

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MAINE

IN RE: PEGASUS SATELLITE ) Case No. 04-20878(11)  
TELEVISION, INC., ) AP 04-2064  
ET AL., ) June 22, 2004  
Debtor. ) Portland, Maine

TRANSCRIPT OF TELEPHONIC HEARING  
REGARDING DISCOVERY SCHEDULING

BEFORE

THE HONORABLE JAMES B. HAINES, JR.

APPEARANCES:

For the Debtors : Robert Keach, Esq.  
Michael Warden, Esq.  
David Richardson, Esq.

For DirecTV : John Clegg, Esq.  
Richard Krasnow, Esq.  
Michael Baumann, Esq.

For NRTC : Richard O'Brien, Esq.  
Dustin Hecker, Esq.

Unsecured Creditors Committee : Jacob Manheimer, Esq.  
David Botter, Esq.

For Wilmington Trust : Kristopher Hansen, Esq.  
Gayle Allen, Esq.

Steering Committee of Senior Secured Creditors : Andrew Rosenberg, Esq.  
Lori Chasen, 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.

TELEPHONIC HEARING COMMENCED (JUNE 22, 2004)

THE COURT: Good morning. This is Judge Haines. We're back on the record in connection with the Pegasus bankruptcies. We have matters pending that we discussed last night with regard to discovery and the motion for preliminary injunction and the hearing that was set to convene. Last night when we left off, it was set that on July 6th continuing to July 7th as necessary we would commence with a hearing on the debtor's motion for contempt, and that following the contempt proceedings, which were represented to be fairly brief, we will go on to consider the motion for preliminary injunction if the debtor chooses to press it, and I had indicated a willingness to basically adopt my TRO decision as a preliminary injunction determination if the debtor chose to pursue his rights on appeal sooner rather than later. I asked counsel once again to discuss with one another a discovery schedule so that we could in a coordinated and cooperative fashion get what needed to be done done before commencing the hearings on July 6th, and we've reconvened this morning to take up those matters. So perhaps I should start by first reminding counsel that since we're on the phone, we'll appreciate it if you'll identify yourselves as you speak. And then turning to debtor's counsel, given that these are both debtor's motions, to ascertain what progress has been made since last night with regard to discovery schedules.

MICHAEL WARDEN, ESQ.: Your Honor, Mike Warden for the debtors. Good morning.

THE COURT: Good morning.

MR. WARDEN: Here is where we are, your Honor, and if I could address first what your Honor mentioned yesterday about potentially converting the TRO into a preliminary injunction ruling. And we do think that we want to pursue that option, and the way that I

understand it, your Honor, we would need to do two things. The first is to have your Honor convert the temporary restraining order ruling into a preliminary injunction ruling, and then we would need the equivalent of certification under 1292--28 USC 1292(b), and I believe there's a decision from Judge Carter out of--in the bankruptcy context, In Re: Jackson Brook Institute, 280 Bankruptcy Reporter 1, a 2002 decision, that suggests that even though 1292(b) doesn't apply on its face, it is the appropriate analog. And so we would request that we obtain--that your Honor convert that and provide a 1292(b) certification, and we're happy to do that in writing to the extent the Court desires us to do so.

THE COURT: All right. I would be--if you wish to propose--to submit a proposed form of order that does exactly that, I'd be happy to entertain entering it as long as you run it by DirecTV and NRTC for review as to form prior to--prior to filing it, and then if you could do that, I will look at it and either enter it or doctor it up and enter it as soon as possible.

MR. WARDEN: We will, your Honor.

THE COURT: All right. Thank you.

MR. WARDEN: And then--obviously, that will take the preliminary injunction hearing off calendar for July 7.

THE COURT: Right.

MR. WARDEN: It's--I discussed with counsel for DirecTV and NRTC yesterday evening, we are still determining what we need to do with respect to discovery, obviously not directed at a preliminary injunction hearing, but discovery on the merits, and whether we need some expedition as to that. But for right now, we just want to reserve our rights, and I will follow up with counsel for DirecTV and NRTC as appropriate. Then, your Honor, with respect to the contempt hearing, we--there are a couple of issues regarding that. We would like to go

forward with that. I did discuss with Mr. Baumann yesterday, because July 6th and July 7th are, as we understand it, being held on the Court's calendar, whether the Court would hear the contempt hearing on July 7th instead of on July 6th.

THE COURT: If--if that's agreeable to counsel and it makes things easier for everyone, I would happily do that.

MR. WARDEN: And then the other thing is that Mr. Baumann and I did discuss discovery relating to the contempt issue. I believe Mr. Baumann raised this with--in our call of yesterday evening, and we have agreed that we will exchange brief document requests this week and we will have depositions next week. We have indicated we want to depose the two declarants of DirecTV, and Mr. Baumann has indicated he wants to depose Mr. Broadenham [phonetic], one of our declarants.

THE COURT: All right. Now, let me ask whether, just based on those representations, whether counsel see the need for a formal discovery order. We can set in the minutes that the parties have agreed for document exchanges and depositions in time to commence the--the hearing on the contempt motion for July 7th, and we can certainly set that for July 7th. I just wonder if there's a need for anything more elaborate than those notations to the file in terms of locking people into their representations to one another with regard to discovery on the contempt matters.

MR. WARDEN: I don't think that that's necessary at this point, your Honor. If there's any dispute that does arise at--but I don't envision that at this point in time.

THE COURT: All right. And, Mr. Baumann, that's agreeable to you and DirecTV?

MICHAEL BAUMANN, ESQ.: That is, your Honor.

THE COURT: All right. I appreciate that. And what we can do, then, is, as I understand it, for this morning, is in the adversary proceeding--in the adversary proceeding the plaintiffs have agreed and will submit an order to the effect that it converts the TRO ruling into a ruling denying a preliminary injunction and contains language which is the equivalent of 1292(b) certification as suggested by Judge Carter in In Re: Jackson Brook case so that the plaintiffs may pursue their rights on appeal forthwith in connection with the interlocutory injunctive relief they have sought from this Court. With regard to the contempt hearing, the parties have reached agreement on discovery including an early exchange of documents and depositions of declarants whose declarations have been made part of the record, with an eye towards convening the contempt hearing on July 7th, and I take it that it would suit all parties' travel schedules to start that hearing at 10:30 on July 7th, is that a fair summary?

MR. BAUMANN: Yes, your Honor. This is Mike Baumann.

MR. WARDEN: Mike Warden, yes, your Honor.

THE COURT: All right.

DAVID BOTTER, ESQ.: Your Honor, just one point. This is David Botter on behalf of the committee. We would just like notice of all depositions in the contempt proceeding as well as the opportunity to see the discovery requests as well as the discovery responses.

THE COURT: All right.

ANDREW ROSENBERG, ESQ.: This is Andrew Rosenberg, your Honor. I was about to say the same for the bank steering committee.

THE COURT: Very good. I'll ask that debtor and DirecTV cooperate in providing you with that notice. And with regard to the motions for expedited discovery in the adversary proceeding, those were--those were pinned to the preliminary injunction hearing, so if

I understood Mr. Warden correctly, those are withdrawn for the present with rights reserved to seek some discovery scheduling in the future in connection with travel of the adversary proceeding.

MR. WARDEN: Correct, your Honor. Mike Warden again.

THE COURT: Very good. Is there anything else we can do this morning?

MR. BAUMANN: Your Honor, this is Mike Baumann. With regard to sharing discovery related to the contempt proceeding beyond NRTC, Pegasus and DirecTV, I haven't seen the document requests yet, but I believe they are going to go to information about the DirecTV broadcast system, and it may deal with information that's very sensitive to the company. And I--we have old existing protective orders in place within our--

(TELEPHONE INTERFERENCE)

MR. BAUMANN: --Pegasus--and Pegasus but I don't have that with any other folks.

THE COURT: All right. I--

MR. BOTTER: Your Honor, with respect to the creditors committee, our bylaws have a fairly standard confidentiality provision.

THE COURT: Excuse me. I'm losing people 'cause I'm getting interference.

MR. BAUMANN: I'm not sure what that--

(TELEPHONE INTERFERENCE)

THE COURT: Can you folks hear me?

MR. WARDEN: Yes, your Honor.

THE COURT: Okay. Let's--

MR. BAUMANN: I can.



THE COURT: Okay. Let me leave it this way, and I think it'll probably wrap things up all right. Mr. Baumann, and certainly the same would go for Pegasus, although given the relationship it may be of less concern. What I'm gonna do is ask that, Mr. Baumann, you cooperate with counsel for those who wish to see that discovery in order to come to terms of protection for anything that you can assert in good faith is proprietary to DirecTV, and I'll be ready to assist the parties in working out any disagreements on that, but I would think that with standard confidentiality agreements in place and the ability to limit particularly sensitive data, that you should be able to work that out pending the hearings.

MR. BAUMANN: That's fine, your Honor.

MR. BOTTER: That's fine, your Honor. Thank you. THE COURT: Good. And I want to thank you all for taking the time overnight to consider these matters and consider not only ways that would expedite any treatment of your rights that you think needs to be had as well as to cooperate with one another in the discovery and in the scheduling of the contempt matter. And the contempt matter will proceed at 10:30 on July 7th, and we will take you off on July 6th. Thank you all very much.

COUNSEL IN UNISON: Thank you, your Honor.

HEARING RECESSED (JUNE 22, 2004)

STATE OF MAINE )

) ss.

CUMBERLAND )

I, Patricia A. Burrows, transcriptionist, do certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings supplied by the UNITED STATES BANKRUPTCY COURT in the case of Pegasus Satellite Television, Inc., et al., Case No. 04-20878 and Adversary No. 04-2064, heard June 22, 2004, in Portland, Maine.

\_\_\_\_\_ Date: June 29, 2004

Patricia A. Burrows, Transcriptionist

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