

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
SEA CONTAINERS LTD., <i>et al.</i> ,	.	Case No. 06-11156(KJC)
	.	(Jointly Administered)
Debtors.	.	
	.	Feb. 12, 2008 (11:02 a.m.)
	.	(Wilmington-Teleconference)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY COURT JUDGE

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

1           THE COURT: Good morning, all, this is Judge Carey.  
2     We're on the record in Sea Containers. Counsel, I've read  
3     the binder that has been delivered in anticipation of today's  
4     telephone conference. Let me at this point start by saying,  
5     Has there been any resolution?

6           MR. STRATTON (TELEPHONIC): Your Honor, this David  
7     Stratton of Pepper Hamilton, co-counsel for the Sea Container  
8     Services Limited Committee. Brian O'Connor of the Willkie  
9     Farr firm will address the Court on where we are and what the  
10    issues are both with respect to the response made for the  
11    objection to the Pension Schemes claims and also with respect  
12    to the motion to compel discovery that was filed on Friday.

13          THE COURT: Yes.

14          MR. STRATTON (TELEPHONIC): If that's acceptable to  
15    the Court?

16          THE COURT: Well, yeah, my understanding was that  
17    the conference call initially was set for the purpose of  
18    dealing with the response date, but I see that another matter  
19    has been added. We can talk about it as a status matter.

20          MR. STRATTON (TELEPHONIC): By way of background,  
21    Your Honor, I had contacted chambers to see how Your Honor  
22    wanted to deal with the response date issue, and in the  
23    meantime, the other Committee, the Sea Containers Committee  
24    filed their motion to compel, and I spoke with your judicial  
25    assistant, and she indicated I should add that to the agenda.

1 It's also consistent with where I think we left things when  
2 we were last before Your Honor, which was when I think you  
3 essentially said if there's a settlement and the other  
4 Committee is still pressing discovery, then we should have a  
5 telephone conference to discuss how we're going to handle  
6 that, but - and I think we have come up between the debtor  
7 and the Pension Schemes and our Committee with some proposals  
8 on how - what makes sense and how we want to proceed. If you  
9 want to hear from Mr. O'Connor, I think he's prepared to lay  
10 that out.

11 THE COURT: Yes, certainly, and as long as Ms. Hunt  
12 said it was okay, then it's okay with me because I never  
13 second guess her.

14 MR. STRATTON (TELEPHONIC): That's sort of my rule  
15 life as well.

16 MR. WILLETT (TELEPHONIC): Good morning. Sabin  
17 Willett of Bingham McCutchen for the SCL Committee. Just  
18 before we hear that, I don't know what this binder is. It  
19 wasn't served on us, so I don't know what it is that Your  
20 Honor will have seen.

21 THE COURT: I'll tell you it contains the SCL  
22 Committee's objection to the '83 and '90 Schemes claims, the  
23 debtors' statement in support of staying discovery, which was  
24 filed on January 18<sup>th</sup> and secondly the motion to compel that  
25 Mr. Stratton just described, which was filed on February 8<sup>th</sup>.

1 The agenda, I'm sure, is online if you want to pull it up,  
2 that was specifically what's there, but that's it in a  
3 nutshell.

4 MR. WILLETT (TELEPHONIC): Thank you, Your Honor.

5 MR. O'CONNOR (TELEPHONIC): Your Honor, Brian  
6 O'Connor from Willkie Farr, if I may proceed?

7 THE COURT: Go ahead.

8 MR. O'CONNOR (TELEPHONIC): Thank you, and thank  
9 you, Your Honor, for hearing us on such short notice. The  
10 reason we asked for this conference is to report to Your  
11 Honor that there's been a significant change in the landscape  
12 since our last conference before Your Honor on January 22<sup>nd</sup>,  
13 and that change, of course, is the fact that the debtors and  
14 the Schemes and the Services Committee have reached an  
15 agreement to settle the proofs of claim filed by the Schemes,  
16 and the debtors, as we understand it, expect to file a 9019  
17 motion to obtain approval from Your Honor of that settlement  
18 by the end of this week, and as Your Honor will recall from  
19 our last conference, there are pending objections filed by  
20 the SCL Committee to the Schemes proofs of claim, and at the  
21 moment, the deadline for response by the Schemes and by the  
22 Services Committee to those objections is currently to  
23 February 19<sup>th</sup>. On Thursday, we proposed to the SCL Committee  
24 that given the significant change in the landscape, it would  
25 make sense for all parties and for the Court to address the

1   SCL's, the Service Committee's objections - or rather, the  
2   SCL Committee's objections to the Schemes claims in the  
3   context of that Rule 9019 motion rather than in the somewhat  
4   outdated procedural posture of the objections to the proofs  
5   of claim. We, therefore, proposed to the SCL Committee that  
6   they raise any objections to the Schemes claims in response  
7   to the 9019 motion and that we, in turn, the Schemes and the  
8   Services Committee, would respond to those objections at that  
9   time. It seemed to us that it didn't make any sense from the  
10   point of view of the efficiency and economy to essentially  
11   litigate this twice, once in the context of the older  
12   objections to the proofs of claim and secondly in the context  
13   of the 9019 motion. Unfortunately, however, the SCL  
14   Committee declined to agree to that proposal, and that's why  
15   one of the reasons we're here before you today is to ask that  
16   Your Honor set a schedule that makes sense, and would have us  
17   addressing those objections only once in the context of a  
18   9019 motion. Then the second issue we wanted to raise with  
19   Your Honor is the motion to compel that was filed by the SCL  
20   Committee on Friday, and as Your Honor will recall from our  
21   last conference, the SCL Committee had served both the  
22   Schemes and the Services Committee with document requests.  
23   They're fairly broad requests, although the principal  
24   subjects of those requests are documents reflecting how the  
25   claims are calculated and documents reflecting any contact by

1 the Schemes or the Services Committee with the UK Pension  
2 Regulator, apparently to support the SCL Committee's argument  
3 that there's been some violation of the automatic stay. Both  
4 the Schemes and the Services Committee objected to those  
5 requests on a number of grounds: One, they're being premature  
6 and that the debtor had not objected to the claim. They were  
7 over broad and burdensome, and that there were some  
8 significant privilege issues. The Services Committee did  
9 produce responsive non-privilege documents, but we did  
10 withhold a significant number of documents on privilege  
11 grounds. We had produced yesterday a privilege log to the  
12 SCL Committee that lifts the communications that we withheld  
13 on privilege grounds with the Pensions Regulator. We have  
14 not produced a broader privilege log that addresses all of  
15 the documents that we withheld on the grounds of  
16 attorney/client privilege, work product, or common interest  
17 privilege in connection with communications between the  
18 Committee and the Schemes' counsel. Presently the SCL  
19 Committee's motion is scheduled for hearing on February 26<sup>th</sup>.  
20 Our opposition papers are due on February 15<sup>th</sup>, and a reply is  
21 due on February 22<sup>nd</sup>. We think that the current document  
22 requests are over broad and should be narrowed to reflect the  
23 changed landscape, the 9019 motion, and what we would  
24 propose, Your Honor, is that our response date be pushed back  
25 from the February 15<sup>th</sup> date to February 19<sup>th</sup>. We think that

1 would give the SCL Committee an opportunity to review the  
2 9019 motion which we expect to be filed by the end of this  
3 week, and perhaps allow the parties to engage in some  
4 additional dialogue to determine whether or not we can narrow  
5 the documents that are being requested by the SCL Committee  
6 and perhaps moot some or all of the pending motions.

7 THE COURT: All right, let me hear from others.  
8 Does the debtor wish to weigh in?

9 MR. EATON (TELEPHONIC): Yes, Your Honor. Mr.  
10 O'Connor stated correctly, we've reached a settlement. The  
11 debtors reached a settlement with the Services Committee and  
12 the Pension Schemes. The SCL Committee has a copy of that  
13 term sheet. They've had it so they understand, and it's -  
14 the structure of it's been generally the same for awhile.  
15 Some of the verbiage changed, but they've had that so they  
16 know what the settlement is that we're seeking to approve.  
17 We are on target to file a motion by the end of this week.  
18 The debtor agrees that it would be much more efficient and  
19 financially sound to be dealing with objections or discovery  
20 matters in connection with the 9019 motion and not to have a  
21 diversion into responses to a pending objection to a claim  
22 when it's the very claim we're seeking to settle, and I do  
23 believe there will be some overlap in relevant discovery. It  
24 sounds to me like the Services Committee recognizes that and  
25 so hopefully that can be worked out between the Committees.

1 I'm in support of moving the response date as requested by  
2 the Services Committee.

3 MR. WILLETT (TELEPHONIC): Your Honor, good morning.  
4 It's Sabin Willett again at Bingham McCutchen for the SCL  
5 Committee. Let me tell you where we are on this, and I think  
6 it requires a little bit of a return to how we got here,  
7 which is that we filed an objection to the claim on September  
8 17<sup>th</sup> and very shortly after that, document requests. They  
9 were not broad. There were four each to the trustees, that  
10 is four specific requests, six I think to the Committee, and  
11 they're as Mr. O'Connor said, they focused on how the claims  
12 were calculated and what the communications had been with the  
13 UK Regulator. We then extended the response date for these  
14 things three times by agreement. In January we were unable  
15 to further extend it, and we said it's time to . . .  
16 (microphone not recording). As settlement discussions  
17 continue, we nevertheless need to get on with understanding  
18 these facts. We had a discovery conference. We didn't make  
19 progress. We had a status conference before Your Honor on  
20 the 22<sup>nd</sup> of January. We had another conference thereafter.  
21 We didn't make progress. Now, we've received no documents at  
22 all other than additional copies of the proofs of claim  
23 themselves, and a privilege log that we got last night, which  
24 I'll turn to in a moment. But, we have been told something  
25 that is pertinent here and which you've heard just now, which



1 is that these parties have now reached an agreement, which  
2 they will try to gain approval of by means of a 9019 motion,  
3 whose central issue will be whether their compromise is  
4 reasonable, and so their 9019 motion will inevitably get us  
5 into exactly the same documents that we've asked for here.  
6 Now, we've done everything we can to move this process along  
7 so that the case isn't stalled with massively long and  
8 tedious 9019 litigation because we haven't seen a document  
9 yet. But that appears to be where we are right now. But I  
10 want to turn to something that really is quite astonishing,  
11 it's a first for me in my career. This privilege log that we  
12 got last night from the Committee, and we're told in papers  
13 that the pension trustees are going to assert the same  
14 privilege, asserts that this Pension Regulator in the UK,  
15 whoever or whatever it is, is a body so intimate with the  
16 pension trustees that when they communicate there's a  
17 privilege. Your Honor, I have a privilege with my regulator,  
18 is what they are saying to you. This isn't regulation at  
19 all. This looks like joint venture. Now, we've recognized  
20 from the beginning of this case that comity is a big factor  
21 here. There are important UK interests involved. There's no  
22 question about that, but comity is a two-way street and just  
23 as it is joined from this Court to legitimate exercises of  
24 foreign sovereignty, so too is it due to this Court by  
25 foreign sovereigns and so too do they owe this Court and the

1 United States an obligation in comity, not to manipulate its  
2 laws by claiming benefits of their regulatory exemption of  
3 362(b)(4) for what looks like joint venture, at least as  
4 they're describing this privilege. So, we have very serious  
5 issues at play here, and this proposed deal is going to cost  
6 the American creditors who financed this company, who put up  
7 the capital to enable these pension trustees to make handsome  
8 pension benefits possible. It's going to cost them scores of  
9 millions of dollars. Now, who's left to speak for the other  
10 creditors? Not the debtors. Certainly not the Service  
11 Committee whose own relations with this mysterious regulator  
12 are also so intimate that they too, your own professionals in  
13 your own Chapter 11 case, they claim this privilege. It's  
14 us. No one but us. And how shall we carry out our duty to  
15 the creditors with a blindfold on? How's the claim  
16 calculated? None of our business. How did you procure these  
17 FSD's? None of our business. And this attitude, Your Honor,  
18 these pension trustees, it has just got to stop. That they  
19 can coo and bill with a foreign regulator and procure made-  
20 to-order pieces of paper from them and then hop under a  
21 privilege blanket when somebody tries to find out what's  
22 going on, that's got to stop. We have got to get an attitude  
23 adjustment in the first instance, and in the second, we've  
24 got to get these documents so we can move forward. How all  
25 of these comity issues come out, I don't know, and I'll never

1 know until we see documents and pursue discovery, but this is  
2 going to be a big issue, this 9019 motion they're talking  
3 about, and no purpose of efficiency is served by delaying any  
4 further the discovery that they owe us nor delaying any  
5 further the filing of responsive briefs or of their position  
6 paper and effect on the claim. Particularly with respect to  
7 the responsive brief on their motion to compel, I guess, in  
8 that responsive brief we're going to learn how it is that you  
9 can have a privilege with your own regulator? And still be  
10 within (b)(4), but the sooner we learn about that, the  
11 better, and we're going to have to brief it in response so  
12 that Your Honor can address it, a hearing that's now  
13 scheduled for the 26<sup>th</sup>. So, I would urge that there be no  
14 delay on that. That's the big picture on where we are, Your  
15 Honor, and I apologize if a note of frustration has crept  
16 into my voice. We feel a profound frustration with a process  
17 in which professionals engaged in this Court and creditors  
18 who have filed claims in this Court nevertheless, to our  
19 view, show so little respect to the rules that govern what  
20 happens in this Court. Thank you, Your Honor.

21 THE COURT: All right. Typically, as maybe Mr.  
22 Willett just pointed out, in considering a 9019 motion, the  
23 standard I employ in determining whether to approve it may be  
24 somewhat different than the standard I would use in  
25 determining whether to sustain or overrule a claim objection.

1 So, the combination of the two proceedings, one pending, one  
2 about to be filed, I'm advised, presents that possible issue,  
3 although I tend to agree, it involves much of the same if not  
4 all of the same evidence. The other part of that procedural  
5 problem is that combining the two might involve, is that in a  
6 9019 motion, all I need do is - in the words of some of the  
7 decisions, conduct a survey of the issues. I don't actually  
8 try the dispute, but it seems to me that SCL's entitled to  
9 file its objection, whether the debtor has or not, and it's  
10 entitled to pursue it's objection, whether the debtor agrees  
11 or doesn't. So, here's my, after having heard the parties,  
12 here's my initial thought. I would be willing to relieve the  
13 debtor and the Schemes from the upcoming deadline to the  
14 objection to claim, you know, subject to the following:  
15 Combining the two matters, providing that the scope of  
16 discovery - that neither the scope of discovery nor the  
17 evidentiary hearing to be had would in any way be limited  
18 because of the fact that the 9019 motion is part of it. In  
19 other words, the objector here, the SCL Committee would have  
20 the full breadth of that which was available to it if it were  
21 only in the context of the claim objection. Secondly, it  
22 seems to me that we need - if the discovery issues can't be  
23 resolved, and I will say, this really, you know, when a party  
24 says, Oh, here's the copies of the proofs of claim and  
25 everything else is privileged, I mean it makes even a

1     trusting person kind of scratch his head. But, the parties  
2     have said the privilege issues are real. I'm unfamiliar with  
3     the foreign privilege issues, upon which those asserting it  
4     may or may not be right, but I think I have to hear that  
5     first if it's not resolved, and my inclination would be to  
6     set the motion to compel for hearing on the 26<sup>th</sup> and any  
7     responses and replies to be done in accordance with the  
8     schedule to be agreed, and if you can't, I'll set it, and  
9     secondly, to have a hearing on the combined objection and the  
10    9019 motion on the 13<sup>th</sup> of March which is the next omnibus  
11    hearing. I'm open to reaction from the parties.

12                 MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
13    from Bingham for the SCL Committee. I was with you right  
14    till the end. I think there's no chance if we're having a  
15    motion to compel heard on the 26<sup>th</sup> and even if Your Honor  
16    grants it instantly, for us to get documents and then take  
17    depositions and then be ready on issues that may include  
18    expert issues because a big dispute in this case, for  
19    example, is whether the claims should be valued under the  
20    prudent investor rule which is as to what that value is,  
21    you're going to need expert testimony I imagine. I just  
22    don't see how even if Your Honor is not determining the claim  
23    but still, but under the 9019 standard surveying the range of  
24    outcomes, I can't imagine that that's ready by the 13<sup>th</sup> of  
25    March. Indeed, I note today is, whatever date it is, but

1 they haven't filed the 9019 motion yet. So, I think that the  
2 first part of what you said all makes perfect sense but I  
3 just don't see how we're going to be ready by March 13<sup>th</sup>.

4 MR. EATON (TELEPHONIC): Your Honor, David Eaton,  
5 again on behalf of the debtors. Time is of the essence in  
6 view of where we're at in this case, and where we want to get  
7 to and in a reasonable amount of time, but having said that,  
8 I agree that I did anticipate that there would be discovery,  
9 that there might be expert issues. We certainly are  
10 advocating a hearing as early as possible. I'm a bit  
11 sympathetic that March 13<sup>th</sup> might be aggressive. We will be  
12 filing by the end of the week. We would normally set it on -  
13 Well, seek a hearing as soon as possible. So I guess I would  
14 say I think it's a little bit aggressive. I don't want to go  
15 much further out because this matter, the issues relating to  
16 both the claim and the settlement have been out there for  
17 months and months and months. There's been a ton of due  
18 diligence. I think largely both sides should be able to  
19 present their case. A lot of it may be legal as well, and so  
20 we should be in a position to do it fairly shortly after  
21 that, but I think that is a bit aggressive.

22 THE COURT: Well, your next omnibus hearing is April  
23 15<sup>th</sup>. How does that strike the group?

24 MR. EATON (TELEPHONIC): I'm actually hoping we can  
25 get something between the two.

1           THE COURT: All right, let me hear from the Services  
2 Committee.

3           MR. O'CONNOR (TELEPHONIC): Your Honor, one question  
4 I have which I think would be useful for us to explore  
5 because I think it would make it perhaps easier for the SCL  
6 Committee and the Services Committee and the Schemes,  
7 perhaps, to try to reach agreement on the necessary discovery  
8 is Your Honor had indicated that you would intend to hold the  
9 hearing and allow the SCL Committee to object to the claims  
10 in the normal fashion at the same time as addressing the Rule  
11 9019 motion, and the one issue I have with that is a  
12 theoretical concept is, to the extent that, as Your Honor  
13 indicated, the standard for approval of the 9019 would be  
14 that the settlement falls within the range of reason. I'm  
15 not quite sure how the hearing would proceed. If the debtors  
16 had agreed to settle a claim for X amount, is Your Honor  
17 intending then to - if the SCL Committee were able to  
18 establish that the claim was something less than that, are  
19 you saying then that you wouldn't approve the settlement?  
20 I'm not sure how these two different competing interests  
21 would work at the same hearing.

22           THE COURT: Well, and as I indicated, it poses the  
23 difficulty that I described, but I don't see any basis for  
24 anyone depriving the SCL Committee of their right to pursue  
25 its objection. In other words, even the debtor can't settle

1 an objection of a matter asserted by a third party who's not  
2 a party to the settlement.

3 MR. O'CONNOR (TELEPHONIC): One point on that  
4 though, it would seem to me, Your Honor, that if under the  
5 law, the debtor has the right to seek a settlement of the  
6 claim and Your Honor has to review and approve that  
7 settlement as long as it falls within the range of reason.  
8 It would seem to me that if you were then to allow some  
9 individual creditor or other entity to argue that you've got  
10 to actually establish the amount of that claim the way you  
11 would in an ordinary claims process. That would seem to be  
12 taking the power to settle away from the debtor.

13 THE COURT: Well, it does limit it somewhat, but I  
14 don't think I've - I know I haven't said what you've just  
15 recited, and I'm not going to make any preliminary rulings at  
16 this point, but you know, read my decision in the Excite  
17 confirmation. I had that circumstance in which the debtor  
18 attempted to propose a settlement but excluding a party to  
19 the dispute, and I found for the reasons that I described in  
20 the opinion that that can't be done. Now, I did consider it  
21 in the confirmation context, but I'm not sure that makes all  
22 that much of a difference.

23 MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
24 of Bingham for the SCL Committee. I think I have a practical  
25 suggestion for how to resolve this. I think it's too early



1 on this call to figure out what issue Your Honor would hear  
2 on what date, whether it's the issue of a party's objection  
3 to a claim or whether it's the issue of whether a 9019 motion  
4 has been made out. What we should do, rather, is we should  
5 first figure out what discovery we're going to get, which I  
6 take it will occur on February 26<sup>th</sup>. We should show up at  
7 that hearing, as you earlier ordered, with our best effort at  
8 a discovery calendar, and at that hearing we should  
9 determine, all right, what do we think is going to be heard  
10 and what's a reasonable time for the Court to schedule a  
11 hearing on it. One thought that occurred to me while others  
12 were speaking was that you'd have to look at the Court's  
13 omnibus calendar to see whether there was indeed room, a time  
14 for the level of evidentiary hearing that's likely to happen  
15 at a - either one, a 9019 or a claim objection.

16 THE COURT: I'll make room for you.

17 MR. WILLETT (TELEPHONIC): So, I would suggest  
18 simply that we first resolve what are we going to get to see,  
19 and then on the 26<sup>th</sup>, we could set a hearing on a specific,  
20 whether it's their 9019, which, of course, hasn't been filed  
21 yet, or our existing claim objection.

22 THE COURT: All right. Well, that probably makes  
23 sense at this point. You've each exchanged views about what's  
24 possible. It will give the - two weeks will give the parties  
25 a chance to talk a little bit and think a little bit more

1 about that and to the extent it can't be resolved by  
2 agreement, I'll set something, hopefully at the 26<sup>th</sup> hearing,  
3 but with respect to those issues to be heard on the 26<sup>th</sup>,  
4 obviously there's going to be an accelerated schedule. When  
5 can those who wish to respond to the motion to compel,  
6 respond to the motion to compel?

7 MR. O'CONNOR (TELEPHONIC): Your Honor, you mean  
8 other than the date that we proposed for February 19<sup>th</sup>?

9 THE COURT: Yeah, is that okay? Is that still a  
10 good date? I'm okay with that date.

11 MR. O'CONNOR (TELEPHONIC): That's okay with us,  
12 Your Honor.

13 MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
14 again. The problem with the 19<sup>th</sup> is that that paper that they  
15 file is going to be the first explanation of this privilege  
16 with the foreign regulator that they're claiming, and we're  
17 going to need to respond to that before the 26<sup>th</sup>. We'll do  
18 whatever Your Honor orders, but if we stick with the existing  
19 schedule, which has them responding on the 15<sup>th</sup>, we then have,  
20 I think, about a week to try to understand this and file a  
21 reply keeping in mind that all that this motion does is talk  
22 about what documents they produce to us. So whether the  
23 documents are ultimately relevant to a 9019 or to a claim  
24 objections doesn't matter and isn't going to be affected.  
25 The sooner we understand those issues and the Court is fully

1     briefed on them the sooner we can move forward in a practical  
2     way.

3             THE COURT: Well, it seems to me that we could move  
4     easily on the expedited basis to address the document issue  
5     but not so with respect to the privilege issue. So, it seems  
6     to me there are two choices there. We either deal with those  
7     issues separately or move the 26<sup>th</sup> hearing back to permit  
8     sufficient time to tee up all of the discovery issues so that  
9     I can consider them at once. Anybody have a thought on  
10    that?

11            MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
12    for the SCL Committee. That might make sense, because here's  
13    what's going to happen. When we get their 9019 motion, we  
14    will have to send them discovery requests, and we'll do that  
15    as quickly as we can. I'm sure we'll ask for experts. We'll  
16    ask for the same documents we've already asked for. We'll  
17    probably ask for depositions, and if those requests raise  
18    this same UK privilege issue, it would make sense to have all  
19    of that resolved once. Now, I'll pledge to you, we'll get  
20    discovery requests out just as soon as we can after we have  
21    their motion, but it sounds like that isn't going to be until  
22    next week, would be the earliest that that happens, and then  
23    they would need to object to frame an issue for Your Honor's  
24    consideration, maybe that 26<sup>th</sup> hearing should go back a week  
25    or so. I don't know.

1           MR. O'CONNOR (TELEPHONIC): Your Honor, this is  
2   Brian O'Connor. If I'm hearing Mr. Willett correctly, are we  
3   saying at this point that we're going to treat the existing  
4   document requests as no longer applicable and we're going to  
5   see the new document request for discovery demands that the  
6   SLC Committee will file after the Rule 9019 motion is filed?  
7   Because otherwise we're again in a situation where, you know,  
8   we're dealing in addressing two different discovery requests.

9           MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
10   again. That's not what I intended. I'm merely suggesting  
11   that they're going to file a motion. We're going to seek  
12   discovery related to the motion. It's going to be the same  
13   discovery in part, and it apparently is going to raise the  
14   same privilege issue. So, I'm quite confident that Your  
15   Honor's ruling in any context on this privilege issue will be  
16   scrupulously observed by all the parties in every discovery  
17   context, so maybe we don't have to wait. Maybe we can just  
18   rule on the current context because it's going to be the same  
19   documents, same claim of privilege, same issue, I think.

20           MR. O'CONNOR (TELEPHONIC): Your Honor, I think what  
21   I was getting at there is I do agree with Mr. Willett that  
22   the same privilege issue is going to rise, and I think it  
23   makes sense that we go ahead and tee that up for Your Honor  
24   to decide. My hope was that with respect to the other issues  
25   that the parties had with those discovery requests, their

1 breadth and other relevant objections that rather than having  
2 two sets of discovery requests outstanding, it would make  
3 sense to allow Mr. Willett to file new discovery requests,  
4 which hopefully would be tailored somewhat to the facts at  
5 issue in the 9019. I understand that to a large extent they  
6 may be very similar to the ones that they already filed, but  
7 it just doesn't seem to make sense that two different  
8 document requests outstanding, apart from the privilege  
9 issue, which I agree, needs to be addressed in any event.

10 MR. WILLETT (TELEPHONIC): Again, Willett for the  
11 SCL Committee, Your Honor. That's simply going to accomplish  
12 nothing other than delay. It's really up to the debtors and  
13 the proponents of this. Now, they're the ones trying to move  
14 it along quickly so, we're just trying to have a fair chance  
15 to place the issue in front of you and be prepared to respond  
16 to these motions.

17 THE COURT: All right, here's what we're going to  
18 do. And let's come full circle and return to the reason that  
19 the conference call was first scheduled. We've kind of gone  
20 well beyond that, but I'm not complaining. I think it might  
21 be helpful. It's helpful to me to get a global picture of  
22 all the moving parts, or at least those I should be aware of.  
23 I guess the debtor and the Services Committee have requested  
24 that there be an extension of the response date to the SCL  
25 Committee's objection which currently sits at February 15<sup>th</sup>

1 and would like to move it to February 19<sup>th</sup>. So that's still  
2 the case.

3 MR. O'CONNOR (TELEPHONIC): I'm sorry, Your Honor,  
4 on the motion to compel or the objection?

5 THE COURT: Well, the objection, I think, was the  
6 original -

7 MR. O'CONNOR (TELEPHONIC): Yes, the objection - our  
8 original request, Your Honor, was that we essentially  
9 disregard the initial schedule with respect to the objection  
10 and treat that one and the same with the 9019, such that once  
11 the 9019 motion is filed, Mr. Willett will file whatever  
12 response he has to that, and then we would respond to that in  
13 turn, and then with respect to the motion to compel we were  
14 seeking to move the date out from our response to the 19<sup>th</sup>.

15 THE COURT: Okay, let's do this. With respect to  
16 the motion to compel, you can have an extension to the 19<sup>th</sup>,  
17 and I'll order that from the bench today, both the debtor and  
18 the Services Committee.

19 MR. EATON (TELEPHONIC): Actually, Your Honor, I  
20 don't believe the debtor is going to file a response. We  
21 were supportive of the Services Committee's request for an  
22 extension.

23 THE COURT: All right, very well.

24 MR. EATON (TELEPHONIC): Thank you.

25 THE COURT: So ordered. Now -

1           MR. YATES (TELEPHONIC): Your Honor, I'm sorry, I  
2     don't mean to interrupt. This Farrington Yeats for the 1990  
3     Scheme. That extension would also apply to the individual  
4     Schemes too?

5           THE COURT: To anyone who intends to - on this  
6     conference call who has not yet filed a response.

7           MR. YATES (TELEPHONIC): Thank you very much, Your  
8     Honor.

9           THE COURT: Okay. I think - So I guess, I'm looking  
10    at the 26<sup>th</sup>. I think what we're going to do is have a status  
11    hearing, just a status on any 9019 motion that's filed, and a  
12    hearing to the extent we can based upon the filings to go  
13    forward on document issues, the breadth of the discovery  
14    requests that have been made and the document issues, but not  
15    the privilege issues, and with respect to the privilege  
16    issues, we'll discuss and decide at the hearing on the 26<sup>th</sup>  
17    how that's to be addressed and when. Comments? Questions?

18          MR. O'CONNOR (TELEPHONIC): Your Honor, it's  
19    O'Connor again, and at the conference on the 26<sup>th</sup> when we'll  
20    discuss perhaps issues on the 9019, at that point we can  
21    address after we've again looked at your Excite opinion  
22    whether or not or what the argument that we would make as to  
23    whether or not the SCL Committee is actually an essential  
24    party to the settlement and how that would impact how the  
25    9019 hearing would proceed.

1           THE COURT: Well, as to the - Let me put it this  
2 way: The parties are of course free to raise whatever issues  
3 they think are pertinent, but I will tell you they have a  
4 right to object to a claim, and so -

5           MR. EATON (TELEPHONIC): Your Honor, I -

6           THE COURT: I don't know how you can legitimately  
7 argue that they couldn't participate in the hearing as we  
8 contemplated it as being combined.

9           MR. EATON (TELEPHONIC): Your Honor, David Eaton on  
10 behalf of the debtors. I understand that you're not making  
11 any rulings on that. We certainly accept that they have the  
12 right to object to the claim and object to the settlement if  
13 they're not onboard with it, and we will review the Excide  
14 decision, of course, but what I do object to is that this is  
15 a claim. What we will be settling is a claim against the  
16 debtor, and I think that I'm not - I will have to obviously  
17 review the Excide decision. There may have been  
18 indispensable party issues with it, but we're not denying  
19 anybody the right to - a party in interest the right to  
20 object or speak their peace in connection with the  
21 settlement, but whether they have to actually sign on the  
22 dotted line to ever settle, would seem to me inconsistent  
23 with the debtors' ability to settle any claim against it  
24 where all a creditor would have to do is then to file an  
25 objection as it has the right to do and then say, Now the



1 debtor can't possibly ever settle it if I'm not a signatory  
2 to it.

3 THE COURT: No, you'll see what I did in Excide was  
4 I basically, in the context of the confirmation hearing,  
5 which went on for many days, instead of merely conducting a  
6 survey of the issues, I heard extensive evidence in support  
7 of the party who was objecting to the settlement.

8 MR. EATON (TELEPHONIC): I see. Okay.

9 MR. WILLETT (TELEPHONIC): Your Honor, Sabin Willett  
10 of the SCL Committee. One small final - I hope final point,  
11 you've extended the response date on the motion to compel to  
12 the 19<sup>th</sup> and we understand that. Could we also extend the  
13 deadline for a reply to 10 a.m. on the 25<sup>th</sup>, that is the  
14 Monday prior to the 26<sup>th</sup> hearing. It's my hope that we will  
15 be able to address whatever their privilege issue is. I  
16 don't know that we will, but I'd like to build in a few more  
17 days so that we could try to address that to the Court before  
18 that hearing.

19 THE COURT: Is there any objection to that? I'll  
20 permit that then.

21 MR. WILLETT (TELEPHONIC): Thank you, Your Honor.

22 THE COURT: All right, counsel, is there anything  
23 further for today?

24 MR. O'CONNOR (TELEPHONIC): I don't believe so, Your  
25 Honor.

1 THE COURT: All right, thank you all. That will  
2 conclude this hearing.

3 ALL (TELEPHONIC): Thank you, Your Honor.

4 (Whereupon at 11:41 a.m., the hearing in this  
5 matter was concluded for this date.)

6

7

8

9

10

11

12

13

14

15

16

17

18 I, Elaine M. Ryan, approved transcriber for the  
19 United States Courts, certify that the foregoing is a correct  
20 transcript from the electronic sound recording of the  
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan February 18, 2008  
Elaine M. Ryan  
2801 Faulkland Road  
Wilmington, DE 19808  
(302) 683-0221