COPY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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JUDY LIU, ESQ.,
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I N D E X

THE COURT: Please be seated.

You may proceed.

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

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

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

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

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

THE COURT: Okay.

MR. BIENENSTOCK: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to enter into the settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Does Your Honor have any questions?

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

MR. CARDONICK: Thank you, Your Honor.

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

waterfall distribution had occurred.

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

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

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

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

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

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

THE COURT: Okay.

Let me hear from the objectors.

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

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

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

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

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

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

satisfied.

Thank you.

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

THE COURT: Okay.

MR. BUCHBINDER: Good afternoon, Your Honor. Dave Buchbinder on behalf of the U.S. Trustee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When this debtor --

THE COURT: Ah, I'm sorry.

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

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

THE COURT: Okay.

Well, I -- I --

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

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

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

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

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

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

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

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

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

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

The plan wasn't anything else.

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

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

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

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

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

interpretation, implementation or enforcement of the plan.

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

That's not an interpretation of the plan.

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

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

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

There are some alternatives. If the debtor

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

That may be an option.

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

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

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

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

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

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

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

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

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

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

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

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

Why?

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

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

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

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

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

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

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

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

Do we reappoint them?

Do we form new committees?

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

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

That's not what the system is all about.

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

the channeling order they seek.

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

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

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

The substantial consummation issue.

The availability of number of alternative forms of relief.

The question of adequacy of notice.

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

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

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

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

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

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

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

Thank you, Your Honor.

THE COURT: Let me start off with a question.

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

assets are available, and then close the doors?

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

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

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

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

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

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

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

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

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

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

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

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

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

Is the Estate being liquidated and wound down?

Absolutely.

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

Absolutely.

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

This is the furthest thing from this case.

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

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

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

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

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

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

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

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

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

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

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

The creditors chose these investors.

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

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

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

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

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

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

Ah, the point --

THE COURT: Let me -- le me ask another question.

MR. BIENENSTOCK: Yes.

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

MR. BIENENSTOCK: Both.

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

MR. BIENENSTOCK: Right.

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

MR. BIENENSTOCK: Yes, Your Honor.

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

MR. BIENENSTOCK: Because --

THE COURT: You don't need me right?

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

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

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

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

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

Ah --

THE COURT: Okay.

But let me just comment.

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

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

MR. BIENENSTOCK: Right.

And, as Vice Chancellor Lamb said in his

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

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

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

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

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

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

THE COURT: Are the shares still trading?

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

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

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

It -- there is something of a market.

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

(Laughter)

THE COURT: As for buying them for wall paper.

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

Our motion, I think, was filed November 10.

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

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

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

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

Ah, our record speaks for itself.

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

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

THE COURT: It's been dissolved?

MR., BIENENSTOCK: Yes, under the plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

MR. BIENENSTOCK: Of what we asked for in the

motion.

THE COURT: Okay.

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

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

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

Okay.

I'll sign the order.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: Okay.

Is there anything else?

Okay.

Stand in recess.

C E R T I F I C A T E

I, DIANE AMORIN, the assigned transcriber, do hereby certify that the foregoing transcript of the proceedings before the United States District Court, Bankruptcy Court, District of Delaware, on December 4, 2006, CD Tape is prepared in full compliance with the current Transcription Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings to the best of my knowledge and ability.

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