UNITED STATES BANKRUPTCY COURT

DISTRICT OF MAINE

IN RE: PEGASUS SATELLITE TELEVISION, INC., ET AL., Debtor.)	)	Case No. 04-20878(11) Adv. No. 04-2064 July 7, 2004 Portland, Maine

TRANSCRIPT OF HEARING ON MOTION FOR ORDER AUTHORIZING IMPLEMENTATION OF MANAGEMENT RETENTION PLAN AND MOTION FOR ENTRY OF SCHEDULING ORDER

BEFORE

THE HONORABLE JAMES B. HAINES, JR.

APPEARANCES:

For the Debtors	:	Robert Keach, Esq. Michael Warden, Esq. E. Moring, Esq. Thomas Yancey, Esq. Paul Caruso, Esq. Guy Neal, Esq.
For DirecTV	:	George Marcus, 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. Steven Baldini, Esq.

For Wilmington Trust	:	Kristopher Hansen, Esq. Gayle Allen, Esq.
Steering Committee of Senior Secured Creditors	:	Benjamin Marcus, Esq. 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.

HEARING COMMENCED (JULY 7, 2004, 10:30 A.M.)

BAILIFF: --the Honorable Judge Haines presiding. Please be seated and come to order.

THE COURT: Good morning. We're here in the Pegasus cases, jointly administered Case 04-20878 is the lead case. We have matters on this morning in the general bankruptcy case and one matter in the pending adversary matter, 04-2064. We have counsel in the courtroom and we have counsel on the phone. The Clerk has taken appearances from those who are on the phone. I'll just ask that as we have counsel speak on the phone, you identify yourselves each time you speak so that we can keep an accurate record. I also--well, with that said, let's go ahead and get appearances from counsel in the courtroom, starting with debtor's counsel.

ROBERT KEACH, ESQ.: Thank you, your Honor. Robert Keach, Bernstein, Shur, Sawyer and Nelson for the debtors.

GEORGE MARCUS, ESQ.: Good morning, your Honor. George Marcus for DirecTV.

JACOB MANHEIMER, ESQ.: Good morning, your Honor. Jacob Manheimer of Pierce Atwood on behalf of the creditors committee as well.

BENJAMIN MARCUS, ESQ.: Good morning, your Honor, Ben Marcus on behalf of the steering committee of senior secured creditors.

GAYLE ALLEN, ESQ.; Gayle Allen, local counsel for the second-position lienholders.

DUSTIN HECKER, ESQ.: Good morning, your Honor, Dustin Hecker for the NRTC.

RICHARD O'BRIEN, ESQ.: Good morning, your Honor, Rick O'Brien for the NRTC as well.

THE COURT: All right. Thank you. And as I said, let me--let me just go over who I believe is on the phone, Counsel, so that's clear. We have--for the debtors we have Attorney Moring? Or is Attorney Nyan [phonetic] on? Attorney Warden?

MICHAEL WARDEN, ESQ.: Good morning, your Honor.

THE COURT: Good morning. Attorney Caruso?

PAUL CARUSO, ESQ.: Good morning, your Honor.

THE COURT: Good morning. Attorney Yancey?

THOMAS YANCEY, ESQ.: Good morning, your Honor.

THE COURT: Good morning. For DirecTV we have Mr. Baumann?

MICHAEL BAUMANN, ESQ.: Good morning, your Honor.THE COURT: Good morning. Mr. Krasnow?

RICHARD KRASNOW, ESQ.: Good morning, your Honor.

THE COURT: Good morning. We have Mr. Rosenberg for the steering committee of senior secureds?

ANDREW ROSENBERG, ESQ.: I'm on, your Honor, good morning.

THE COURT: Good morning. Attorney Chasen for the steering committee of senior secureds?

LORI CHASEN, ESQ.: Yes, your Honor.

THE COURT: Ms. Chasen, thank you. Attorney Hansen for Wilmington Trust?

KRISTOPHER HANSEN, ESQ.: Yes, your Honor, and Mr. Lawrence is with me as well. Good morning.

THE COURT: Thank you. We have--Mr. Botter is on for unsecured creditors committee?

DAVID BOTTER, ESQ.: Good morning, your Honor. I also have my partner Steven Baldini.

THE COURT: Thank you. And then we have--Mr. Lodge is on for Pegasus?

MR. LODGE: Yes. Good morning, your Honor.

THE COURT: All right. Mr. Neal?

GUY NEAL, ESQ.: Yes, your Honor.

THE COURT: All right. Is there anybody else on who I didn't mention? All right. Thank you. We have--as I said, we have a couple matters in the main case, one of which I believe has been worked out, one of which may need to be put over. We have the motion of the debtors for final order and authorizing continued performance under the support services agreement with Pegasus Communications Management Company, and we have the debtor's motion for an order pursuant to 363(b) and 105(a) authorizing and approving the management retention plan. Mr. Keach, do you want to be heard on those or does someone on the phone wish to be heard?

MR. KEACH: Actually, on the motion on support services, your Honor, let me just speak briefly to that, and then I'll turn it over to Mr. Neal for the Kirk [phonetic] motion. On the motion on support services, we're just gonna continue that with the Court's permission to July 22nd.

THE COURT: All right. That'll be extend--continued to July 22, which is the omnibus hearing day. And with regard to the management retention plan?

GUY NEAL, ESQ.: Yes, your Honor, Guy Neal, Sidley, Austin, Brown and

Wood, counsel for the debtors.

THE COURT: Yes?

MR. NEAL: Although I arrived in Portland last night, my luggage decided to stay on vacation, so I am here in a Portland hotel room. But you had entered my appearance pro hac yesterday, I thank you for that. We have spent the past two weeks, your Honor, working very hard almost every day to try to reach a consent order, or not consented to, an order that would not meet with any objection from the parties in interest as it relates to the debtor's for order pursuant to 363(b) and 105(a) authorizing and approving implementation of a management retention plan. I'm pleased to report, your Honor, that we have reached an agreement with the unsecured creditors committee and we do not have any objection by the steering committee of the senior lenders or the second lenders to the entry of an agreed-upon order. Your Honor, Mr. Keach has a copy of the order that he can submit to your Honor. I can touch upon it briefly if your Honor would like.

THE COURT: Yes, and I--I take it from your representation that the objection that was filed by the steering committee of senior secureds has been withdrawn?

MR. B. MARCUS: No, Judge, that--this is Ben Marcus for the steering committee. That objection stands, however, we do not oppose entry of this form of order that counsel may wish to describe for your Honor that grants a more limited relief.

THE COURT: Okay. Thank you. 'Cause I saw that was just filed today, so let me--let me go ahead and ask you to outline what this form of order provides. Go ahead, Counsel.

MR. NEAL: Certainly, your Honor. As your Honor may recall, at the June 24th hearing we set this for a hearing today, officially a status conference that provided for an

objection deadline of any time prior to this morning's hearing. Only one objection has been filed and Counsel has just spoken to that. We have endeavored for the past two weeks to reach an agreement on a modified order for modified relief with the remaining portion of the order, the remaining relief requested, to be heard on the July 22nd hearing date. The order that we are going to submit today, your Honor, covers the vast majority of the management that were originally sought to be covered under the original order. All of the top nine senior management are covered under this agreed-upon order. Those top nine management and the relief sought for them will be heard on July 22nd. You will see within the order, your Honor, very detailed provisos in the third ordered paragraph that relate to the coverage of the employees under what circumstances they are to obtain their retention payments. If I could ask your Honor if your Honor has a copy in front of him at the moment or whether you would like to see a copy from Mr. Keach?

THE COURT: Let me ask Mr. Keach if he'll hand a copy forward.

MR. KEACH: Your Honor, why don't--I mean, it's probably most useful if I hand up a red-lined copy, would that be--

THE COURT: Yes, please.

(PAUSE)

THE COURT: Go ahead, I have it now.

MR. NEAL: Thank you, your Honor. On page 2, your Honor, if you would look at the third ordered paragraph.

THE COURT: Yes.

MR. NEAL: You will see in paragraphs A through I very detailed restrictions as it relates to the relief sought. These matters were discussed at tremendous length with the

committee in a very cooperative manner in which we laid out to the committee the costs associated with covering these employees listed in paragraph A. Your Honor, I can walk you through very quickly. As I said, in paragraph A it outlines the number of employees who are covered and whether or not the debtor and under what circumstances the debtor can increase the amount of the covered employees. We have agreed to work in consultation with the committee in that regard. Paragraph B concerns PCMC employees, those who perform substantial services for the debtors. The allocation of the costs relating to these individuals will be addressed in detail in the support services motion which, as your Honor heard, will be heard on July 22nd. Paragraph C covers the circumstance in the event in which there was a dismissal of the debtor's cases or Chapter 11 plan of liquidation and terminates the retention plan upon such circumstances. And paragraphs D, E and F cover the parameters of the retention plan under discussion. Again, all of these parameters have been discussed in detail with supporting documentation with the creditors committee, we are very pleased they have agreed to this form of limited relief. Paragraph G concerns the severance amount and when such amounts will be paid upon a change in circumstances. Paragraph F concerns severance amounts and the total amount of severance that will be provided to managers, directors and vice presidents. And finally, your Honor, paragraph I concerns the severance component and the fact that such severance amounts shall constitute an administrative priority expense claim pursuant to Section 503(b) of the Bankruptcy Code.

THE COURT: All right. And I take it--

MR. NEAL: And finally, your Honor, there is a final hearing on the remaining components of the motion shall be heard on July 22nd at 10:30 a.m. That was a date that was previously established at the June 24th hearing date, and the parties reserve all of their rights --

when I say the parties, of course I mean the debtors, the committee and the other parties in interest including the senior lenders and the junior lenders with respect to the other relief requested.

THE COURT: Thank you. And I see that with regard to the continued hearing on July 22 it indicates that the parties--and you've indicated the parties reserve their rights, that this ordering paragraph which establishes the continued time and date for hearing says that that will be to continue to consider the remaining provisions, so I take it that without objection this form of order may enter finally, if you will, with regard to the provisions it covers and we will not be revisiting that which is articulated in this order at the 22nd hearing. Is that your understanding?

MR. NEAL: Your Honor, this order would be final as to the employees that it covers.

THE COURT: Right, that's--that's what I'm asking.

MR. NEAL: As to the non--the non--let me state that differently. As to all of those employees other than the top nine senior officers, this will be final relief as it relates to those employees but for the additional relief that is being sought in the motion as it relates to them. Stated differently, these employees will not receive any decrease or substantial diminution in benefits relating to the retention plan on the 22nd.

THE COURT: Okay. I understand. And this can be entered without objection?

MR. B. MARCUS: We--Judge, the steering committee does not oppose entry of this order.

THE COURT: Thank you.

MR. HANSEN: Your Honor, it's Kris Hansen on behalf of Wilmington Trust.

The order was being finalized this morning and Wilmington Trust has the same consent rights that the steering committee for the senior lenders has and the committee has. It just isn't reflected in the form of order that I believe Mr. Keach will hand up, but I did want to put that on the record, and I would note that there was no opposition of it from Sidley and Austin.

THE COURT: All right. And, Mr. Keach, it may--I understand that there'll be an electronic form of order filed?

MR. KEACH: Yeah. I was gonna say, actually, your Honor, there was--the one tweak that was just referred to we were not able to make before I had to leave for court, so we will submit the final form electronically later today.

THE COURT: All right. Thank you.

MR. BOTTER: Your Honor, this is David Botter on behalf of the unsecured creditors committee.

THE COURT: Yes?

MR. BOTTER: I would just like to make a brief statement. The committee did work very hard with the debtors in connection with this relief. The committee felt that given the uncertainty that's surrounding these companies, it was very important to incentivize those lower level management employees who really don't control the fate of these cases. Obviously, with respect to the senior level employees, we have not reached an agreement and we will continue our discussions, and hopefully we will come to a consensual resolution, although those discussions are at a very early stage. But the committee does support entry of this order and believes that it is, again, important to comfort these lower-level management employees during this great period of uncertainty.

THE COURT: Thank you, Mr. Botter.

MR. BOTTER: Thank you.

THE COURT: Thank you. So I'll look for that form of order today with the balance of relief sought to be considered at 10:30 on July 22. Now, I want to just take a minute before we get to the adversary proceeding to talk about the general case management order that was submitted, and I intend to enter it or something like it forthwith. I just wanted--if Counsel are prepared now to take a minute to look at the provisions of that order, because I had--I had a couple comments and I wanted to see if the changes that I've indicated might be considered perhaps could be made. Counsel prepared to take a lok at that?

MR. NEAL: Your Honor, this is Guy Neal. Regrettably, I don't have a copy of that in front of me. I could defer to my colleague, Paul Caruso, to the extent he has that available.

THE COURT: Well, I'll tell you what I'll do is let me just make a couple comments and then you can talk among yourselves and see if you want to submit a revised form which includes any of these changes, and I'll indicate any ones that I think are--strongly need to be in there. On page 3 at paragraph 4(d), there's language addressing compromise or settlement and service with regard to compromise and settlement. And it says to be made on -- and this is small ii, "Each entity designated in the all-notices list and, in addition, if the compromise or settlement involves claims subject to insurance coverage, notice shall also be given to the insurance company providing coverage," and then I thought it should add, "or asserted to provide coverage," then go on as it said, because I don't think that a condition of service should be the insurance's company's cession that coverage exists. Then in--on page 6, paragraph--okay, it's Part B, paragraph 1, subparagraph (d). It says, "Any objections to or requests for a hearing on a motion must be filed and served" -- you see that language. It appeared to me that we should--we

should address filing separately from service because otherwise the enumerated manners of service might be considered to apply to filing, and I just would suggest that it say, "any objections to or requests for a hearing on a motion must be filed in accordance with the local rules and applicable administrative procedures and served upon the moving party," and then as follows. That's just a suggestion so that we don't confuse the requirements of filing under the Court's rules and administrative procedures with the manners of service. And I also would ask with regard to the manners of service whether you meant to exclude regular mail by its lack of mention in the part addressing e-mail, hand delivery or facsimile. So those were my comments on that. And then, finally -- I think it's finally -- with regard to paragraph (e), telephonic hearings. I have checked around with other courts and this appears to be a fair way to address telephonic hearings. I'm happy to attempt to do it in the way that you have said. I am concerned about being inundated with motions five days before hearings and having scores of orders to sign, but we'll try it this way. And at worst we can grant leave for parties to file--well, we'll try it this way, that's all I'll say. I want to add one para--one sentence at the end of the paragraph. "Parties attending hearings telephonically may not participate in the taking of evidence," because I think that may go without saying, but I'd rather say it. With regard to telephonic hearings as well, we've had some--some difficulty in accommodating the interests of counsel who wish to appear telephonically with the procedures that we've generally handled for setting up telephonic participation of counsel and the expectations or requests of nonparties to hear what's going on in Court. And for today what we've done is this. First, I think that counsel and parties who wish to participate telephonically are a different stripe of animal than those who may wish to do essentially the same as sitting in a seat in the back of the courtroom and listening. And it's unfair to counsel and the parties to burden them with the expense of accommodating of listen-only

attendees as part and parcel of attending and participating as a party or counsel. So what we've done for today and I plan to continue to do for parties who wish to listen only is that we will provide a phone line which they may call, we're just gonna set it up on a speaker phone, providing that phone line and number for them to call on a listen-only basis is the equivalent to reserving them a seat in the courtroom. It may be a great seat, it may be a lousy seat, but that's the seat you get if you're on listen-only. And the procedure that's in this order that addresses the way in which telephonic hearings--telephonic participation will be set up for parties and counsel together with this step sort of removes the burden that was otherwise placed on counsel who might happen to be the first one who wanted to participate telephonically and then got tens or scores or hundreds of requests for people who wanted to listen. So those of you who want to listen and you who are listening, you may proceed to make arrangements as you have today and we'll try to accommodate you as best we can, technology permitting. For parties and counsel, although you're not encouraged and will have to seek leave to participate telephonically and will not be able to participate in the taking of evidence, we will adopt the procedures set forth in the order. Those are the--those are the changes I'd like to see in the order. If I could get it, we'll execute it and enter it forthwith. And as always, we're here to answer the parties' needs, and if we need to add omnibus hearing days or the like, if you get ahold of the scheduling clerk, we will do what we need to do to make the offices of the Court available to the parties for this case. Thank you. Now, let's--is there anything else to be heard in the overall bankruptcy case before we turn to the pending matter in the adversary proceeding?

MR. BOTTER: No, your Honor, I believe that covers it. Thank you.

THE COURT: All right. Thank you. We had the emergency--the plaintiff debtor's motion for emergency hearing for entry of a scheduling order in the adversary

proceeding, that's 04-2064. By agreement it's been brought forward for hearing today on an emergent basis. I would say that notwithstanding the parties' agreement that something is an emergency, I may not in every case agree that it's an emergency, and this one, although a request for a scheduling order is not usually something that's an emergent matter and I wouldn't grant it on an emergency basis, I'm going to do it this time. But I see requests for scheduling orders sort of like motions for reconsideration as seldom an emergency. But because the primary actors who are at war in this case have agreed it's an emergency, I'm not going to stand in the way of at least addressing it today so that we might get done what needs to get done when we have parties in attendance. The debtor has--debtors, plaintiffs, have sought a scheduling order which puts the adversary proceeding on a rocket ride to trial in the third week or second week in August, suggesting the week of August 16th as a date for trial of claims generally related to termination of the DBS and member agreements and related injunctive relief of the character that was sought in the motion for TRO, has sought to set certain deadlines for response to discovery requests, set a discovery deadline of August 6th, a pre-trial motions deadline for August 9th, and otherwise putting the matter in line for trial before the end of August. The defendants have filed opposition thereto. I've reviewed the papers. I'm happy to hear any supplementary argument that either party may wish to provide at this time before I rule on the motion. So with that said, let me ask if the moving parties wish to add or supplement to the papers in support of the motion?

MR. WARDEN: Yes, your Honor, Mike Warden for the plaintiff debtors. We appreciate your hearing this on this basis, and we do think that two scheduling orders presented by the parties create two stark choices and two very different paths. Under our proposal, we intend and would hope to try claims relating to the termination issues that your Honor identified before the August 31st deadline. And it's essential that we be in a position to do that based on

the District Court's ruling on any legal issues. The only product that Pegasus offers right now is DirecTV service, and pursuant to the purported termination of the various agreements, its ability to offer that product will run out on August 31st as things now stand. Now, with respect to what DirecTV and NRTC propose, their schedule just runs out the clock on that August 31st deadline. What they propose is the first time the parties would even discuss discovery issues is September 9th. Your Honor, we have set forth in our papers, and I won't repeat it here, that the two-prong strategy that we are following to try to meet the August 31st deadline that DirecTV and NRTC have imposed upon us. The first part of that is to appeal this Court's preliminary injunction ruling and the legal rulings that the Court made in the course of rendering its decision. The--[telephone line drops out].

THE COURT: Mr. Warden, I've lost you. Are you there?

MR. WARDEN: Yes, your Honor.

THE COURT: Go ahead.

MR. WARDEN: NRTC and DirecTV's strategy is clear in the District Court as well. They have moved to dismiss. They are attempting to slow down a ruling. We have sought to expedite that. Now, the parallel and second prong of our strategy is that we do need to prepare for trial on the termination issues. We have sought to bifurcate the issues relating to termination including the use of subscriber information, and also to bifurcate the relief seeking trial only on the equitable remedies and reserving legal--I'm sorry, reserving damages issues for a later date. Now, we've made clear in our motion the way in which we're trying to bifurcate. The defendants have taken some issue with our description and the clarity of what we have said. There are in general three categories of claims in our amended complaint. The first category and the category on which we are seeking discovery and an early trial relate to the termination

claims. And the second category relates to the meaning of the member agreement. For example, one of the issues that Judge Baird held was open as how long does a member agreement last, what is its term. Those issues regarding the meaning of the member agreement, we would propose to stay them for now. As we would with respect to the historic claims that we have regarding the NRTC, such as its assessment of margin or entitlement to patronage capital and the like. The problem with identifying these by count, and I will do that in a minute, is that some of our counts cut across the various issues in the case. For example, the breach of fiduciary duty claim that we have against NRTC, that relates to all the issues. It relates to the termination, it relates to the meaning of the member agreement, it relates to our entitlement to patronage capital. So the counts--the way to bifurcate this, we believe, is by issues and issues relating to termination which need to be tried by August 31st. And the specific counts that include those claims are Counts One, Two, Three, Four, Five, Six, Eight, Nine and Fourteen. So to the extent that the defendants in their opposition raise some issue as to they don't know what the precise counts are, those are the counts. And what we really need, your Honor, is both a trial date and then discovery. As your Honor, is aware, as part of the TRO hearing there was no discovery. That was done on papers. We had initially agreed as part of the then-planned preliminary injunction hearing that certain documents would be provided to us early by the defendant, such as the very deal documents, the documents that set forth the various termination agreements and the like. We have only one or two of those that were attached to an 8K that was filed by DirecTV, and those have been provided to the Court. But as far as other documents we've never seen them, the Court has never seen them. These are things that there is really no burden in getting them to us. Now, what DirecTV and NRTC have said in their opposition is that our schedule imposes too much of a burden on them, that it's not fair. To be sure, there's a lot of

work to be done in a short period of time. But that period of time is a period that is dictated by the August 31st deadline. That's a deadline that if the defendants wished to move, they could, but it's a deadline that we are faced with right now and we have to modify our conduct, our discovery and how we go forward in this case based on that. It's gonna be a lot of work for all the parties. There are seven law firms on the defendant's opposition, so I think that if it's a matter of double- or triple-tracking depositions, it's something that won't be easy but can certainly be done. Now, what they propose in their schedule is that we aren't even gonna discuss discovery until September 9th. And that's obviously well after the August 31st deadline and effectively provides us no opportunity to come back to your Honor if the District Court reverses on any of the underlying legal issues. Now, what--the other thing that the defendants have said is that they won't really have an opportunity to move to dismiss. With respect to the termination claims, the legal issues regarding those claims are now before the District Court. And it--just as a matter of judicial economy and efficiency, it doesn't make sense to be litigating and briefing those same legal issues in the Bankruptcy Court before your Honor while they are on appeal and being briefed in the District Court. And with respect to the other issues unrelated to the termination, we would suggest that those issues and claims be stayed for now. One of the final arguments that the defendants make is that somehow your Honor would be bound by law of the case--

THE COURT: I don't need to spend any time on that, because under Rule 54, I can revisit those rulings pending a final entry of judgment on all claims.

MR. WARDEN: Okay. That was the final point that I was going to make, unless your Honor has any questions for me, and I'd just urge the Court to enter our scheduling.

THE COURT: All right. Thank you. For the opposition?

MR. BAUMANN: Your Honor, this is Michael Baumann for DirecTV. I guess--let me start with the last point that Mr. Warden made, which is whether it makes any sense to litigate the Bankruptcy Court issues that are the subject of an appeal to the District Court, and I would agree with him that it doesn't make a lot of sense. The current posture of the case is that Pegasus has a damage claim on an assortment of legal theories that they wish to pursue against NRTC and DirecTV. And the rules are fairly clear-cut about how you proceed on damage claims or on any type of claim that you file complaints on. And the necessity for expediting it all is based on the argument that's already been made. I understand your Honor's position on law of the case, but it's been made that the August 31st pre-bankruptcy termination by the NRTC can be reversed and undone in an equitable action, and I don't believe that's the case. And I think that the rulings were fairly clear that that remedy should not be available to them. Now, I understand that at the end of the day once we go through the discovery process, I suppose it's always possible for a Court to change their mind about interim orders before the final order is entered, but that's not a rationale for changing all of the rules of procedure that apply to the typical action. Neither DirecTV nor NRTC stood in the way of Pegasus coming in on an emergency basis on an automatic stay. Neither party stood in the way of Pegasus coming in and having an emergency hearing on their request for a TRO, and we did not make the decision to forego discovery and convert the TRO ruling into a preliminary injunction ruling so that they could litigate these issues before the District Court rather than in the Bankruptcy Court. They were all decisions that have been made by Pegasus. I mean, at this point the two-tier path not only will be inefficient and inappropriate but, frankly, many of the issues that counsel wishes to raise are, in fact, issues that we believe have been litigated and decided, if not by the Bankruptcy Court, by the court in California. And we should not--we will lose the protection of

res judicata and collateral estoppel if we are not able to move and to have rulings on what precisely it is that DirecTV is going to be subjected to in another round of litigation with Pegasus. We've been through five years of litigation with Pegasus, and we ought to at least have the benefit of not having to revisit rulings that were made that were the subject of a final order in the District Court in California and that Pegasus is appealing to the Ninth Circuit or, in other cases, where Pegasus filed an appeal and then dismissed the appeal challenging and making the same challenges now in Bankruptcy Court that they made in the court in California and then gave up their rights on appeal. And that clearly should entitle both NRTC and DirecTV to some procedural protections. And so we would urge the Court, the schedule that we have laid out, you know, frankly is the schedule that's called for under the rules of the procedure and allows for the fair, just and speedy determination of cases. And that's all that we have asked for.

THE COURT: Thank you. Anything else from any other quarter?

MR. HECKER: Your Honor, just for the NRTC very quickly.

THE COURT: Yes?

MR. HECKER: I concur in what Mr. Baumann said. I'd just like to emphasize that Pegasus had its opportunity for an evidentiary hearing and expedited discovery on the legal issues that the Court has now looked at twice. That opportunity was on the preliminary injunction hearing, which would have been--the evidence would have been presented yesterday and today. Pegasus chose to waive that to pursue an immediate appeal to the District Court, and now what it wants through the scheduling order is, in effect, to have an even more involved expedited discovery process and preliminary injunction evidentiary hearing dressed up as a bifurcated trial on a few issues. I went through the complaint. There are at least 17 of the 21 counts that I see as intimately related to the termination. They can say that there are only 8 or 9

counts, but the truth is 17 of the 21 at least as far as I read it will be--will disappear if the Court upon a motion to dismiss agrees with its earlier rulings on the legal issues in the case. Nothing that remains, anybody contends I believe, is necessary for reorganization of the debtor. Thank you.

THE COURT: Thank you. Anything further? All right. I've reviewed the parties' papers before court and I've considered the arguments of counsel, and I've said this before and I guess I'll say it again, you know, the Bankruptcy Court is sort of the economic triage unit for businesses in trouble, and used to--used to taking emergent action as necessary to save the life of an enterprise, and it feels odd at best to be confronted with a situation that everyone sort of put all their chips on the table and they're holding their cards, and they're going to call each other before they do any horse trading or bargaining, at least that's apparent to this Court. And really that removes this case from sort of the mill-run reorganization case. I mean, cases come as complex or as simple as can be, and some of them, like this one, are very complicated, but they devolve sometimes to simple matters. And in this case we don't really have the kind of massaging reorganization where the leverage that is switched with the initiation of bankruptcy and the order for relief is being put to work by the parties to attempt to negotiate a result. Rather, we have just sort of the next battle in World War III, and parties recognize that when they play it that way, what they're gonna get is win or lose as opposed to--as opposed to a negotiated compromise. And as a Bankruptcy Judge who is used to seeing the leverage change with the filing and seeing the parties negotiate and reorganize in the sense that the Bankruptcy Code encourages, it's a difficult spot to see one where everything hinges on the merits of a lawsuit, and the merits of that lawsuit need be determined either preliminarily or finally within the first few weeks of the case. But that's the situation that we have. I note that the debtor's filed

the amended complaint six days ago, and it is a multi-count complaint, it's a multi-count, multi-defendant complaint and it includes prayers for relief with regard to the termination issues, the patronage capital, the membership contracts, and includes issues relating to assertions of breach of fiduciary duty and interference with economic relations, a multitude of things. The debtor--the debtor has been provided with at least three opportunities to change the course of events which are now running against the August 31 deadline. There was the motion for an order in aid of the automatic stay. We took evidence on that. The debtor got limited relief, but it wasn't all the relief it sought. There was the motion for a temporary restraining order which, yes, was submitted on the papers by agreement but it was also submitted on the record of the trial that was had on the motion for an order in aid of the automatic stay. Then there was the opportunity to seek preliminary injunctive relief, the opportunity to seek expedited discovery with regard to that, and again, that was by choice submitted on the TRO record, and the debtors are pursuing an appeal which indeed this Court encouraged them to do because of the way things shook out in this Court's mind based on the record it had at the TRO hearing. The Court did not withdraw the opportunity to engage in discovery and present evidence on the preliminary injunction matter; rather, the debtor opted to forego those opportunities and pursue its rights on appeal. What the debtor really wants, again, is the opportunity to avoid the harsh consequences of the August 31 deadline's passage without--without relief from the pre-bankruptcy termination of the contracts. But, you know, just going back to say, as simple or as complex as cases get, and they all devolve to simple things sometimes, and, you know, this is not unlike a case, to my mind, where the lease was terminated before the debtor filed, or the redemption period ran out before the debtor filed, or the mortgage foreclosure sale was completed before the debtor was filed. I mean, that's what we have. The debtor has alleged that DirecTV and NRTC have a dagger at the heart, pointed at

the heart of the debtor. In this Court's view, the dagger was plunged before the case was filed, and what the debtor seeks is extraordinary relief by way of injunction. Now, the way you get extraordinary or any relief by way of injunction before a final judgment on the merits is seeking a TRO, seeking a preliminary injunction. The debtor has sought those and has not obtained them here. It still has the opportunity to convince the appellate forum that this Court was wrong in delaying those relief--that relief, to convince the appellate forum that it's appropriate that that relief enter and that it enter before August 31st. It is, in my view, in light of the legal obstacles that I have already recognized and pointed out to the debtor's obtaining the character of relief they seek, which include questions regarding the basis for the alleged fiduciary duty that the debtor claims exists, which include the consequences of the court's rulings in California, which include the very nature of the relief sought as opposed to damages, for all those reasons, coupled with the procedural path of this case in which the debtor has already taken and used or foregone three opportunities to get some kind of interim relief, it would be unfair in the extreme for this Court to put this litigation which again is a complicated, lengthy complaint, this latest version of which was filed only six days ago, on a rocket sled for all or part of it to be tried by August 16th or 23rd or 31st. It's simply--breaking the case up the way the debtors want to break it up, although it makes fundamental good sense from their point of view, it makes no disciplined sense from a case management point of view. We would be trying the same issues in different contexts with the same witnesses before and after the minitrial or trial in August because if they didn't get the injunctive relief, then we'd be back to the damages. It would deprive the defendants of the opportunity to present what appear to me at least to be bona fidedly assertable defenses which may cut down considerably on the scope of relief that the debtors are able to obtain, and would put the defendants to the very expense that the doctrines of collateral estoppel,

res judicata are intended to help avoid, and the very--and the very expenses, the necessity of which can be obviated by meritorious legal defenses asserted at the 12(b)(6) stage. I--like I say, it's not--it's not a happy circumstance for me to have this laid on as a do or die proposition for the debtors and to see that what they need so desperately denied them. But at the same time, I might be more inclined to put this on the kind of expedited trail that the debtors would seek if I felt they hadn't had an opportunity to try to get that which they want three times already in this Court and a continuing opportunity to get it through the appellate court. They have that--they have that right. I wish them all the luck in the world in pursuing that, without taking sides, but that's their chosen path. Otherwise, they have chosen to file a multi-count, multi-defendant, multi-multi-page complaint, and it makes no sense from a case management point of view to break the case up in which the--the way the debtors want, so they might have again one more chance to seek, in essence, an injunctive relief on an expedited basis which they've already had the opportunity to seek in this Court. So for those reasons, as odd as it seems as a reorganization court to see things evolve or devolve in this particular manner, I can once again see no disciplined way to provide the debtors with what they seek at this stag. I think as a starting point the proposed scheduling order that's been filed by the defendants is appropriate and in order. I will enter it today, and with that we'll be in recess. Thank you.

BAILIFF: All rise.

HEARING RECESSED (JULY 8, 2004, 11:30 A.M.)

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 04-2064 heard July 8, 2004, in Portland, Maine.

_____ Date: July 12, 2004

Patricia A. Burrows, Transcriptionist

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