT, LLC, .
.
Debtor, . 5414 USX Tower Building
.
July 19, 2004
10:52 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE M. BRUCE McCULLOUGH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Kirkland and Ellis
By: ANUP SATHY, ESQ.
200 East Randolph Drive
Chicago, Illinois 60601

Campbell & Levine
By: DOUGLAS CAMPBELL, ESQ.
1700 Grant Building
Pittsburgh, Pennsylvania 15219

For Fleet Bank: Buchanan, Ingersoll
By: JOAN G. DORGAN, ESQ.
One Oxford Centre
301 Grant Street, 20th floor
Pittsburgh, Pennsylvania 15219

Audio Operator: Cathy Younker

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-Mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES CONTINUED:

For the Committee:

McGuire Woods

By: MARK E. FREEDLANDER, ESQ.

Dominion Tower, 23rd floor

625 Liberty Avenue

Pittsburgh, Pennsylvania 15222

1 THE COURT: Here we are -- bankruptcy number 04-
2 27848, ACR Management, LLC, et al, appearances please.

3 MR. SATHY: Good morning Your Honor, Anup Sathy, from
4 Kirkland and Ellis, LLP, along with my co-counsel Doug
5 Campbell.

6 MARK FREEDLANDER: Good morning Your Honor, Mark
7 Freedlander of McGuire, Woods, proposed co-counsel the official
8 Committee of unsecured creditors.

9 MS. DORGAN: Good morning Your Honor, Joan Dorgan
10 from Buchanan, Ingersoll, local counsel for Fleet Bank as agent
11 for the DIP lenders.

12 THE COURT: Okay.

13 MR. SATHY: May I proceed Your Honor?

14 THE COURT: Sure.

15 MR. SATHY: Your Honor, there is only one matter set
16 for hearing today, it's the debtor's motion to retain CIBC as
17 the debtor's financial advisor. As Your Honor may recall, this
18 matter and this pleading was originally scheduled for hearing
19 at the July 13th hearing, last week, subsequent to filing the
20 pleading, the Official Committee had raised some concerns about
21 the -- the debtor's need for an investment banker, and a
22 proposed fee structure. Your Honor we --

23 THE COURT: Well what's the -- I asked you when we
24 first talked about this, the CIBC the investment bankers when
25 the unsecured debt was issued?

1 MR. SATHY: Your Honor, they were not -- you did
2 mention, you did ask me this on the July 1st hearing, we've
3 done our diligence, the answer is no, they were not the
4 investment banker.

5 THE COURT: Well, they were pleading that they were
6 there for at least a year.

7 MR. SATHY: Your Honor, they were -- they were
8 present as I mentioned on the July 1st hearing, they were there
9 as part of the overall restructuring, that occurred in the late
10 2002 and early 2003.

11 That restructuring had a number of separate
12 components. One was a forbearance and an amendment to our
13 existing senior secured credit facility. In addition to that,
14 Your Honor, there was an exchange offer with respect to then
15 existing bonds, and those bonds were exchanged for the current
16 bonds that are outstanding from the debtors.

17 That exchange Your Honor was structured very
18 specifically to provide that it would be subject to the
19 assumption under Section 309 of the Securities Act.

20 And because the bond holders requested a public, that
21 the security be public, the exchange was a structured very
22 carefully to prevent there from being a solicitation. So, as
23 to allow for the exemption under 309 to be satisfied.

24 In other words, Your Honor, CIBC was there, they
25 acted as a financial advisor, to the debtors. But they did not

1 perform any investment banker services, there were not an
2 underwriter, they were placement party, they did not solicit
3 bond holders, Your Honor. They did not take any securities in
4 connection with the exchange.

5 Your Honor, this was an exchange between current
6 holders, exclusively so that the exchange would satisfy the
7 exemption of the 309, CIBC's retention was very clearly
8 structured so that they would not be doing investment banking
9 services, so as to satisfy the 309 exemption, and in fact Your
10 Honor, CIBC's compensation at the time, was not conditioned
11 upon a successful exchange, which is one of the additional
12 factors that the SEC looks at for purposes of determining
13 whether the exchange would have satisfied Section 309. CIBC
14 was there, they were involved in the overall restructuring,
15 which was a very comprehensive restructuring, both on the bank
16 side, and on the bond side, but they did not -- they did not
17 act as investment bankers for the debtors, their engagement was
18 not structured that way, and Your Honor, therefore we believe
19 that that involvement in the company's prior restructuring
20 transaction does not render them to not satisfy the
21 disinterested standard.

22 THE COURT: Okay, thank you.

23 MR. SATHY: Your Honor, with respect to the
24 Committee's objection, Your Honor, we agree with the Committee
25 to continue the pleadings, though as to provide a meaningful

1 opportunity for the company, and the Committee to engage in a
2 productive dialogue. Your Honor that time has been very well
3 spent. And on Saturday Your Honor the Committee and the
4 company agreed on a revised compensation structure, on CIBC's
5 retention and with this revised structure Your Honor, the
6 Committee has withdrawn its objection and in fact does support
7 the retention of CIBC.

8 Your Honor, the revised retention compensation
9 arrangement provides a meaningful and substantial savings to
10 the estate and Your Honor if I can, I'd like to just go through
11 what that revised compensation structure looks like.

12 THE COURT: Before we go through that, I'd like to
13 hear from Mr. Freedlander on why he thinks they still need
14 somebody.

15 MR. FREEDLANDER: Thank you Your Honor, again for the
16 record, Mark Freedlander, as proposed co-counsel to the
17 Committee.

18 Your Honor, on behalf of the Committee, we have spent
19 real time discussing matters with both representatives of CIBC
20 as well as representatives of the debtor.

21 In our minds, the engagement of CIBC is largely a
22 twofold engagement, separate and apart from that of Kroll Zolfo
23 Cooper.

24 With resepct to CIBC, Your Honor, and we've had this
25 discussion in part at prior hearings, they are going to

1 endeavor to obtain what I'll call take out financing.

2 Understanding that the existing lenders -- existing
3 senior lenders are in place, and the possibility certainly
4 exists that they're going to roll a portion of their facility
5 over for the purposes of emergence of these entities.

6 But, frankly, with the proposed de-leveraging of the
7 company, and we're not in complete agreement that de-leveraging
8 to the extent that they're proposing is absolutely necessary,
9 but nevertheless, under any set of circumstances these entities
10 are going to emerge substantially de-leveraged.

11 And that set of circumstances we do believe that it's
12 appropriate, that new lenders come into place, to the extent
13 that they are able to do so. And that would be a roll that CIBC
14 would fill.

15 Likewise, Your Honor, at the heart of this
16 reorganization, and at the heart of the dispute of the
17 constituency that we represent as value, there is an awful lot
18 of debt in this company. The question is how debt stacks up
19 against emergence value.

20 Certainly something that reasonable minds can
21 disagree about, you've made determinations about value,
22 Bankruptcy Courts across the country make value determinations
23 all the time.

24 The plain and simple fact is, that the bankruptcy
25 lawyers don't do a very good job when it comes to valuation.

1 We can take testimony, but what the investment bankers really
2 serve that roll.

3 And in our minds, whether there is a dispute or
4 whether we do this consensually, valuation issues are going to
5 be the heart of the restructuring.

6 And those valuation issues are largely left to
7 investment bankers. You may not like it, I may not like it,
8 but investment bankers serve that roll.

9 And in our minds, given the fact that valuation is at
10 the heart of a dispute, or the heart of a consensual
11 reorganization, again you need investment bankers.

12 So, when we take a look at things, we've made a
13 determination that they are going to retain investment banker,
14 and it really comes down to a cost benefit analysis.

15 If you start with someone new, and representing
16 debtors is often as I do, I know the market, and I know what
17 life is like. It is expensive. The restructured proposal CIBC
18 is expensive. If they were to go out and try to retain a new
19 investment banker, that likewise would be expensive, the
20 difference in my mind, there's two differences.

21 Number one, CIBC has been involved, so they have an
22 understanding, there isn't a learning curve.

23 And learning curves are expensive, as well. Flat
24 monthly rate, the case will go on longer, the longer the case
25 goes on, all the lawyers are incurring fees, not just the

1 investment banker.

2 So, the duration of a case is assisted in my mind by
3 having CIBC in place.

4 There is a relationship good or bad, nevertheless,
5 historical relationship between a substantial number of the
6 constituents that we represent and CIBC.

7 So, we have worked together with them, pre-bankruptcy
8 basis. And believe that under the circumstances they likely
9 serve the best roll for us to work with them into the future,
10 to endeavor to obtain consensual restructuring.

11 And that's not a guarantee that it happens, so to the
12 extent it doesn't happen, we're looking at plan confirmation
13 litigation. Where again Your Honor, an investment banker on
14 each side, or a financial advisor of some form, on each side,
15 is then playing an essential roll. So when we do that analysis
16 Your Honor, we've determined in consultation with our financial
17 advisors, that the new pricing of CIBC is now a market price,
18 and given the learning curve of someone new, on a cost benefit
19 analysis, it makes financial sense to allow CIBC to continue in
20 their existing roll as opposed to starting fresh.

21 THE COURT: Thank you.

22 MR. SATHY: And Your Honor, one of the things that
23 the Committee mentioned in their objection which we discussed
24 with them and we've had further discussions with other
25 professionals is whether or not the debtor's existing group of

1 professionals can perform all of these services, and in
2 particular Your Honor, the Committee mentions the Kroll Zolfo
3 firm, and my co-counsel Mr. Campbell is here and I think he
4 speaks best as to whether or not Kroll is truly in a position
5 to perform these services that CIBC is being proposed to engage
6 to do.

7 MR. CAMPBELL: That was something I took up with Mr.
8 Lobiondo, and these services are outside the scope of their
9 existing engagement, and --

10 THE COURT: You're securing financing isn't outside
11 the scope of their ability --

12 MR. CAMPBELL: Not outside the scope of their
13 abilities, and I asked him if he -- if given their CRO
14 function, they sought the other function, or an expansion of
15 it, and he indicated they did not.

16 They felt under the circumstances the case was best
17 served by the accord that's been reached here.

18 THE COURT: Now we'll see how much it costs?

19 MR. SATHY: Your Honor, if I may, I may -- I will,
20 I'm happy to describe the restructured fee proposal.

21 THE COURT: Okay.

22 MR. SATHY: Okay. Your Honor, the -- the engagement
23 letter that is currently before the Court, has different fee
24 proposals, there is a monthly proposal, there is a DIP fee
25 proposal, DIP fee -- there is a lock up fee, and there is a

1 transaction fee.

2 THE COURT: As I understand it, we've got DIP
3 financing, we've got a lock up, but why are any of those in
4 there?

5 MR. SATHY: Your Honor, the revised proposal has both
6 of those being eliminated.

7 THE COURT: Okay.

8 MR. SATHY: Okay. With respect to the monthly
9 calculation Your Honor, the current proposal is to have the
10 same \$150,000 per month for six months, with no additional
11 credit with respect to those monthlies. The DIP fee of
12 \$100,000 has been eliminated, the lock up fee of \$150,000 has
13 been eliminated. And the transaction fee, Your Honor, has been
14 restructured such that it is now capped at 2.925 million
15 dollars, Your Honor, the existed -- the previous transaction
16 fee was a formula based fee, that was effectively 50 basis
17 points on the -- of the bank debt, and 75 basis points on the
18 bond debt when the transaction is successfully consummated.
19 We've calculated that fee to be approximately 4.1 million
20 dollars.

21 So, when you add all of the concessions that CIBC has
22 agreed to Your Honor, if this case turns out to be a six month
23 case, we believe the savings are over a million dollars, or
24 approximately a million dollars, in the reduction of fees.

25 Your Honor, in addition, if the case goes seven

1 months, CIBC will not receive any monthly fee on account of
2 that's the service performed in the seven months -- seventh
3 month, and the savings would be true for the eighth month, if
4 the case wound up going more than 8 months, then the Committee
5 and the debtors would revisit CIBC's entitlement to a monthly
6 fee starting from month 7.

7 So, Your Honor if this case does go 8 months, then
8 the savings to the estate would be approximately 1.3 million
9 dollars off of the engagement letter that was submitted to the
10 Court.

11 Your Honor, we believe this is a meaningful savings,
12 to the estate.

13 THE COURT: How do we come to the 2.9 million?

14 MR. SATHY: Your Honor, reverse engineering.
15 Basically we agreed with the Committee what the total fee
16 package would be that they would be comfortable with, and then
17 based on that number, Your Honor, we worked backwards, and
18 subtracted things that we needed to to get to that number, so
19 obviously reduction of the DIP fee was a reduction of a
20 \$100,000, the reduction of the -- the elimination of the lock
21 up fee was \$150,000 and by -- that's 250,000, and to reach the
22 Committee's threshold we reduced the success fee and
23 restructured the monthly, so that the -- package --

24 THE COURT: But isn't this supposed to be what the
25 value to the estate is?

1 MR. SATHY: Your Honor, this is a proposal that CIBC
2 has put forth to the Court right now, this is --

3 THE COURT: Well how -- what -- how are they going to
4 contribute 2.9 million dollars in value to this estate?

5 MR. SATHY: Your Honor, we believe that the work
6 necessary to complete this restructuring will be valued at that
7 much, if not more.

8 THE COURT: But I thought it was already structured.

9 MR. SATHY: It is. We do have a conceptual balance
10 sheet restructuring agreement.

11 THE COURT: Costs 3.7 million dollars pre-petition.

12 MR. SATHY: Your Honor, it cost -- the -- it did not
13 -- the affidavit set forth the compensation of CIBC in the year
14 prior to that year included this previous restructuring, so
15 over two million dollars of the fees in that 3.6 related to the
16 previous restructuring, which was completed within a year, of
17 the filing.

18 With respect to the work that CIBC has done in
19 relation to this restructuring Your Honor, they received
20 monthly fees for 8 months, which is 1.2 million dollars and so
21 that's the eight months times the monthly that they received,
22 with respect to this restructuring. The fees that they
23 received beyond that, relates to the previous restructuring
24 bill that I described at the beginning of the hearing.

25 THE COURT: The Transaction fee of 2.9 doesn't

1 include the 150,000 a month right?

2 MR. SATHY: That's correct Your Honor. So the total
3 compensation that CIBC will propose will be 3.825 which is
4 again about a million dollars lower than what was originally
5 proposed, so we -- basically we stopped to get a million dollar
6 reduction, and so we worked with that number, and worked
7 backwards to achieve that result in order to have the Committee
8 support the retention.

9 And again Your Honor, if the case did go longer, 7 or
10 8 months, CIBC would in effect be working for no monthly fee
11 which would be an additional 300,000 of savings to the estate.

12 THE COURT: So just what are they doing for the 2.9
13 over and above the 150 a month?

14 MR. SATHY: Well, Your Honor, again it relates to
15 finalizing everything necessary to get this -- get the plan
16 consummated, first. It's the valuation work, they're updating
17 their valuation and --

18 THE COURT: Why don't they do that for the 150 a
19 month?

20 MR. SATHY: Well, Your Honor, the -- the fee
21 structure proposes that they do a number of things, not just
22 the valuation, the valuation alone --

23 THE COURT: There are two things, valuation and
24 finding money.

25 MR. SATHY: Valuation, there's finding money, there

1 is liaising with parties who have expressed an interest in this
2 company, potential purchasers, is very, very preliminary
3 indications of parties who are looking at this company, it's
4 liaising with the Creditors Committee's professionals, both on
5 business and on the valuation. There's also finalizing the
6 terms of the consensual deal.

7 Your Honor, we agree with the -- with our senior
8 lenders, on the constructs of a plan, and a very detailed
9 balance sheet restructuring, but there are still items such as
10 management incentive plans, board governance, and other similar
11 types of provisions, that need to be negotiated and we are in
12 the process of negotiating.

13 In addition, Your Honor, and it probably won't
14 surprise you, we are also preparing a key employee retention
15 plan which we'll be bringing to this Court, at some point later
16 in the case. And CIBC is involved in working with the company
17 and the advisors to the banks, and presumably with the
18 creditors once that, we make enough progress, on what those
19 provisions are going to look like.

20 These are all services and work that need to be done,
21 to get this restructuring completed, and these are the -- these
22 are services that traditional fall within the scope of a
23 retention of a financial advisor, and Your Honor, the -- folks
24 at the company the management, are simply not equipped to do
25 this. They're busy running their business. And we don't

1 believe --

2 THE COURT: I would say that people -- I'm just -- I
3 just want to know what we're getting for this 3. Whatever --
4 3.9 million dollars --

5 MR. SATHY: 3.825.

6 THE COURT: And -- I thought I saw in the original
7 transaction letter that they got some money ongoing even if
8 nothing -- even if they did nothing, for six months after --

9 MR. SATHY: Oh, Your Honor, the tail transaction.

10 THE COURT: NO.

11 MR. SATHY: Your Honor, that -- there is a -- I
12 believe a tail provision in that agreement, I think we're
13 prepared to remove that, if that's necessary.

14 THE COURT: Well I was going to kick the whole thing
15 out for that alone.

16 You don't get nothing for nothing here.

17 THE COURT: Yes, Your Honor, I think we're happy to
18 have that removed. Your Honor, CIBC we believe will perform
19 valuable services. We believe that we'll be able to
20 demonstrate that to the Court, we believe that we have
21 consensus among all of the constituents that this is necessary
22 to move this process along. And failure to have CIBC would
23 wind up being more expensive and delaying this process Your
24 Honor, this is work that needs to be done. And whether it's
25 CIBC, Kroll Zolfo, or someone else that we bring in, the

1 reality is, this is work that needs to be performed, and CIBC
2 is best suited to do that.

3 For example Your Honor, the exit financing, the 300
4 million dollars if we were able to save half a percent on an
5 interest rate, that would be more than paying for CIBC's fee
6 over the course of a facility, a six year facility, half a
7 point savings would be -- would be 9 million dollars Your
8 Honor.

9 So, there is substantial work to be done, and we
10 believe that CIBC will -- is best equipped to do those --
11 perform those services, and will add benefit and value to the
12 estate.

13 We also believe Your Honor, that to the extent that
14 there is a consensual deal, we're not foreclosed at this point
15 from a consensual deal with our bond holders and our creditors.
16 And we believe -- and I believe the Committee also agrees, that
17 CIBC can play a role in helping facilitate if possible, the
18 consensual deal. It's no promises, there is a lot of work to
19 be done, if that's going to happen.

20 But CIBC was part of the process that brought us to -
21 - where we are today, in the sense that they helped bring the
22 prior restructuring to completion, and allowed for the company
23 to continue for the year that it did, so that it could be in
24 this spot today, which everyone anticipated would be the case.

25 CIBC knows the players, they know the company, and I

1 believe they have a handle on the value of this company, so
2 even the -- even having them around to help facilitate to the
3 extent possible, a transaction would add substantial value to
4 this estate, in preventing deterioration of value, if this case
5 lingers.

6 None of us want the Committee, the creditors, the
7 lenders, the company, nobody wants this case to linger in
8 Chapter 11 for any longer so that professionals continue to
9 approve fees. That's not the goal, we could have been in
10 Chapter 11 at the early part of the year, but we made a
11 consensual effort to try to bring a deal together so that we
12 could minimize the time that we're in Chapter 11. And we
13 believe that having CIBC involved in the process, from the
14 beginning, through the end, will more than pay for the value
15 that they were getting asked to be compensated.

16 THE COURT: And under what circumstances don't they
17 get 2.9 million?

18 MR. SATHY: Your Honor, the 2.9 million is predicated
19 on a successful transaction, it's based on the consummation of
20 a transaction. And that --

21 THE COURT: Which is defined as what?

22 MR. SATHY: Your Honor, it's a very broad definition,
23 but it basically incorporates any substantial recapitalization
24 of the company. For all intents and purposes Your Honor,
25 that's the transaction that we're proposing to you today.

1 That's the transaction that's subject to the lock up agreement.

2 The transaction -- the engagement letter also
3 provides for an M&A fee as well, if it turns out there's going
4 to be a sale.

5 But the reality is, Your Honor, it's one or the
6 other, it's -- the agreement doesn't provide that CIBC be
7 entitled to multiple fees, it's one fee, and we believe that
8 the fee that CIBC will earn, will be --

9 THE COURT: Do they get the fee before we have
10 confirmation of a plan.

11 MR. SATHY: No, absolutely not. Absolutely not Your
12 Honor.

13 MR. FREEDLANDER: I'll also add Your Honor, just for
14 a moment, that in the event an M&A transaction were to be
15 consummated, and CIBC were not responsible for bringing the
16 acquiring party to the table, under those set of circumstances
17 they would not receive a fee either.

18 I'm not suggesting to you today that an M&A
19 transaction will occur, but nevertheless, in the event we
20 headed down that path, and CIBC were not the party responsible
21 for bringing the person to the table, they would not be
22 entitled to that type of M&A fee as their retention letter
23 suggests.

24 MR. SATHY: That's absolutely right Your Honor.

25 THE COURT: How many people are they going to

1 dedicate to this?

2 MR. SATHY: Your Honor, I'm being told that they have
3 six full time employees, including the people the engagement
4 letter -- Mr. Redecki, working on the engagement right now.

5 THE COURT: And when do our eight months start?

6 MR. SATHY: Petition date. We're already through
7 month one Your Honor.

8 CIBC has been performing a substantial amount of work
9 even in spite of the fact of their retention hasn't been
10 approved, I believe Your Honor's words were to me, at the first
11 day you work at your own peril. And I think CIBC has certainly
12 understood that there is a risk, and yet they have continued to
13 perform as much as they could, given the fact that they've had
14 this over them. But I do believe that if the retention does
15 get approved, that we could make substantially more detailed
16 progress with the Committee, on very, very -- issues such as
17 Mr. Freedlander identified, such as valuation where -- you
18 know, we're very eager to explain to the Committee the
19 company's theory on value so that we can move to the real
20 issues in this case. Which are what if anything, are the four
21 lien holders and unsecured holders, entitled to receive.

22 THE COURT: So it's a 150 a month for six months, up
23 to eight months, and 2.9 million is that all there is to it?

24 MR. SATHY: It's a 150 a month for six months,
25 correct Your Honor, at 2.925 million is the transaction fee,

1 correct. And if the case goes longer than eight months, then
2 the Committee, the debtors will come to you and seek guidance
3 from you as to whether or not the monthly fee should be
4 readjusted, but absent that, there is no change -- the
5 transaction fee regardless of what happens will not change,
6 regardless of the length of the case.

7 THE COURT: And they're not keeping track of their
8 time, as the Committee suggested, right?

9 MR. SATHY: I don't -- yeah, I don't believe they
10 keep track of the time Your Honor, but I do believe they keep
11 track of expenses, and --

12 THE COURT: Well I'm sure they keep track of
13 expenses.

14 MR. SATHY: Yeah.

15 THE COURT: Pretty hard to keep track of time --
16 notwithstanding everybody else, but the --

17 MR. SATHY: Your Honor, certainly --

18 THE COURT: Within an 8 hour -- it's like accountants
19 any way.

20 How many people they got working on finding other
21 financing?

22 MR. SATHY: Your Honor, I believe it's -- some subset
23 of the existing group, I imagine, all -- I imagine, some set of
24 all six are working on all of these issues Your Honor. Just to
25 give you a status of where we are in the financing, and I spent

1 some time with Mr. Redecki this morning, and he did caution me
2 that there have been a number of very sensitive and private
3 discussions but we have received indications from at least two
4 outside parties, who have expressed an interest -- a sincere
5 interest in writing this paper.

6 These are people that are -- it would not be the
7 existing group, these are people who find new lenders, we -- he
8 also believes that there may be one or two additional including
9 the current group that he will be having discussions with, and
10 reaching out to so there could be as many as three or four
11 people who will serve as syndication heads, and try to find the
12 additional financing necessary but I think it's fair to say
13 that based on where we are today, he believes that there is a
14 strong likelihood that the money will come from an outside
15 source.

16 THE COURT: And you're satisfied with this Mr.
17 Freedlander?

18 MR. FREEDLANDER: Your Honor, the Committee does
19 believe that this is closer to market rate, and I can tell you
20 that the Committee's had any number of conversations as a
21 group, the most recent as late as this past Friday. And the
22 professionals, by itself as well as some of the attorneys from
23 -- had a very lengthy conversation with the Committee, where we
24 explained to them again the dynamics, the negotiations that had
25 occurred, and the Committee was very clear in its direction, to

1 us, and we pursued what we were instructed to do, and reached
2 what we believe to be the best deal possible under the
3 circumstances, so we are comfortable that we're at market rate.
4 We are comfortable that an investment banker is necessary on
5 the debtor's side, and that again the cost of bringing someone
6 new in, would far exceed the benefit to the estate.

7 THE COURT: Well, I don't disagree, I don't even have
8 to make that argument.

9 MR. FREEDLANDER: Right.

10 THE COURT: I understand.

11 MR. FREEDLANDER: So the plain and simple fact is
12 Your Honor, that -- in our mind, bankruptcy lawyers and
13 investment bankers share a unique relationship where largely
14 bankruptcy lawyers are jealous of investment bankers, their
15 rate structure is something that we would love to have, but it
16 plain and simply isn't the case.

17 The market's largely been established, and all the
18 research that we've done, indicates that we're not on market
19 rate, and we're comfortable under the circumstances that that's
20 appropriate.

21 THE COURT: Okay. On that representation I -- do we
22 have an order?

23 MR. SATHY: Your Honor, again this was an agreement
24 that we reached over the weekend, we are revising an order and
25 we'll be sharing that with the Committee, and Mr. Redecki,

1 before the end of the day, if it's appropriate Your Honor, we -
2 -

3 THE COURT: Well can you get it in by the middle of
4 like tomorrow?

5 MR. SATHY: I think we will certainly have it to you
6 tomorrow.

7 THE COURT: My problem is, I may not be here
8 Wednesday, and then I'm out for 10 days.

9 MR. SATHY: Okay, then Your Honor we will have it to
10 you tomorrow.

11 THE COURT: Okay. Don't make it four pages, five
12 pages, six pages long, it doesn't have to be. Okay.

13 MR. CAMPBELL: Your Honor, there will also be an
14 amended order as far as this concerning the ordinary course
15 sale procedures, changed the notice period from 10 to 20 days.
16 As part of the overall --

17 THE COURT: Okay. Okay. Anything else?

18 MS. DORGAN: Your Honor, for the record Joan Dorgan,
19 for Fleet Bank. I'd simply like to express the bank's
20 concurrence of what's been said today, particularly with
21 respect to the excessive time and costs involved in retaining
22 someone new. And also in particular CIBC's familiarity with
23 the debtor and its affairs, and the parties ability and
24 demonstrate ability to work with CIBC. Thank you Your Honor.

25 THE COURT: Okay. Anything else?

1 MR. FREEDLANDER: Not on behalf of the Committee Your
2 Honor. Thank you.

3 MR. SATHY: Nor from the debtors.

4 THE COURT: So I'll be looking for a new order on
5 this, and an order on the ordinary course sales? Oh, you have
6 that here. Okay. Anything else?

7 MR. SATHY: Your Honor, just for the record, the
8 description of CIBC's work on the previous transaction as Your
9 Honor had questioned me about, on the first, we have submitted
10 this morning an affidavit of Mr. Redeckl which outlines all of
11 the services performed with respect to the prior restructuring,
12 and that that was filed and given to the Committee, it is
13 docket number 266, and again that is an affidavit in support of
14 the retention, and explains and answers the questions that Your
15 Honor had posited to me on the first.

16 THE COURT: Okay, thank you.

17 MR. SATHY: Thank you Your Honor.

18 THE COURT: If there's nothing else, close the
19 record.

20 MS. DORGAN: Thank you Your Honor.

21 (Court adjourned)

22 * * * * *

23

24

25

CERTIFICATION

I, PATRICIA C. DUPRE, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

_____ Date: August 23, 2004

PATRICIA C. DUPRE

J&J COURT TRANSCRIBERS, INC.