UNITED STATES BANKRUPTCY COURT

DISTRICT OF MAINE

IN RE: PEGASUS SATELLITE TELEVISION, INC., ET AL., Debtor.)	Case No. 04-20878 November 24, 2004 Portland, Maine

TRANSCRIPT OF HEARING

ON MOTION TO AUTHORIZE SUPPLEMENTAL RETENTION PLAN,
EXTENSION OF EXCLUSIVITY PERIOD AND
INTERIM FEE APPLICATIONS

BEFORE

THE HONORABLE JAMES B. HAINES, JR.

APPEARANCES:

For the Debtors	: Michael Fagone, Esq. Paul Caruso, Esq. Guy Neal, Esq. Ellen Moring, Esq.
For the Creditors Committee	: Jacob Manheimer, Esq. David Botter, Esq.
For Davidson Kempner Partners	: John McVeigh, Esq.

For U.S. Trustee : Robert Checkoway, Esq.

Recording Equipment Monitor : Julie Winberg

INDEX OF WITNESSES

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS

No witnesses were presented on the record.

INDEX OF EXHIBITS

EXHIBIT:	MARKED	ADMITTED

No exhibits were presented on the record.

HEARING COMMENCED (NOVEMBER 24, 2004, 10:23 AM)

THE COURT: Pegasus Satellite and Television and consolidated--administratively consolidated cases. We have attorneys in the courtroom--we'll start by getting appearances in the courtroom, starting with debtors' counsel--

(TELEPHONE RINGS)

THE COURT: All right. We're here in Pegasus Satellite and Television. We'll start by getting appearances of counsel who are in the courtroom, starting with debtor's counsel, then I'll turn to those who've joined us by phone this morning.

MICHAEL FAGONE, ESQ.: Good morning, your Honor, Michael Fagone, Bernstein, Shur, Sawyer and Nelson for the debtors and debtors-in-possession.

JACOB MANHEIMER, ESQ.: Good morning, your Honor. Jack Manheimer, Pierce, Atwood, co-counsel for the committee.

JOHN MCVEIGH, ESQ.: John McVeigh for Davidson Kempner Partners.

ROBERT CHECKOWAY, ESQ.: And Robert Checkoway for the U.S. Trustee.

THE COURT: All right. Thank you. And on the phone, let me just run through who I have listed here and

we'll see if there's anyone else on. Is Mr. Freetog [phonetic] on?

MR. FREETOG: Yes, I am.

THE COURT: And you're here for whom?

MR. FREETOG: Kekst and Company, public relations firm.

THE COURT: All right. Thank you. We have Ellen--let's see, Ms. Moring

ELLEN MORING, ESQ.: Your Honor--

THE COURT: --Mr. Botter, Mr. Caruso, and Mr. Neal for the debtor, correct?

DAVID BOTTER, ESQ.: Your Honor, David Botter is for the committee.

THE COURT: Oh, I'm sorry, Mr.--that's right. I apologize, Mr. Botter.

MR. BOTTER: That's quite all right. Thank you, your Honor. Thank you for let us attend by phone today.

THE COURT: That's all right. I just had--I had you lumped in with a list of debtors' counsel and ran right through your name. I apologize.

MR. BOTTER: No problem.

THE COURT: And for FIT [sic] we have whom?

ADRIAN FRAIKEN, ESQ.: FTI Consulting, Adrian Fraiken.

THE COURT: Right, FTI, I apologize. And Mr. Schaumburg [phonetic] for King and Spaulding?

MR. SCHAUMBURG: Here.

THE COURT: All right. And is Mr. Dane [phonetic] on?

MR. DANE: Yeah.

THE COURT: And, Mr. Dane, you're here for whom?

MR. DANE: We're a creditor [indiscernible].

THE COURT: All right. I think I heard you say you're a creditor, correct?

MR. DANE: Correct.

THE COURT: Let's go through the list of matters that are on for hearing today with--and we'll start by taking them in the order that are on the amended notice of agenda matters that are scheduled for hearing today that was filed by the debtors. Let's start with Mr. Fagone on the debtors' motion for the order authorizing and approving supplemental retention plan.

MR. FAGONE: Thank you, your Honor, this is Mr. Fagone. Shortly before the hearing commenced this morning, the debtors filed a revised form of order on the KERPS motion, and I have a black-lined version of that form of order marked to show changes from the form that was filed with the motion, and with the Court's permission, I

would hand it--I would like to hand that up at this point?

THE COURT: If you would, please? Thank you. And that form of order that was recently filed just before the hearing was filed this date and it appears on the docket as entry 769, for those who are following along at home.

MR. FAGONE: Thank you, your Honor. I--my understanding is that this form of order reflects an agreement between the debtors and the committee as to the terms of the program, but I would at this point turn it over to Mr. Neal to explain to the Court exactly what the contours of that program are.

THE COURT: All right. Mr. Neal, please?

MR. NEAL: Yes, good morning, your Honor, Guy Neal, Sidley, Austin, Brown and Wood. And thank you for allowing us to appear by phone today. Your Honor, this motion was filed on full notice to all creditors with an objection deadline of last Thursday, the 18th. No objections to this motion have been filed. We have been working extensively in negotiating this KERP extensively with our unsecured creditors committee. Mr. Botter, his colleagues, as well as the committee's financial advisors, and the deal was inked, your Honor, at ten o'clock this morning, which would explain the amended order that we've

submitted to the Court. I can provide your Honor a brief overview. The order is very comprehensive. It lays out the terms and conditions of the two retention programs that the debtors seek authority to implement. And by way of background, your Honor, and to the extent your Honor has any questions, of course, please feel free to ask. But your Honor has seen KERPs in this case before. We have gone and had approved a KERP for our satellite division starting in July of this year, and it went through a couple iterations and a couple changes, and we now have a new KERP being proposed in this motion, and that is the KERP for the debtor's broadcast division. Very briefly, your Honor, 17 employees are covered under the satellite KERP. The need for it reflects the present circumstances of the debtors and their estate. While the prior KERP was very useful and very valuable to these estates to retain appropriate personnel on the debtor's satellite side, there are since the end of August no additional payments to be paid as a retention tool under that KERP. This motion reflects the debtors' business judgment that an additional retention tool is needed for these 17 employees. The added cost to the estate, your Honor, should the employees remain and not leave--either be terminated for cause or leave voluntarily, would only be $276,000 in additional cost to the estate,

and the committee has approved the satellite program. Very briefly, your Honor, on the debtors' broadcast program, the debtors had never sought a broadcast KERP for its broadcast division. The debtors' satellite stations are still operating, they are a very valuable asset of these estates. The debtors project to have an auction of the broadcast assets in mid to late January. We are working very hard to line up a stalking horse bidder. We have an agreement in principle way back in July that that stalking horse bidder could be PCC, although we do not have an executed asset purchase agreement or stock subscription agreement yet. We hope to get there in the near future. But to keep these employees engaged, to make them a valuable part of these estates going forward with respect to an auction, we believe a KERP is appropriate. Twenty-eight employees would be covered in the debtors' broadcast division. The changes reflected in this order from the originally drafted order don't change the economics significantly, but they do change the incentive amounts and the retention and severance triggers. No longer will there be a retention award for the broadcast employees, there will simply be a severance payment. As they do not have guaranteed administrative expense severance coverage, this is an appropriate, just and reasonable benefit for these

employees, again, to keep them engaged and to maximize their potential and to maximize the value of these estates. And, your Honor, again, we have worked very closely with our committee, no objections on file, and we would ask your Honor to approve this order.

THE COURT: All right. Thank you. And this is the revised form of order I've already referenced, and, Mr. Botter, the committee has no objection, correct?

MR. BOTTER: Your Honor, if I might briefly be heard on this issue?

THE COURT: Yes.

MR. BOTTER: The debtors came to us with this new program prior to filing of the motion. They'd indicated to us that despite the fact that we had had two KERP orders entered in these cases previously, that with respect to satellite employees, that they were necessary to get us toward and get us to consummation of a plan of reorganization in these cases. We were obviously concerned that we had already paid a substantial amount of money to the employees, and we spent a good deal of time discussing with the debtors the actual needs of these estates and why it was necessary to further compensate the employees. Mr. Neal said that the initial cost of this KERP with respect to the 17 satellite employees was $276,000, which

is fairly de minimis in the context of these cases, but the actual real additional cost is a little over $140,000. The debtors were able to save approximately $130,000 from the first level of KERP because employees chose to leave the company of their own free will and therefore were disqualified from the benefit. So the additional real cost would be the $140,000. A critical portion of this KERP as far as the committee was concerned was that, in fact, these employees if they're to be paid these additional sums, would be available to finish the job and to get the cases through confirmation. One of the changes that was negotiated late last night and which is reflected, your Honor, this morning, shows a little bit of a tension between the estates' need to conclude this job as well as the estates' flexibility to terminate employees once that-- their individual jobs are finished. The debtors rightly so were concerned that they didn't want to keep an employee on if, in fact, they've finished their task to get these companies to confirmation. The committee was concerned that we have, in fact, come to a final KERP solution here and that whoever was necessary to take these cases to the end are going to be in place and that their incentives remained in place for them to do the job. So there is a change to the order this morning which reflects that

tension, and it gives the debtors the flexibility that, in fact, if a person, if an employee has finished all the tasks that that employee needs to do to get us to confirmation, the committee and the debtors can work it out so that if, in fact, that has occurred, that if that particular employee can be terminated prior to consummation and they can be paid whatever incentive was put in place to get them to do the job that was required to be done. Otherwise, our employees will be paid at consummation. So at this point, your Honor, the committee is fully signed off on this program. We do think it's necessary to keep these 17 employees in place, so as I said, to finish the job. With respect to the broadcast employees, this is a strange situation. Your Honor is fully aware of PCC, the parent company in connection with these cases. Your Honor's also aware that as part of the global settlement, we had negotiated that PCC could be a stalking horse bidder for the broadcast assets. We've been working very hard with PCC--with the debtors to get that worked out. It is a fairly complex transaction because the broadcast division itself is a fairly complex division. The way in which some of those assets are owned, I'm not gonna bore the Court with the details, but as I said, it is fairly complicated, and we are working hard to get that sale moving forward,

but it was important for the debtor to make these employees feel comfortable during this process, that, in fact, if they were severed, if something happened where PCC was not the ultimate bidder and, in fact, these employees lost their jobs, that they would have severance pay. The committee was concerned that there was not the same kind of issues facing these employees because they believe--we believe they believe that, in fact, PCC may well be the winning bidder here and that they will probably because of PCC's continued involvement with these companies retain their jobs. That's why we took out the retention plan and made it just a severance plan. It is important to note that if, in fact, PCC is the winning bidder, there essentially--effectively is no harm to the estate, there is no cost to the estate. So, again, we balanced a lot of tensions here. We think this is an appropriate way to go forward. We think there is very little impact, if any, on these estates other than incentivizing those remaining 17 employees to finish the job here. So with that, your Honor, we are fine with this.

THE COURT: All right. Thank you very much. With the support of the committee and for the reasons set forth in the motion and emphasized on the record this morning, that form of order authorizing the debtors to go

forward with the KERP will be entered and, as I said, that proposed form of order that was filed today reflecting the revisions that have been discussed is Number 769 on the docket. Thank you. We'll move to the order with regard to the further extension of the exclusivity period. And on that one let me just recap where we are, and my understanding is that as was discussed last week, negotiations or discussions have gone forward with the objecting creditor, Kempner--Davidson-Kempner Partners, and as yet have not been resolved. So pursuant to the understanding and scheduling discussion that we had on the record last week, the order that's proposed to be entered today, which appears as Number 758 on the docket, extends exclusivity period for a bridge period to a hearing date that is December 1, 2004, and should the matter continue to be contested, we'll have a hearing at 1:30 on December 1, 2004. From the debtors' side, is there anything to add on that score?

MR. NEAL: No, your Honor. Other than since we were before your Honor on Friday the 19th, we have tried to work on a consent order with both the committee and Davidson-Kempner. We've been unsuccessful to get a full agreement and, yes, your Honor, you are correct, we are going to have to proceed now on December 1 at 1:30 p.m.

THE COURT: Thank you.

MR. BOTTER: Your Honor, this is David Botter again. Actually, Mr. Neal hasn't even heard of my conversation this morning. Just before the hearing started I did speak with Mitchell Seider [phonetic], who is an attorney at Latham and Watkins that represents Davidson-Kempner. We spoke about a possible resolution of this. I have spoken to the debtors about a way in which we would resolve any committee objection to this order. The debtors and the committee I believe agreed on a form of order which would permit the debtors continued extension through the end of this year, and unless the committee were to give the debtors a notice prior to the conclusion of that period, I think we had talked about December 21st, there would be an automatic rolling of the exclusivity period for another month. And the theory behind that, your Honor, was that the committee and the debtors have worked very, very well together in this--in these cases. The committee and the debtors are working on a plan of reorganization that we hope to file promptly, and frankly may obviate the need for any extension of exclusivity. But if, in fact, the circumstances change and the committee and the debtors were no longer working well together, obviously the committee would then look to terminate exclusivity and file its own

plan. The conversations I had this morning with Mr. Seider where he had indicated that Davidson-Kempner would like that same type of relief, the committee has been resistant to that in the past. We had a long conversation this morning. It may very well be that the order that I've been discussing with Mr. Neal and the debtors would be extended to include--to give Davidson-Kempner the same kind of right which would be to effectively refile their objection on December 21st and then have a subsequent hearing after the first of the year if, in fact, it was necessary. I informed Mr. Seider that I don't believe it will be necessary because I think we will have a plan on file in these cases before December 21st. He was gonna consider being included within that order and whether or not that would obviate the need for a hearing next week. It's my hope that, in fact, we will not--we will be able to enter a consent order on those terms and conditions and then, therefore, not require the Court's findings.

THE COURT: All right. Thank you. But for today, given the pending expiration, it's appropriate to enter this bridge order with the understanding that if the parties file a consensual form of order in advance of December 1, the consensual order can operate, we won't need a hearing. Is that--that's a correct understanding?

MR. NEAL: Yes, your Honor.

THE COURT: All right. Then I will enter an order extending to December 1 and setting a hearing on December 1 with regard to any further extension of the exclusivity period. And again, that's the order that appears on the docket as Number 758. The next matter on is application for compensation of debtors' counsel, and there was a limited objection filed by the United States Trustee. Let me--let me hear from--I understand too that there's been a revised proposed form of order filed by the applicant which reduces the expense component of the interim compensation award by approximately $30,000. I--my expectation is that is as a result of discussions with creditors committee and/or the United States Trustee or other parties who may have registered concerns. Let me hear from the applicant whether there's anything else afoot and whether we need hear from--if we need hear from further parties, I'll be happy to hear from them as well.

MR. NEAL: Your Honor, Guy Neal, Sidley, Austin, Brown and Wood. No, you accurately represented what has transpired since the filing of this application on full notice, and since the trustee had filed and served the limited objection. Colleagues in my firm have negotiated

with the U.S. Trustee, who I understand is in Court today, on the issue relating to phone charges and legal research services, specifically Westlaw and Lexus, and the potential appearance of a markup or, in fact, a markup associated with these costs in our billing records. We have worked with the U.S. Trustee and we have negotiated an appropriate write-down and your Honor is correct, that amount is about $30,000. So the form of order that was uploaded this morning around 9 a.m. Eastern time does reflect the write-down of the expenses component of this interim fee application.

THE COURT: All right. Thank you.

Mr. Checkoway, do you wish to be heard?

MR. CHECKOWAY: Thank you, your Honor. If I may have just a few moments to explain. First of all, on behalf of Phoebe Morse, the U.S. Trustee for Region One, I want to welcome all of our hardworking and creative professionals to this case. I've personally been very impressed with all the work that's been done. You might want to be aware of a case that here in the provinces of New England we're very fond of, the Massachusetts Bankruptcy Court decision in In Re: Learningsmith, which we read for the proposition that rates in reorganization cases should be limited to the local market whenever appropriate.

We simply have not felt that that is an appropriate precedent to invoke in this case, so you won't find it cited in our objection. Realizing that this is only an interim application, I'm seeking only to make all the applicants aware of the issues that are developing. We have no objection to distribution, approval of the amounts and distribution sought, but I didn't want to hang back until the end of the case and take everyone by surprise with final applications. I applaud Sidley Austin's proactivity in doing the homework that's required to dig into their billing system and find out what is going on there. I would encourage the rest to follow their lead. For those who aren't familiar with the issue, the local rules here, now about ten years old, simply state that all expense reimbursements may be sought at actual cost, and at about the same time those local rules were adopted, the ABA was busily issuing its ethics opinion allowing lawyers generally to add overhead costs to such in-house items as computer service, photocopying and telephone. And inevitably over the decade that's intervened, more and more firms are subscribing to computer and telephone services at fixed rates, flat rates, discounted rates, and fewer and fewer are actually hiring any of these kinds of services on an out-of-pocket, line-by-line basis. We realize that it's

either technologically impossible or practically difficult to reconstruct actual charges in this environment. All we're trying to do is keep a limit on the tendency of these services to creep upward under the ABA rule, often without the awareness of the bankruptcy partners. The--I've already talked to several of the applicants, the local firms, to whom the computer research issue is not new. They've all assured me, in effect, that they are passing through their discounts. For those who haven't yet gone through this process, the way to find out if you're getting the right answer from your billing department is when you find the person who will explain to you what is happening to your nonbillable work, the work that is done pro bono or in-house for marketing. If that is being reallocated to your paying clients, we can live with that as long as you've gone that far to know that that's what you're actually doing and that you're not marking up the computer research beyond that. Beyond that, I will say that the billing format for the substantive work of all of these applications like the work being done substantively is exemplary, and although in my rule of thumb we generally see expenses run between 5 and 10 percent of at least legal fees in these cases, I was surprised in these cases to see that the expense component does not exceed that 10 percent,

for which I have two theories. One is that the underlying rates themselves are so relatively high that it dilutes the fraction, and the other is that with thanks to your Honor and the Court staff, these--this kind of phone hearing saves thousands of dollars in travel expense. I would formally withdraw the objection to the extent that I linked it to those applications seeking less than $1,000 in expenses, with my apologizes, and those are King and Spaulding, Shaw Pittman, Kerbain [phonetic] and Company, and Capital and Technology Advisors. For the rest, to the extent that we haven't come to a final agreement today, we're always willing to talk and we'll be truing all up before the final applications are in. My particular thanks to Mr. Neal and Sidley Austin for doing their digging.

THE COURT: So if I may just recap, my understanding is, first, that the objection has been resolved insofar as the interim application of Sidley Austin is concerned; that it is withdrawn as to King and Spaulding, Shaw Pittman, Kerbain and Company, and Capital and Technology Advisors. And that as to the balance of the fee applications, which include Bernstein Shur, FTI, Kekst and Company, Pierce Atwood, Akin Gump, and Greenhill, the U.S. Trustee's plan is to stand on the objection and reserve it for resolution or hearing at a later time on

further interim applications at some time prior to or final fee applications for those entities or otherwise to resolve it?

MR. CHECKOWAY: Yes, that's correct, your Honor. Thank you.

THE COURT: Thank you. Now we'll go back to where we are. So the form of order Number 768 on the Sidley Austin fee application can enter. Let's see if there's discussion with regard to--beyond what we've had on the record thus far with regard to the balance of the fee applications that are pending, understanding that as to those which the U.S. Trustee has not expressly withdrawn its objection, the issues to the extent they're not resolved are reserved.

MR. BOTTER: Your Honor, very briefly, David Botter of Akin Gump. We've taken the U.S. Trustee's comment to heart and have done a great deal of digging. Unfortunately, I'm not comfortable with the results of our digging at this point. We are--we believe that we have reached ground on the telephone issue. A lot of our telephonic charges are costs associated with conference call services which are, in fact, billed at direct cost and there is no markup. There may be a very small reduction in--on the telephone charges that we have with respect to

our own telephone charges. Again, I'm not sure of the exact number at this point. With respect to the research charges, your Honor, I believe that we will get to the point exactly enunciated by Mr. Checkoway, which is that we are, in fact, only passing along the direct charges. But again, we have not completed that work and obviously we will do so either prior to our next interim or certainly for our final fee application.

THE COURT: Thank you. And we can handle that as basically a credit as against a further interim if you're--if you're paid on this one, so--

MR. BOTTER: The interim--

THE COURT: I appreciate that, and it's not this Court's objective or the U.S. Trustee's objective to make things hard for bankruptcy practitioners or out-of-town bankruptcy practitioners. We're satisfied that the hourly rates are reasonable for the character of the work and that the time expended on the tasks is reasonable. People generally get their fees in this district, but we do have the policy that expenses are meant to be reimbursed as expenses and not to be marked up as profit centers. So I appreciate doing the digging to conform to that policy. And as I said, the issue is reserved with regard to future fee applications and will likely be resolved by credits if

credits are to be given to make up for any overpayment that may accrue as a consequence of this interim fee application.

MR. BOTTER: Thank you, your Honor. And one further point. With respect to the application of King and Spaulding--

THE COURT: Yes, Mr. Botter?

MR. BOTTER: --the committee contacted King and Spaulding directly regarding their fee request, and there was a negotiated resolution with George Salf [phonetic] who is a partner in the New York office. I don't believe he's on the phone today. I'm hoping that the King and Spaulding representatives who are on the phone today are aware of that negotiated resolution.

MR. SCHAUMBURG: Yes, we are aware. We've actually filed a revised proposed order--

MR. BOTTER: Okay.

MR. SCHAUMBURG: --as reflected in that agreement.

MR. BOTTER: Good. Thank you very much.

THE COURT: Let me look here quickly at the docket to be sure that we have--we can make reference expressly to the revised form of order that was filed by King and Spaulding. That is a proposed form of order that

was filed--I take it that's the order that was filed on November 19th and appears as Number 754 on the docket.

MR. SCHAUMBURG: Yes, that is correct.

THE COURT: All right. Because the other one, the original one was attached to the application.

MR. SCHAUMBURG: Yes, that is correct.

THE COURT: All right. Thank you. So based on our review of the interim applications, their character as interim applications, the comments of the U.S. Trustee, the resolutions effected for now by revised forms of orders as we have discussed, is there anything more to be done with regard to the pending fee applications that are on for hearing today in this matter?

MR. NEAL: Your Honor, Guy Neal, I do not believe that there is anything left to be done.

THE COURT: I don't either, and I appreciate that. I will enter those orders, either the revised form of orders that we've indicated or the original ones with the reservations articulated by the United States Trustee. Is there anything else? Let's see, I'm going through my notice of agenda matters. It appears to me that we are at the end of the matters that are on for hearing today. Let me ask any party if there's any other matter that they wish to bring to the Court's attention this morning?

MR. NEAL: No, your Honor, this is Guy Neal for the debtors. As we already indicated, we have the hearing on December 1 at 1:30 presently as a placeholder in the events we do not reach a resolution with Davidson-Kempner on exclusivity. The next omnibus date is December 16th at which time we anticipate to have some other matters heard.

THE COURT: Exactly. Thank you very much. Happy Thanksgiving. We'll be in recess.

MR. NEAL: Thank you, your Honor. Happy Thanksgiving.

MR. BOTTER: Happy Thanksgiving, your Honor.

BAILIFF: All rise.

HEARING CONCLUDED (NOVEMBER 24, 2004, 11:05 AM)

STATE OF MAINE)
) ss.
CUMBERLAND   )

I, Patricia A. Burrows, transcriber, do certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in United States Bankruptcy Court, In Re: Pegasus Satellite Television, Inc., et al., Case Number 04-20878, held on November 24, 2004, at Portland, Maine.

________________________________ Date: March 24, 2005
Patricia A. Burrows, Transcriber