

COPY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
:
THE FINOVA GROUP, INC. and : Case Nos. 01-00697-PJW
FINOVA CAPITAL CORPORATION, :
:
:
Reorganized Debtors : Jointly Administrated
-----:

Place: U.S. Bankruptcy Court
District of Delaware
824 Market Street
Wilmington, DE 19801

Date: December 4, 2006

BEFORE:

THE HONORABLE WALSH, J.S.C.

TRANSCRIPT ORDERED BY:

HEIDI L. PARKER, ESQ.

APPEARANCES:

MARTIN BIENENSTOCK, ESQ.,
JUDY LIU, ESQ.,
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1 THE COURT: Please be seated.

2 You may proceed.

3 MR. BIENENSTOCK: Good afternoon, Your Honor. Martin
4 Bienenstock of Weil, Gotshall and Manges for Finova. With me
5 at counsel table is my partner, Judy Liu, Drew Cardonick, Mark
6 Collins and Captain Peshkin (phonetic) from Warren Don
7 (phonetic).

8 We're here pursuant to Finova's Motion dated November
9 10th, 2006.

10 The relief requested with an Order approved 9 on
11 Finova's part of the facts and settlement that was approved on
12 the facts inside an hour ago.

13 An Order of cleaving the continuing windup and
14 solution of Finova and its entities and a Challenge Order
15 directing that note holders and the indented trustees, to the
16 extent they have claims against Finova, bring them here first,
17 for this Court to decide what order will determine them or send
18 them to other Courts.

19 Ah, I believe no party has -- ah, is objecting to the
20 approval of the facts and settlement from the Finova point of
21 view, and, for that purpose, if it's okay with the Court, I'd
22 like to turn things over to Mr. Cardonick to handle, and then
23 we can get back to the other two prongs of relief for which
24 there are, ah, there were a few objections, most of which are
25 resolved.

1 THE COURT: Okay.

2 MR. BIENENSTOCK: Thank you, Your Honor.

3 MR. CARDONICK: Thank you, Your Honor. Drew Cardonick
4 on behalf of Group Finova Capital Corporation.

5 This Court is well versed in the facts in the
6 litigation and, also, ah, as Mr. Perry told you, earlier today,
7 the Court is also aware of the general circumstances of the
8 facts in the settlement. Just in -- in light of that I will
9 summerize, ah, all of this and try to be as brief as possible.

10 As the Court is well aware, Finova Capital is the
11 target of litigation and arising from its senior secured
12 facility to the facts and group in certain of its subsidiaries.

13 Beginning in, approximately, in 1995, the facts in
14 group in certain of Finova and its subsidiaries, actually the
15 facts in group issued unsecured subordinated notes.

16 As of October 17th, 2003, which was the date that its
17 facts and group subsidiaries filed for bankruptcy in this
18 Court, there were \$121 million in notes outstanding. At that
19 time, the indebtedness to Finova and its senior secured and
20 credit facility was \$110 million.

21 Ah, the day before and in a few months following the
22 facts and petition date, certain facts and note holders filed
23 various actions against Finova Capital Corporation, among
24 others.

25 There were five such actions brought. They were, ah,

1 all class actions filed in four different States, and they were
2 ultimately consolidated as one multi-district litigation.

3 In March of 2004, the Creditors Committee and the
4 Banks and Bankruptcy cases brought an adversary proceeding
5 against Finova, pursuant to a cash collateral -- cash
6 collateral order.

7 In that adversary proceeding, which was 22 counts,
8 the Committee sought, among other things, the equitable
9 subordination of all of Finova's claims against all of the
10 facts and entities.

11 Finally, on June 8th of 2006, approximately 1500
12 facts and note holders filed a complaint in the South Carolina
13 District Court against not only Finova, but against Finova
14 Group and also Burcher Hathaway (phonetic), Burcadia
15 (phonetic), one of its officers and numerous Burcadia actions.

16 The allegations in that complaint were substantially
17 similar to those brought in the class actions against Finova.

18 On September 22nd, 2005, the South Carolina District
19 Court denied Finova Capital's motions for transfer and for
20 partial summary judgment in the adversary proceedings, which
21 was before it pursuant to the MDL.

22 By Order dated March 20th, 2006, the South Carolina
23 District Court granted the Committee's motion for sum --
24 partial summary judgment on its equitable subordination claims.
25 In the process equitably subordinating all of Finova's claims

1 against -- against all other facts and entities to all other
2 claims against those facts and entities.

3 Finova, subsequently, appealed that ruling and
4 throughout 2006 that appeal was briefed. That appeal was fully
5 briefed as of the end of the Summer, and it has been sitting
6 with the Fourth Circuit since then.

7 In May 2006, shortly after the summary judgment was
8 entered the South Carolina District Court scheduled a trial,
9 some class actions to commence on August 28th, 2006.

10 In connection with -- with the setting of the trial
11 date the parties commenced a mediation in the Summer of 2006.
12 In early August, I believe. And, as a result of that, that
13 mediation led to further settlement discussions. And, as a
14 result of those settlement discussions a settlement was reached
15 in the litigation.

16 That settlement was put on the record -- was put on
17 the record, as part of a settlement conference before Judge
18 Anderson, on September 11th and September 12th, 2006. Um, they
19 -- so that the -- the outline terms of the settlement were in
20 the transcript of that date.

21 The settlement agreement was finalized. It was, um,
22 it was -- it's quite a complex and long agreement and the
23 agreement was finally finalized on October 20 -- 31st, 2006.

24 Although this Court -- it had not occurred by the
25 time the motion, ah, the -- Finova filed its motion in the

1 instant case. On November 15th, 2006, Judge Anderson, from the
2 South Carolina District Court, entered an order for the
3 preliminarily approving the settlement in the action in which
4 it was brought, certifying a class and naming Gil Bagnell
5 (phonetic) and others as class counsel.

6 Judge Anderson also indicated that, ah, that he would
7 be willing to reconsider his ruling granting summary judgment.

8 Judge Anderson scheduled a January 18th, 2007
9 hearing, ah, for final approval of the settlement pursuant to
10 Judge Anderson's Order.

11 Notice of the settlement has already gone out. It
12 is, or its already been or is about to be published, ah, over
13 the course of the next month or so.

14 Pursuant to Judge Anderson's order the opt out date
15 is October 14th, two thousand, excuse me, December 14th, 2006,
16 if a sufficient number or certain particular creditors opt out
17 Finova will have the right to walk away from the deal. It has
18 that right, through December 21st, 2006.

19 By Order today, this Court sentences -- sets December
20 12th, 2006 as the note seller's claims date. And the Court
21 said January 5th, 2007 as the subsequent litigation bar date.

22 I want to just take a minute, Your Honor, to, ah, you
23 heard some of this from Mr. Perry earlier today, but I want to
24 try to go briefly through the settlement terms, um, before I
25 tell you why it is we believe Finova should be given authority

1 to enter into the settlement.

2 The -- as I indicated, Judge Anderson has settled --
3 has certified a class consisting of all facts and note holders
4 and other unsecured creditors. Ah, he has done that on a
5 preliminary basis, actually, he's -- he's certified the class
6 and he's approved the settlement on a preliminary basis.

7 On the effected date, the master settlement
8 agreement, which requires a number of things to happened; one
9 of which happened at two o'clock and the facts and approval,
10 one of which is, hopefully gonna happen in this hearing, ah,
11 which would be the Finova's approval. But, once that effective
12 date occurs, Finova will receive, approximately, \$81 million in
13 cash out of a funded escrow account that the debtors are
14 holding. There's \$97 million in that account.

15 Finova will also -- also receive certain net
16 recoveries from avoidance actions. It is actually not
17 anticipated that, ah, Finova will get any money out of that
18 right because we believe that the threshold is so high the
19 threshold is at a number where there won't be any money above
20 that, but in the event that there's a some windfall avoidance
21 action above the aggregate 2.2 7 million dollars Finova
22 wouldn't share in the proceeds of that.

23 On the settlement effective dates and facts the
24 note holders and the other creditors and Faxton (phonetic)
25 would receive all of the other proceeds. Finova would,

1 essentially, release any weight its liens and all the
2 other assets of Faxton.

3 Ah, one of the critical components is global
4 releases. There are a lot of parties involved here, Your
5 Honor. There are a lot of parties directly involved.
6 There are a lot of parties, ah, involved in ancillary
7 fashion. We believe that the releases that are being
8 granted offer Finova and all of the affiliated persons and
9 entities in connection with this transaction sufficient
10 relief so that Finova will not see this litigation anymore
11 whether directly or indirectly.

12 Finova also has -- as being -- has been -- has,
13 as part of the settlement agreement, and is asking this
14 Court to approve its granting of releases. Those releases
15 are not entirely mutual, ah, but they attempt to mirror as
16 much as, ah, reasonably practical the releases being given
17 to Finova.

18 Finally, as I indicated, the settlement
19 effective date could not occur until a number of
20 conditions precedent are met. There are others beyond
21 this hearing today; one of which is the approval of a
22 disclosure statement. One of which is the approval of a
23 plan.

24 The plan, in facts, in bankruptcy cases will
25 incorporate the terms of the settlement and the releases

1 granted therein. There are some things that needed to be
2 done in the plan.

3 We expect a disclosure hearing to take place in
4 January. And, I believe that the Faxton attorneys are
5 going to be asking you for another date in February
6 because beyond the bis -- is in February is too soon from
7 the disclosure hearing in January to, ah, to get it all
8 done in February. But that -- the -- the goal is to try
9 and get it done, at some point, ah, towards the end of
10 February.

11 As this Court is well aware, um, the standard
12 for proving settlements in the Third Circuit, ah, has been
13 enunciated and it was enunciated, ah, primarily in a case
14 called Martin.

15 There are four, ah, criteria to consider. One
16 of them does not apply here. Um, the one that does not
17 apply is the likely difficulties in collection because
18 it's been over the -- it's actually being sued here. So,
19 the criteria are the probability of success in the
20 litigation. Complexity of the litigation involves and the
21 best interest of creditors.

22 I think, speaking to the first, Your Honor, ah,
23 the probability of success in the litigation, I think the
24 maxim that continues to run through my head, and has for
25 the last three years, is that litigation always has risk.

1 I think that, ah, this case is a prototypical example of
2 why litigation always has a risk.

3 Finova does not believe it did anything wrong.
4 Ah, has never believed it did anything wrong, and, yet, it
5 finds itself having to appeal a summary judgment ruling in
6 the Fourth Circuit.

7 I think that there's probably not much more that
8 I can say, um, that -- ah, to convince the Court that
9 litigation has risk and that's why, ah, it's a good idea
10 to settle this case than what has already happened.

11 Ah, this litigation, as the Court is well aware
12 is highly complex. It has been costly. It's cost the
13 Faxton Estate, ah, almost \$30 million. It's cost Finova
14 and its creditors in excess of \$10 million in professional
15 and -- and other expert fees, and it will continue to be
16 expensive if it goes forward.

17 And, finally, it is our belief that this settle
18 of the litigation, at this time, is in Finova's best
19 interest.

20 At a minimum, the litigation, should Finova win
21 at the Fourth Circuit, ah, Your -- Your Honor has pointed
22 out on multiple occasions to me and the other lawyers in
23 this room that this is a freer four-year process, if the
24 Fourth Circuit reverse the case. That will delay the
25 distribution of approximately 50 percent. I believe the

1 number is actually closer to 48 percent of the remaining
2 assets of Finova Capital Corporation. Finova's bond
3 holders will not see that money. Settling the case will
4 enable them to receive \$81 million today.

5 That \$81 million number is very close to the,
6 ah, to the amount that's -- that the loan is carried on
7 Finova's books for some time.

8 On the other hand, the -- Finova could lose the
9 litigation. We don't believe it will happen, but it could
10 happen. Ah, as I said before, litigation has risk, and if
11 Finova loses the litigation, the bond holders will see
12 millions and millions of dollars less.

13 Finally, the South Carolina District Court f
14 Settlement does not approve is likely to set a trial date
15 in the class actions. Although Finova believes it will
16 prevail in full, and, in fact, Finova would be judgment
17 proof in the class actions.

18 There are good reasons that the class actions
19 would have to be defended.

20 Just to pick one as an example. Ah, it is
21 possible that a ruling in the class action would -- or
22 actually in the indi -- it would be in the individual that
23 would proceed because it wouldn't be a class in that
24 circumstance. But, that ruling in the individual actions
25 could serve as collateral or estoppel we can spin all that

1 in the adversary proceeding if the adversary proceeding
2 ever goes to trial.

3 So, Finova, even though it couldn't pay any of
4 the judgments in the individual actions would actually be
5 required to defend against them, ah, to avoid the
6 collateral estoppel effective then.

7 Finally, Your Honor, I just wanna note that
8 there have been no objections, from anyone, and there are
9 three objecting parties here today with respect to other
10 portions of this motion, there have been no objections
11 from anyone. No note holder, no bond holders, no
12 stockholders, nobody, as to the Faxton portion of the
13 settlement.

14 And, I'm sure Mr. Bienenstock will do this at
15 the conclusion of his presentation, but we would ask you
16 to approve, from Finova's perspective, approve the facts
17 and settlement, ah, and let this continue to move forward
18 towards it's ultimate conclusion.

19 Does Your Honor have any questions?

20 THE COURT: No, no questions and I'll authorize
21 the settlement.

22 MR. CARDONICK: Thank you, Your Honor.

23 MR. BIENENSTOCK: If it's okay, Your Honor, I'll
24 proceed with the other prong of the motion.

25 THE COURT: Okay.

1 MR. BIENENSTOCK: Which were our request for an
2 order approving the continuing wind-down and dissolutions
3 of debtors a channeling order, as I explained in --
4 inherent in those two were an order we opened the Finova
5 Group case, ah, for purposes of issuing those -- those
6 orders.

7 We've, essentially, had, ah, three objections.

8 Ah, one is from Olsen Industries, whose attorney
9 is here, who would like to be heard briefly, we think
10 that's resolved. Essentially, that's a creditor who
11 wanted assurances from us that, um, we have reserved
12 totally for that trade creditor claim which we have.

13 Ah, there is an objection from the, ah, the
14 Equity Committee that has been recognized, for a limited
15 purposes by this Court. Ah, to the best of our
16 understanding, ah, they want assurances that their, ah,
17 pending issues concerning payment to them, if the Estate
18 is solvent, ah, are not affected, by what we're asking for
19 today, and -- and that is our understanding. We're not
20 trying to take their rights away, although, when the time
21 is right, we will explain and it will be apparent that --
22 why we believe we're -- we're dealing with an insolvent
23 situation.

24 And the U.S. Trustee has objected on a few
25 grounds.

1 One is, the U.S. Trustee did not believe we gave
2 notice to current debt and equity holders. We hope that
3 our reply, which we filed last week, ah, has satisfied the
4 U.S. Trustee that we did not use the five or six-year old
5 lists in this case, we, rather went to great lengths to be
6 able to notify, ah, current debt holders and equity
7 holders, and we've done it in many different ways,
8 including, ah, the use of website, filing an AK with the
9 motion, and, ah, and direct mail.

10 Ah, but the U.S. Trustee's other grounds are,
11 essentially, as we understand it, the U.S. Trustee is
12 contending that to obtain the ends we -- we want to
13 achieve there are alternatives and that the length of time
14 since the, ah, conformation of the plan and other items,
15 ah, tip in favor of the Court not granting us the relief
16 that -- that we've requested.

17 Ah, Your Honor, in brief, I know the Court reads
18 the -- the papers, so I'll just say in brief.

19 Ah, this is an Estate, where, under the plan,
20 the debtor with the help of -- of the new investment that
21 came in from Burcadia, paid off approximately 70 percent
22 of the creditors' claims, and issued approximately 3.25
23 billion of new notes, ah, secured by most of the prior
24 Estate's assets. And under the terms of the indenture for
25 those notes the operating expenses of this company get

1 paid first and there's permission to use all of, what
2 would have been, cash collateral while still in Chapter
3 11, ah, to pay current operating expenses and the like,
4 and then the note holders get the rest. And if there had
5 been solvency the -- the shareholders would get the rest.

6 As has turned out in this case, ah, after
7 conformation, but before the actual investment was made by
8 Lucadia, ah, 911 occurred and the -- several of the
9 portfolios devalued instantaneously, because they involved
10 a lot in the airline industry and related industries.

11 Nevertheless, ah, we've proceeded, the last five
12 years, in what, to our knowledge, has been a -- an effort
13 that has more than satisfied our creditors that -- in now,
14 we've maximized the Estate. We've repaid, approximately
15 one and a half billion of the three and a quarter billion
16 of new notes issued by the reorganized debtor. In
17 addition to that, that one and a half billion, we've paid
18 over nine hundred million dollars of interest to the note
19 holders. And that we -- we --we purchased approximately
20 225 million of those notes at a discount. And, that
21 leaves us, today, with approximately a billion and a half
22 of new notes outstanding against, which we have, assets on
23 our book of approximately 83 million dollars, ah, plus the
24 assets from this Faxton settlement. But, the combination
25 of those assets would have to more than triple or

1 quadruple for us to be able to satisfy, in full, the
2 remaining note, principal due our -- our note holders.

3 Um, we've come to a level of assets down from
4 multiple billions to, ah, a few hundred million, at this
5 point, where it begins to make sense to, if possible, sell
6 the -- the balance of the assets in bulk or in a few
7 batches of, just because on economy is to scaled, et
8 cetera, it doesn't make sense to go one by one at this
9 level.

10 Ah, we believe both from comments we've received
11 and from the absence of creditor objections that the note
12 holders believe we're doing the right thing. And to do it
13 most efficiently in the shortest time and at the least
14 expense, we're bringing on this motion.

15 Ah, absent this motion we go to the types of
16 things that the U.S. Trustee is raising. You know, why
17 not do it, ah, under State procedures. Ah, why not
18 convert, file a new case, even if you do it in Chapter 7.
19 Ah, there are other alternatives, and -- and we agree with
20 that, but the problem is, there's no alternative that's
21 better for our creditors, ah, they're all a lot worse.

22 Ah, if -- if we do follow the procedures that
23 the U.S. Trustee has suggested, ah, we and the other
24 professionals will make a lot more money, because there
25 will be a lot more State filings and FCC filings and the

1 like. But, they'll all have the effect of delaying the
2 Administration of the remaining assets, increasing expense
3 and leaving less for -- for creditors and if there is any
4 chance that shareholders would get anything, and we don't
5 think there is, and it certainly will devastate whatever
6 chance they had.

7 Um, Your Honor, if -- just last week Vice
8 Chancellor Lamb of the Delaware Chancery Court in
9 Newcastle entered a very interesting decision, ah,
10 entitled Asopas (phonetic) Creek Value -v- Hope, et al,
11 and I -- I mention it because it -- it both, we believe,
12 supports our position and it's so recent it couldn't have
13 been in our papers.

14 Ah, in that case, an entity without debt, but it
15 had a very valuable 50 or 51 percent interest in a cable
16 company, was un -- unable to get shareholder approval of
17 the sale of its interest. Ah, and so it -- and the reason
18 it was unable was that it didn't have audited financials,
19 not because of any fraud reasons, but it was just a
20 problem of getting the accounting firm to sign off so it
21 couldn't have a shareholders' meeting under federal law.
22 So, to solve the problem it tried -- it developed a plan
23 to go into Chapter 11 to have the sale.

24 And, as part of the arrangement the preferred
25 shareholders would come out better than if a straight

1 waterfall distribution had occurred.

2 Ah, the common shareholders went to court to
3 stop it and were successful in what turned out to be an
4 agreed order.

5 And Chancellor Lamb wrote a decision explaining
6 that when you're solvent and you have no debt, and
7 therefore, the shareholders do have a cognizable financial
8 interest, it would be wrong to get around their approval
9 rights, ah, while using bankruptcy, especially when you
10 have no debt.

11 Ah, here we have the opposite, which is why we
12 believe his decision, ah, supports what we're doing.

13 We have, ah, a situation where our assets would
14 have to quadruple or more in value to pay our debt.
15 Where, unlike that case, our shareholders do have the
16 right to do things by consent, ah, and where we have a
17 Chapter 11 plan, where this Court would retain exclusive
18 jurisdiction, ah, to enter orders, in aid of its
19 consummation as well as to enforce any difference or
20 disputes among the parties. We believe what we're doing
21 is completely consistent with, ah, with State law and with
22 federal bankruptcy law, and we're -- we're not
23 circumventing anything and -- and don't want to.

24 Ah, I could -- I could go on at length, Your
25 Honor, but I -- I think, ah, the essence of what we're

1 asking for was clear in our papers and our reply, and I
2 would just as soon listen to see if there's any remaining
3 objection before I take up more of the Court's time,
4 unless the Court has questions.

5 THE COURT: Okay.

6 Let me hear from the objectors.

7 MR. BIENENSTOCK: And as I said, Olsen Industries
8 just wanted to put its reservation rights on the record.

9 MS. IORII: Good afternoon, Your Honor. May it
10 please the Court, Regina Iorii from Ashby and Geddes
11 representing Olsen Industries, Inc.

12 I know Your Honor's very familiar with, ah, our
13 situation.

14 Um, we had filed an objection, and I'm,
15 basically, just making sure that in the event Your Honor
16 rules in Finova's favor on the liability issue, there is a
17 damages trial scheduled and that there was going to be
18 funds available to pay whatever judgment would be entered.

19 Um, the Finova has represented in its reply --
20 on its reply, that it has reserved 12 million, which is,
21 ah, the amount of Olsen's claim. Um, it has reserved that
22 12 million and that 12 million will stay reserved or until
23 the entry of a final non-appealable order.

24 And, with that representation and that being on
25 the record, Your Honor, Olsen's objection, um, is

1 satisfied.

2 Thank you.

3 THE COURT: Okay.

4 MR. SILVERSCHOTZ: Good afternoon, Your Honor.
5 Mark Silverschotz, Anderson, Kill and Olick, on behalf of
6 the Equity Committee.

7 Debtor's counsel, correctly observed that the
8 limited objection of the Equity Committee was -- the
9 emphasis is on limited not on objection.

10 Um, and I'm going to yield the podium in just a
11 moment, um, to the U.S. Trustee.

12 Um, the -- the only issue that we continue to
13 have concern about is the fact that, in our view, is that
14 this was a, and I think that even Mr. Landis, last time,
15 acknowledged that the dispute that the Equity has in
16 connection with the old clarification motion is, really,
17 the legal issue. We do have, the -- the according to the
18 Debtor's theory of the case, the factual issue of
19 solvency.

20 Um, as a bankruptcy lawyer, I'm not gonna
21 stipulate that the Debtor is or is not insolvent, because
22 it's simply not the area of expert -- my expertise. And
23 Your Honor and I had a colloquy on that the last time we
24 were here.

25 Ah, I've gone out, into the market, and spoken

1 with three different financial professionals, and, in
2 fact, Mr. Mandarino came by today just to confirm what I
3 was saying. And they think that, all three of them were
4 fairly consistent, and they thought that they could go in
5 and do an analysis. At least make sure there isn't
6 anything robust that has to be done for, you know, not a
7 tremendous amount of money. And -- and I'm gonna consult
8 with the, ah, the Debtor, ah, after the hearing, and,
9 maybe, we could get that on a -- on a agreed basis. If
10 not, I'll come back and make an application.

11 It's been quite quiet for the last, ah, several
12 months, ah, really in the last year. Ah, as the Debtor
13 noted in reply papers, as we noted in our papers, we did
14 try to take an interlocutory of the PLO, the legal
15 decision that Your Honor made.

16 Ah, Judge Farnon (phonetic), ah, wrote a very
17 polite, but firm, opinion explaining that he disagreed
18 that it should be taken up right now.

19 What surprised us, Your Honor, frankly, was that
20 the Debtor so physiphoesly (phonetic) opposed us in trying
21 to get that resolved, because if we were wrong as a legal
22 proposition, well, then, all that would be left would be
23 this, hopefully, fairly narrow factual issue that could
24 get resolved fairly quickly.

25 But, if we were right on the legal issue, and we

1 still think we were right, and are right, then there would
2 be no need to engage in this analysis of solvency for now
3 and forever or solvency at all.

4 So, in fact, we would probably be up at the
5 Third Circuit now, if not out of the Third Circuit by now
6 if we had just gone and -- and, ah, had the legal issues
7 resolved.

8 So, our limited objection was simply to remind
9 the Debtor that -- that we're still here. We know that
10 Your Honor knows we're still here.

11 Ah, we would like to have this resolved and on a
12 level playing field in a way that's fair to all parties.
13 And when the issue is resolved it'll be resolved and we
14 will all be done.

15 Ah, on the merits of the motion that has been
16 made, ah, we leave the issue to the U.S. Trustee, and we
17 have no formal legal retractions, because, frankly, we
18 think they were beyond the scope of our very limited
19 appointment in this case.

20 Thank you.

21 THE COURT: Okay.

22 MR. BUCHBINDER: Good afternoon, Your Honor.

23 Dave Buchbinder on behalf of the U.S. Trustee.

24 With respect to the aspects of the motion that
25 seek to approve line down procedures, and with respect to

1 the aspects of the motion that seek to authorize, ah, a
2 liquidation of the debtor's remaining assets, the United
3 States Trustee has vigorously opposed this motion as
4 inappropriate.

5 It's inappropriate for any number of reasons as
6 set forth in the brief that we filed. Section 350 is
7 governed by equitable considerations.

8 And, all of the factors in the case that have
9 denied motions to reopen involve the passage of time.
10 Questions regarding notice. Whether or not the underlying
11 relief sought can be granted in the first place. And,
12 whether or not there are alternatives.

13 In all of the cases that the Debtor cited in the
14 reply brief for the proposition that was appropriate none
15 of those cases involved a Chapter 11 debtor with thousands
16 of creditors and thousands of shareholders. They all
17 involved situations that were one on one situations.

18 There were two cases that the debtor cited in
19 their reply, the Capson (phonetic) case and the Kelsey
20 (phonetic) case that involved debtors reopening Chapter 7's
21 to determine whether or not their student loans were
22 discharged. One on one issues.

23 There was one case where a debtor, individual
24 debtor sought to reopen his individual Chapter 11 case,
25 together with (inaudible) as to whether or not the IRS was

1 violating his discharge. Again, a one on one issue. And,
2 all of these issues were ancillary to the main case.

3 There was one Chapter 11 case called Coffee
4 Cover, which involved a Chapter 11 plan that had been
5 confirmed but that had never been substantially
6 consummated because there was some underlying fraud
7 involved.

8 And the final case with the -- the Windburn
9 case, cited by the Debtors, was a Chapter 7 case that the
10 Trustee reopened to administer an unscheduled asset.

11 Those are all traditional grounds for reopening
12 a case. Ministerial relief, ancillary matters, one on one
13 issues.

14 Here, the debtor is seeking to reopen a case in
15 which there was a final decree obtained two years ago, and
16 which, in the motion for a final decree, the debtor made
17 numerous judicial admissions that, to the effect that not
18 only was the plan substantially consummated, it was fully
19 performed.

20 We have a new debtor that issued new debt and
21 new stocks.

22 We have thousands of new creditors, and
23 thousands of new shareholders.

24 Yes, the debtor has filed a certificate of
25 service for today's motion. But we don't know if that

1 certificate of service, involves existing creditors or
2 former creditors or both. No new list of creditors has
3 been filed. No new list of equity security holders has
4 been filed. And, the certificate of service, itself,
5 notably, was not filed until after the deadline had passed
6 for objections.

7 I'm not saying service wasn't made. I'm not
8 saying service was made. We just don't have any way of
9 knowing, from the record, whether the people who are
10 actually the parties and interest are the ones who
11 received notice. We just know that a whole lot of people
12 got notice, but that's not how the bankruptcy system
13 works.

14 When this debtor --

15 THE COURT: Ah, I'm sorry.

16 What do you think should be done to do -- to
17 effect proper notice?

18 MR. BUCHBINDER: I think, that, at a minimum, the
19 debtor would have -- assuming that the Court were going to
20 grant the motion, the debtor would have to file an updated
21 list of creditors and an updated list of equity security
22 holders. That's what would establish who should receive
23 service.

24 THE COURT: Okay.

25 Well, I -- I --

1 MR. BUCHBINDER: Not -- not persons who may have
2 been creditors or shareholders years ago, and -- who may
3 no longer be creditors or shareholders now.

4 THE COURT: Yeah, I just assumed, maybe
5 incorrectly, that what they meant by the notice they gave
6 is it was based upon whatever information they have as to
7 who their creditors are today and who the shareholders are
8 today.

9 MR. BUCHBINDER: But the way to confirm that in
10 the bankruptcy system is to file a list of creditors and a
11 list of shareholders.

12 I mean, it's a collateral issue, Your Honor.
13 I'm not saying they didn't. I'm not saying they did. I'm
14 just saying, we don't know. That's the issue, we don't
15 know. There's uncertainty here.

16 The underlying relief may not be granted because
17 this plan was not only substantially consummated it was
18 fully performed.

19 The reply brief suggests that the Court reserve
20 jurisdiction over various issues; and I've reviewed the
21 plan and there were three provisions they cited.

22 They cited Paragraph 12. Paragraphs 12.1(G),
23 (H) and (I) from their motion, from their plan.

24 Paragraph 12.1(G) states that jurisdiction is
25 retained to issue orders in aid of execution of the plan

1 as may be necessary or appropriate to carry out its intent
2 and purpose or to implement the plan or, in furtherance of
3 the discharge, to the extent authorized by Section 1142.

4 While this plan was effectively completed, when
5 it was substantially consummated, and the cash was paid,
6 and the bonds were issued, and the stock was issued, that
7 was the plan.

8 The plan wasn't anything else.

9 So, we don't need to issue an order to execute
10 the plan or to consummate the plan.

11 The debtor is not claiming that someone's
12 threatening to violate the discharge order that was
13 entered. So, Section R42 doesn't apply here.

14 Paragraph 12.1(H) of the plan, reserve
15 jurisdiction, quote, to consider any modifications of the
16 plan. To cure any defect or omission, or reconcile any
17 inconsistency in any order of the Bankruptcy Court,
18 including, without limitation the conformation order as
19 may be necessary to carry out its purpose and intent of
20 the plan.

21 The plan's been substantially consummated and
22 fully performed. It can't be modified or amended at this
23 point in time. So, this provision doesn't apply.

24 Paragraph 12.1(L) retain jurisdiction, quote, to
25 hear and determine disputes arising in connection with the

1 interpretation, implementation or enforcement of the plan.

2 The debtor is not asking for any of that relief.
3 The debtor's not claiming that an issue has arising as to
4 how he interpreted a paragraph of the plan. The debtor,
5 simply, wants to effectively reopen the case, to liquidate
6 the assets of the Estate and to impose an injunction
7 against parties who may not have been creditors or
8 shareholders at the beginning of the case.

9 That's not an interpretation of the plan.

10 Now, in that reply the debtors suggest that this
11 really was a liquidating plan.

12 I've reviewed the plan. I've reviewed the
13 disclosure statement, it was a restructuring plan. The
14 plan was, to issue the new notes, to pay the 70 percent
15 cash and to issue the new stock and then the plan was
16 done.

17 The fact that after the plan was confirmed 911
18 took place, an unforeseeable circumstance, that may have
19 changed their financial projections, all stuck with
20 changes in circumstance. In fact, that happened after the
21 plan went effective, because the notice of effective date
22 was filed, I believe, on August 21st of 2001, about three
23 weeks before September 11th. This plan was already fully
24 consummated. So they can't change it that way.

25 There are some alternatives. If the debtor

1 wants to reopen the case, it's reopening the case because
2 it's either in breach or is going to be in breach of the
3 plan, in which case, that's a material default in a
4 confirmed plan and that would be grounds to convert the
5 case to a Chapter 7 and appoint a Chapter 7 trustee.

6 That may be an option.

7 It's not necessarily a viable option. And there
8 are many reasons, that I'm sure everyone, in the room,
9 could think of why this case should not be a Chapter 7,
10 but it is one of the options.

11 Another option is that this reorganized debtor
12 with a final decree can go to the State Court and engage
13 in whatever dissolution procedures are available under
14 State Court.

15 Counsel tells us that we need to save the money.
16 That we don't have money for the creditors.

17 Now, I have a September 30th 10(Q) for this
18 debtor said it had \$221 million in the bank; so a lack of
19 cash to provide creditor with notice and disclosure does
20 not appear to be an issue. There's plenty of money in
21 this Estate. It may not be enough to pay everyone in
22 full, but there's plenty enough -- plenty enough to
23 provide everyone with the right due process.

24 A fourth alternative for these debtors is to
25 file a new Chapter 11 case. The prior case was confirmed.

1 It was substantially consummated. It was fully performed.
2 The debtor obtained a final decree. These events took
3 place over the last five and a half years. The final
4 decree was entered approximately two years ago.

5 The debtor has engaged in innumerable
6 transactions since August 21st of 2001, because its stocks
7 and bonds are publicly traded, the parties who hold those
8 today are most likely not the same parties who held them
9 on August 21st of 2001 or an earlier date, and they all are
10 entitled to their rights under the Bankruptcy Code.

11 If there were new file -- a new filing, for
12 example. And this would be the debtor's choice if the
13 motion is denied.

14 The creditors and the shareholders would enjoy a
15 number of rights that they do not enjoy if the motion is
16 granted.

17 If the motion is granted, for example, what
18 about financial transactions engaged in by insiders within
19 the past year? Is it equitable under the facts and
20 circumstances of this case to ignore them?

21 If there were new firing, the debtor would have
22 to file statements and schedules and all of its financial
23 transactions, in the past year, and all of its current
24 creditors, and all of its current assets would have to be
25 exposed in full view of the creditor body.

1 The motion proposes wind down procedures, but
2 the motion's devoid of what they are.

3 Why?

4 Let's see, Burcadia (phonetic) owns 50 percent
5 of the stock, according to the planning disclosure
6 statement, or owns 50 percent of the stock of the
7 reorganized debtor, at a minimum.

8 Burcadia funded the loan that resulted in the
9 plan. And, Burcadia's affiliate, Lucadia, manages the
10 reorganized debtor. They're all insiders.

11 If the motion's granted, though, the debtor's
12 given a cart blanch black hole to liquidate the remaining
13 assets of this Estate without any oversight, supervision
14 or control.

15 The debtor claims, in its reply, that this was
16 really a liquidating plan. It wasn't a liquidating plan,
17 it was a restructuring plan.

18 Some of the terms of the Burcadia loan prevented
19 the debtor from engaging in business with new customers,
20 but the disclosure statement was careful to say that they
21 could engage in business with existing customers. They
22 could renew or increase lending limits to existing
23 customers.

24 And, if it were a liquidating plan authorizing
25 the debtor to liquidate all its assets, back in August of

1 2001, then, why, was there a discharge provision in the
2 plan? Because liquidating corporate debtors are not
3 entitled to discharges under Section 1141(C).

4 If the case is reopened what do we do with
5 committees?

6 Do we reappoint them?

7 Do we form new committees?

8 And we could keep going on and on down the list
9 of why it would be better to file a new case because of
10 the passage of time and the innumerable transactions that
11 have taken place since as opposed to reopening the old
12 case.

13 Given the involvement of the insiders in
14 control, this is more like a motion like father knows
15 best. We -- we don't think anyone's going to get any
16 money, so just give us cart blanche to liquidate the rest
17 of the Estate without oversight supervision or control and
18 we'll go on our merry way.

19 That's not what the system is all about.

20 A new filing would obviate all of those problems
21 while, at the same time, providing the debtor with the
22 protections it desires, protecting the funds that are
23 subject to dispute with the, ah, former Equity Group; and,
24 by providing the debtor an automatic stay that would be
25 the effective -- that would be the practical effective, of

1 the channeling order they seek.

2 The channeling order they seek is inappropriate
3 because they're asking for an injunction against,
4 literally, thousands of people, and, as I understand
5 Bankruptcy Rule Procedure 7001, they can't get an
6 injunction against people unless they serve them with an
7 adversary proceeding.

8 So, they're effectively asking for an
9 injunction, as I said, against thousands of people
10 without having given them service.

11 So, ultimately, there are many facts and
12 circumstances here which gravitate against granting a
13 motion to reopen.

14 The substantial consummation issue.

15 The availability of number of alternative forms
16 of relief.

17 The question of adequacy of notice.

18 Again, I'm not saying it wasn't given, I'm just
19 saying, we don't know that it got to the right people.
20 And that the underlying relief is inappropriate.

21 If the Court has any questions, I'll be happy to
22 answer them, otherwise, I wanna leave the Court with a
23 quote from this Court's own case of innovative clinical
24 solutions, where the Court denied a motion brought by a
25 disgruntled bond holder about some of the terms of a plan.

1 And, although an adversary proceeding was brought right
2 after confirmation, no effort was made to stay
3 consummation and the plan was substantially consummated.

4 The debt -- the Court turned down the motion
5 claiming that, in essence, old ICSL, that was the debtor,
6 no longer exists, and the new ICSL has been operational
7 for a number of years and has effected innumerable
8 transactions as reorganized entities.

9 Every asset that old ICSL controlled, came into
10 the control of new ICSL long ago, except for assets that
11 were used to satisfy debts pursuant to the terms of the
12 plan.

13 That's precisely the same situation we have
14 here, Your Honor, and we should have precisely the same
15 result.

16 In that case, although the Court was ruling on a
17 -- on a motion to dismiss, the Court noted that if it were
18 a motion under 350(B) it would be inappropriate because it
19 would be an improper attempt to modify a substantially,
20 consummated, confirmed plan.

21 Thank you, Your Honor.

22 THE COURT: Let me start off with a question.

23 Um, for a company to go out of business they
24 don't have to go into the Bankruptcy Court. Why not just
25 wind down, satisfy whatever claims there are to the extent

1 assets are available, and then close the doors?

2 MR. BIENENSTOCK: Your Honor that's essentially
3 what the disclosure statement and plan that Your Honor
4 confirmed, envisioned.

5 Ah, the reasons we're here, instead of just
6 doing that are -- are several.

7 First, as you get to the point where you're
8 going to, ah, finish up and close the doors. It's harder
9 to attract buyers because they're concerned when they're
10 -- what -- how their transactions may be revisited, ah, if
11 they know you're going out of business.

12 Ah, second, there -- there are State law
13 requirements that we've explained in our motion and in our
14 reply, about shareholder approval, filings that are
15 necessary, ah, that simply will take more time. And we
16 note that we -- we did serve existing creditors, existing
17 shareholders, en mass, and they're not objecting, ah,
18 because anything we have to do along those lines will
19 delay and -- and leave less of an estate for distribution
20 to them.

21 Ah, that's really what this is about. We're
22 trying to maximize proceeds to the stake holders. Ah,
23 nothing more, nothing less.

24 Ah, I would direct the Court's attention to the
25 disclosure statement where it did say that the intent of

1 the plan is, and -- and I'll quote, it was on Page 29, ah,
2 what we were supposed to do was each reorganized debtor
3 may operate its business and may use, acquire and dispose
4 of property, and compromise or settle any claims or
5 interest without supervision or approval by the Bankruptcy
6 Court and free of any restrictions of the Bankruptcy Code
7 or Bankruptcy Rules. And then, that was a plan itself,
8 Your Honor.

9 Then, that was the disclosure statement it
10 provides that the intent, post -- the post confirmation
11 business plan, and this is on Page 36 of the disclosure
12 statement, is to maximize the value of their portfolio
13 through the orderly liquidation of the portfolio over
14 time.

15 Ah, this was the plan from the onset. What all
16 the creditors and shareholders were told we were doing.
17 It -- as Your Honor well knows this was confirmed and
18 there hasn't been an objection to our business plan, ever.

19 Now the -- the U.S. trustee raises, ah, what
20 I'll say were are -- are technical gotcha points. One
21 being, well, how could we have gotten a discharge if we
22 had a liquidating plan.

23 The U.S. Trustee says, it's a restructuring
24 plan.

25 And the answer is very simple, and it's the same

1 that happened in, for instance, Enron a few years ago.

2 Is the Estate being liquidated and wound down?

3 Absolutely.

4 But, does it take several years where you have
5 to operate the business?

6 Absolutely.

7 The prohibition on discharge for liquidating
8 plans was something that Congress put into the Bankruptcy
9 Code to prevent the, ah, to prevent commerce in selling
10 shell, empty corporations for -- for bad tax purposes.

11 This is the furthest thing from this case.

12 This was a matter of needing to operate a
13 company for several years to wind down the assets, knowing
14 that, ultimately, you would get to an outright
15 liquidation, and that's what happened here. And you can
16 only operate that way if you do have a discharge,
17 otherwise you'd be sued every day by the debt you didn't
18 discharge.

19 Ah, so that type of gotcha is not the answer
20 here.

21 In terms of, ah, what this Court retained
22 jurisdiction for it was to carry out the intent and
23 purpose of the plan.

24 Your Honor, the intent and purpose as set forth
25 in both the plan and the disclosure statement was to wind

1 down the assets. And that's why we're back to the Court
2 that -- that confirmed and approved this whole regiment in
3 the first place.

4 The U.S. Trustee says, shouldn't creditors be
5 able to look at the assets?

6 Your Honor, the plan restricts us to the old
7 business. We weren't allowed to do new business.

8 So, the assets are the assets that the creditors
9 and their committees and their professionals picked over,
10 reviewed, audited, at length, during the Chapter 11 case.

11 These are the same assets. This is what we've
12 been winding down. There's nothing new to look at.

13 The -- the money that came in to pay them all,
14 70 percent to start with, was from the investors,
15 Berkshire, Hathaway and Lucadia, Your Honor. And these
16 are the so-called insiders who the creditors chose.

17 There -- there were lots of investors who wanted
18 to sponsor different types of plans.

19 The creditors chose these investors.

20 The Court, then, approved them, and they've been
21 operating according to the operating agreements, the
22 management agreements that the creditors negotiated and
23 that the Court also approved. So, I don't know what
24 insider transaction the -- the U.S. Trustee is talking
25 about.

1 The only transactions here were pursuant to the
2 arrangements that the creditors negotiated and this Court
3 approved.

4 Ah, I just wanna make sure I don't miss any
5 points that the, ah, U.S. Trustee has made. Ah, ah, I'll
6 -- I'll say, while I'm checking my notes, the innovative
7 solutions case, ah, of this Court that the U.S. Trustee
8 cites. There's a case about revoking a confirmation
9 order. It wasn't an order in aid of the intents of the
10 plan, as this is.

11 We've -- ah, there's a complaint about reopening
12 cases many years later.

13 The Texaco case was closed soon after it was
14 confirmed in 1988. Ah, we have reopened that case
15 multiple times, starting in 1995. Ah, for whatever needed
16 to be done to carry out the original intent of the plan.
17 Those were not one on one cases as the U.S. Trustee has
18 said.

19 It may well be that the reported decision which
20 the U.S. Trustee found related to one on one situations.
21 But there are several reported decisions in Texaco, ah,
22 which is clearly no one on one case, ah, each time the
23 case being reopened, ah, for whatever purpose was
24 necessary to enforce the dischargers to collect assets or
25 otherwise.

1 Ah, the point --

2 THE COURT: Let me -- let me ask another question.

3

4 MR. BIENENSTOCK: Yes.

5 THE COURT: Um, I think you just read from the
6 plan or disclosure statement --

7 MR. BIENENSTOCK: Both.

8 THE COURT: -- something to the effect that the,
9 ah, debtor would wind down and liquidate without further
10 Court supervision.

11 MR. BIENENSTOCK: Right.

12 THE COURT: Isn't that, effectively, what it
13 said?

14 MR. BIENENSTOCK: Yes, Your Honor.

15 THE COURT: But -- well, why are you back here
16 then?

17 MR. BIENENSTOCK: Because --

18 THE COURT: You don't need me right?

19 MR. BIENENSTOCK: Ah, yes and no, Your Honor.

20 Ah, I think, Your Honor, during a Chapter 11
21 case Your Honor is frequently asked for orders that will
22 enable the Estate to get more money, because people
23 dealing with the Estate want the blessing of a Bankruptcy
24 Court order.

25 Ah, we have the issues of -- of that. We also

1 have the issues of, what we call in our motion and reply,
2 the substantially all clause for dissolving a corporation,
3 ah, under Delaware law.

4 And Delaware law specifically provides, Your
5 Honor, that Bankruptcy Court approval is a substitute.
6 It's a -- it's an approved substitute by the State of
7 Delaware. So this is not a matter of circumventing what
8 the Delaware Legislature has said, it's implementing what
9 the Delaware Legislature has said.

10 Ah --

11 THE COURT: Okay.

12 But let me just comment.

13 But that reason, to me, ah, is certainly a basis
14 for your request.

15 Ah, I think it's -- it's certainly every
16 representation that's been made in this Court for the
17 last, ah, I guess, with -- between Paxton and this case,
18 for at least the last year, ah, has been that the -- the
19 debtor's hopelessly insolvent. The shareholders are
20 clearly out of the money. Ah, so, I think, a good
21 argument is -- is made that why waste money on a, um,
22 solicitation of votes of shareholders which is not even
23 necessary.

24 MR. BIENENSTOCK: Right.

25 And, as Vice Chancellor Lamb said in his

1 decision of November 29, they don't have a cognizable
2 financial interest when the -- when the company's
3 insolvent.

4 Now, we've heard from the Equity Committee, they
5 believe they have a legal argument. That they have,
6 essentially, a debt claim to the five percent. And we're
7 not doing anything here to prejudice that, if -- if
8 anything.

9 I mean, if they're -- well, if they're right and
10 they do have a claim, we'll be better off to pay it, if --
11 if we proceed, as we're asking to proceed here.

12 The -- none of the thousands of people the U.S.
13 Trustee referred to on the debt side have objected.

14 Ah, there are many injunctions issued in aid of
15 prior orders, ah, that are not brought about by the firing
16 of, ah, complaints.

17 Ah, in fact, the last thing, and, I think, the
18 Court would want us to do is serve complaints on thousands
19 of transitory debt holders. Because, after all, this is
20 debt trades and a shares trades, and serve each of them
21 with a complaint that they have to answer and summons.
22 And the expense of the summons and complaint and service
23 on -- on each, ah, on each creditor, ah, would be a
24 complete waste.

25 THE COURT: Are the shares still trading?

1 MR. BIENENSTOCK: Well, there are -- the -- the
2 insiders own approximately half of them, Your Honor, but
3 the other 50 percent, I -- I believe, trade on some basis.

4 MR. SILVERSCHOTZ: Your Honor, ah, Mark
5 Silverschotz.

6 If one can accept, ah, the Yahoo Finance
7 website, approximately 20 to 50 thousand shares, ah, have
8 been trading, ah, every day or so in the range of five
9 cents to ten cents per share, I think, the last, in the
10 last year. I may be off slightly. (Inaudible.)

11 It -- there is something of a market.

12 THE COURT: I -- I don't understand the market
13 then,

14 (Laughter)

15 THE COURT: As for buying them for wall paper.

16 MR. BIENENSTOCK: I'm -- I'm with the Court on
17 that. I don't understand it either, but I -- I'm -- I'm
18 advised by my colleague that, ah, the lists of, ah, the
19 list we use for service were created as of November 8, so
20 we try to be as current as possible.

21 Our motion, I think, was filed November 10.

22 As to the existing creditors and shareholders
23 who were served, as I've explained, the -- the order is
24 really necessary under Delaware law because we're selling
25 -- we want to sell substantially all the assets and to

1 dissolve, ah, the Finova Group. And, under Delaware law
2 we -- we need to follow, either its procedures or obtain a
3 Bankruptcy Court order for it to be appropriate.

4 Ah, we, as I said at the onset, that this all
5 goes back to the fact that -- that we chose the method
6 that has destroyed us and least expensive and will create
7 the least professional work.

8 Ah, there's -- we have nothing whatsoever to
9 hide. I think the -- the -- the creditors have been
10 delighted with the way we've maximized the, ah, the value
11 of the portfolio in difficult times.

12 Ah, our record speaks for itself.

13 THE COURT: I'm sorry. Does the Committee still
14 have a role in this case?

15 MR. BIENENSTOCK: I -- I don't think the
16 creditor's committee does, no.

17 THE COURT: It's been dissolved?

18 MR., BIENENSTOCK: Yes, under the plan.

19 And we did put into our proposed -- we -- if the
20 Court is disposed to grant the relief requested, we have
21 put into the proposed order something the U.S. Trustee
22 requested, which is a provision making express that the,
23 ah, debtor, Finova Group, would pay the fees required
24 under, ah, 28 US C, 1930.

25 Ah -- and nothing, I want to emphasize, nothing

1 we're doing here, in any way, ah, eliminates any causes of
2 action that anyone has, if any insider has done anything
3 wrong or there's a voidable transaction, or anything like
4 that.

5 Ah, we're not asking for any type of discharge
6 relief.

7 On the channeling order, that's, again, solely
8 for the benefit of the creditors themselves, as we've
9 admitted to the world that we think it's highly unlikely
10 that we'll be able to pay in full the new notes.

11 And this was a risk acknowledged in the
12 disclosure statement. Everyone knew it was a, ah, it was
13 unpredictable whether the full balance of the debt would
14 be paid off or not, especially with interest that we've
15 paid.

16 Ah, we're -- we're not asking for any type of
17 transaction, ah, with insiders to be blessed one way or
18 the other here. We're not asking for a discharge or
19 exculpation. We're just asking for permission to do what
20 this Court was told we were doing in the disclosure
21 statement and the plan.

22 That the creditors agreed to, that the
23 shareholders agreed to. And, we wanna do it to maximize
24 the -- the remaining return.

25 And -- and so for that matter, I mean, the U.S.

1 Trustee's objections talking about what do we know about
2 the transactions going on and other things.

3 Well, in any corporation, Your Honor, how do
4 people in -- outside the bankruptcy setting know? I mean,
5 we're a public filing company. Ah, I guess they have
6 their ways to find out. But, certainly, ah, knowing that
7 we have an Equity Committee, at least, for some purposes,
8 ah, this is all being done pursuant to Court Orders.

9 Ah, the notion, just raising the specter as the
10 U.S. Trustee did as to, well, who knows what's been going
11 on, we don't think is sufficient basis to prevent the
12 creditors from getting the better return they'll get if
13 the Court, ah, grants the relief we've asked for.

14 THE COURT: Did you have a, ah -- I wanna look at
15 the, ah, proposed order, because, quite frankly, ah, in
16 the motion you talked only about, ah, getting the Faxton
17 matter approved and put off to a later date the five
18 percent solvency issue and other remaining claims.

19 Now, so I assume they're not addressed in the --
20 in the order?

21 MR. BIENENSTOCK: That's right, Your Honor.

22 We -- we've only addressed, in the proposed
23 order, if I might hand it up?

24 THE COURT: Okay.

25 MR. BIENENSTOCK: Of what we asked for in the

1 motion.

2 THE COURT: Okay.

3 Well, I'm going to grant the motion. Ah, as I
4 said before, I really think, ah, under the existing plan,
5 ah, I'm -- I'm not sure that you need the specific items
6 in the order that you have, but, ah, I certainly don't see
7 any harm to, ah, giving this authorization. Ah, because
8 if it's already been given, pursuant to the plan
9 conformation, then no harm is -- is, ah, imposed.

10 I think there's a legitimate purpose for the
11 debtor to wind down and conclude matters in the fashion
12 indicated, including without shareholder vote, ah, given
13 the notice that's been given, not only to the creditors
14 but to the shareholders. And, um, it -- it strikes me
15 that this is a way -- a -- a procedure for winding up that
16 should maximize recoveries for the, ah, billion and a half
17 of remaining, ah, note -- debt.

18 Um, with respect to the -- the possible wrongs
19 doing -- wrong doings that, ah, the U.S. Trustee alluded
20 to, my answer would be to conduct a 2004 examination, if
21 you think one is appropriate. And, if you find wrong --
22 wrongdoing, it will be addressed.

23 Okay.

24 I'll sign the order.

25 MR. BIENENSTOCK: Thank you, Your Honor.

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THE COURT: Okay.
Is there anything else?
Okay.
Stand in recess.

A			
ability 50:12	administer	7:12,22 8:4	46:12,16,17
able 15:6 17:1	25:10	8:10,17 9:3	47:5,6,8,9
39:5 46:10	Administrated	9:6,15,16	47:13,14,15
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