

Hearing Date: December 19, 2005 at 2:30 p.m.
Objection Deadline: December 13, 2005 at 10:00 a.m.
(extended for the Committee)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: DELTA AIR LINES, INC., et al., : Case No. 05-17923 (PCB)
: :
: Debtors. : (Jointly Administered)
-----X

**OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO THE MOTION OF
SECTION 1114 COMMITTEE TO ENFORCE SECTION 1114**

The Official Committee of Unsecured Creditors (the “Committee”) of Delta Air Lines, Inc. and its affiliated debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “Debtors” or “Delta”), by and through its counsel, hereby files its Objection (the “Objection”) to the Motion of Section 1114 Committee to Enforce Section 1114 (the “Motion”) and respectfully states as follows:

I. PRELIMINARY STATEMENT

The Motion brought by the Delta Air Lines Section 1114 Committee representing Delta's non-pilot retirees (the "1114 Committee") raises a number of serious allegations against the Debtors. The Committee has not yet completed its analysis of the allegations set forth in the Motion because: i) the Committee received no advance notice of the Motion; ii) the Motion was only filed a week ago; iii) the Motion contains extremely serious allegations of breaches of fiduciary duties that the Committee is carefully investigating; iv) the allegations involve complex areas of law and fact; and v) the Committee has not yet received all of the pertinent documents and factual information necessary to undertake a thorough analysis. Accordingly, in order to provide the Committee and its advisors (as well as other parties) with sufficient time to evaluate the facts at issue and the relief requested in the Motion, the Committee requested that the 1114 Committee adjourn the Motion and asked that the Debtors cease making severance payments from the Disability and Survivorship Trust (the "Trust", as amended and restated on July 1, 2001) that the Motion seeks to halt in order to secure such adjournment from the 1114 Committee. However, while the Debtors made a proposal to the 1114 Committee to prevent the dissipation of the funds in the Trust until this Court renders a decision on the Motion, the Debtors have not agreed to cease making severance payments from the Trust and the 1114 Committee has not agreed to an adjournment.

The Committee believes that an adjournment of the Motion, with appropriate safeguards to prevent the dissipation of the funds in the Trust until this Court renders a decision on the issues raised in the Motion, is necessary and requests that this Court adjourn the hearing on the Motion for at least a month to permit the parties sufficient time to fully investigate and analyze the issues raised in the Motion.

II. BACKGROUND

1. On September 14, 2005 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 28, 2005, the Office of the United States Trustee for the Southern District of New York appointed the Committee pursuant to Section 1102 of the Bankruptcy Code.¹

3. On November 10, 2005, the Court appointed the 1114 Committee under Section 1114(d) of the Bankruptcy Code to serve as the authorized representative for Delta’s retired non-pilot employees.

4. Delta created the Delta Family Care Disability and Survivorship Plan (the “Plan”) to provide certain benefits to Delta’s non-pilot employees and retirees.² The Plan is qualified under Section 501(c)(9) of the Internal Revenue Code and is an employee welfare benefit plan as defined in the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. § 1001 et seq. The Plan expressly provides for life insurance benefits, survivorship

¹ The Committee is comprised of the following members: 1) The Boeing Company; 2) Pension Benefit Guaranty Corporation; 3) Pratt & Whitney; 4) Fidelity Advisor Series II: Fidelity Advisors High Income Advantage Fund; 5) Mackay Shields, L.L.C.; 6) The Coca-Cola Company; 7) The Bank of New York, as Indenture Trustee; 8) Air Line Pilots Association, International; 9) U.S. Bank National Association and U.S. Trust National Association; 10) Kenton County Airport Board (ex-officio); and 11) Hartsfield-Jackson Atlanta International Airport (ex-officio).

² The Plan is attached as Exhibit E to the Declaration of Dean M. Gloster in Support of Committee’s Motion to Enforce Debtor’s Section 1114 Obligations.

benefits and disability benefits and other similar benefits. Plan, § 4.01, pg. 19, § 5.01, pg. 26, § 6.01, pg. 29.

5. Pursuant to the terms of the Plan, Delta may amend, modify or terminate the Plan at will. “[Delta] reserves to itself the unilateral right at any time to amend, modify or terminate the Plan in whole or in part, or suspend contributions to the Plan . . . Benefits for all Participants³, including retired and disabled participants and survivors and their Eligible Family Members, may be unilaterally changed, modified, reduced, increased or terminated by [Delta] at any time in its sole discretion.” Plan, § 13.10, pg. 48-49.

6. The Benefit Funds Investment Committee of the Delta Air Lines, Inc. Board of Directors (the “BFIC”) manages the investment of the Plan’s assets, and the Administrative Committee of Delta (the “Administrative Committee”), as appointed by Delta’s Board of Directors, operates and administers the Plan. Plan, § 12.01, pg. 42; § 12.07, pg. 44.

7. The Plan provides that Delta will establish and maintain a “Benefit Fund” from which all Plan benefits will be paid, and that the Benefit Fund may comprise any combination of trust funds and insurance contracts. Plan, § 11.03, pg. 40. The Plan does not specifically reference the Trust as the source of such payment.

8. The Plan further provides that no part of the Benefit Fund may be used for any purpose other than benefiting the Plan’s Participants or their beneficiaries and paying the Plan’s reasonable administrative expenses. “At no time shall any part of the corpus or income of the Benefit Fund be used or diverted to any purpose other than for the exclusive benefit of the

³ The term “Participant” is defined in the Plan as either: 1) an Employee (as defined in the Plan); 2) a disabled Employee; 3) an Employee who has retired under the Retirement Plan (as defined in the Plan); or 4) an eligible family member who is eligible to receive survivor benefits.

Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan.” Plan, § 11.04, pg. 40.

9. As set forth in the trust agreement (the “Trust Agreement”), Delta funds the Plan by contributing funds to the Trust.⁴ In addition, Delta has the right to pay amounts due under the Plan out of its general funds.

10. The Trust Agreement provides that Delta maintains the Plan “to provide life insurance, medical, and or other benefits as may be provided through an organization defined in Section 501(c)(9) of the [Internal Revenue] Code (as defined below) for certain of their employees and may adopt this trust (the “Trust”) and this Agreement to serve as the funding vehicle for the Plan.” Trust Agreement, Recital A, pg. 1. The Trust Agreement further provides that “[u]nder the Plan, funds will from time to time be contributed to the Trustee, which funds, as and when received by the Trustee [Citibank], will constitute a trust fund held for the benefit of the members under the Plan or its beneficiaries.” Trust Agreement, Recital E, pg. 2.

11. The Trust Agreement also provides that only the BFIC and Administrative Committee may direct disbursements from the Trust and holds the BFIC and Administrative Committee “responsible for insuring that any payment directed under [the Trust] conforms to the provisions of the Plan, this Agreement, and the provisions of ERISA.” Trust Agreement, § 3.1, pg. 13. The terms of the Trust expressly prohibit any reversion of the Trust assets to Delta. Trust Agreement, § 2.6, pg. 8.

12. In November of 2001, Delta amended the Trust Agreement, effective as of September 11, 2001, by entering into the First Amendment to the Trust Agreement for the Delta

⁴ The Trust Agreement is attached as Exhibit D to the Declaration of Dean M. Gloster in Support of Committee’s Motion to Enforce Debtor’s Section 1114 Obligations.

Family-Care Disability and Survivorship Trust (the “First Trust Amendment”).⁵ The First Trust Amendment amended Recital A of the Trust Agreement to state specifically that “[t]he Company and certain of its affiliates and wholly-owned subsidiaries maintain the Delta Family-Care Disability and Survivorship Plan, the Delta Airlines, Inc. Recovery Plan Voluntary Severance Program, the Delta Air Lines Inc. Recovery Plan Published Pay Scale Employees Involuntary Reduction in Force Program, and the Delta Air Lines, Inc. Recovery Plan Supervisory/Administrative Employees and Corporate Administrative Support Employees Involuntary Severance Program [collectively, the “Named Severance Plans”] to provide life insurance, medical, and or other benefits as may be provided through an organization defined in Section 501(c)(9) of the [Internal Revenue] Code (as defined below) for certain of their employees and may adopt this trust (the “Trust”) and this Agreement to service [*sic*] as the funding vehicle for the Plan.” First Trust Amendment, pg. 1. The First Trust Amendment also added language to the Trust Agreement providing that “[t]here shall be no disbursements from the Trust on account of the benefits from the [Named Severance Plans] unless the obligation to pay benefits arose between the dates of September 11, 2001 and March 1, 2002. First Trust Amendment, pg. 1.

13. On September 12, 2005, two days before the Petition Date, Delta amended and restated the Plan (the “Certified Time Amendment”). The Certified Time Amendment amended the Plan retroactively to January 1, 2004 and added language to the Plan which permitted employees to use “Certified Time”, which the employees already accrue pursuant to Delta’s sick time policy, in the event of a short-term disability. Plan, § 4.02, pg. 20-21. The Plan had

⁵ The First Trust Amendment is attached as Exhibit B to the Declaration of Dean M. Gloster in Support of Committee’s Motion to Enforce Debtor’s Section 1114 Obligations.

previously provided and continues to provide “Short-Term” disability benefits, wherein disabled employees may, with restrictions, receive a portion of their salary while disabled. Plan, § 4.03, pg. 22. The Certified Time Amendment permits employees to use their accrued Certified Time, under which the employees receive their full salary, instead of the Short-Term Disability benefit. Plan, § 4.02(d), pg. 21. While retirees are eligible for the life insurance and survivorship benefits provided under the Plan, only active employees are eligible for disability benefits, including the Certified Time benefits, under the Plan. Plan, § 2.01, pg. 12.

III. ARGUMENT

A. The Motion Should be Adjourned for at Least One Month.

14. The Motion, filed late in the evening on December 5, 2005, makes a number of serious allegations and several complex legal arguments regarding allegedly improper payments made by the Trust. The Committee received no advance notice of the Motion and, due to the short time between the filing of the Motion and the objection deadline (the Committee’s objection is due December 13, 2005 at 10:00 a.m.), the Committee has only been able to perform a limited investigation and review of the serious allegations set forth in the Motion. As of the filing of this Objection, neither the Committee, the Debtors, nor the 1114 Committee has a complete accounting of the payments made from the Trust during the period under dispute, and the Committee does not know who received payments from the Trust, what benefits those payments were intended to provide, or under which plans or programs the obligation to pay those benefits arose, all of which are critical issues of fact.

15. Upon receiving the Motion, the Committee requested extensive information and documents from the Debtors concerning the Plan, the Trust and the disbursements questioned by the Motion. The Debtors are working to collect the information and documents requested as

rapidly as possible, but, as of the filing of this Objection, the Debtors have not provided the Committee with all of the information requested.

16. Once the Committee receives the information requested, the Committee and its advisors will need time to review and analyze that information and the law in conjunction therewith. Additionally, there is a strong possibility that a review of the information will generate new questions and additional requests for information.

17. In order to provide the Committee and its advisors with sufficient time to evaluate the facts and the law at issue in the Motion, Akin Gump has requested an adjournment of the Motion from the 1114 Committee and has asked the Debtors to cease making the payments from the Trust in order to secure such adjournment. Thus far, however, the 1114 Committee has refused the Committee's request for an adjournment and the Debtors have refused to halt the severance payments from the Trust. Instead, the Debtors have proposed that, if the 1114 Committee were to prevail on the Motion, the Debtors would return any funds disbursed from the Trust from this point forward, to the extent that the Bankruptcy Court later held that the Trust improperly disbursed such funds.⁶ Thus far, the 1114 Committee has not accepted this alternative.

18. In sum, the 1114 Committee makes serious allegations in the Motion involving tens of millions of dollars in payments made under a complex Plan and Trust that implicates difficult legal issues under ERISA, the Internal Revenue Code and the Bankruptcy Code. For all of the foregoing reasons, the Committee respectfully submits that the parties and the Court need a complete picture of the information and time to consider the information in conjunction with

⁶ The Debtors' proposal assumes that there would be no excise tax liability associated with such funds (which concerns the Committee).

the applicable law to resolve these issues, and that for these reasons the Court should enter an interim order protecting the Trust against any further diminution and adjourn the Motion for at least a month.

B. Section 1114 Does Not Apply to the Allegations in the Motion.

19. The 1114 Committee argues that Section 1114 of the Bankruptcy Code applies to the retiree benefits provided under the Plan and the Trust and that Delta may not amend the Plan or Trust absent (a) a Bankruptcy Court order or (b) an agreement with the 1114 Committee to modify the Plan or Trust. The 1114 Committee concludes that, because Section 1114 requires Delta to continue to pay the retiree benefits under the Plan without modifying them, Delta cannot make the “unauthorized payments” from the Trust for severance or Certified Time benefits without seeking to modify the Plan through the Section 1114 process.

20. The Committee believes that Section 1114 of the Bankruptcy Code is not applicable for several reasons. First, the terms of the Plan allow the Debtors to freely amend the benefits provided under the Plan. See Plan, § 13.10, pg. 48-49. A majority of courts have held that Section 1114 of the Bankruptcy Code does not apply to amendable benefits and that debtors do not have to comply with the standards set forth in Section 1114 when the benefit plan expressly reserves the right to amend or eliminate retiree benefits. In fact, the United States Court of Appeals for the Second Circuit has stated that, under Section 1114, “we must analyze the ‘plan, fund, or program maintained or established’ by [the debtor] before it filed for bankruptcy in order to determine the trustee’s obligations to [the debtor’s] retired former employees.” LTV Steel Co. v. United Mine Workers of Am. (In re Chateaugay Corp.), 945 F.2d 1205, 1207 (2d Cir. 1991). Since Chateaugay, many cases, including cases decided in the United States Bankruptcy Court for the Southern District of New York, have held that, where the debtor

had the right to freely amend a plan, fund or program providing retiree benefits immediately prior to filing for bankruptcy, the debtor in possession retains that right during the bankruptcy case, regardless of Section 1114. See, e.g., In re Penn Traffic Co., 2005 Bankr. LEXIS 785, at *21-22 (Bankr. S.D.N.Y. Mar. 11, 2005) (retiree life insurance program “by its terms, is terminable by the Debtors at their discretion and, therefore, section 1114 is inapplicable”); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 763 (Bankr. S.D.N.Y. 1992) (citing Chateaugay and ruling that section 1114 does not prevent a debtor from modifying or terminating benefits where the debtor has reserved the right to do so); In re Doskocil Cos., 130 B.R. 870 (Bankr. D. Kans. 1991) (Section 1114 does not apply to “claims for which the debtor has no contractual or other legal liability”);⁷ In re North Am. Royalties, Inc., 276 B.R. 860, 866 (Bankr. E.D. Tenn. 2002) (“Despite § 1114, the debtor can terminate the contract as allowed by its terms.”); In re Raytech Corp., 242 B.R. 222 n.3 (Bankr. D. Conn. 1999) (Section 1114 inapplicable where employer reserved right to terminate benefits); CF & I Steel Corp. v. Connors (In re CF & I Fabricators of Utah Inc.), 163 B.R. 858, 874 (Bankr. D. Utah 1994) (“[Section] 1114 does not protect retiree benefits beyond the contractual obligations”); Retired W. Union Employees Ass’n. v. New Valley Corp. (In re New Valley Corp.), 1993 U.S. Dist. LEXIS 21420 (D.N.J. Jan. 28, 1993) (following Chateaugay); In re Federated Dep’t Stores, Inc., 132 B.R. 572, 574 (Bankr. S.D. Ohio 1991) (same); United Steel Workers of Am. v. Jones & Lamson Mach.

⁷ The Court’s analysis in the Doskocil case succinctly summarized the reasoning behind the various court’s conclusions that a company can terminate or amend benefits where there is a non-bankruptcy basis to do so. Indeed, the reasons given by Doskocil can be summarized as follows: 1) such amendment is not unilateral where there is a prepetition contractual right to amend; 2) an examination of the parallels between Section 1113 and 1114 yields the same conclusion; 3) health benefits were “exempt by Congress from the strict, state-law ‘automatic vesting’ requirements and those imposed by ERISA because of the fluctuating and unpredictable variables.” Because these rights do not vest automatically, they can be altered by the employer; and 4) the written terms of the benefit plan govern. Doskocil, at 873-74.

Co. (In re Jones & Lamson Machine Co.), 102 B.R. 12, 16 (Bankr. D. Conn. 1989) (predecessor to Section 1114 “leaves intact those property rights derived from the operation of applicable bankruptcy law [H]ad Congress intended to override property rights arising under the state law, [the statute] would have been written to expressly achieve that result . . .”).⁸

21. Second, the Committee believes that Section 1114 is not applicable to this situation because paying the Certified Time benefits and the severance payments did not alter, amend, change or reduce the benefits received by the retirees under the Plan or the Trust. Instead, the payment of those benefits constitute *additional* benefits that were paid to the employees. Section 1114 is not implicated because the Debtors were not, and are not, seeking to reduce, alter, amend or change retiree benefits.⁹ Therefore, we disagree with the 1114 Committee that Delta must comply with the process set forth in Section 1114, including negotiations with the 1114 Committee, in order to make changes to pay severance benefits and Certified Time benefits. Since retiree benefits are not being modified or reduced in any way

⁸ This Court recently granted a motion to compel a debtor to follow the procedures in Section 1114 in the In re Solutia, Inc. bankruptcy case, No. 03-17949, where the retiree benefits provided by the debtor were subject to a complex class action settlement agreement and the debtor had attempted to modify the retiree benefits provided under the agreement with no notice to the Court. See Transcript of Proceedings, In re Solutia, Inc., No. 03-17949 (PCB) (Bankr. S.D.N.Y. Sept. 28, 2004), attached as Exhibit A to this Objection. In granting the retiree committee’s motion to compel Section 1114 procedures, the court expressed concern over the “drastic[]” nature of the changes, and voiced doubts as to whether the proposed changes were authorized by the terms of the settlement agreement. See Transcript of Proceedings, In re Solutia, Inc., No. 03-17949 (PCB) at 16, 27 (Bankr. S.D.N.Y. Sept. 28, 2004). The Committee submits that the facts in this case are entirely different from the special circumstance present in the Solutia case.

⁹ The term “retiree benefits”, as used in Section 1114, means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case in bankruptcy.

whatsoever, there is no legal requirement that the Debtors must comply with Section 1114 to modify employee benefits.

22. Third, the 1114 Committee argues that a new provision of Section 1114 should be applied to invalidate the Certified Time Amendment, as an adjunct to their argument that Section 1114 applies to the Plan and the Trust. In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress amended Section 1114 such that a Bankruptcy Court must, upon the motion of a party in interest, undo any modifications made by a debtor to retiree benefits within the 180 day period prior to the Petition Date unless the Bankruptcy Court finds that the balance of the equities clearly favors the modification. This provision, 1114(l), took effect on the date of enactment. The 1114 Committee contends that the Certified Time Amendment, made two days prior to the Petition Date, falls within the ambit of 1114(l) and should therefore be undone by a Court order. However, because the Committee does not believe that Section 1114 is applicable to the Certified Time Amendment which, at best, modifies employee benefits, not retiree benefits, Section 1114(l) does not apply to the Certified Time Amendment and should not be used to invalidate it.

23. Notwithstanding the fact that Section 1114 does not apply to the Plan, Trust and the allegedly improper payments, the 1114 Committee has raised serious issues that need to be reviewed by all parties in interest and this Court.

24. Finally, many current employees, not represented by the 1114 Committee, are receiving benefits under the Plan and it is clear from the terms of the Trust Agreement that the Trust can be used to pay many types of benefits, including benefits to non-retirees. Thus, current employees are impacted just as much as, if not more than, retirees by any potentially improper payments. Indeed, the Committee believes that the majority of the benefits provided under the

Plan are benefits provided to employees and not retirees. For these reasons, in the event that this Court ultimately determines that litigation is appropriate, the Committee questions whether the 1114 Committee is the proper party to bring such litigation on behalf of the Trust.

C. Payments Made by Trust do Not Appear to be Prohibited under Plan and Trust Documents, and to the Extent that They Were Not Authorized, the Documents May be Retroactively Amendable to Authorize the Payments.

25. As set forth above, the Committee only learned of the allegations set forth in the Motion about a week ago, does not have a complete accounting of the payments made from the Trust during the period under dispute, does not know who received payments from the Trust, what benefits those payments intended to provide, does not know under which plans or programs the obligations to pay those benefits arose and has not yet received all of the documents—all of which are critical to understanding the allegations set forth in the Motion.

26. In the event that this Court determines that it will rule on the Motion rather than adjourn the hearing for a month, the Committee wanted to provide the Court with its *preliminary* view that the payments made by the Trust do not appear to be prohibited under the Plan or the Trust Agreement and that, to the extent they were not authorized, the documents may be retroactively amendable to cure any problems with the payments.

i. Certified Time

27. The 1114 Committee asserts that, through the Certified Time Amendment, Delta improperly attempted to retroactively justify \$22.6 million in disbursements from the Trust for Certified Time benefits in 2004-2005. The 1114 Committee argues that the BFIC and Administrative Committee violated their obligations under the Plan, the Trust and ERISA and breached the agreements of the Plan and the Trust by directing the Trust to pay for the Certified Time benefits, because neither the Plan nor the Trust authorized such payments. The 1114

Committee concludes that, under ERISA, the BFIC and Administrative Committee are responsible for any losses and lost opportunities for profits resulting from the unauthorized disbursements.

28. It appears that the Debtors did retroactively amend the Plan through the Certified Time Amendment to permit \$22.6 million in disbursements already made from the Trust for Certified Time benefits. The Debtors did not, however, violate either the Plan, the Trust or ERISA by so amending the Plan to allow for the Certified Time benefits. As noted above, the Plan gives broad authority to amend the Plan to the Debtors, Plan, § 13.10, pg. 48-49, and nothing in the Plan prohibits a retroactive amendment of the Plan. Moreover, prior to the Certified Amendment, the Plan had previously provided “Short-Term” disability benefits, wherein disabled employees may, with restrictions, receive a portion of their salary while disabled. The Certified Time Amendment merely permitted employees to use their accrued Certified Time, under which the employees receive their full salary, in lieu of the Short-Term disability benefit.

29. Moreover, ERISA does not prohibit retroactive amendments that, like the Certified Time Amendment, *increase* benefits under a benefit plan subject to ERISA. While some courts have held that ERISA prohibits retroactive amendments where an employer seeks to remove a benefit from a plan where an employee has already accrued that benefit¹⁰, it appears that no courts have prohibited retroactive amendments where an employer increased benefits.

¹⁰ See e.g., Algie v. RCA Global Comm’ns, Inc., 891 F. Supp. 875 (S.D.N.Y. 1994), aff’d 60 F.3d 956 (2d Cir. 1995) (Once an employee has accrued a benefit under an ERISA governed plan, the employer “may not retrospectively amend the plan to divest the plan participant of a payment that he was already entitled to receive.”); Medina v. Time Ins. Co., 3 F. Supp. 2d 996 (S.D. Ind. 1998). The facts of those cases are wholly distinguishable from the facts at issue because the Debtors, through the Certified Time Amendment, seek to add new benefits, not to take old benefits away.

30. In addition, the Debtors have argued that the terms of the Trust allow disbursements for any type of benefit, not just the benefits specifically named in the Plan. Indeed, contrary to the 1114 Committee's assertions, the terms of the Trust do not provide any explicit limitations on the disbursements that can be made under the Trust, other than the limitation that the Trust is to serve as the funding vehicle for the Plan and that Trust funds will be held for the benefit of members under the Plan or the Plan's beneficiaries. See Trust Agreement, Recital E, pg. 2.

ii. Severance Benefits

31. The 1114 Committee asserts that, after March 1, 2002, the Trust made unauthorized disbursements from the Trust for severance benefits of \$6 million in fiscal year 2002, \$13.2 million in fiscal year 2003, \$2.8 million in fiscal year 2004 and at least \$14 million in fiscal year 2005. The 1114 Committee further asserts that Delta continues to pay severance benefits through unauthorized disbursements from the Trust and calculates that these unauthorized payments reduce the Trust's assets by an average of \$3 million a month.

32. The 1114 Committee argues that neither the Plan nor the Trust authorized any of the disbursements for severance benefits after March 1, 2002. The 1114 Committee further argues that the BFIC and/or Administrative Committee, by directing such disbursements, violated their obligations under the Plan, the Trust and ERISA and breached the terms of the Plan and the Trust Agreement. The 1114 Committee concludes that, under ERISA, the BFIC and Administrative Committee are responsible for any losses and lost opportunities for profits resulting from the unauthorized disbursements.

33. The Committee has discussed the 1114 Committee's allegations with the Debtors and the Debtors have responded that they believe that the disputed severance payments were

proper, for several reasons. First, the Debtors contend that the terms of the Trust allow disbursements for any type of benefit, including for severance payments, not just the benefits specifically named in the Plan. Indeed, the Committee believes that, contrary to the 1114 Committee's assertions, the terms of the Trust do not provide any explicit limitations on the disbursements that can be made under the Trust. See Trust Agreement, Recital E, pg. 2.

34. Second, the Debtors contend that, while the Trust does prohibit payment of severance benefits under the Named Severance Plans after March 1, 2002, it permits payment of severance benefits under other plans and that the disputed severance payments were potentially made under other severance plans. As of the filing of this Objection, the Committee does not know whether the Trust made severance payments for obligations arising after March 1, 2002 under the Named Severance Plans or other severance plans. Because the First Trust Amendment added language expressly prohibiting such disbursements under the Named Severance Plans, the Committee lacks a critical fact necessary to evaluate the 1114 Committee's argument and the Debtors' response on this point.

35. Third, to the extent that the disputed severance payments were not made under other severance plans, the Debtors contend that, because Delta may amend the Trust and Plan at will, Delta can amend the Trust and Plan, even now, to retroactively permit all of the disbursements previously made, including for any severance benefits since 2002. While we are still reviewing the Plan and Trust documents, it does appear that the Plan provides the Debtors with broad authority to amend the Plan and does not prohibit retroactive amendments. See Plan, § 13.10, pg. 48-49. Combined with the fact that the Trust does not explicitly limit disbursements and appears to refer to the Plan as the guide for a determination of what benefits should be paid,

the Debtors may be correct that the Plan could be amended to retroactively permit the disputed severance payments, similar to what was done in the Certified Time Amendment.

36. Overall, while the Committee still needs a significant amount of additional information before it can complete its investigation, one thing is absolutely clear—the issues involved are very complex and it is not as cut and dried as the 1114 Committee alleges in the Motion that improper severance payments were made from the Trust.

iii. Constructive Trust

37. The 1114 Committee argues that the Bankruptcy Court should impose a constructive trust over \$52 million of Delta’s assets because of the alleged violations of the Plan, the Trust and ERISA by the BFIC and Administrative Committee in directing the distributions from the Trust for the severance and Certified Time benefits. The 1114 Committee contends that a constructive trust over Delta’s assets is proper because, though the BFIC and Administrative Committee actually directed the disbursements from the Trust, Delta controlled the BFIC and Administrative Committee and directly benefited from the improper disbursements, which paid obligations Delta would have otherwise had to pay itself.

38. Even were the 1114 Committee to prevail on their arguments, however, these alleged violations would not justify establishing a constructive trust over the Debtors’ assets. Bankruptcy Courts rarely impose constructive trusts¹¹, and the 1114 Committee puts forth no factual or legal argument why this relief is justified here, other than a citation to Waller v. Blue Cross of Cal., 32 F.3d 1337 (9th Cir. 1994), a non-bankruptcy case involving the duty of loyalty and an employer seeking to maximize its reversionary interest upon terminating a retiree benefit

¹¹ See Superintendent of Ins. for the State of N.Y. v. Ochs (In re First Cent. Fin. Corp.), 377 F.3d 209, 217-18 (2d Cir. 2004).

plan. Additionally, the BFIC and the Administrative Committee directed the payments, not Delta, and the 1114 Committee cannot pierce the veil with bare allegations, devoid of any factual support in the record, that Delta controlled the BFIC and Administrative Committee and orchestrated these alleged violations.

CONCLUSION

The Committee takes the alleged breaches of fiduciary duty set forth in the 1114 Committee's Motion very seriously. The 1114 Committee's Motion makes it seem as if it is beyond any reasonable doubt that the breaches of fiduciary duty occurred and that the payments made by the Trust for severance and Certified Time benefits were improper and unauthorized. To the contrary, based upon the Committee's limited review of the facts and the law, the factual and legal issues involved are complex and it is not at all certain that there were breaches of fiduciary duty. Without adequate time to review all of the documents and all of the facts involved, the Committee and this Court would be making a decision on far less than perfect information. Therefore, it is necessary for this Court to adjourn the Motion, and put in appropriate safeguards to prevent the dissipation of the funds in the Trust until this Court renders a decision on the issues raised in the Motion, in order to provide this Committee, this Court and the other parties with a full and complete opportunity to review all of the issues and documents. This is necessary and appropriate, especially in light of the serious allegations being made, and the drastic remedies being requested, by the 1113 Committee in the Motion.

WHEREFORE, for all of the foregoing reasons, the Committee requests that the Court adjourn the Motion for at least a month.

Dated: December 13, 2005
New York, New York

Respectfully submitted,

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EXHIBIT A

2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In the Matter Chapter 11
6 of Case No. 03-17949(PCB)
7 SOLUTIA, INC., et al., (Jointly Administered)
8 Debtors.

9 -----x

10 September 28, 2004

11 United States Custom House
12 One Bowling Green
13 New York, New York 10004

14 Motion of the Official Committee of Equity
15 Security Holders for authority to conduct examinations
16 of Monsanto Company, Pharmacia Corporation, and
17 Goldman Sachs, pursuant to Rule 2004 of the Federal
18 Rules of Bankruptcy Procedure (Docket No. 1137).

19 B E F O R E :

20 HON. PRUDENCE CARTER BEATTY,
21 Bankruptcy Judge
22
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25

SOLUTIONIA, INC., et al.

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1 SOLUTIA, INC., et al.

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3 P R O C E E D I N G S.

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5 THE COURT: This is Solutia. I would like
6 to have Counsel for the Committees. We'll take a
7 recess. (At 3:55 PM a ten-minute recess was taken.)

8 AFTER RECESS.

9 THE COURT: You may be seated. You have a
10 vague look today. Did you have a particular order
11 that you wanted to take them in?

12 MR. REILLY: No, Your Honor. I wanted to
13 make sure that one of them could be tested, because
14 the matter wasn't resolved. And we're happy to do
15 whatever order you like, Your Honor.

16 THE COURT: I wanted to take the Retirees'
17 Motion first.

18 MR. REILLY: You might like to hear from the
19 Retirees.

20 THE COURT: No, I don't want to hear from
21 anybody. I don't need you people to sit here and
22 recite what's already written in the papers.

23 Who's here that represents the Equity
24 Committee?

25 MS. DINE: Here, Your Honor.

1 SOLUTIA, INC., et al.

2 THE COURT: Who's here for the Retirees'
3 Committee? One of your requested documents, with
4 respect to the former Monsanto benefit plan, is
5 going way back.

6 My understanding is that, in the Florida
7 action, they attempted to get and retrieve every
8 plan, as far back as 1969, that they could find.

9 That was including the ones that they got
10 from the Retirees. And there was an exhaustive
11 search made.

12 The settlement for that action provides
13 that that documentation will be kept for five
14 years. After that, it can be destroyed.

15 What I'd like to know is whether the Retiree's
16 Committee is in a position to tell me who's paying
17 for those documents to be stored; and whether the
18 documents, in fact, are accessible, or so mixed up
19 that nobody could possibly find anything.

20 MR. DOYLE: Your Honor, Dan Doyle, on behalf
21 of The Official Committee of Retirees.

22 One of the first things we did was to ask
23 White and Case to provide us with copies of their
24 files. We have about a quarter of a million cases,
25 both on hard copies, and on disks.

1 SOLUTIA, INC., et al.

2 MR. DOYLE: We have been talking with the
3 Equity Committee, about having them access those
4 documents. But we cannot access them, because of
5 confidentialities, unless Solutia is willing to
6 waive the confidentiality.

7 THE COURT: A little bit of action by the
8 Court might just be helpful.

9 MR. REILLY: We waived that provision quite
10 some time ago.

11 THE COURT: Where are the documents?

12 MR. REILLY: The originals are in Florida;
13 and Solutia's copies are in our office.

14 THE COURT: How much space do they take up
15 now?

16 MR. REILLY: They take up one office, Your
17 Honor. We made an effort to organize them, and to
18 index them, from the point of view of the Equity
19 Committee.

20 THE COURT: You people are the people from
21 whom they should be getting information, yes?

22 MR. CRICHLow: Just to save some time, I
23 think that we recently got involved in this issue.

24 We have obtained permission from Monsanto
25 and Pharmacia to have access to those documents.

1 SOLUTIA, INC., et al.

2 THE COURT: You can take an examination with
3 respect to why Solutia chose to enter into the
4 Settlement Agreement. Since it didn't seem to give
5 them that much, over what they already had.

6 This is the question for Solutia's Counsel,
7 okay? Regarding this new plan, that you told
8 everybody about, on September 1st, and which is
9 apparently going ahead, on January 1st.

10 Can you tell me how much Solutia calculated
11 that they would save, with respect to their current
12 Employees, by implementing this plan?

13 MR. REILLY: The savings is about \$14 million
14 dollars, with respect to the active Employees.

15 THE COURT: I'm not asking you about the
16 active Employees, because that is what I would call
17 a potentially technical term. I asked you about the
18 current Employees.

19 MR. REILLY: I'm sorry. I took "current" to
20 mean "active."

21 THE COURT: Since you didn't take "active"
22 to mean "current" in the Application, as to what
23 you wanted to do with the Retirees, I wasn't sure
24 if you wanted "active" Employees to mean "current"
25 Employees.

1 SOLUTIA, INC., et al.

2 THE COURT: Your position is that the
3 Settlement Agreement says that the plans can
4 follow the active plan.

5 Then, it was unclear to me, when you said
6 "active" exactly what you were referring to.

7 Did you mean the current Employees, or the
8 current operative plan?

9 But, you're saying to me that \$13 million
10 dollars is the savings, with respect to the "current"
11 Employees?

12 MR. REILLY: \$14 million dollars, Your Honor.

13 THE COURT: What is it that would see the
14 Retirees?

15 MR. REILLY: \$5 million dollars, Your Honor.

16 THE COURT: \$5 million a year?

17 MR. REILLY: Correct.

18 THE COURT: Now, I have another question
19 for you. As I understand it, if you do not fire
20 your Employees immediately, before the filing of
21 the Petition, then they will cross over the line,
22 from pre-petition Employees, to post-petition
23 Employees, with all of their wages and benefits
24 intact. Is that right?

25 MR. REILLY: Yes, Your Honor.

1 SOLUTIA, INC., et al.

2 THE COURT: What you're doing, by making
3 these changes, to the active plan, is in truth a
4 reduction in their wages, by the \$14 million dollars.

5 You think that you will save money if you put
6 over to them a greater portion. They have paid with
7 after-tax dollars, and not the pre-tax dollars you
8 use when you pay for them.

9 I am uncertain that you can implement that
10 plan. You are, in fact, reducing their wages.
11 You're not really changing how you provide the
12 product to them; you're providing a cheaper product.

13 MR. REILLY: First of all, in terms of what
14 actually was being done, in January 2004, and 2003,
15 the plan was re-designed. Different carriers were
16 brought in, and co-pays were changed.

17 This happens in every corporation of America,
18 every year. So you're correct, but the Employees of
19 Solutia will have to pay more for medical costs.

20 THE COURT: No. It means they will get less
21 money than they got last year; because every dollar
22 they pay, out of their pocket, is a taxed dollar,
23 whereas what you give them is not taxed. So they
24 will make less money, if they have medical expenses,
25 than they did before.

1 SOLUTIA, INC., et al.

2 MR. REILLY: That's absolutely right.

3 THE COURT: I don't know; what are the
4 terms and conditions of employment?

5 MR. REILLY: They are Employees at will.
6 And I assure you --

7 THE COURT: I don't know that they are
8 Employees at will. I understand that the Employee
9 at will doctrine in New York is not universal.

10 There are states that do not have an
11 Employee at will doctrine. Their standard is
12 Employee until you screw-up.

13 MR. REILLY: Missouri has most of the
14 Employees.

15 THE COURT: Most of your Employees could
16 not possibly be in Missouri.

17 MR. REILLY: Missouri is the state with the
18 largest number of Employees, Your Honor.

19 THE COURT: How many Employees are there,
20 altogether?

21 MR. REILLY: About 4,000 Your Honor. And
22 Your Honor, it is changing the medical insurance
23 programs, and how those programs work, frankly,
24 on an annual basis; it was recognized as something
25 within the power of a corporation.

1 SOLUTIA, INC., et al.

2 MR. REILLY: And it does not violate any of
3 the rights of the Employees.

4 If they don't like those benefits, they can
5 leave. They are not being terminated.

6 THE COURT: I understand that we can
7 characterize it that way.

8 We can tell them it's good for their health.
9 We can tell them we're really sorry.

10 MR. REILLY: That's unfair, Your Honor.

11 THE COURT: That's what it says. It says:
12 "We're really sorry. We appreciate your standing
13 behind us."

14 MR. REILLY: It doesn't say that it's good
15 for their health.

16 THE COURT: I agree; it doesn't. It's
17 actually not good for their health.

18 This is a savings of 3,500 Employees,
19 divided by \$4,000 dollars into \$14 million dollars.

20 MR. REILLY: That sounds right, Your Honor.
21 But it can't be right; it seems too high.

22 I can't explain where my numbers are off;
23 but it can't be right.

24 I know there were increases in co-pays.
25 It doesn't make sense.

1 SOLUTIA, INC., et al.

2 THE COURT: If it's \$14 million dollars,
3 then, I get 3,500 Employees.

4 MR. REILLY: It's closer to 5,000 Employees.
5 So that would be 2,500 Employees. That's what I've
6 been told.

7 THE COURT: Then it's \$2,500 dollars per
8 Employee; and that's a fairly significant change.
9 I doubt you made that change last year. How big was
10 it last year?

11 MR. REILLY: I don't have the numbers in
12 front of me. But, it's normal to be changing the
13 medical benefits.

14 THE COURT: You're not just changing their
15 benefits in order to stay even. You're changing
16 their benefits in order to reduce your costs, not
17 to make them stay even, but to reduce your costs,
18 by \$14 million dollars.

19 MR. REILLY: The \$14 million dollars is the
20 savings, between what the program would cost, with
21 the changes, and without the changes. The year 2004
22 was different numbers, Your Honor.

23 THE COURT: What I'm saying to you is: You
24 didn't change the plan simply to keep costs of the
25 plan at the same level as costs of the prior year.

1 SOLUTIA, INC., et al.

2 THE COURT: You have changed the plan, in
3 order to significantly reduce the costs, from the
4 prior year.

5 MR. REILLY: Correct, Your Honor. Solutia
6 has been trying to reduce costs.

7 THE COURT: But this doesn't seem to be a
8 friendly area to reduce costs in.

9 MR. REILLY: They have to do this. It's the
10 right decision to take.

11 THE COURT: I don't necessarily know that the
12 Creditors ought to ride on the back of the Employees.

13 But maybe I'm just mistaken. I found this
14 change to be one that I really believe requires a
15 prior Court approval.

16 It is not simply changing your plan, in order
17 to maintain the costs.

18 It is changing the plan significantly. It
19 could well have an effect on the Employees' desire
20 to continue to work for you.

21 MR. REILLY: I guess what you're saying is a
22 change of this type --

23 THE COURT: Is one that reduces the cost per
24 Employee so drastically.

25 MR. REILLY: That is not our view, Your Honor.

1 SOLUTIA, INC., et al.

2 THE COURT: If you decided that you wanted
3 to cut your Employees' pay in half, that wouldn't
4 be subject to Court approval? Did you, last year,
5 cut benefits by this amount? You changed the
6 benefits last year?

7 MR. REILLY: That can't be the test, Your
8 Honor. It has to be the same cut every year?

9 THE COURT: You would have run out of benefits
10 five years ago. What I'm saying to you is:

11 This is an area that you have made what I
12 consider to be a significant change from your prior
13 practice. This year, you have chosen not merely to
14 change the types of benefits, but to reduce them
15 significantly. Now, maybe nobody else cares about
16 this. Do they have unions?

17 MR. REILLY: Your Honor, that's an unfair
18 characterization. Yes, we have unions.

19 THE COURT: Is it better than this benefit
20 package?

21 MR. REILLY: Their plan exactly matches this
22 change. The union agreed to this. The negotiations
23 have just been completed.

24 THE COURT: How many of the Employees are
25 union Employees?

1 SOLUTIA, INC., et al.

2 MR. REILLY: I don't have the exact number at
3 hand.

4 THE COURT: Is it a thousand?

5 MR. REILLY: No, it's under a thousand. It's
6 not a happy event. It's not a good thing. But, this
7 is the same problem that many people are facing.

8 THE COURT: But you didn't face this problem
9 because of rising medical costs.

10 MR. REILLY: This problem wasn't addressed by
11 the prior management. Some of this is a "catch up"
12 to get back to where we were over the previous years.

13 Where, after these cuts, do these programs
14 stand, in comparison to other Employee programs?

15 THE COURT: I'm just saying, when I look at
16 this, this is an aspect, a side aspect, of what was
17 brought up, by the Employees' Retirees' Committee.

18 I look at it and I say: "Well, is this
19 something you can do, in the ordinary course of
20 business?" And, in fact, it's very difficult to
21 tell, whether or not it's difficult, for the
22 Employees to tell, to what degree their benefits
23 were actually cut. I don't know whether your
24 biggest savings was in the area of not allowing
25 your Employees to buy insurance "post-age 65."

1 SOLUTIA, INC., et al.

2 MR. REILLY: These changes were not affected
3 by --

4 THE COURT: The plan says that the Retirees
5 are not able to buy insurance after age 65; which
6 they currently can. And I don't know how much you
7 expect that to provide.

8 MR. REILLY: I'm not sure of the numbers,
9 Your Honor.

10 THE COURT: I got somebody else.

11 MS. CECCOTTI: Your Honor, Babette Ceccotti
12 from Cohen, Weiss and Simon. We represent Pace
13 International Union et al. We're here on #1114.

14 I wanted to come forward to say that they
15 had negotiations, over benefits, resulting in a
16 tentative Agreement that was circulated for approval.

17 In my mind, it is no longer an understanding.
18 There was a decision, about 650 unionized members,
19 and seven plants. At least those are the numbers we
20 are working with. There may be somewhat fewer.

21 Other than that, it's best not to characterize
22 anything that's subject to ratification, which will
23 be implemented, until Your Honor actually sees the
24 papers, and the Debtor makes a presentation with
25 that, on that subject. Thank you.

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SOLUTIA, INC., et al.

THE COURT: Well, since I will go to the Retirees' Motion, I think I should let the Retirees' Counsel speak first.

MR. DOYLE: Dan Doyle, Your Honor, on behalf of The Official Retirees' Committee.

Part of the problem here is that it's hard to tell exactly what the plan does.

According to the Retirees' benefits, and the Employees' benefits, the retirement plan was setup under Florida's laws. They're entitled to reductions in what they pay.

If the Debtor saves money, it's grouped by class. Eight classes are based on when the people retire. Solutia agreed to this, each time there was a change in the plan.

And each of these groups, according to percentages, has a maximum amount that they have to contribute.

THE COURT: Do you mean the year 2004?

MR. DOYLE: Yes, Your Honor, in 2004, there were two members who met informally with the Debtor.

THE COURT: What about the year 2003?

MR. DOYLE: There was a meeting to incorporate the schedules that the two members gave them.

1 SOLUTIA, INC., et al.

2 MR. DOYLE: The forecasted costs of the plan,
3 were as of January 1st of this year; and allowed them
4 to make sure that they weren't more than they needed
5 to be. This is complicated stuff from a common
6 medical plan. There's one cost for the Pre-Retirees.

7 THE COURT: Can you tell me what the surviving
8 dependent spouses are?

9 MR. DOYLE: When a person retired, if one of
10 the spouses passed away, the surviving spouse becomes
11 a widow.

12 THE COURT: Or a widower.

13 MR. DOYLE: What the Debtor is doing there is
14 changing, and trying to treat these eight classes all
15 in the same manner.

16 By having them select from a menu of different
17 plans that makes it difficult to figure out if they
18 are meeting their obligation percentage; because
19 Solutia is not going to tell us what each one of them
20 has; and there are 6,000 prescription medicines.

21 The Retirees need to know what the costs are
22 for each one of the Retirees.

23 THE COURT: Is the cost that individualized?
24 Or is it that if you pick plan "A" you pay "X" and
25 if you pick plan "B" you pay "Y"?

1 SOLUTIA, INC., et al.

2 MR. DOYLE: There are three different plans
3 for prescription drugs, and for a medical office
4 visit.

5 THE COURT: I don't remember seeing anything
6 here that says: "This is what you will pay in, if
7 you're going to change it." Solutia never paid the
8 entire premium, did it?

9 MR. DOYLE: No, Your Honor.

10 THE COURT: There has to be something the
11 Employee pays. I don't remember seeing any
12 literature on the cafeteria plan.

13 MR. DOYLE: I don't believe it has been
14 disclosed.

15 MR. REILLY: What I find astounding about
16 his remarks is that he knows that there is a meeting,
17 to give them a breakdown on the costs.

18 And yet, he stands up here, and says Solutia
19 can't do it, and they haven't done it. Yet he knows
20 that there is a meeting.

21 THE COURT: Let me ask you a question. Is it
22 your expectation that by choosing different options
23 the Employees will pay different amounts?

24 MR. REILLY: By choosing different options,
25 yes, you would pay different amounts.

1 SOLUTIA, INC., et al.

2 THE COURT: The amount you pay towards that
3 percentage of coverage, is it less if they choose a
4 less expensive option?

5 MR. REILLY: In the plans, with the higher
6 degrees of coverage, the employee pays a higher cost
7 and vice versa.

8 THE COURT: I asked you whether these plans
9 had been neutralized as to the costs to the employer.

10 MR. REILLY: I think so, yes.

11 THE COURT: So, it doesn't make any difference
12 if they choose plan A, B, or C, because the cost on
13 your side would be the same.

14 MR. REILLY: Yes.

15 THE COURT: You're saying it would just change
16 your costs. So you're basically reducing the
17 contribution you make.

18 Is it anticipated that their premium costs
19 will go up, by an amount equal to the amount that
20 you have reduced your costs.

21 MR. REILLY: Reduced from what, Your Honor?

22 THE COURT: You told me that you were going
23 to save \$14 million dollars.

24 Would the Employees have to pay \$14 million
25 dollars, in order to get insurance under this plan?

1 SOLUTIA, INC., et al.

2 MR. REILLY: Partially, but that \$14 million
3 dollars eventually consists of two elements. One of
4 them is an extra expense to the Employees.

5 THE COURT: What is that on your side? The
6 \$14 million dollars should be the amount, you say?

7 MR. REILLY: By re-designing the plan, and
8 going to different vendors, there are over-all
9 savings. I don't have the breakdown.

10 THE COURT: Is this \$14 million dollars what
11 you're going to charge them more?

12 MR. REILLY: No. \$14 million dollars is the
13 difference between what the 2004 plan would have cost
14 in 2005, and what the 2005 plan will cost.

15 THE COURT: Will the Employees' prior costs
16 go up by a significant factor, like by five or ten
17 multiples?

18 MR. REILLY: No. But certainly there is an
19 increased cost to the Employee.

20 THE COURT: How can it be an increased cost
21 to the Employees that makes up \$14 million dollars?
22 It's not your money. It's not your savings. It's
23 their expenditure.

24 MR. REILLY: When I say, "increased cost," I
25 mean that it is --

1 SOLUTIA, INC., et al.

2 THE COURT: I'm saying to you that, in
3 calculating your savings, you cannot determine
4 what they have to pay. It is only a question of
5 how much do you actually have, to spend less?

6 MR. REILLY: I'm sorry, Your Honor. We
7 self-insure our medical insurance.

8 THE COURT: You self-insure everything.
9 It's a London insurance market.

10 MR. REILLY: This is the way it works: If
11 we have higher deductibles, we're spending less on
12 the medical insurance, and that's a savings to
13 Solutia. That's the nature of much of the change.

14 THE COURT: What I don't understand is: Why
15 do you do that? It seems to me that your better
16 choice would be to out-source your insurance.

17 MR. REILLY: The Board of Directors doesn't
18 agree.

19 THE COURT: I don't think it's a cheaper
20 way to do this. What's your maximum capacity per
21 Employee?

22 MR. REILLY: I don't have access to that fact.

23 THE COURT: But that's really the issue. In
24 order for you to self-insure, you have to have a
25 health plan.

1 SOLUTIA, INC., et al.

2 MR. REILLY: We use a third party to
3 administer the actual costs that are borne by
4 Solutia. A third party administers. There is
5 a third party who has that responsibility.

6 THE COURT: Wait, I don't understand
7 why the deductible changes the savings to you.

8 MR. REILLY: We're paying the ultimate losses.
9 It comes out of Solutia's medical insurance program,
10 because we're self-insured.

11 If there is a \$700 dollar deductible, then
12 Solutia is paying \$300 dollars. That is part of
13 the savings to Solutia.

14 THE COURT: You can't add \$700 dollars.

15 MR. REILLY: The savings, by increasing the
16 deductibles, and the co-pays, means that Solutia
17 pays less on the \$14 million dollar savings.

18 THE COURT: But, over-all, you're giving them
19 less insurance for their money.

20 MR. REILLY: Absolutely. It is a reduction
21 in the medical insurance benefits to the Employees
22 of Solutia. No doubt about it.

23 THE COURT: Well, it sure wouldn't make me
24 happy.

25 MR. REILLY: It doesn't make anybody happy.

1 SOLUTIA, INC., et al.

2 THE COURT: I don't know where the bulk
3 of the \$14 million dollars comes from.

4 But anyway, I think we need to get on
5 with it. Would Counsel for the Employees' Motion
6 step forward?

7 MR. DOYLE: The Retirees' Motion, Your Honor.

8 THE COURT: I mean the Retirees' Motion.
9 There are only two parts to your Motion.

10 One is that they can't do what they already
11 did, which was a reduction in benefits. Because
12 1114 does not allow a reduction in benefits, without
13 making an application to the Court.

14 The second part is the new, active plan,
15 which doesn't deal with, or fit with, the Settlement
16 Agreement.

17 MR. DOYLE: Yes, Your Honor.

18 THE COURT: It's not entirely clear to me to
19 what extent the Retirees rely on the Agreement, which
20 follows the active plan. I mean, in New York, there
21 is a requirement that you exercise good faith in
22 interpreting contracts. I don't think that this
23 would have been put there.

24 MR. REILLY: I know of a heavily negotiated
25 plan; the words explicitly say --

1 SOLUTIA, INC., et al.

2 THE COURT: You have to restore all benefits
3 to your Retirees, as they existed on the day you
4 filed the Petition. If you want to change them,
5 you have to make a Motion. I believe the word in
6 there is jail. And it does not give you the right
7 to make changes without Court approval.

8 MR. REILLY: May I be heard as to that,
9 Your Honor?

10 THE COURT: No. I made a ruling.

11 MR. REILLY: Will you be putting your ruling
12 in writing?

13 THE COURT: No.

14 MR. REILLY: May I ask what procedural--

15 THE COURT: I believe a Motion is sufficient.
16 I received a response from you and from the Committee
17 that opposed the Motion. I received a reply from the
18 Retirees Committee. I have considered all of these
19 documents. That's my ruling.

20 I have considered the text of 1114; and what
21 you offer, in terms of other interpretations. And
22 this is my conclusion.

23 MR. REILLY: I heard you say that you're
24 unwilling to listen to further arguments. Is that
25 correct?

1 SOLUTIA, INC., et al.

2 THE COURT: I assume that you put your best
3 arguments in your papers. I don't agree with them.

4 MR. REILLY: You're unwilling to hear any
5 further arguments?

6 THE COURT: It is uncommon for a Court to hear
7 further arguments after it has ruled.

8 MR. REILLY: Sorry. Thank you, Your Honor.

9 THE COURT: The salary Motion sort of doesn't
10 have a "today" kind of urgency. So I think we should
11 look at the proof of claim Motion, because that would
12 require a lot of work by the Debtor.

13 MR. REILLY: Could I ask one clarification
14 question? What you said, in terms of what you were
15 ordering, is different from --

16 THE COURT: I am not aware that the law
17 requires that I will hear an argument solely as one
18 party has requested. I may make a ruling that is
19 within the parameters.

20 MR. REILLY: -- what Your Honor said earlier.

21 THE COURT: The Retirees' benefits must be
22 restored to what they were on the day the Petition
23 was filed.

24 MR. REILLY: But, there were changes made to
25 it before that.

1 SOLUTIA, INC., et al.

2 THE COURT: You can restore the benefits to
3 the January 1, 2004 level.

4 MR. REILLY: Thank you, Your Honor.

5 THE COURT: Now, I have a couple of
6 questions. One, why is it that you're requiring
7 the Creditors to file multiple proofs of claim?
8 There is a separate proof of claim in each case,
9 notwithstanding those that are jointly administered.

10 MS. LABOVITZ: Your Honor, they have not been
11 substantially administered.

12 THE COURT: It's not common to do it that way.
13 It's much more common to provide a list of companies
14 that require a checkoff. And it seems to me that
15 what you're doing is actually making it much more
16 difficult for a Creditor to assert claims against
17 the multiple Debtors.

18 MS. LABOVITZ: We believe that in this
19 situation those Creditors have filed. Perhaps it
20 makes sense for me to refresh Your Honor's memory.

21 THE COURT: What I'm saying to you is this:
22 You got Solutia Business Enterprises, Inc.; Solutia,
23 Inc.; Solutia Systems, Inc., and more.

24 There may be Creditors who don't recognize
25 which name is the correct name.

1 SOLUTIA, INC., et al.

2 THE COURT: And then you're going to say:
3 "Oh well, they filed the wrong case."

4 MS. LABOVITZ: If a Creditor has done business
5 with C.P. Films, and files a proof of claim, then it
6 would have the name, C.P. Films, printed on it. So,
7 in fact, we think this process is easier.

8 THE COURT: It just seems to me that those
9 Creditors, who might think that Solutia Inc. was also
10 liable, shouldn't have to file a separate claim.

11 And they shouldn't be at risk that they're
12 going to lose their rights, because they picked the
13 wrong one of these companies.

14 That's the concern that I have. I think it's
15 very hard for them. The fact is that Solutia Inc.
16 is not the first named case. So, it's hard for them
17 to be sure that they have the right case.

18 It may be that. I mean, how many people are
19 likely to have claims against Solutia Inter-America,
20 or Solutia Taiwan?

21 MS. LABOVITZ: None, Your Honor. Twelve of
22 them are not even operating businesses. And the only
23 claims against them are the "inter-company" claims.
24 And C.G.T. might protectively file. We agree that
25 they might file a claim.

1 SOLUTIA, INC., et al.

2 THE COURT: Beginning with Solutia overseas?

3 MS. LABOVITZ: Maybe it's easier if I tell
4 you three of them: Solutia Inc., C.P. Films Inc.,
5 and Axio Research Corporation.

6 They are trade names of the businesses, so
7 we don't think there's much likelihood for confusion.
8 For example, a Creditor of C.P. Films should know
9 that it's C.P. Films.

10 THE COURT: I think that you ought to put
11 the three active companies at the top of the list
12 of the proof of claim forms.

13 And put next to the others that they are
14 non-operating, or something like that. Then I
15 would have less problems with asking them to make
16 a choice, because then, it's only between three,
17 and not between a huge number.

18 And that's not going to be that difficult to
19 do. And I would take out Solutia Inter-America, and
20 Solutia Taiwan, if they're not going to have any
21 Creditors.

22 MS. LABOVITZ: Your Honor, it makes sense
23 just to leave the names there, to avoid confusion.

24 THE COURT: Every time you use the name,
25 Monsanto, you're going to get into trouble.

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SOLUTIONIA, INC., et al.

THE COURT: If there are no Creditors, I don't think you need to put anything in there. You can put in the three Debtors that are active, and then put underneath them: "The following companies also filed Chapter 11, but are not currently operating."

If you make some changes there, that makes it a little easier for the Creditors too.

There is a whole spectrum of sophistication that your Creditors have; and it was happening, even with respect to the business ones.

These forms are very complicated to people, unless you're used to seeing them. I don't want you to have to make a change on the notices.

Because you still haven't printed out the proof of claim forms anyway, because they have to be personalized. Now, the other thing I had a problem about was that you said you must attach this proof of claim form to the copies of the documents.

But, I think the rules say that you don't have to do it, if the documents are too voluminous.

MS. LABOVITZ: Yes, that's true, Your Honor.

THE COURT: Well, they don't have to file, if we agree that they don't have to file. But, you're going to have to set up a hotline.

1 SOLUTIA, INC., et al.

2 THE COURT: 200 pages is too voluminous.

3 MS. LABOVITZ: We have set up a hotline.

4 THE COURT: I think that I would say that you
5 must attach the documents. However, if the documents
6 exceed 25 pages in length, then just merely attach a
7 statement of what the documents are.

8 MS. LABOVITZ: I'm just thinking about some of
9 the contracts at issue. 100 pages might be a cut-off
10 that makes more sense.

11 THE COURT: I just don't want Mr. Jones to
12 think he has to attach 45 invoices that are going to
13 take him more time to copy.

14 MS. LABOVITZ: So, what Your Honor would be
15 proposing is: If a document is more than one hundred
16 pages, then we should ask for a detailed summary, of
17 what the documents are. To be honest with you, I
18 don't want thousands of pages either.

19 THE COURT: I think you should change that
20 too; I mean, I really think you should change it so
21 people will know how many pages they have to send.

22 I've seen 45-page proofs of claim, because
23 they didn't know that they could have done something
24 simpler. And then, you get the guy who writes one
25 million dollars, and doesn't say what you owe him.

1 SOLUTIA, INC., et al.

2 MS. LABOVITZ: Your Honor, we will make an
3 appropriate change.

4 THE COURT: Okay, what do other people think?
5 I was not sure, with respect to your bar notice, that
6 said who didn't have to file the claims, whether all
7 these were really necessary.

8 The particular issues that I think are most
9 problematic for me are the Equity interests. They're
10 a preferred stock.

11 MS. LABOVITZ: One Debtor has preferred stock.

12 THE COURT: You own all the stock.

13 MS. LABOVITZ: There is one Debtor that has
14 preferred stock.

15 THE COURT: Do any of the Debtors have to file
16 proofs of claim?

17 MS. LABOVITZ: Solutia Inc. is publicly held.
18 And there is one other Debtor, I believe it's Solutia
19 Management Company Inc.; Solutia owns 100 percent of
20 the common stock. But there is a preferred stock
21 that is held by outside Creditors.

22 THE COURT: Okay, I think that one of the
23 things that's missing here, with respect to Equity
24 interests, is the fact that they are registered.

25 MS. LABOVITZ: Yes, we agree.

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SOLUTIONIA, INC., et al.

THE COURT: The reason they don't have to file is because they're registered. I really had a hard time understanding the "M" which refers to the first one as: Six point two seven.

I thought that what you wanted to have happen was for the Trustee, of those indentures, to file the claim. Is that correct?

MS. LABOVITZ: Correct, Your Honor.

THE COURT: Have you spoken to these Trustees and found out whether they're willing to file the claim?

MS. LABOVITZ: I believe the Trustees will file a claim. I have not yet spoken to them, so I don't know.

THE COURT: I'm not sure, actually. I mean, in a sense, the way it's written says that the claim is basically unprincipled, et cetera, et cetera.

I don't know if there is something there that could lead me to not realize, as a holder, that the indentured Trustees are going to file.

MS. LABOVITZ: If we could make the language more simple.

THE COURT: If you could make it more simple. Maybe what you need are two paragraphs.

1 SOLUTIA, INC., et al.

2 THE COURT: The second part of that is, if
3 you wanted to assert a separate claim.

4 MS. LABOVITZ: If you like to assert a
5 litigation-based claim, you must file.

6 THE COURT: You say any indentured Trustee,
7 or designated Agent, under the debt instrument, or
8 related documents, will be required to file a proof
9 of claim.

10 MS. LABOVITZ: That's correct. And then,
11 there is a typo, which we will fix.

12 The concept is that indentured Trustees
13 are required to file a proof of claim, as of the
14 Petition date; and, whether fully secured, or
15 unsecured, it is important to have that happen by
16 the bar date.

17 THE COURT: I guess the problem I have is
18 that I just think it takes up a lot of somebody's
19 energy, to read something that is applicable to
20 only a small group of people. And you visualize
21 the debt instruments.

22 MS. LABOVITZ: I think we could undertake
23 to shorten it.

24 THE COURT: But it's not easy to do anything.

25 MS. LABOVITZ: Well, we can make changes.

1 SOLUTIA, INC., et al.

2 THE COURT: You should say, Holders of claims,
3 rather than indentured Trustees. Because if you use
4 the words: Holders of claims, rather than indentured
5 Trustees, then you will be able to separate out the
6 fact that there are multiple people here.

7 I'll sign it the way it is, and you can do
8 this. I think that one objection that was made was
9 how long it's going to take for this stuff to go out.

10 MS. LABOVITZ: If we had required them to
11 individually file proofs of claim, for each of the
12 Plaintiffs, it would have taken too long. So, we
13 agreed that they may file one consolidated.

14 THE COURT: But they cannot file a claim on
15 behalf of anyone that they fail to identify, by name
16 and address.

17 MS. LABOVITZ: We agreed to provide more
18 information than that.

19 THE COURT: I'm just concerned that somebody
20 might say: "And anybody else like us." I think the
21 concept that it's a group claim is a nice way to do
22 it. I don't think it's a consolidated claim.

23 MS. LABOVITZ: Yes, "group claim" is useful
24 terminology. We can use that in the Stipulation.

25 THE COURT: Yes, Mr. Meth.

1 SOLUTIA, INC., et al.

2 MR. METH: Richard Meth, appearing on behalf
3 of 1,500 individuals known as The Crystal Springs
4 Plaintiffs. These are all individuals who live in
5 the general area of Coleman.

6 These are individuals with personal injuries.
7 In Missouri, we had reached a general agreement, in
8 Chambers, that we would append a list.

9 THE COURT: Can I ask you to do the following?

10 MR. METH: Certainly.

11 THE COURT: Can I ask you to make sure that,
12 on every page, there is a page number, and some type
13 of line across the top, that would allow you to pick
14 one of these papers up, off the floor, and know
15 exactly what it is related to.

16 It will allow us to keep what we have
17 together, if somebody makes copies of it. I would
18 also ask that you append the names, as well as the
19 caption.

20 MR. METH: I think what we're doing is even
21 more helpful. We have appended a copy of the
22 complaint that was already filed in Coppea County,
23 Missouri. We also appended a draft of another
24 complaint. If and when there is a stay of relief,
25 we will append that too.

1 SOLUTIA, INC., et al.

2 MR. METH: So, we can help fix the specific
3 amounts of the 1,500 claims. So, we would identify
4 the Counsel from Missouri that is involved.

5 THE COURT: I think that you're not going to
6 be the only people doing this, necessarily.
7 Certainly some people in Anniston will litigate.

8 MS. LABOVITZ: No. No one made a similar
9 request, Your Honor.

10 THE COURT: That may be because Mr. Meth is
11 more meticulous than most people.

12 After all, under the Federal Rules, with
13 respect to a complaint, you can join multiple
14 Plaintiffs, without ever creating a class action.

15 And we never think twice about a claim by a
16 husband and wife, or related entities, who have a
17 single claim. I think maybe the fewer "B" class
18 claims may be a little bit overblown.

19 MS. LABOVITZ: A proof of claim must be
20 cleared by an authorized representative.

21 MR. METH: We have been. As a matter of fact,
22 Gibson and Dunn have spoken with Counsel for The
23 Crystal Springs Plaintiffs, and a number of Counsel
24 in Ridgeland, Missouri, and made one or more meetings
25 on behalf of specially identified Claimants.

1 SOLUTIA, INC., et al.

2 MR. METH: Whatever is in their jurisdiction,
3 one of those that we agreed upon was a meeting to
4 confer upon the filing of any objections.

5 THE COURT: I have one rule about objections.
6 I don't want you to resolve them.

7 I don't want to have to resolve them. In this
8 case, I couldn't even fix your claims.

9 I might be able to estimate your claims, on a
10 contingency. But there are personal injury claims,
11 and property claims.

12 MR. METH: Both commercial injury and personal
13 injury claims as well.

14 THE COURT: Dig up my yard, and build me a new
15 house.

16 MR. METH: It hasn't risen to that level, and
17 hopefully it won't.

18 THE COURT: They didn't actually rebuild the
19 houses, but they did actually dig up the yards.

20 MR. METH: I guess the other general component
21 is that whatever bar date they have will be the bar
22 date for this claim.

23 THE COURT: Good and that's fine. Thank you.
24 Does anybody else have any comment on the bar date?
25 No one?

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SOLUTIONIA, INC., et al.

MR. METH: We hope to submit that, in the next day or two; and we'll work with Gibson-Dunn.

MS. LABOVITZ: Your Honor, if I may? There may be a change to one of the notices that attaches to the proof of claim.

THE COURT: Which is no other than the one that we've been talking about, I think. But the Clerk's Office has requested a couple of form changes in the proof of claim, or in the notices.

MS. LABOVITZ: The notices will move the name of the firm to an elective Solutia. The U.S. Bankruptcy Court, care of the Trundle Group.

THE COURT: The ones that you're going to publish?

MS. LABOVITZ: Yes.

THE COURT: These are fairly long notices. I think that, before you publish them in the New York Times, or the Wall Street Journal, you should verify what you're talking about.

MS. LABOVITZ: As a cost estimate, Your Honor?

THE COURT: Yes.

MS. LABOVITZ: We've gotten a cost estimate, and it's approximately \$465,000 dollars, which is a lot.

1 SOLUTIA, INC., et al.

2 THE COURT: Yes, it's a lot. But it's not
3 like \$3 trillion dollars. A lot of effort was put
4 into these notices. And hopefully, they will do
5 what we'd like them to do.

6 MS. LABOVITZ: I hope so, Your Honor.

7 THE COURT: For example, the ones with a
8 large page, these are the ones you're sending only
9 to the Creditors.

10 MS. LABOVITZ: Where it says, "page," or
11 larger font type, that would go only to Creditors
12 within a 5 million radius of the plant. If it was
13 within a 25 million radius, then they would get a
14 larger print, and similar language.

15 THE COURT: You're also publishing it, in a
16 paper?

17 MS. LABOVITZ: With respect to the tort clean
18 ups, we do not know their names and addresses.

19 THE COURT: Okay.

20 MS. LABOVITZ: Thank you, Your Honor. We will
21 send a revised Order to Chambers.

22 THE COURT: How long from the time I send the
23 Order, until the time you get the notices out?

24 MS. LABOVITZ: Within 10 days; and published
25 in 20 days; we believe the time-frame will be less.

1 SOLUTIA, INC., et al.

2 THE COURT: They're getting at least 30 days,
3 because they're getting November 29th.

4 MS. LABOVITZ: If Your Honor signed tomorrow
5 that would be September 29th.

6 THE COURT: Why have you picked the 29th,
7 instead of the 30th?

8 MS. LABOVITZ: We wanted to be --

9 THE COURT: The only reason I pointed this out
10 is because November 29th is the first Monday back
11 from Thanksgiving.

12 MS. LABOVITZ: We can make it the 30th.

13 THE COURT: I think the 30th might be a little
14 better.

15 MS. LABOVITZ: That's fine, Your Honor.

16 THE COURT: So now, is there any objection to
17 the extension of time to follow the plan? No.

18 Is there any objection to the Motion for
19 appointing Value Agency? You got that approved by
20 the Clerk's office. Is there any objection to the
21 notice for approving the access of C.P. Films? No.

22 I think we have a conceptual difficulty with
23 this Solutia, because this Solutia, and Astaris are
24 50 percent owners. So, who is it that is running
25 Astaris? It's not Solutia.

1 SOLUTIA, INC., et al.

2 THE COURT: And what did they get out of
3 running Astaris?

4 MS. LABOVITZ: Your Honor, Mr. Reilly is
5 prepared to address this.

6 THE COURT: Oh good.

7 MR. REILLY: Astaris has half the members
8 of Solutia. It is independent.

9 THE COURT: What does Astaris get out of
10 doing what they do?

11 MR. REILLY: Profits go to the Shareholders
12 ultimately.

13 THE COURT: That one is okay then. We got
14 a Stipulation between Solutia and Astaris.

15 There is no objection to that. I have one
16 Motion for approving the termination of lease and
17 service agreements, between Solutia and Pharmacia.

18 I am unclear about this. What are you giving
19 up, in making this deal?

20 MR. REILLY: It's to the benefit of the
21 Debtors. This is one of the guest agreements, where
22 they guest at one of our properties.

23 If they're shutdown, essentially for making
24 Solutia whole, then they shutdown their operation
25 before we filed for bankruptcy.

1 SOLUTIA, INC., et al.

2 MR. REILLY: If we made a Motion, to lift
3 a stay, we agreed on immediate cash payments, equal
4 to the full payment.

5 They would have had to pay, to make us fully
6 whole, disposing of the facility, in terms of Solutia
7 not giving anything up. The funds would otherwise
8 come in, over a period of time.

9 THE COURT: There is no objection to this
10 Huntsman Petrochemical Corporation Motion.

11 I have a Motion of the Official Committee of
12 Retirees' collective bargaining agreements. There
13 is no objection there either.

14 MR. REILLY: Nothing was filed, Your Honor.

15 THE COURT: I think that leaves us with two
16 matters. One is the retention of Geo Syntec. And
17 the other is a Discovery Motion.

18 Now, I was not clear if there was at least
19 one of the objections that said that Geo Syntec is
20 not competent, or something like that?

21 MR. REILLY: Your Honor, I think we filed
22 the only objection. And the Creditors' Committee
23 filed a joinder. But, they have been working for
24 Solutia; so that's not the issue, Your Honor.

25 THE COURT: What do you think the issue is?

1 SOLUTIA, INC., et al.

2 MR. REILLY: We think that this is just over
3 the top. And that's the easiest way to describe it.
4 We know that environmental issues are important; but
5 in this case, the 2009 Noteholders all got their
6 hands around an environmental issue.

7 THE COURT: The whole problem in this
8 situation has been that nobody wanted to be
9 realistic about what the environmental problems
10 really were. And they didn't bother to get any
11 professional advice.

12 What the Equity Committee wants to do is
13 actually sensible. They want to get a second
14 opinion.

15 MR. REILLY: I don't think that it actually
16 matches the facts here. Over the years they have
17 been coming up with numbers. And you can't come up
18 with revised numbers.

19 THE COURT: Why not? I know why not. It's
20 like your P.C.B.'s have floated out into the water,
21 and you had to change the shape of your water
22 barrier.

23 MR. REILLY: These are 30-years. We have a
24 range. The Equity Committee wants to hire experts
25 and come up with their own numbers.

1 SOLUTIA, INC., et al.

2 THE COURT: Have you made your information
3 available?

4 MR. REILLY: Absolutely. It's completely
5 available. Our numbers are in terms of the mediation
6 costs. There are two sets of numbers. The reserve
7 numbers, which are more conservative.

8 THE COURT: I think you should say: "Okay,
9 this is what I think it's going to cost me to do it."

10 MR. REILLY: That's the second set of numbers.
11 Here's what we think the actual cost will be.

12 What the Equity Committee said is that those
13 numbers are somewhere in between.

14 You could apply ten sets of experts; but
15 you're not going to refine this issue much.

16 If they decide that we have to dredge that
17 creek, you can hire all the experts in the world,
18 and you're still not going to know where this can
19 come out. And that's our belief.

20 And we believe that the Creditors' Committee
21 Dip Lenders agree that it would actually be a silly
22 expenditure. I suggest it's not likely to be right.

23 THE COURT: I see that you have a list of 100
24 properties. How many of them did you find were
25 phantoms?

1 SOLUTIA, INC., et al.

2 MR. REILLY: I'm not sure I know what you
3 mean, Your Honor.

4 THE COURT: That is what you have; when you
5 tried to find the property, and you found out it
6 wasn't there.

7 MR. REILLY: A lot of work has been done.
8 And it's pretty refined. There's a smaller number
9 of sites, where it's meaningful. There are only
10 three sites that have really big numbers.

11 THE COURT: Okay, which sites are those that
12 have really big numbers?

13 MR. REILLY: Anniston, Alabama, and Sawjay,
14 Illinois, have the biggest re-mediation costs. And
15 the third site is Crumlay, Illinois.

16 THE COURT: Has the E.P.A. approved any dump
17 sites, where whatever is on those sites can be taken
18 away and dumped?

19 MR. REILLY: Part of the work has been done
20 in areas where the E.P.A. said that the soil can be
21 dumped.

22 THE COURT: Several of the sites you listed
23 were dump sites, which are owned by somebody else.

24 I know that the E.P.A. had come in and sought
25 to find some of the people that were there for years.

1 SOLUTIA, INC., et al.

2 MR. REILLY: I think the Equity Committee
3 will agree that, in terms of the re-mediation costs,
4 these aren't problems.

5 The problems are with these other sites,
6 where we have facilities, and where there is some
7 uncertainty, about what it will cost.

8 And that's partly because we don't know
9 what's there.

10 THE COURT: Now, I would like to hear from
11 the Creditors' Committee on the subject of why they
12 didn't retain an expert.

13 MR. REILLY: Thank you, Your Honor.

14 THE COURT: Where is Counsel for the
15 Creditors' Committee?

16 MS. SATYAPRASAD: I'm Shuba Satyaprasad,
17 representing The Official Committee of Unsecured
18 Creditors. Your Honor, may I ask you to repeat
19 your question?

20 THE COURT: I wanted to know why the
21 Creditors' Committee had decided not to hire an
22 environmental expert?

23 And why you felt that the information you
24 got from the Debtor was sufficient, for making a
25 determination, with respect to those issues?

1 SOLUTIA, INC., et al.

2 MS. SATYAPRASAD: At that time, and
3 throughout the determination, the Debtors and
4 the company itself had, in environmental terms,
5 a great deal of experience.

6 THE COURT: You were using your own
7 environmental knowledge?

8 MS. SATYAPRASAD: They visited the sites,
9 and they met with the company; and the company
10 was very willing to provide us with documents.
11 That's why we hadn't seen a need for experts.

12 THE COURT: You probably used the \$500
13 dollar-an-hour attorneys, to do this work; and
14 in the late afternoon, even more. Let me ask you
15 another question: Monsanto is on the Committee?

16 MS. SATYAPRASAD: Yes, Your Honor.

17 THE COURT: When you were discussing these
18 issues, was Monsanto part of the discussion or not?

19 MS. SATYAPRASAD: There were certain instances
20 where they were part of the discussion. And there
21 were certain instances where they were not included
22 in those discussions.

23 THE COURT: Because Solutia's liability
24 included liability for Monsanto's environmental
25 issues, as I understand it.

1 SOLUTIA, INC., et al.

2 MS. SATYAPRASAD: Generally speaking, where
3 there is this conflict, Monsanto shouldn't be
4 involved in those discussions.

5 THE COURT: Okay. Now, I'm going to ask the
6 Debtor this. You probably don't want to tell me.

7 I always have the sneaking concern in this
8 case that the Debtor and Monsanto are going to buy
9 off the Creditors. That's why the environmental
10 liabilities are going to be left in the class of
11 when they occur.

12 Because most recently, there has been a
13 suggestion, in your papers, that Solutia may sell
14 many of its assets.

15 Now, I guess one of the problems I have is
16 trying to decide how important this environmental
17 issue is, not the Committee.

18 If it is not important to the Committee,
19 then they will be relying on what you say.

20 But, if it is really important, they have
21 mentioned that, under the plan, those functions
22 are going to be next; and if they're next, then I
23 will get a different scenario.

24 MR. REILLY: That's a tough question,
25 Your Honor. Let me say a couple of things first.

1 SOLUTIA, INC., et al.

2 MR. REILLY: The Debtor is very focused on
3 the feasibility of the plan.

4 And Solutia would be able to deal with all
5 its obligations. I think that clearly handling this
6 question is a key element that we are hopeful, as to
7 all of the difficult issues.

8 In this case, what happens to these
9 environmental issues going forward can be resolved.

10 A likely resolution is that Monsanto can take
11 some of them back. Solutia can keep some, and some
12 can have negotiations, about what kind of claims
13 Monsanto would have, as a result of that settlement.

14 We are not at that point yet. But, assuming
15 where the case ends up, what's the relevance to the
16 Equity Committee?

17 THE COURT: What's relevant to the Creditors?

18 MR. REILLY: Assuming we can agree, if
19 Solutia's taking too much, is the equity going to be
20 worth anything?

21 THE COURT: You're still not talking to me
22 about the Creditors.

23 MR. REILLY: I apologize, Your Honor.
24 Assuming the Creditors will get equity, they need to
25 know Solutia.

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2 MR. REILLY: Whatever size claim Monsanto
3 gets will be relevant to them, in those two ways,
4 Your Honor.

5 THE COURT: You don't contemplate a plan under
6 which the Creditors will get some kind of money?

7 MR. REILLY: No, we don't.

8 THE COURT: That's too bad, because that's
9 what Creditors really like.

10 MR. REILLY: If only it was feasible.

11 MR. BARBAROSH: Craig Barbarosh, on behalf of
12 The Official Equity Committee.

13 We had some meetings, and frankly, Your Honor,
14 the documents that he has given us are inadequate
15 to try to quantify. They have not done a rigorous
16 analysis.

17 THE COURT: What kind of analysis have they
18 done?

19 MR. BARBAROSH: As far as we can tell, Your
20 Honor, the Debtor has two calculation figures.

21 One is \$165 million dollars. In the ten "K"
22 determined by accounting principles, they announced
23 a number of a billion dollars.

24 THE COURT: Where did they announce the
25 billion dollar number?

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2 MR. BARBAROSH: They said it several times,
3 in the consultation of this case.

4 We heard the number one billion dollars, as
5 their insurance estimate.

6 What that doesn't do is take a hard look at
7 the reports by an expert who determines that kind
8 of thing. The key is to benchmark where the E.P.A.
9 determined the cost estimate.

10 We're not trying to waste money. We think
11 the cost will be \$350,000 dollars less than the
12 cost of publishing the notices. It's important
13 to quantify what it will cost in this case.

14 THE COURT: You asked the people you met
15 whether they had any additional information that
16 would allow you to understand how they had reached
17 their numbers.

18 MR. BARBAROSH: I asked about all significant
19 cost calculations.

20 THE COURT: Whether they have given you the
21 beginning, and the middle, they still haven't given
22 you what items make up the cost calculations.

23 MR. BARBAROSH: This is the problem we have,
24 Your Honor. And we considered not retaining an
25 environmental consultant.

1 SOLUTIA, INC., et al.

2 THE COURT: I asked you a question. I asked
3 you whether you had asked them, for the material that
4 comes before the end, the beginning, and the middle.
5 So that you could understand how they had reached
6 that particular number.

7 MR. BARBAROSH: We have that information.
8 We received some information from them.

9 THE COURT: Do you think that the information
10 they provide to you will be of any help in making a
11 determination as to whether or not their numbers are
12 accurate?

13 MR. BARBAROSH: We don't think we can do it
14 without experts to help us. We believe we need
15 experts to look through that information.

16 The next step is to benchmark it. We put a
17 lot of thought into this. The last thing is a
18 duplicate effort. We need the aid of experts.

19 THE COURT: I'm trying to recognize that,
20 from the Debtors point of view.

21 You're out of the box, because the Creditors
22 are going to take your position 100 percent.

23 And so, I'm trying to figure out whether what
24 you're seeking to do is something that will, in fact,
25 aid in the resolution of this case.

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2 THE COURT: It will provide information to
3 everyone, with respect to those issues, which are
4 extraordinarily significant.

5 If the claims were a billion dollars, do
6 you have any idea what kind of insurance they
7 would have? What level of insurance?

8 MR. BARBAROSH: We don't know.

9 THE COURT: Have they told you, "we think
10 we have this or that?"

11 MR. BARBAROSH: Most of the insurance has
12 been exhausted.

13 THE COURT: They think they have a billion
14 dollars worth of liabilities, with virtually no
15 insurance?

16 MR. BARBAROSH: That's our understanding,
17 Your Honor.

18 THE COURT: I would like to wait on this,
19 for another two weeks, until you see what you get
20 from them; and see if you can get the underlying
21 form, for one, or two, or three sites.

22 And see whether that will be helpful to you.
23 Okay now, with respect to your Motion for Discovery,
24 have you made any progress, regarding Pharmacia or
25 Monsanto, as far as resolving their issues?

1 SOLUTIA, INC., et al.

2 MR. CRICHLow: David Crichlow, from Pillsbury
3 Winthrop, on behalf of The Equity Committee.

4 Your Honor, I'm happy to report, as was
5 laid-out on our status report, we have made
6 significant progress, with Monsanto and Pharmacia.

7 As Your Honor instructed, we were making it
8 clear exactly what we were looking for; and at the
9 same time, we were making it clear that we wanted
10 things to move on a fast track, and wanted to get
11 the documents as quickly as possible.

12 Both parties have been cooperative, and we
13 resolved most of the issues. There was a little
14 twist that the Debtor found documents responsive to
15 some of their questions.

16 The Debtor contributed confidential requests,
17 and yesterday, I received a telephone call from
18 Pharmacia's Counsel, Mr. Bae.

19 And today, I had a chance to resolve it, and
20 it looks like these spin-offs will be produced,
21 because the parties may have a resolution to it.

22 To the extent that they are still in their
23 possession, we have been informed that they will
24 have that information transferred. And it even
25 occurred to us to look there first.

1 SOLUTIA, INC., et al.

2 MR. CRICHLOW: Or to at least confirm that
3 we don't have access to those documents from the
4 Debtor. We're willing to do that answer.

5 As my partner, Mr. Barbarosh said, we're
6 still waiting for documents from Solutia.

7 So, we'll take a look at these, and then
8 delve into the environmental documents.

9 Goldman Sachs' Counsel has left today.
10 But Counsel wanted me to represent to The Court
11 that we have spoken.

12 In light of the fact, they will be producing
13 all of the documents that they believe are responsive
14 to our document requests, withholding attorney/client
15 documents; and initially, they have no objection to
16 that.

17 THE COURT: I think that there may be some
18 spin off documents that are privileged.

19 I am not sure that the attorneys' opinion that
20 you can do the transaction would be privileged.

21 MR. CRICHLOW: We happen to agree with you,
22 Your Honor.

23 THE COURT: It's kind of like one of those
24 opinions that has to be given to both parties. It
25 is hard to maintain.

1 SOLUTIA, INC., et al.

2 THE COURT: It would be part of what you would
3 have to use.

4 MR. CRICHLAW: As I was concluding, and I will
5 be brief, it leaves one more open issue.

6 We anticipate wanting to talk to some people.
7 And we have a Court Order, permitting us to take
8 depositions.

9 THE COURT: Why don't we get there in a couple
10 of weeks?

11 MR. CRICHLAW: That would be a disputed issue.

12 THE COURT: You don't know for sure.

13 MR. CRICHLAW: We will adjourn that, and keep
14 that open without prejudice, with respect to deposing
15 people.

16 THE COURT: I think that you should review the
17 documents first.

18 MR. CRICHLAW: We may be able to push that,
19 and keep those items. It will take us sometime to
20 get it. Thank you, Your Honor.

21 THE COURT: Mr. Reilly, how do you think you
22 will be able to get the assets from Solutia like
23 plans?

24 MR. REILLY: That's obviously a complicated
25 issue.

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2 THE COURT: Oh, that is a good answer.
3 I mean, it's like it doesn't say anything.

4 MR. REILLY: The reason I'm not saying
5 anything is because it's not clear if we will be
6 able to say anything.

7 THE COURT: Instead of it being Solutia in
8 the newspapers, presently it's going to be some
9 other company.

10 MR. REILLY: I'm glad you raised that issue,
11 Your Honor. It's a case of the press taking just
12 one line out of context.

13 And currently there is no part of the company,
14 other than Swiss Farm, a South California business,
15 that is up for sale.

16 With regard to any significant part of the
17 assets, with reference to the fact that we have
18 begun the appropriate preparation.

19 So, if we decided to go that way we could.
20 No decision has been made to go in that direction.
21 At this point, don't believe everything you read
22 in the press.

23 THE COURT: I don't read anything about you
24 guys in the press. Only if it happens to be in a
25 left-hand column.

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MR. REILLY: Anyone who had given a lot of thought to it would know that it would be difficult to structure such a transaction.

THE COURT: There is a probability of that, depending on what administration we have, and who we have working for the E.P.A, and what policy they're purchasing, at any given moment, things are very possible.

MR. REILLY: Fair enough, Your Honor.

THE COURT: Okay, I wondered whether you had a black, magic ball, like the ones that you can shake and turn upside down, to read the answers.

MR. REILLY: No, Your Honor.

THE COURT: Does anybody else have anything you want to say? No. Then we are adjourned.

