

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 06-11156 (KJC)
. .
. .
SEA CONTAINERS LTD., .
et al., . 824 North Market Street
. Wilmington, Delaware 19801
Debtors, .
. September 19, 2009
. 3:30 P.M.
.

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

APPEARANCES:

For Sea Containers: Young Conaway Stargatt & Taylor, LLP
By: EDMON L. MORTON, ESQ.
The Brandywine Building
1000 West Street
17th Floor
Wilmington, DE 19801

For Sea Containers: Kirkland & Ellis, LLP
By: DAVID L. EATON, ESQ.
DAVID A. AGAY, ESQ.
SIENNA SINGER, ESQ.
200 East Randolph Drive
Chicago, IL 60601-6636

Audio Operator: Brandon McCarthy

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

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

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

APPEARANCES (Cont'd.):

For GE Container:	Drinker Biddle & Reath LLP By: HOWARD A. COHEN, ESQ. 1100 North Market Street Wilmington, DE 19801-1254
For HSBC Bank USA as Trustee:	Ropes & Gray LLP By: MARK K. SOMERSTEIN, ESQ. 1211 Avenue of the Americas New York, NY 10036-8704
For the United States Trustee:	The United States Trustee's Office and the Department of Justice By: DAVID L. BUCHBINDER, ESQ. 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801
For the SCL Committee:	Morris, Nichols, Arsht & Tunnell, LLP By: THOMAS F. DRISCOLL, III, ESQ. DEREK C. ABBOT, ESQ. 1201 North Market Street, 18th Floor Wilmington, DE 19899-1347
For the 1990 Pension Scheme:	The Bayard Firm By: JEFFERY M. SCHLERF, ESQ. 222 Delaware Avenue Wilmington, DE 19801
For the SCSL Committee:	Pepper Hamilton LLP By: DAVID R. STRATTON, ESQ. Hercules Plaza, Suite 5100 1313 Market Street Wilmington, DE 19899-1709

TELEPHONIC APPEARANCES:

For the Sea Containers:	Alix Partners, Ltd. By: LAURA BARLOW, ESQ. 9 West 57th Street, Suite 3420 New York, NY 10019-2701
For Dune Capital Management:	Dune Capital Management By: LAURA HAMMOND, ESQ. 623 Fifth Avenue, 30th Floor New York, NY 10022

TELEPHONIC APPEARANCES (Cont'd.):

For the SCL Committee:	Bingham McCutchen LLP By: SCOTT K. SEAMON, ESQ. 399 Park Avenue New York, NY 10022-4589
For GE SeaCo SRL:	Weil, Gotshal & Manges LLP By: GARY T. HOLZER, ESQ. 76 Fifth Avenue New York, NY 10153
For GE Capital:	Weil, Gotshal & Manges LLP By: ROBERT J. LEMONS, ESQ. 767 Fifth Avenue New York, NY 10153
For the Joint Provisional Liquidators Of Sea Container LTD:	Shearman & Sterling, LLP By: DANIELLE KALISH, ESQ. NED S. SCHODEK, ESQ. JAMES L. GARRITY, ESQ. 999 Lexington Avenue New York, NY 10022
For the Official Committee of Unsecured Creditors:	Wilkie Farr & Gallagher LLP By: MARC ABRAMS, ESQ. MICHAEL J. KELLY, ESQ. STEVEN SZANZER, ESQ. ANDREW SORKING, ESQ. 787 Seventh Avenue New York, NY 10019-6099
For Five Individual Bondholders:	Kramer Levin Naftalis & Frankel LLP By: JOSHUA BRODY, ESQ. 1177 Avenue of the Americas New York, NY 10036
For Six Individual Bondholders:	Kramer Levin Naftalis & Frankel, LLP By: THOMAS MOERS MAYER, ESQ. 1177 Avenue of the Americas New York, NY 10036
For GE Equipment Services:	GE Equipment Services By: JOSEPH L. LINCOLN, ESQ. 3135 Easton Turnpike Fairfield, CT 06431
For the Creditor, HSBC	SANDRA HOROWITZ, Pro Se

TELEPHONIC APPEARANCES (Cont'd.):

For the 1990 Pension Scheme: Sonnenschein, Nath & Rosenthal
By: D. FARRINGTON RATES, ESQ.
1221 Avenue of the Americas
New York, NY 10020-1089

For the Sea Containers 1993 Pension Scheme: Debevoise & Plimpton LLP
By: STEVE GROSS, ESQ.
919 Third Avenue
New York, NY 10022

For Sandelman Partners Master Fund, Ltd.: Sandelman Partners Multi-Strategy
By: JOSEPH LAMPORT, ESQ.
500 Park Avenue, Third Floor
New York, NY 10022

1 THE COURT: Good afternoon, everyone.

2 ATTORNEYS: Good afternoon, Your Honor.

3 MR. STRATTON: David Eaton's looking at me like
4 what's Stratton doing. I think there are some people on hold
5 on the Court call who have not been put through to the
6 courtroom. In particular there are some people at Wilkie Farr.
7 I don't know. If they can hear me, then I'll just sit back
8 down. But the last e-mail I got a few minutes ago was that
9 they were still on hold.

10 MR. LEMMONS: I think -- this is Robert Lemmons at
11 Weil Gotshal for GE. We're -- I can hear you.

12 MR. STRATTON: Actually I'm looking for people from
13 Wilkie Farr. Yeah, I think they're on hold, Your Honor.

14 MR. ABRAMS: Wilkie Farr is here.

15 MR. STRATTON: Okay. They just got on. Thank you.

16 THE COURT: Okay. Thank you. Let's begin.

17 MR. EATON: Good afternoon, Your Honor. David Eaton
18 and David Agay on behalf of the debtors. Your Honor, we not
19 that we received your ruling on the pension settlement motion.
20 We appreciate the timing of that and it enables us to have more
21 confidence as we go forward with today's hearing and go forward
22 with the plan.

23 THE COURT: All right.

24 MR. EATON: We're here seeking approval of what will
25 be the debtors' second amended disclosure statement and

1 solicitation materials related to the debtors' second amended
2 plan.

3 The first amended plan and disclosure statement were
4 filed Tuesday evening and reflected changes that resolved
5 almost all concerns and requests for information that parties
6 brought to our attention.

7 Your Honor, I'd like to approach with a copy of the
8 second amended plan which I'll be referring to briefly later.

9 THE COURT: All right. Is it blacklined?

10 MR. EATON: Yes, it is.

11 THE COURT: All right.

12 MR. EATON: It is the blackline version.

13 THE COURT: Okay. Thank you.

14 MR. EATON: The difference between the first amended
15 plan and the second amended plan and disclosure statement
16 represent changes or additions that were requested by the
17 committees and the Kramer Levin bondholder clients that do not
18 materially change the plan. I'll touch upon just a couple of
19 those later. First I'd like to very briefly present an
20 overview of the plan.

21 The Court has seen pieces of the Sea Containers'
22 puzzle over of the last 20 plus months or so such as the
23 pension settlement, the GE settlement, the sale of subsidiaries
24 and various funding motions. We believe the plan brings all
25 these pieces together.

1 Here's how it works. The container related assets of
2 Sea Containers including the cargo units themselves which are
3 housed within a special purpose subsidiary of Sea Containers
4 and Sea Containers interest in the GE SeaCo joint venture will
5 be transferred to a new Bermuda entity. The equity of that new
6 Bermuda entity, we can call it NewCo, will be distributed to
7 our creditors on a pro rata basis. Those would include the
8 pension schemes with the claim -- the claims that were the
9 subject of the pension settlement motion.

10 The other primary asset of the new Bermuda entity
11 will be what is referred to as the repatriation note which I'll
12 explain a little bit more in a minute. This repatriation note
13 will be pledged to our exit lender and the proceeds of the
14 repatriation note will be used to help repay our anticipated
15 exit financing.

16 The non-container assets of Sea Containers will
17 remain with reorganized Sea Containers to be dealt with by a
18 plan administrator. These assets primarily include most of Sea
19 Containers existing cash resources, sources within the
20 enterprise I should say, and Sea Containers interests in and
21 claims against non-debtor subsidiaries which are expected to
22 generate and repatriate additional cash as the affairs of the
23 remaining non-debtor subsidiaries are wound down. Reorganized
24 Sea Containers will be responsible to pay a variety of post
25 effective date costs in connection with the wind down and the

1 equalization determination costs that are described in the plan
2 and disclosure statement.

3 The repatriation note I referred to earlier will be
4 payable from reorganized Sea Containers to NewCo and
5 essentially will represent the amount reasonably expected to be
6 repatriated that has been or will be repatriated from the
7 subsidiaries in the managed wind down after payment of the post
8 effective date costs.

9 Some cash and NewCo equity will go to fund a variety
10 of reserves for certain disputed and other claims. Those are
11 primarily the equalization reserve which the Court is familiar
12 with having just issued its ruling and that was described in
13 great detail in the pension settlement motion. That is set at
14 69 -- that will NewCo equity attributable to a 69 million
15 dollar claim pending the UK court's determination of the
16 equalization status of the pension schemes.

17 Another reserve will be established that's referred
18 to as the equalization related employee claims trust. This
19 anticipates certain possible claims of individual UK employees
20 who may assert that even if the schemes were properly equalized
21 to provide benefits at age -- starting at age 65, that they
22 nonetheless may be entitled to different benefits and have
23 claims on account of that.

24 There will be a non-debtor subsidiary reserve. This
25 is an amount intended to cover the third party claims against

1 non-debtor subsidiaries who have or have agreed to repatriate
2 cash to the debtors. But they need assurance that
3 notwithstanding the repatriation their creditors will be fairly
4 treated. Fairly treated has been agreed to by these non-debtor
5 subs and the debtors as calculated by use of what's been
6 referred to as the EPM, the entity priority model, which
7 essentially depicts the results of a hypothetical simultaneous
8 liquidation and distribution of assets amongst the entities,
9 taking into account local priority laws, for example with
10 respect to intercompany claims, and it suggests what relative
11 distributions would be available to creditors at each level.

12 Now although intercompany claims are not classified,
13 by virtue of a standstill agreement that's also attached as an
14 exhibit to the disclosure statement, the non-debtor
15 subsidiaries have agreed to refrain from asserting intercompany
16 claims against each other and against the debtors and the
17 debtors, in exchange for the debtors' agreement to forebear
18 from asserting their intercompany claims against the subs, and
19 I note that on an overall -- on an aggregate net basis Sea
20 Containers is a very large intercompany creditor, so it's a
21 great benefit to those non-debtor subsidiaries. And the non-
22 debtor subs would also receive their right to receive payments
23 under the non-debtor subsidiary reserve to enable them to pay
24 their creditors as they would have had they not repatriated the
25 cash. There will also be a generic disputed claims reserve for

1 miscellaneous claims.

2 Of course, as mentioned at the recent status hearing,
3 the plan is predicated on final documentation of the GE deal
4 and confirmation and consummation within the deadline set forth
5 in the framework agreement that the Court approved. Those are
6 very well along. I don't expect any issues with the
7 documentation or the timing, Your Honor.

8 That essential describes how the assets will be held
9 and distributed under the plan, but there are a couple of
10 critical process issues described in the disclosure statement
11 as well that are worthy of note. I'm sure the Court will
12 recall that Sea Containers is a Bermuda entity and it is also
13 the subject of a provisional liquidation proceeding in Bermuda,
14 pending in Bermuda. As my partner, David Agay, will refer to,
15 because he's going to address the solicitation materials, once
16 the disclosure statement and solicitation materials are
17 approved here, we will file the final versions in Bermuda
18 including with the Bermuda scheme, a copy of which has been
19 attached to the disclosure statement. And the Bermuda scheme
20 describes the same structure and transaction as are
21 contemplated in the plan of reorganization we filed.

22 We anticipate a hearing to approve the solicitation
23 of votes in connection with the Bermuda scheme, and we do
24 anticipate a joint solicitation, to occur within approximately
25 two weeks.

1 Next, as the Court is aware, it is critical for the
2 pension schemes that the pension settlement and the plan of
3 reorganization be implemented in a way that preserves the
4 pension scheme eligibility to enter into the PPF if necessary.
5 The pension schemes, I don't mean to presume to speak for them
6 but I think I will get this correctly, they believe that in
7 order to accomplish this goal in accordance with UK regulations
8 various actions must be completed in the UK before the plan can
9 go effective. In particular, by way of example, that schemes
10 for Sea Containers Services and non-debtor participating
11 employers that would implement the pension settlement must be
12 sanctioned in the UK and that these actions must be completed
13 before the voting deadline in order for them to have comfort to
14 vote in favor of the plan and that in fact, as they've stated
15 and as we've indicated and disclosed in the disclosure
16 statement, they would intend to vote against the plan and
17 contest confirmation if they do not have comfort that the
18 settlement is implemented in a way that would ensure PPF
19 eligibility.

20 THE COURT: Well in their filing they indicate that
21 you hadn't said that well enough. Has that issue been
22 resolved?

23 MR. EATON: I actually believe we adopted their
24 precise language. It is -- I think it's crystal clear in the
25 -- in the plan that we filed. We tried to -- I think that's

1 crystal clear, Your Honor. If not, we're certainly not trying
2 to hedge on that issue.

3 THE COURT: Okay.

4 MR. EATON: The good news though is that we've agreed
5 on what the UK schemes are that need to be implemented and
6 believe they can be completed before the voting deadline.

7 Back to revisions between the first and the second
8 amended plan. If Your Honor -- I believe for the most part
9 they are not material. I'm happy to answer any questions that
10 Your Honor has. We can walk through the document if you'd like
11 or Your Honor may want to go through it. But there are two
12 changes in particular I would like to bring to your attention.

13 The first is that -- and I'm not -- I can't promise
14 this exactly, but it may be on roughly page 31 of your
15 blackline, we have added a Class 4C for the debtors -- of
16 claims for the debtors Sea Containers Carribean Inc. This
17 relates to the claims of the PBGC against that debtor in
18 connection with the pension plan of Sea Containers America,
19 which is a non-debtor subsidiary. We believe the claims are
20 unimpaired. We expect them to be paid in full upon the sale of
21 a -- pending sale of a subsidiary of Sea Containers America
22 which has been negotiated and which we expect to be the subject
23 of a motion, because it involves certain intercompany claims of
24 the debtors, to be filed within the next couple of days.

25 Your Honor, the second amendment worthy of note to

1 the second amended plan is not in the blackline before you but
2 I'm going to describe it. We appreciate very much, as I
3 mentioned, that the pension settlement ruling that embodies the
4 settlement that enables us to go forward with this plan has
5 been issued by the Court today.

6 THE COURT: Let me note that there is some noise
7 coming from the telephone connection. I ask that the
8 participants keep their phones on mute and their fingers away
9 from the phone buttons please. Thank you. You may resume.

10 MR. EATON: Okay. We appreciate that ruling, Your
11 Honor. It enables us to go forward. In the meantime, however,
12 the Committees have been meeting diligently to continue to see
13 if they could reach a fully consensual settlement and
14 modifications that would allow them both to be satisfied. And
15 we would like to add an insert to the disclosure statement that
16 would describe certain potential consensual modifications to
17 the approved settlement that could be contained in a confirmed
18 plan without resolicitation if a settlement within the
19 parameters I'm about to describe is in fact agreed to by the
20 Committees and the debtors and approved by the Court at
21 confirmation.

22 Your Honor, among the potential modifications to the
23 approved settlement that are being discussed would be -- is the
24 thought that the -- that there would be a reduction of claim
25 and an increase in cash as I'll describe that could be fully

1 consensual. That if the claim were reduced from 194 million
2 dollars as approved to 181 and the cash distribution on
3 administrative expenses increased from 5 million to 10 million
4 for the pensions with an additional potential 6 million -- I'm
5 sorry, \$700,000 of administrative expense claim to reimburse
6 bondholders represented by the Kramer Levin firm who became
7 involved in the settlement and a reduction of the equalization
8 claim reserve from 69 million to 60 million dollars, that if a
9 settlement is reached within those parameters, it has not been,
10 but if it is agreed and subsequently approved by the Court that
11 such a settlement would --

12 THE COURT: I'm sorry to interrupt.

13 MR. EATON: Yes.

14 THE COURT: I hear noise coming from the telephone
15 connection. Is the Court call operator on the line?

16 MR. ABRAMS: We hear it as well at Wilkie Farr but it
17 is not coming from us. So someone needs to mute their phone.

18 THE COURT: Is the Court call operator on the line?
19 I hear no response. Well if the Court call operator were on
20 the line the offending party could be selectively removed. All
21 right. But if I continue to hear noise I'll simply terminate
22 the entire phone connection. I'm sorry for the interruption.
23 Please continue.

24 MR. EATON: Your Honor, We plan to submit an insert
25 that says if in fact the Committees and the debtor are able to

1 agree to a modification of the settlement within the parameters
2 that I described and the Court were to approve it that there
3 would not be a resolicitation required, that a vote for the
4 plan and the settlement agreement as approved would constitute
5 a vote in favor of the plan if it embodied a pension settlement
6 agreement within the parameters -- the modified parameters that
7 I just described if later approved by the Court. That's an
8 insert we're working on that is not contained and I can answer
9 any questions about that.

10 Your Honor, I don't believe that there are any other
11 material modifications between the first and second amended
12 plan, although I'm happy -- as I said I'm happy to answer any
13 questions and my partner, David Agay, will address the
14 solicitation aspect of the motion. If there are no questions,
15 I would ask for approval of the second amended disclosure
16 statement as described.

17 THE COURT: Well, a couple things. I did review the
18 blackline in detail and it draws a picture of really an
19 amazingly complex series of not just the corporate organization
20 but events which must take place as orchestrated in order for
21 everything to go as the parties wish it to, particularly the
22 debtors. But I have no -- no questions to ask except secondly,
23 are there any outstanding objections to the disclosure
24 statement at this point?

25 MR. EATON: I believe we've resolved all the

1 disclosure statement objections. A number of parties, when
2 they speak up, of course have the reserved the right to object
3 on confirmation issues. But I'm not aware of any outstanding
4 disclosure statement objections.

5 MR. BRODY: Your Honor, it's Josh Brody from Kramer
6 Levin.

7 THE COURT: Yes.

8 MR. BRODY: There was one other issue that I had
9 spoke with Mr. Eaton about in respect to additional information
10 on the owned containers. I've been informed by Mr. Eaton that
11 additional information was going to be made available.

12 MR. EATON: I will clarify that for the Court. The
13 -- Kramer Levin had requested that additional information be
14 disclosed with -- detailed information with respect to the
15 debtors' owned container fleet. We filed an exhibit last night
16 that listed the book value of containers by category and the --
17 committed in the disclosure statement and are committing to the
18 Court that by the end of the month we will file an additional
19 -- we will file additional information that relates to the
20 utilization of our own container fleet including whether
21 containers are on lease or currently held for sale. We have
22 provided in the disclosure statement that that will be
23 available to any party that wants it upon request. But that
24 was a specific disclosure request that was made by that law
25 firm.

1 THE COURT: All right. Does anyone else care to be
2 heard on disclosure?

3 MR. BUCHBINDER: Good afternoon, Dave Buchbinder on
4 behalf of the United States Trustee. We have resolved our
5 issues with the debtor and plan proponents with respect to the
6 disclosure statement. There are outstanding issues that we
7 will raise in connection with the confirmation hearing. I want
8 to advise the Court of that.

9 But I am a little concerned about the discussion that
10 we were just given about the insert to the disclosure statement
11 and I'm not certain what counsel is asking the Court to approve
12 or not approve with respect to that today. If he's asking us
13 can we put an insert in the disclosure statement that says we
14 may do something, that's one thing. But if he says we're going
15 to put an insert in the disclosure statement that lays out A,
16 B, C and D and as long as we do this we don't have to resolicit
17 the plan, that strikes me as an open door for an insert that
18 may say things that are within the parameters of what counsel
19 suggested but may or may not go beyond that. And there are
20 procedures under Section 1127 to modify a plan before or after
21 confirmation and I want to make certain that we're not being
22 asked to sidestep those in some way today and that all of our
23 rights are preserved. I'm just not certain exactly what we're
24 being asked to do with this insert.

25 THE COURT: Well I think of the two alternatives that

1 you described, my impression is that the debtor is seeking the
2 latter. But I suppose taking the position that it's not an
3 event which requires resolicitation or is in impermissible
4 preconfirmation modification. Not to put words in your mouth,
5 but --

6 MR. ABRAMS: Your Honor, this is Marc Abrams. May I
7 be heard?

8 THE COURT: I'm sorry. Identify yourself again,
9 please.

10 MR. ABRAMS: It's Marc Abrams at Wilkie Farr, Your
11 Honor.

12 THE COURT: Go ahead.

13 MR. ABRAMS: The purpose of the insert is to bolster
14 precisely the position that Your Honor just articulated. I
15 don't think that we are asking the Court to make a ruling today
16 that would circumvent any of the procedural safeguards or
17 protections or requirements of 1127. We simply are saying that
18 we are baking onto the disclosure statement the seeds, if you
19 will, that we believe the Committees and the debtor, that we
20 believe will obviate any need for resolicitation as long as the
21 -- any amended settlement agreement and modifications to the
22 plan that give effect to it fall within that box. So I think
23 we appreciate the U. S. Trustee's position, but I don't think
24 we're attempting to circumvent any future hearing or
25 requirements that have to be put before the Court and any

1 ruling that Your Honor would need to make at that time in
2 connection with the issue.

3 MR. BUCHBINDER: Well, Your Honor, my concern is that
4 in some way you're being asked to approve today a document that
5 you haven't seen that may or may not materially modify the
6 plan, that may or may not require resolicitation and I want to
7 make certain that neither the Court nor any party in interest
8 is being placed in that box. I don't want to have to stand
9 here at a future date and listen to an argument that this was
10 approved today something we've never seen.

11 THE COURT: Well if the concept is reduced to writing
12 as it's described, I don't think it will necessarily be
13 problematic. But I think until we see language it's difficult
14 to definitively determine whether it's right or wrong.

15 MR. BUCHBINDER: I agree, Your Honor, and that's why
16 I'm standing here to make certain that all the rights of all
17 parties are preserved.

18 THE COURT: Well, you know, let's do this. As always
19 with amendments to follow from a hearing they'll be circulated
20 to those concerned and if there are still problems with them,
21 you know, I would encourage counsel to reach out to me and I
22 can resolve matters hopefully at that point by conference
23 telephone if there are disagreements.

24 MR. BUCHBINDER: Thank you, Your Honor.

25 MR. EATON: Your Honor, I would like to make comment

1 -- two comments. First of all, of course, we will circulate
2 that to all parties before we file it. The other thing is that
3 I believe what it will -- what it will then constitute is part
4 -- is that potential modification of the settlement within that
5 box is part of the plan and is part of the disclosure statement
6 and if it falls within that box as described, subject to the
7 parties agreement and Court's approval, it won't require a
8 subsequent modification of the plan. So I think by addressing
9 it up now, if the language is correct, this is not an 1127
10 issue.

11 THE COURT: All right. Does anyone else care to be
12 heard in connection with disclosure?

13 MR. ABRAMS: Your Honor, just one last observation on
14 behalf of the SCSL Committee. Again it's Marc Abrams. I think
15 that Mr. Eaton noted at the outset that we continue to be in
16 discussions with respect to what I'll call last minute changes
17 and clarifications in the disclosure statement. I do believe
18 that there are still a few provisions which we must speak to
19 and address to our satisfaction. So clearly we're reserving
20 our rights with respect to those kinds of discussions and would
21 hope and expect that our issues will be addressed before the
22 document goes live. But I don't want to imply through our
23 silence that I believe we have actually gotten where we need to
24 get to. Other than that, I think we are good to go.

25 MR. EATON: Your Honor, I don't know what that means.

1 I -- we've taken --

2 THE COURT: Well --

3 MR. EATON: -- 18 rounds of comments from --

4 MR. ABRAMS: Your Honor, what it means is that I'm
5 not seeing all of the final changes. There are, for example,
6 in the last document I looked at characterizations of how the
7 schemes intend to vote with respect to certain matters that I
8 don't believe accurately reflect the current state of mind and
9 therefore we need to have discussions on matters such as that.

10 THE COURT: Well --

11 MR. ABRAMS: We're not objecting to approval. We're
12 simply saying that I am not sure at this moment in time that
13 certain statements in the disclosure statement are in fact
14 accurate.

15 THE COURT: Well now I really don't know what that
16 means. Today is the day for the Court to consider objections
17 to the disclosure statement. It's not unusual, in fact it's
18 more often the case than not, that there's still some tweaks to
19 be made after the hearing. But I guess the way to bring this
20 to a head is, tell me what you would like the Court to do.

21 MR. ABRAMS: Your Honor, we are not asking Your Honor
22 to not approve the disclosure statement. I'm simply pointing
23 out, as an example, that as I read the last draft of the
24 document it states that the schemes have stated that they
25 intend to vote to accept certain schemes of arrangement. And I

1 don't think that we have ever said that and frankly until those
2 schemes of arrangement are finalized it would be premature for
3 us to articulate that state of mind. So I'm simply saying that
4 we would expect that post approval today that if we point out a
5 statement attributed to the schemes that we believe does not
6 fairly or accurately reflect their current intentions, that the
7 debtor will in fact change the document to deal with that kind
8 of point or -- and if they don't it should be clear that on
9 that particular point we're not estopped from voting any way we
10 want to vote.

11 THE COURT: Well nobody's foreclosing confirmation
12 positions today. In fact I can't think of a single
13 circumstance in which -- well I guess if I thought long enough
14 I could think of one, but nothing comes to mind that would
15 preclude that in almost any circumstance unless we're talking
16 about a prepack or something.

17 MR. EATON: Your Honor, it's going to be Monday for
18 sure before we have a clean version with the insert language
19 that's been circulated that I've discussed to present and I
20 certainly commit to address any tweaks between now and then. I
21 can't imagine there is anything material left at this point.
22 But we've been very cooperative with the pensions in inserting
23 language that they themselves have requested with respect to
24 the implementation of the settlement, by way of example, and
25 the UK schemes and will continue to work with them and make any

1 additional tweaks that are necessary.

2 THE COURT: Well let me -- let me make a suggestion.
3 I'll hear from others. But I'm not -- I'm not at ease yet that
4 you're crossing the finish line at least on this stage and I
5 think what we better do is set up a follow on time for Monday
6 or Tuesday of next week just in case all the issues aren't
7 worked out and I'll hear that by conference telephone. No one
8 has to show up just so long as the papers can be gotten to me
9 because I'm going to be -- I'll be at NCVJ from Wednesday
10 through Saturday and it's --

11 MR. EATON: I'd request that we --

12 THE COURT: -- something I'd prefer not to handle
13 from there.

14 MR. EATON: I'd -- you're leaving when, Your Honor?

15 THE COURT: Wednesday morning.

16 MR. EATON: I'd request that we do this Monday. This
17 should be resolved. This should have been resolved already.

18 THE COURT: Okay. Probably safer to do something in
19 the afternoon?

20 MR. EATON: Yes, Your Honor. If it would be possible
21 to do it early to mid afternoon I'd appreciate it. I know it
22 depends on the Court's calendar. I'll make myself available.

23 THE COURT: Well I have a hearing at 1:30. So I'd
24 put this down for 2:30.

25 MR. EATON: Thank you, Your Honor.

1 THE COURT: Monday afternoon, by conference
2 telephone.

3 MR. EATON: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. SILVERMAN: Good afternoon, Your Honor. Ronald
6 Silverman from Bingham McCutchen, counsel for the SCL
7 Committee. I'm not standing before you to prosecute disclosure
8 statement objections at this moment. But I did need, I think
9 for clarity for all parties and Your Honor, just to make a
10 couple of points.

11 With respect to the modification that Mr. Eaton
12 described, I think he spoke well and described it accurately.
13 But to be explicitly clear it is possible for the debtors and
14 each Committee in their sole and absolute discretion may or may
15 not reach any further compromise with respect to the pension
16 settlement. It is possible that they may reach a consensual
17 resolution that is other than as described by Mr. Eaton.
18 However we do understand the mechanic that's being suggested
19 which we think makes sense which is if there is a consensual
20 resolution that is within the box that's described, since that
21 will be on notice to all parties, there will be no need for a
22 further solicitation and we agree with that mechanic as a
23 matter of efficiency. But we did want to emphasize that there
24 may be any number or no number of modifications and any
25 resolution is within the sole and absolute discretion of each

1 of the Committees and the debtor.

2 Lastly I did want to make clear that we did receive
3 Your Honor's opinion from earlier this afternoon and want to
4 comment on the excellent prose in drafting of the decision.

5 THE COURT: A good law clerk is helpful in that
6 respect.

7 MR. SILVERMAN: And just for the record, because
8 we're talking about a potential modification to the disclosure
9 statement and that implies that a consensual resolution is
10 possible, I want to be explicitly clear that it is also
11 possible that our rights with respect to appealing that
12 decision are reserved and there be no -- there may be no
13 consensual resolution. But I didn't want our silence to be
14 misleading. And just as Your Honor acknowledged that all
15 parties rights to object to a plan in any respect are reserved,
16 we wanted to make the same clear with respect to this issue.

17 THE COURT: All right. Thank you.

18 MR. SILVERMAN: Thank you.

19 THE COURT: Does anyone else care to be heard in
20 connection with disclosure before I go back to the debtor?

21 MR. BRODY: Your Honor, it's Josh Brody from Kramer
22 Levin. I'm not going to repeat what Mr. Silverman just said
23 other than to reserve the same rights as he has just reserved.

24 THE COURT: Very well.

25 MR. EATON: Excuse me, Your Honor. I can't help but

1 ask Mr. Abrams if he can identify now, as long as we're all
2 here, what issues and tweaks are left open because maybe we can
3 resolve them today?

4 MR. ABRAMS: Your Honor, I'm -- I can't. All I'm
5 saying is I know from my colleagues here at the firm including
6 folks who are in the room participating with me that we have
7 sent comments to the company today and have not seen them
8 incorporated in a disclosure statement. And I think, to some
9 extent, I didn't mean to escalate or increase any level of
10 tensions here. I was simply pointing out that we're not quite
11 finished. I don't anticipate that there will be a problem.

12 MR. EATON: Okay. We have sent them through to you.
13 You know what we've approved.

14 MR. ABRAMS: I don't think that's true, David. But
15 if you want to bicker about it on this call we can. I'm simply
16 saying I think we have sent comments today through the morning
17 that we have not yet seen in the document you intend to
18 utilize. I could be right. I could be wrong. I think I'm
19 right, but we can certainly resolve this off the record.

20 THE COURT: Well let me ask Mr. Eaton, has -- has
21 whatever final response, and I put final in quotes, that the
22 debtor has given been delivered?

23 MR. EATON: Yes.

24 THE COURT: Okay. So --

25 MR. EATON: Except for the one answer that I

1 mentioned on the settlement.

2 THE COURT: Okay. So if that's the case then I think
3 it would be appropriate for you to identify any remaining
4 issues you have.

5 MR. ABRAMS: Your Honor, I will -- I will try but I
6 first have to tell the Court that we have not seen what Mr.
7 Eaton believes we have seen. So it's hard for me to identify
8 issues that exist because I do not believe we have had access
9 to a document reflecting those points. I think one example is
10 the one I made earlier which is a characterization of an
11 intention with respect to voting on schemes of arrangement that
12 I don't believe to be accurate at the moment.

13 THE COURT: What others are there?

14 MR. ABRAMS: Your Honor, just bear with me for a
15 moment.

16 THE COURT: Will do.

17 (Pause)

18 MR. ABRAMS: Your Honor, I'm told just in terms of a
19 generic category that as of this morning there are a series of
20 agreed upon changes to the plan that will reflect parallel
21 disclosure changes in the document that have yet to be seen.
22 Though I don't think I can do better than what I've done, I
23 think a lot really hinges on confirming in fact that these
24 changes were run and that they have been reviewed by the
25 schemes or the Committee. But at this point I'm hearing they

1 have not been reviewed yet because we don't have them.

2 THE COURT: Okay. Well I do agree that it doesn't
3 serve any purpose to sit here figuring out what you have and
4 what you don't have and what's been delivered and what hasn't
5 been. So just let me ask, if anyone I haven't yet heard from
6 wishes to be heard with disclosure before I go back to the
7 debtor? All right. I hear no further response. Shall we talk
8 about solicitation?

9 MR. AGAY: Good afternoon, Your Honor, David Agay for
10 the debtors. As Your Honor knows we filed our motion for order
11 approving adequacy of disclosure statement and solicitation
12 materials. I thought it might make sense, because some things
13 came in somewhat piecemeal, to sort of go down the list of
14 items for solicitation that Your Honor would be approving
15 today. I won't detail all the various notices and ballots
16 specifically, but just speak in broad categories.

17 THE COURT: Okay.

18 MR. AGAY: Currently before the Court for approval
19 are the solicitation procedures and the scheduling of certain
20 dates in connection with confirmation, and we'll go through
21 those dates in a moment, the various ballots and notices in
22 connection with that solicitation as well as other solicitation
23 materials which I'll go through now.

24 Firstly, Your Honor, we have our second amended
25 disclosure statement and the appendices to that disclosure

1 statement. Appendix A is, of course, our second amended plan.
2 Exhibit A to that plan is the pension scheme settlement
3 agreement. Exhibit B to the plan is a corporation governance
4 term sheet for what we've called our NewCo entity. Appendix B
5 to the disclosure statements are liquidation analysis.
6 Appendix C is our plan recovery analysis. Appendix D is our
7 corporate org chart. Appendix E are the financial projections.
8 Appendix F is the form of no objection letter from the
9 directors of the non-debtor subsidiaries. Appendix G is the
10 summary of material terms of our anticipated exit facility.
11 And Appendix H is the breakdown as Mr. Eaton mentioned of SCL's
12 own container fleet which supplements the valuation analysis.

13 Also, Your Honor, we filed our form of Bermuda scheme
14 of arrangement which, as I'll mention, is going to be part of
15 the solicitation package that we're sending out to creditors
16 and for which we'll get approval from the Bermuda court.

17 Your Honor, as Mr. Eaton alluded to and as you
18 clearly mentioned, the debtors' proposed solicitation process
19 together with the plan and disclosure statement materials are
20 the product of intensive negotiation and collaboration with the
21 Creditors Committee and also discussions with the United States
22 Trustee. Most of the proposed solicitation process and forms
23 are standard fare but as you know, because we are
24 choreographing parallel processes in the U.S. and Bermuda -- in
25 the U.S., Bermuda and the UK, there are certain novel things

1 about our solicitation process which we incorporated in some
2 aspects to save costs and expense for the estate. At the same
3 time, as part of the solicitation process, we have taken into
4 account certain UK regulatory matters impacting on the pension
5 schemes. I'll touch on all of this as we go through the
6 solicitation process.

7 Your Honor, the time line that we are proposing for
8 the solicitation varies somewhat from the original time line
9 with our originally filed papers. We are proposing a voting
10 record date of August 15th. That actually has not changed. We
11 are proposing commencement of solicitation by October 3rd or
12 within seven days thereafter. I'll get -- I'll come back to
13 the cushion that we're building into ourselves -- for ourselves
14 in a second. We're proposing a plan objection deadline of
15 November 10th, a voting deadline of November 10th or within 10
16 days thereafter, a confirmation hearing, of course subject to
17 the Court's availability, November 17th or at such date
18 thereafter that is at least seven days after the voting
19 deadline but before November 30th.

20 We are building limited cushion into the time line,
21 Your Honor, to accommodate the Bermuda scheme process. That
22 process cannot commence until the Court approves the
23 solicitation materials. As the Court knows, we are soliciting
24 acceptances of the plan and the Bermuda scheme as part of the
25 same package. Therefore we cannot commence solicitation until

1 the Bermuda court has approved the scheme related documents for
2 distribution. While we have comfort around the dates I have
3 outlined, we cannot know if those dates work with certainty as
4 the Bermuda process has not commenced and therefore we are
5 building in a cushion into the solicitation commencement date,
6 the voting deadline and the confirmation hearing dates.

7 We have also revised our solicitation procedures. We
8 filed amended solicitation procedures with the Court. Firstly,
9 Your Honor, we have -- the revised solicitation order that we
10 filed with the Court includes these -- the specific new dates
11 that I mentioned, the October 3rd, November 10th and the
12 November 17th date. We will be providing the Court with a
13 further blackline and revised order which incorporates the
14 cushion that I just mentioned.

15 We've included, at the request of the United States
16 Trustee, a provision in the order which indicates that notice
17 of the effective date will include notice of the administrative
18 claim bar date, the cure bar date and the bar date for
19 rejection damages.

20 Next, Your Honor, I'll briefly go through the revised
21 solicitation procedures. Really the revisions fall into three
22 categories. First, we made conforming changes to the notices
23 and the ballots to reflect the fact that, contrary to what we
24 originally proposed, we are no longer soliciting acceptances of
25 the UK scheme for SCSL together with the plan and Bermuda

1 scheme. That UK scheme process actually we anticipate will
2 come before the voting deadline. We hope it will conclude
3 before the voting deadline. So we are undertaking that process
4 separate from our plan solicitation process.

5 Second, Your Honor, we made certain cleanup changes
6 to the documents. I'm happy to walk through those, but we
7 don't view them as material.

8 Thirdly, Your Honor, we incorporated a provision
9 indicating that we have -- the debtors have the right to extend
10 the voting deadline or allow a creditor to modify its ballot at
11 any time after the voting deadline and prior to the
12 confirmation hearing. This last point was included as a
13 response to a concern raised by the SCSL Committee and the
14 pension scheme trustees. Among other reasons to ensure that
15 any changes to the plan would not affect eligibility for the UK
16 pension protection fund, otherwise known as the PPF. The
17 pension schemes may need to revisit their vote in connection
18 with amendments or modifications to the plan. Indeed, the
19 debtors have agreed with the pension scheme trustees to allow
20 them to modify their ballots at any time after the voting
21 deadline but before the confirmation hearing to the extent a
22 plan amendment or modification materially or adversely affects
23 the rights of the pension schemes.

24 Lastly, Your Honor, the notices and ballots that we
25 filed with the Court with the revised order reflect, along with

1 the order, the fix dates that I mentioned, the October 3rd,
2 November 10th and the November 17th date. With the order that
3 we will be submitted on Monday, we will be submitting amended
4 ballots that include that cushion as well and once we get final
5 dates on the heels of the Bermuda scheme, we will put
6 definitive dates into the notices and file those notices and
7 the ballots with the Court.

8 Again, Your Honor, much of the solicitation process
9 is standard fare, but we've had to incorporate certain novel
10 nuances to accommodate the parallel track that we're pursuing.

11 THE COURT: All right. Well how would you propose,
12 in terms of scheduling my calendar, to address the situation in
13 which the confirmation hearing would not be heard on November
14 17th?

15 MR. EATON: Your Honor, pardon me, at the first
16 hearing in Bermuda, which we expect to take place within two
17 weeks, so on or before October 3rd, we will find out if that
18 court agrees with the ballot deadline date of November 10th.
19 That's really what things run off of. The cushion that we've
20 requested in that for our solicitation materials is only 10
21 days because we're confident if it were to vary at all it would
22 only vary within a small range. So we will know that on or
23 about October 3rd. If there is a change that would require us
24 to request a date different from November 17th, we would
25 immediately call the Court and see if we could work with the

1 Court's calendar to accommodate a seven day spread between the
2 ballot deadline and the Court's calendar. I don't know what
3 the Court's vacation schedule is and that would be -- but we
4 won't know that until October 3rd, Your Honor.

5 THE COURT: Well let me -- looking at the 10 days --
6 I'm sorry, the seven days following the 17th --

7 MR. EATON: We could -- we could actually insert a
8 later date which would give us some more cushion at this point.
9 But it would have to be --

10 THE COURT: Well I could fit something in the 24th,
11 25th or 26th.

12 MR. EATON: Knowing that that's Thanksgiving week,
13 Your Honor, I would take earliest date.

14 THE COURT: Okay. Well that would be Monday, the
15 24th which presently isn't scheduled.

16 MR. EATON: Well actually, Your Honor, if we take --
17 if we move the previously -- the penciled in date to the 24th,
18 then I think that'll give us a little more leeway with the
19 court in Bermuda to set the ballot deadline.

20 THE COURT: Okay. So you're saying you still want to
21 hold that in reserve or you want to set that now?

22 MR. EATON: One second. Okay. Why don't we just set
23 it for the 24th, Your Honor?

24 THE COURT: Okay. And would you like morning or
25 afternoon?

1 MR. EATON: Morning.

2 THE COURT: Okay. 10:00 on the 24th.

3 MR. EATON: Thank you very much, Your Honor.

4 MR. AGAY: With that, Your Honor, we anticipate
5 submitting to the Court for approval on Monday the final form
6 of the order, the ballots, the notices along with the
7 disclosure statement and plan.

8 THE COURT: All right. Does anyone else care to be
9 heard in connection with the solicitation proposal?

10 MR. AGAY: Just a moment, Your Honor. If I could
11 confer with Mr. Eaton for a minute?

12 THE COURT: Go ahead.

13 (Pause)

14 MR. AGAY: Your Honor, if I may just briefly confer
15 with Mr. Silverman and Mr. Buchbinder?

16 MR. BUCHBINDER: Your Honor, Dave Buchbinder for the
17 record. I have a very simple and minor observation. The
18 voting deadline and the plan objection deadline should be moved
19 one day to November 11 because November 10 is a legal holiday.
20 I think that still fits otherwise within all of the parameters
21 counsel has suggested.

22 MR. EATON: We will make that change, Your Honor.

23 THE COURT: All right.

24 MR. AGAY: Excuse me, Your Honor, may I just have one
25 minute with Mr. Silverman to check something?

1 THE COURT: Certainly.

2 MR. AGAY: Thank you.

3 (Pause)

4 MR. AGAY: Your Honor, you may recall that in
5 connection with the solicitation procedures, if a claim is
6 disputed there are certain guidelines on how that claim is
7 treated for voting purposes and the SCL Committee has requested
8 very specifically that if the debtors object to a claim and
9 it's deemed as zero for voting purposes, and then we later
10 withdraw that objection so that the claim could be voted at
11 that point in time, our withdrawal would be subject to notice
12 and potentially a hearing so that they can weigh in and they
13 can have a say and we're fine with that. So we would change
14 the solicitation procedures accordingly. That would, of
15 course, apply to both Committees.

16 THE COURT: So I take it that to the extent there
17 would be any dispute about that it would be resolved at the
18 time of confirmation?

19 MR. AGAY: Yeah.

20 THE COURT: All right.

21 MR. AGAY: That's it.

22 THE COURT: Anyone else care to be heard in
23 connection with solicitation? I hear no further response.
24 Okay. When can I expect to see things Monday?

25 MR. MORTON: Your Honor, I think -- I think we can --

1 with a 230 hearing if we could commit to get these on file by
2 noon, both the revised order and the revised disclosure
3 statement documents and hand delivered to Chambers, would that
4 give you sufficient time?

5 THE COURT: I don't know. But --

6 MR. MORTON: Certainly, Your Honor, as you know, the
7 work will expand to fit the time allotted. So whatever time
8 Your Honor believes you need them, we'll make it work.

9 THE COURT: Noon's fine and I'll do what you do and
10 that is the best I can.

11 MR. MORTON: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. MORTON: And obviously to the extent that we're
14 able to come to agreement, then the holding -- we'll get them
15 on file as soon as possible and the holding time would just be
16 to the extent Your Honor had any final questions.

17 THE COURT: Okay. That's fine. Thank you. Anything
18 further for today?

19 MR. EATON: We have nothing.

20 THE COURT: All right. Thank you. That concludes
21 this hearing. Court will stand adjourned. Have a good weekend
22 everyone.

23 ATTORNEYS: Thank you, Your Honor. You too.

24 (Court adjourned.)

25

C E R T I F I C A T I O N

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

/s/ Beatrice A. Creamer
BEATRICE A. CREAMER
J&J COURT TRANSCRIBERS, INC.

September 29, 2008
Date