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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 11-15463-shl

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In the Matter of:

AMR CORPORATION,

Debtors.

- - - - - x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York

August 29, 2013  
11:09 AM

B E F O R E :  
HON SEAN H. LANE  
U.S. BANKRUPTCY JUDGE

1 HEARING RE: Doc. #8590 (CONTINUED) Confirmation of Debtors'  
2 Second Amended Joint Chapter 11 Plan

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4 HEARING RE: Impact of the Department of Justice Action on  
5 Entry of Order Confirming Debtors' Third Amended Joint  
6 Chapter 11

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25 Transcribed by: Nicole Yawn

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P R O C E E D I N G S

THE COURT: Good afternoon, please be seated.

All right. We are here this morning for the 34th omnibus hearing in the AMR Corporation case.

Good morning.

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

UNIDENTIFIED SPEAKER: Good morning.

THE COURT: So I am in receipt of the pleadings that were filed in response to my request for folks' views about the appropriateness of confirmation, and those were helpfully put together in a binder that I have in front of me. I have read them all, and so, folks shouldn't feel the need to have to repeat everything that's in those pleadings, obviously, but certainly, I'm happy to hear whatever argument folks would like to make, and, with that, let me turn it over to Mr. Karotkin.

MR. KAROTKIN: Thank you, Your Honor. Stephen Karotkin, Weil, Gotshal & Manges, for the debtors.

That is the only item on the omnibus calendar for today. I think it's important, Your Honor, to note a couple of key items at the outset of the hearing today. Number one, no creditor, shareholder, or other economic party and interest has filed any pleading opposing entry of the confirmation order at this time, and I'm sure you're aware that the Department of Justice filed a short pleading where

1 they have taken no position on the issue.

2           The only opposition, I guess, is from Mr. Cook,  
3 who has no standing, apparently believes the procedural  
4 rules applicable in this court don't apply to him. I would  
5 point out, Your Honor, at the last hearing on August 15th,  
6 Mr. Cook agreed on the record to a resolution of his  
7 objection to confirmation, which was excepting that lawsuit  
8 from certain provisions of the plan on the condition  
9 -- and it was very expressly noted on the record -- that he  
10 could pursue his adversary proceeding in this court and no  
11 other court, and I'm sure you are aware that he has filed a  
12 notice to withdraw -- a motion to withdraw the reference,  
13 and, if Mr. Cook is walking away from that settlement and  
14 that resolution that we put on the record on August 15th, he  
15 can stand up and advise the Court of that, and then, we can  
16 address it at the time, including requiring that he file a  
17 motion to modify the stay, and we will reply accordingly.

18           As you know, we submitted a memorandum responding  
19 to the Court's request, which addresses all of the issues  
20 relevant to issuing or entering the confirmation order at  
21 this time, and we think that the brief demonstrates that  
22 that certainly is appropriate at this time, consistent with  
23 what was disclosed to the parties and interests and what  
24 they voted on and what, of course, they overwhelmingly  
25 accepted, pursuant to the vote on the plan.

1           As demonstrated on August 15th on a full  
2           evidentiary record, the plan satisfies all of the  
3           requirements set forth in section 1129(a) of the bankruptcy  
4           code, and we believe that, consistent with the expectations  
5           of all parties involved in this case, Your Honor, and in  
6           particular the debtors' employees, customers, vendors,  
7           suppliers, and business partners, which are critical to the  
8           operation of the business enterprise, that the confirmation  
9           order should be entered at this time. We think that the  
10          failure to do so at this time, Your Honor, would needlessly  
11          introduce an unwarranted element of uncertainty and be a  
12          destabilizing factor that is neither necessary nor  
13          productive to the administration of these cases, and I would  
14          add, again, this is particularly true -- and I know you  
15          voiced your concern about it being in the hearing on August  
16          15th -- where the Justice Department itself has come in and  
17          said we take no position on this particular issue.

18                 As we indicated, again, in our pleadings -- and I  
19          don't want to go through it line by line -- the conditions  
20          to the occurrence of the effective date of the plan -- if  
21          they cannot be satisfied after the confirmation order is  
22          entered, the confirmation order will be vacated, and the  
23          plan will never go effective, and I think it's important to  
24          note that, without the regulatory approvals, there is no  
25          plan. So the confirmation order would be vacated at that



1 time, or, Your Honor, if the DOJ action is settled, of  
2 course, that settlement would be submitted to your Court for  
3 approval, and, at that point, again, if there is a  
4 settlement, Your Honor, that would be on notice to all  
5 parties and interests, and they and you can certainly weigh  
6 in on whether that settlement would necessitate a  
7 resolicitation of votes under both the provisions in the  
8 merger agreement and the provisions in the bankruptcy code.

9 The entry of the confirmation order is consistent  
10 with what we have in the plan. The conditions to  
11 confirmation are separate from the conditions to the  
12 occurrence of the effective date. That scenario, again, was  
13 fully disclosed in the disclosure statement, and that's  
14 what's before the Court today. It's that sequence of  
15 events, again, fully contemplated by the documents and,  
16 again, fully contemplated with what creditors and  
17 shareholders voted on.

18 The plan in the disclosure statement provided a  
19 clear roadmap of how the process would unfold, and that's  
20 where we are today. We have satisfied the requirements for  
21 confirmation. The plan has conditions to confirmation, and  
22 it was always contemplated that that order would be entered,  
23 and whatever conditions there were to the effective date  
24 could be satisfied at a later time.

25 I think that the issue of feasibility in the

1 context of this particular case and this particular plan is  
2 really a red herring, and I think it also is important to  
3 note that nobody has challenged the feasibility of this  
4 plan. No party and interest with standing has challenged  
5 the feasibility of this plan, and I think it's really  
6 impossible to do so, and that's perhaps why there is no  
7 challenge.

8 And I will indicate, Your Honor, that, under the  
9 case law in this district, for example, and under the Leslie  
10 Fay (ph) case, what the judge said in that case was, "A good  
11 barometer of feasibility is the vote of creditors and  
12 shareholders on the plan, because those are the ones who  
13 will be getting the consideration under the plan," and we  
14 clearly satisfy that test, and I think it's important to  
15 note, Your Honor, that, in the first instance, a  
16 determination of feasibility is only relevant in the context  
17 of the plan becoming effective and the merger closing,  
18 because those would happen simultaneously.

19 As I said, if the plan does not become effective,  
20 there is no plan to consider for feasibility purposes. So  
21 feasibility does not, in any way, require the Court to  
22 consider the merits of the action brought by the Department  
23 of Justice in Washington or whether the conditions to the  
24 occurrence of the plan effective date will be met.

25 And, under the circumstances of this case,

1 evaluating feasibility, Your Honor, in the context of this  
2 plan, premised on a closing of the merger, there cannot be  
3 any question that this plan is feasible. We have  
4 uncontroverted evidence that was admitted at the  
5 confirmation hearing in the form of Ms. Goulet's affidavit  
6 that demonstrates that the debtors' projections -- again,  
7 long-term projections over a five-year period -- were sound,  
8 conservative, reflect an extraordinary cash position.

9           Again, I'm sure you recall that you approved  
10 certain financings that would go effective in connection  
11 with the effective date of the plan and even before, and the  
12 capital structure expressly designed -- again, the capital  
13 structure coming out in the merger scenario expressly  
14 designed to withstand the vagaries of the airline business.  
15 Again, five-year projections, Your Honor.

16           Funded debt is limited, and virtually all of the  
17 prepetition unsecured debt will be satisfied in the form of  
18 stock of the new merged entity. There will be no ongoing  
19 debt service with respect to those obligations.

20           And I think it's very clear, Your Honor, from the  
21 projections, which again, are very long-term projections,  
22 that feasibility is easily satisfied, Your Honor, even if  
23 the DOJ action is not resolved for several months. This  
24 Court is well-aware of the standards for feasibility. It's  
25 not a very rigorous test, and, in the circumstances, again,

1 where feasibility is analyzed, based on the plan that  
2 becomes effective if the merger closes, it's inconceivable  
3 to conclude that this plan is likely to be filed by quoting  
4 the statute, Your Honor, "liquidation," or the need for  
5 further financial reorganization. Inconceivable,  
6 Your Honor, that that possibly could happen.

7           Again, we're talking about a rather short-term  
8 horizon before that litigation is concluded. I think you  
9 probably read in the papers at the very, very latest, the  
10 government itself is only seeking a March trial date, and  
11 we're fairly confident it will occur much sooner than that.

12           I would also note, Your Honor, that, even if the  
13 action is settled -- and again, as I said, you will have the  
14 opportunity to review a settlement -- it's inconceivable --  
15 it's impossible to fathom, Your Honor, that the debtors or  
16 U.S. Airways, for that matter, or their boards could  
17 seriously consider any type of settlement which would render  
18 the plan not feasible. Again, it would be a dereliction of  
19 duty of the board to enter into a settlement that would  
20 require, if the plan went effective, that we would be again  
21 before Your Honor or another reorganization court for any  
22 further rehabilitation. It's just inconceivable.

23           I think we're at an important juncture at these  
24 cases. The debtors have satisfied the requirements for  
25 confirmation. The scenario, again, is fully contemplated by

1 the plan, by the disclosure statement, and consistent with  
2 the orderly administration of these cases and the  
3 expectations of the parties, and again, Your Honor, I focus  
4 on employees. I focus on vendors. I focus on business  
5 partners.

6 The expectation is the confirmation will be  
7 ordered. The business will continue as usual, and these  
8 folks are the ones important to the ongoing business  
9 enterprise, and we would request that you enter the order.

10 THE COURT: All right. Thank you.

11 MR. BUTLER: Your Honor, Jack Butler, from  
12 Skadden, Arps, on behalf of the creditors' committee.

13 First, I want to thank the Court for the manner in  
14 which the Court has conducted this confirmation process. It  
15 has, from the committee's perspective, been remarkably  
16 thoughtful. It's given us an opportunity as a statutory  
17 committee to consult at length with the committee to reflect  
18 on these matters, to work with other parties and interests  
19 and with the debtors on the proposed form of confirmation  
20 order, to reflect on the Court's concerns and ponderings, if  
21 you will, or musings, as the Court's explained them to us on  
22 the record, and to address these issues.

23 Two things I'm not going to do today, as  
24 Your Honor would expect, is I'm not going to repeat what's  
25 in our pleadings. We've spent a lot of time thinking about

1 those issues. I know the Court's read them, and I'm also  
2 not going to talk about the architecture of the plan and the  
3 related documents. I spent a half-hour doing that on the  
4 record at the confirmation hearing. We did it again in our  
5 brief. We think it's incredibly important and instructive,  
6 and we think it holds together.

7 We think our stakeholders knew exactly what they  
8 were voting on when they voted in favor of this plan. They  
9 knew exactly what the risks were. They understood that if  
10 the conditions effective to the plan to the consummation of  
11 the plan were not satisfied, that the confirmation order be  
12 vacated and the consequences of continuing an administration  
13 of the case, and they voted, as I said before, by numbers  
14 that I have not seen in my career, close to 99 percent in  
15 terms of all classes from a debt perspective, and I think  
16 one in the high eighties in numerosity. A really remarkable  
17 result.

18 Over a hundred thousand people voted on the plan.  
19 Parties voted on the plan. I think something South of 70  
20 voted against it. It really is a remarkable vote, and that,  
21 under the case law -- I mention that because I think, under  
22 the case law, that's supposed to be instructive to the  
23 Court. That's supposed to be something the Court pays  
24 attention to and is able to reflect as a factor in its  
25 consideration.

1           What I would like to do, Your Honor, is -- again,  
2           in the spirit of being, if you will, in a certain sense, a  
3           creature of the documents, I really do look at the merger  
4           agreement, the plan, the disclosure statement, and now the  
5           proposed confirmation order that we presented to you, which  
6           is something that, I think, on behalf of the creditors'  
7           committee and the ad hoc committee, as I understand it,  
8           complies with the requirements of the plan and the  
9           conditions to the consummation of the plan -- or excuse me,  
10          the confirmation of the plan in terms of the requirement  
11          that would be reasonably acceptable to the creditors'  
12          committee, and I point -- there's lots of things in the  
13          confirmation order. There's lots of things in our briefing,  
14          but there are two, I think, important paragraphs that I  
15          wanted to at least highlight in this argument.

16                 The first is paragraph 38. Paragraph 38 of the  
17          proposed confirmation order -- and I'm going to read it in  
18          the record, if I may -- says, quote, "The Bankruptcy Court  
19          takes judicial notice of the civil action filed by the  
20          United States and several plaintiff states to enjoin the  
21          merger under the Federal Antitrust law on August 13th,  
22          2013." Describes where it's filed and then, goes on to say,  
23          "Nothing in this confirmation order shall be construed as an  
24          adjudication of any causes of action asserted in the DOJ  
25          action or as otherwise expressing the Bankruptcy Court's

1 position with respect to the DOJ action."

2 It goes on to say that, "In the event that the  
3 debtors and U.S. Airways reach a settlement of the DOJ  
4 action, the debtors shall file a motion with the Bankruptcy  
5 Court seeking approval of the debtors' execution of an entry  
6 into such settlement." That was contemplated under the plan  
7 documents, Your Honor, and under the merger agreement, but  
8 there's also a standard in paragraph 38, which we think  
9 addresses one of the Court's questions that they gave to the  
10 parties.

11 And 38 goes on to say, "In addition to determining  
12 whether to approve any such settlement under bankruptcy rule  
13 9019(a), the Bankruptcy Court shall determine whether the  
14 settlement would materially and adversely affect the  
15 treatment of holders claims and AMR equity interests under  
16 the plan such that the Bankruptcy Court should require the  
17 resolicitation of such holders' previous acceptances or  
18 rejections of the plan." What this order does, Your Honor,  
19 is provide, it seems to us, what the Court was searching  
20 for, which is an assurance to the Court and to parties and  
21 interests that the Court would retain the authority under  
22 the confirmation order to make sure that any settlement was  
23 consistent with the plan and didn't materially adversely  
24 affect the treatment of holders of claims and the AMR equity  
25 interests.



1 I agree with Mr. Karotkin. It's hard to imagine  
2 that the range of alternatives that would be potentially  
3 part of a settlement could actually meet that standard, but  
4 we thought it was important to include that standard in the  
5 confirmation order.

6 The second paragraph I would point to is paragraph  
7 70, which deals with nonoccurrence of the effective date,  
8 and again, reading just a portion of that. In the first  
9 sentence, it says, "In the event the debtors determine that  
10 any of the conditions to the effective date set forth in  
11 section 9.2 of the plan cannot be satisfied or duly waived,  
12 then effective immediately upon the debtors' filing of a  
13 notice of failure of the effective date, in accordance with  
14 section 9.3 of the plan, a, the confirmation order shall be  
15 vacated by the Bankruptcy Court, b, the plan shall be null  
16 and void in all respects, and c, the administration of the  
17 Chapter 11 cases shall continue," and then, there are other  
18 provisions of that paragraph.

19 That order that tracks exactly what the creditors  
20 and equity holders were told in the disclosure statement  
21 would happen in that circumstance, if the conditions to the  
22 effective date were not met, and so, I think, Your Honor, in  
23 the architecture of this order, in addition to everything  
24 else that's in it, the Court has the comfort of knowing that  
25 all of us understand and all parties and interests

1 understand publicly that, with respect to what's going on in  
2 Washington, this Court is not seeking to influence it, is  
3 not seeking to take any position on it. The entry of this  
4 order does not affect that in any manner, and I think,  
5 frankly, the government understands that they filed -- you  
6 know, I know that I'm an advocate, so I'll say they filed a  
7 piece of paper that doesn't object to entry of the  
8 confirmation order.

9           They said they took no position on it, but they  
10 didn't object to entry of the confirmation order and  
11 recognized what we all do, that these two proceedings are  
12 separate tracks, to some extent have separate constituents,  
13 and have separate courts dealing with separate issues on  
14 separate schedules, as they should. This Court is dealing  
15 with 435,000 plus parties who have come together at that  
16 moment in the bankruptcy code for confirmation of a plan.

17           We concur with Mr. Karotkin that the debtors have  
18 met all of their requirements to obtain confirmation of the  
19 plan. We, for all the reasons we expressed both on the  
20 record previously and in our two submissions on this point,  
21 believe that it is very much in the interests of our  
22 creditors generally for this confirmation order to be in  
23 place, for there to be a certainty that what we are focused  
24 on at this juncture in the case.

25           As Mr. Karotkin said, at this juncture in the

1 case, we're focused on a confirmed plan that has a series of  
2 conditions, 11 of them, to become effective, the most  
3 focused upon which is resolution of the Clayton Act  
4 enforcement action. With that, Your Honor, thank you very  
5 much for your consideration.

6 THE COURT: Thank you very much.

7 All right.

8 Let me hear from everybody who is supporting the  
9 position taken by the debtors, and then, I'll hear from the  
10 objecting party and the other objecting party.

11 MS. LEVINE: Good morning, Your Honor. Sharon  
12 Levine, Lowenstein Sandler, here with Bobby Gless, for the  
13 Transport Workers Union of America, or the TWU.

14 Your Honor, without repeating anything that's in  
15 our statement or the very well-put arguments by both the  
16 debtor and committee counsel, we just want to put a human  
17 face on how important this merger really is to the people of  
18 the airline and urge Your Honor to enter confirmation order  
19 today. It's not unusual -- in fact, it would be unusual if  
20 a case of this size there was a confirmation that did not  
21 have conditions to closing. While we had a little bit of  
22 drama with the timing of the DOJ complaint, it's also not  
23 unusual to have to work through antitrust issues, and it's  
24 not unusual, as the debtor and the committee have  
25 articulated very nicely, to have to come back to the Court

1 to the extent the settlement or resolution of those issues  
2 require further Court consideration by this Court.

3 THE COURT: All right.

4 MS. LEVINE: Thank you.

5 THE COURT: Thank you.

6 MR. CLAYMAN: Your Honor, Robert Clayman, for the  
7 Association of Professional Flight Attendants. With me is  
8 president of the union, Laura Glading.

9 Picking up on Ms. Levine's comment about trying to  
10 put a human face on this, I think that the legal arguments  
11 have all been, you know, aptly made and well-made by debtors  
12 and creditors' counsel and, as we did in our brief, would  
13 adopt those as our own. I think, though, in terms of  
14 putting a human face on this case, I think it bears stating  
15 that there is a history to this case regarding the employees  
16 that shouldn't be ignored, and that is a history that really  
17 began in 2003 when they accepted a concessionary contract  
18 and then began negotiations in 2008 to try to get a new  
19 collective bargaining agreement.

20 That process took over five years, and we're here  
21 today because we have reached a point where the employees  
22 have ratified agreements, not only in terms of the agreement  
23 that they have reached with American, but also there is an  
24 agreement that was reached previously that will go into  
25 effect if this merger goes through. It is a very unusual

1 situation that the union has gone through, that all the  
2 unions have gone through in trying to accommodate both the  
3 1113 process, which, as you know, was difficult and  
4 prolonged, as well as trying to figure out how to weave in  
5 throughout that process the possibility of a merger.

6 It's now almost a year -- actually, it's a little  
7 over a year now that that ratification of the agreement with  
8 American was reached, and, in that time, the flight  
9 attendants have come to believe in their hearts and in the  
10 way that they operate, in the way that they work every day  
11 that they have a future to look forward to, and it is a  
12 future that will entail a merger with U.S. Airways which  
13 will allow them to compete effectively with carriers that  
14 have enjoyed the benefit of mergers the likes of United and  
15 Continental and Delta and Northwest and Southwest and Air  
16 Tran, and that was a future that was literally days away for  
17 them for that happening.

18 I can tell you that American was diligent in  
19 preparing all of the work that was -- performing all the  
20 work that was necessary to ensure that the allocations of  
21 stock would occur by the end of August. The employees were  
22 put on notice about that. There were actions that they had  
23 to take in advance of that distribution. Everybody was  
24 prepared for this merger, and morale was predicated upon  
25 that merger, and when, at the very last moment, DOJ

1 introduced this lawsuit and injected this uncertainty into  
2 the case, I don't think the average employee could have  
3 expected that to happen, nor ever assumed that anything  
4 would derail, could potentially derail this merger or  
5 prolong the happening of this merger.

6 I think we're at a juncture now, for the sake of  
7 the employees who had every expectation that this merger  
8 would take place and should take place, that, rather than  
9 exacerbate the uncertainty that's been caused by this  
10 litigation, you have the opportunity to quell that  
11 uncertainty and to regain some of the momentum that has been  
12 lost as a result of this DOJ litigation and to assure the  
13 employees that, at least with regard to the bankruptcy  
14 process, that we are on track for accomplishing the merger  
15 that guarantees them the future that they have looked  
16 forward to for a very long time, and I thank you.

17 THE COURT: Thank you.

18 All right. Anyone else before I hear from the  
19 party who filed a written objection?

20 All right. Proceed.

21 MR. COOK: Thank you, Your Honor. For the record,  
22 David Cook, on behalf of Fjord. That's F-J-O-R-D. I'd like  
23 to introduce Mr. Alioto, who's sitting on the bench there,  
24 who is the lead antitrust trial counsel, to His Honor.

25 I'd like to start off with this with addressing

1 that, at the end of the hearing of last week, there was a  
2 discussion of a carve-out, and unfortunately, the details  
3 did not come to fruition of the terms of the carve-out.  
4 Subsequent to the last hearing, I have filed a motion to  
5 withdraw the reference, and now, I believe the matter is  
6 before the district court. We are waiting for a judge and a  
7 hearing date. So counsel's representation of the status of  
8 the adversary proceeding is correct.

9 I'd like to also address the issue of standing  
10 here.

11 THE COURT: I don't think these are the same  
12 things, but I just do want to make sure and understand the  
13 state of play. I believe language was read into the record.  
14 I don't remember what was left unsaid or what wasn't at the  
15 confirmation hearing. So can you explain to me where things  
16 were left?

17 MR. COOK: I think what is unsaid -- what was left  
18 unresolved was the carve-out as to this case and where this  
19 case would go, and it was unresolved as to where this case  
20 would go. That is the adversary proceeding.

21 THE COURT: Well, I don't know what that means,  
22 where this case would go.

23 MR. COOK: That is the adversary proceeding filed  
24 in this court.

25 THE COURT: But what does it mean when you say

1 where this case would go?

2 MR. COOK: Because ultimately, it's before  
3 Your Honor, and I filed a motion to withdraw the reference  
4 here. As Your Honor indicated early on that it was not your  
5 druthers to hear this matter before. It's also a Clayton  
6 action, and --

7 THE COURT: Well, there are a lot of things I want  
8 and don't want in life, and I rarely get my way.

9 (Laughter)

10 THE COURT: I think what I said was I had  
11 expressed no opinion in the case up to this point about  
12 antitrust matters, because, in fact, none had been presented  
13 to me, and the complaint in this case was filed shortly  
14 before confirmation hearing in August. It is a party's  
15 right always to file a motion to withdraw the reference.

16 MR. COOK: Correct.

17 THE COURT: I mean, you filed the case here.

18 MR. COOK: Correct.

19 THE COURT: So it's a bit unusual. Usually,  
20 somebody files a case, and the party that has had the case  
21 filed against them is the one filing the motion to withdraw  
22 the reference because they say we don't agree with your  
23 chosen forum. You filed an adversary here, and you want to  
24 file a motion to withdraw the reference. That's all fine.

25 I think the notion was that any rights that you



1 had in that lawsuit, whatever happens to it, would not be  
2 affected by the confirmation, and I think that was what was  
3 presented to me and certainly what my takeaway was, and so,  
4 when you say wherever that case may be, I'm not quite really  
5 following how that's material to what had been discussed at  
6 the hearing because that lawsuit is that lawsuit, wherever  
7 it may be in the Southern District of New York.

8 MR. COOK: Right. Well, what our view was at the  
9 time and what left unsaid was, a, lawsuit we filed -- that's  
10 the operative pleading here, and I wanted to make sure as to  
11 the details that should this case, for whatever reason,  
12 should there be a motion to abstain, which sometimes occurs  
13 in cases like this or alternatively, should there be a  
14 motion for a reference, that the fact that we have a carve-  
15 out remains with the carve-out. We're certainly not  
16 planning to file an independent action. I filed this action  
17 and this action here, and I want the circumstances that this  
18 thing moves out through are the circumstances I lose the  
19 value of the carve-out here.

20 THE COURT: I still don't quite follow what you  
21 mean by other circumstances and how that would affect your  
22 rights. If there's a lawsuit, there's a lawsuit.

23 Folks can sometimes agree to do other things with  
24 the lawsuit. So they might say why file it here, and all  
25 parties have reached an agreement that, in fact, this case

1 should be in some other venue, and now, it's in your prior  
2 agreement where we now agree to do the following. Folks can  
3 agree to do a lot of things, but I think what I understood  
4 the carve-out to be was the debtors' representation that  
5 nothing in the confirmation order or by confirming the case  
6 would impact your rights to have your claims heard that you  
7 have filed in that lawsuit, and I don't hear anything that  
8 has changed that. So I guess that's where I'm a little  
9 confused.

10 MR. COOK: Well, I don't mean to confuse the  
11 Court. I think, if the -- and I need to take a two-minute  
12 adjournment here -- is I want to preserve the plan's section  
13 seven Clayton action claims there now domiciled in this  
14 Court, as I've obviously filed it here.

15 THE COURT: Well, that's what the complaint is.  
16 It's under section seven of the Clayton Act.

17 MR. COOK: Right.

18 THE COURT: Relating to this merger. So that's  
19 what the allegations are. I think everybody understands  
20 that to be the case.

21 MR. COOK: Absolutely correct, sir.

22 THE COURT: So -- all right. I don't want to get  
23 bogged down on this, and I suspect that it wouldn't be  
24 productive to spend any more time on this at this point, but  
25 I'm not quite sure what it is that prevents that agreement

1 from still working today and from, in fact, still making  
2 tons of sense today, but I don't want to get bogged down.  
3 So let me hear whatever other arguments you have.

4 MR. COOK: Okay. Maybe in between, I can sit,  
5 rediscuss this with the debtors' counsel, and then work out  
6 while we're sitting here any of the remaining threads.

7 THE COURT: Well, one can always hope.

8 MR. COOK: Okay.

9 THE COURT: All right. Let me know whatever else  
10 you would like to argue.

11 MR. COOK: All right. Well, the remaining issues  
12 are that, if should we not come to finalize the carve-out  
13 here, is what this case does involve is 53 million  
14 passengers at 1,665 competing flights. So it's just more  
15 than what it would be.

16 Our view of this is the following. That the  
17 imperative to confirm this plan, of which the merger is the  
18 sole basis, is self-imposed. This is what the debtor has  
19 done here.

20 There's a hearing tomorrow, which we alerted the  
21 Court, in district court for trial setting here of the DOJ,  
22 and, in that setting, the debtor has not even asked the  
23 Court for a one-day continuance. This is like do or die  
24 here. That is really what's being requested of the Court.

25 THE COURT: Well, there are two different cases,

1 and there's two different sets of issues. I don't want to  
2 get bogged down into people start talking about what's going  
3 on in the district court action. You have a judge for that,  
4 a very competent judge, who, I'm sure, will do an  
5 outstanding job. So I'm going to stay out of it. The last  
6 thing that judge needs is for some other judge to start  
7 saying things. So I want parties to stay away from that.

8 My question that I raised was whether is it  
9 appropriate to confirm a plan under these circumstances,  
10 because that is the singular issue that I have in front of  
11 me. So that's what I want you to address, and again, I've  
12 read your papers, and maybe everything that you want to say  
13 is in your papers, but I just don't want to get off the  
14 track.

15 MR. COOK: I know that. Let me summarize  
16 everything I have in the papers.

17 There are really two major issues. One is that a  
18 plan -- this plan, which is predicated upon risk, which says  
19 the risk is there will be no merger at all, is not a plan.  
20 1129 asks for feasibility and say --

21 THE COURT: Well, let me ask you. I will tell you  
22 personally when I was in the U.S. attorney's office as well  
23 as when I've been in the bench, I've seen numerous plans  
24 confirmed, subject to regulatory approval, and so, what  
25 makes this case different? I can't predict the future. No

1 one can predict the future. From that point of view, what  
2 is different about this case than a case that, say, would be  
3 confirmed and then there would be issues that would become  
4 public about regulatory approval the day after confirmation,  
5 in your view, from a bankruptcy point of view?

6 MR. COOK: From a bankruptcy point of view, it's  
7 more than just regulatory approval such as the issuance of a  
8 zoning permit, the issuance of a use -- of a conditional use  
9 permit.

10 THE COURT: No, I'm talking about cases where, if  
11 you don't have regulatory approval, you don't have a plan.  
12 Telecommunications companies where the sale or some business  
13 transaction is subject to FCC approval is a very common  
14 example over the last decade in this courthouse, and I've  
15 had one of those cases -- I've had two of those cases in the  
16 last three years. So, in those cases, there is a plan.  
17 It's predicated on either a sale to a third party that needs  
18 to be approved by the FCC or some other business transaction  
19 where somebody who's going to acquire assets needs to make  
20 sure they are licensed, and that is something that is out of  
21 everybody's hands in the courtroom, including mine. So what  
22 makes this different from those circumstances?

23 MR. COOK: There was a lawsuit filed, we filed,  
24 and there's a lawsuit filed by the Department of Justice,  
25 and these particular lawsuits say, should there be a merger

1 in between, that merger will be subject to a divestiture.

2 THE COURT: Well, I'm not worried about -- you  
3 keep getting back to that point, but I don't think anyone  
4 has ever made the argument -- in fact, they've said exactly  
5 the contrary, that there is no merger unless there's  
6 regulatory approval, and, if there's a merger that's  
7 slightly different than what's proposed, that's because  
8 there have been some agreement reached to have that modified  
9 merger. So I don't think we need to discuss divestiture,  
10 because that's not a possibility.

11 I don't think anybody has thrown on the table --  
12 and lawyers are endlessly creative. So, if it was a  
13 possibility, I'm sure I would have heard about it. So I  
14 don't think we need to talk about divestiture. We just need  
15 to talk about the circumstance we have in front of us here,  
16 which is that there is a need to obtain approval, and  
17 whether that's through litigation, a settlement, or  
18 ultimately no approval is obtained, that that's not an  
19 uncommon -- certainly not an unheard of and, in fact, not an  
20 uncommon situation that comes up in this court.

21 Now, you mentioned one difference is there already  
22 exists a lawsuit, which is different than most of those  
23 cases. So how does that impact the bankruptcy analysis,  
24 from your point of view?

25 MR. COOK: Well, it does because, first of all,

1 there are two lawsuits, but as just focusing just on the DOC  
2 lawsuit and their statements here, which is the statement of  
3 attendant risks, but as opposed to saying it's typical, and  
4 there are obviously many mergers -- large-scale mergers are  
5 subject to regulatory approval for a whole host of reasons.  
6 In this particular case, there is a lawsuit, and the lawsuit  
7 was brought after, obviously, looking at the Hartscart (ph)  
8 Rudena (ph) records, which were millions of them, and one  
9 could look at that Pecoe (ph) lawsuit and say well, the  
10 government must have a reasonably good case, otherwise they  
11 would not have brought it because they have a vast amount of  
12 records.

13 So it's saying yeah, it's subject to regulatory  
14 approval. One would say well, is regulatory approval  
15 accessible. Looking at this lawsuit, one would say the  
16 government has filed this lawsuit. They have looked at  
17 everything. They think they can prevail here. Obviously,  
18 the government doesn't file lawsuits they don't think they  
19 can prevail, and therefore, one would say that would rebut  
20 the claim of feasibility under 1129(a)(11).

21 THE COURT: But are you telling me that I should  
22 make that kind of conclusion here? Because I will tell you  
23 what I think I said before. I don't have a view of the  
24 lawsuit, and there is a more than competent judge who has  
25 been charged with deciding that, and so, I am not going to

1 have a view of the lawsuit filed by the Department of  
2 Justice, and, in fact, that is the state of play in which I  
3 consider confirmation. So, if your objection relies upon me  
4 making a conclusion about the merits of that lawsuit, you're  
5 going to be out of luck because I'm not making any  
6 conclusions one way or the other.

7 Lawsuits are lawsuits, and my job is not to  
8 predict the future in that way, and so, I'm going to decline  
9 to do so. So again, my question is very -- we have a very  
10 specific set of circumstances here. A lawsuit -- a lawsuit  
11 in which I am not making any interpretive attempts at the  
12 merits or demerits of it, and I think that's consistent with  
13 what the debtors have said. It's also consistent with what  
14 the Department of Justice has said, which is why I think  
15 they said we are agnostic on a view of whether you confirm.

16 So again, my question is, from a bankruptcy point  
17 of view, thinking about, I think, the relevant standards of  
18 feasibility, what does the existence of a lawsuit do that is  
19 different from an instance where you have a question of  
20 regulatory approval and no lawsuit, in terms of tipping the  
21 balance.

22 MR. COOK: The answer would be found in the Pizza  
23 of Hawaii case and the Harmon (ph) case, which are identical  
24 in the third case we cited, when the seeks to make its  
25 burden of proof by a preponderance of the evidence.



1 Feasibility in the face of a lawsuit of which the fruition  
2 of the lawsuit would destroy the plan itself, the court's  
3 consistently denied confirmation. It's not our burden of  
4 proof here to show that the plan's not feasible.

5 It's the debtors' burden of proof to show  
6 feasibility, and, given the pendency of that, particularly  
7 the DOJ lawsuit, based upon size or call (sic), a million  
8 plus documents here, the Court would say well, for the  
9 debtor, you are facing this lawsuit. It raises the issue  
10 that this is not feasible. It is your burden of proof, the  
11 debtor, to demonstrate feasibility.

12 I would agree it's not for the Court to sit there  
13 and engage in a mini-trial of that case, but it's an  
14 affirmative obligation. The Court shall confirm a Chapter  
15 11, and obviously, I know His Honor knows this by heart, but  
16 the section says, "The Court shall confirm a plan only if  
17 all of the following requirements are met," and a, 11,  
18 confirmation of the plan, is not likely to be followed by  
19 the liquidation, or the need for further financial  
20 reorganization of the debtor or any successor to the debtor  
21 under the plan, unless such a liquidation or reorganization  
22 is proposed in the plan," and the plan says if we don't  
23 merge, we have no plan.

24 I mean, obviously, we all know the debtors made a  
25 claim saying that, should we lose in the face of DOJ, we'll

1 be back here. That is not a plan. That's nothing. And I  
2 don't think --

3 THE COURT: Well, if that happens, folks will be  
4 back here regardless of whether I confirm here today or not,  
5 as a practical matter. It'll be in a different procedural  
6 posture, but we would end up back here anyway.

7 So all right. What else would you like to tell me  
8 before we conclude?

9 MR. COOK: If we get back to the issue, I do want  
10 to address one issue, which is obviously, my clients are  
11 Fjords, and they have a Clayton Act claim here under section  
12 seven, which they are entitled to pursue separate and apart  
13 from the government here, and that was the whole issue,  
14 getting back to the Court's (sic) last discussion of the  
15 multiple discharge provisions that we discussed starting  
16 from 10.2 to 10.5. Those rights should be stand-alone and  
17 separate from any discharge here.

18 That's what we discussed about a carve-out. That  
19 would be the carve-out itself. Those claims -- and I  
20 thought that's what counsel was stipulating to -- should  
21 survive and be independent of any type of discharge.

22 Typically, as we all know, discharges of  
23 plaintiffs discharge the debtor of the creditors' claims.  
24 Obviously, for all purposes here, that's the whole point of  
25 the 11 is for the creditor to swap out the prepetition debt

1 in exchange for the benefits under the plan. That's why  
2 we're all here.

3 Here, as without recycling a lot of material  
4 before, this goes well beyond that scope of discharge, and,  
5 as we chatted earlier, discharging guarantors, discharging  
6 third parties, discharging a whole --

7 THE COURT: I think we talked about the release  
8 issues in the prior confirmation hearing, and I think I  
9 heard arguments on that. So I don't need to revisit that,  
10 and the confirmation hearing is closed, except to this issue  
11 --

12 MR. COOK: Right.

13 THE COURT: -- about addressing the antitrust  
14 lawsuit. So I don't want to go backwards in life. So --

15 MR. COOK: Right. And so, if we do end up with --  
16 to the extent the Court finds a carve-out, I want to make  
17 sure my Clayton action claims are carved out, and I have one  
18 lawsuit here, and I don't want to end up saying because  
19 somebody makes a motion to abstain or otherwise, that I lose  
20 the benefit of that carve-out or motion to withdraw the  
21 reference. I still haven't worked that out with counsel.

22 THE COURT: No, I -- thank you.

23 MR. COOK: Thank you.

24 THE COURT: Anyone else like to be heard who has  
25 not yet been heard?

1 All right.

2 Anything else to address?

3 MR. KAROTKIN: Just very briefly, because I don't  
4 think that Mr. Cook said anything particularly relevant to  
5 entry of the confirmation order. I will say -- and I'll  
6 emphasize again. We put a settlement on the record of his  
7 objection to confirmation. It was very, very clear he  
8 agreed to it. It provided that he could pursue his lawsuit  
9 in this court and no other court, and you may recall,  
10 Your Honor, that I think you remarked about the tone of my  
11 voice in the settlement was a little strange. Well, now you  
12 know why it was a little strange, because that's what we  
13 agreed to.

14 He could pursue it in this court, not remove it.  
15 That was the deal. That's clear on the record, and, if he's  
16 reneging, let him come up here and say he's reneging on the  
17 settlement, because we'd like to know that, and, as I said,  
18 he can file his motion for relief from the stay, and we can  
19 address it.

20 THE COURT: Well, --

21 MR. KAROTKIN: But, insofar as the confirmation  
22 order is concerned, he's raised nothing.

23 THE COURT: All right. Well, let me ask just one  
24 practical question without -- it's not really weighing in on  
25 the argument you just made.

1           As a practical matter, if there is this lawsuit,  
2           wherever it may end up, here or the district court and it's  
3           not part of any releases or any discharge, I think it would  
4           preserve whatever claims that those parties have, and I  
5           wouldn't say moot the issues that I'm concerned about, but  
6           certainly would moot the issues that those parties have  
7           presented in their lawsuit. So that's my question, is,  
8           separate and apart from any agreement, how debtors want to  
9           approach it in terms of addressing those issues, and I know  
10          we have a separate status conference on that adversary in  
11          September, and that adversary's issues are not the same as  
12          the confirmation issues, and I want to make that very clear,  
13          but, to the extent that we're talking about it here today,  
14          that's my question. I don't know if you want to chat about  
15          it. I just throw that out there, to the extent that it's --  
16          I'm just trying to find practical solutions in life where  
17          they present themselves.

18                 MR. KAROTKIN: Well, Your Honor, if you look at  
19                 paragraph 59 of the proposed order, it addresses what we  
20                 agreed to. As I said, we're prepared to stand by our  
21                 agreement, and where it should sit.

22                 THE COURT: All right.

23                 MR. KAROTKIN: There is a status conference on the  
24                 12th. If there are other matters to be addressed on the  
25                 12th, we can address it at that time, but this is where we

1 are today.

2 Again, Your Honor, this is what was agreed to on  
3 the record.

4 THE COURT: Right.

5 MR. KAROTKIN: Okay?

6 THE COURT: I don't have the benefit of having  
7 that in front of me. So I hear you, and I certainly  
8 understand your position. I just don't have that handy, and  
9 I'll take a look at it after we're done here.

10 MR. KAROTKIN: And I would add just one other  
11 thing. I had called Mr. Cook earlier in the week to request  
12 an extension of time to answer his complaint in this court,  
13 in view of the September 12th status conference as well as  
14 the Jewish holidays. I called him twice. He said he would  
15 call me back twice. He never did. So I would request an  
16 extension from this Court today.

17 THE COURT: All right.

18 We're getting pretty far afield of today's narrow  
19 issues, but, Mr. Cook, is there any problem with an  
20 extension of time on an answer, particularly in light of  
21 your motion to withdraw the reference, which is going to  
22 have to be heard before --

23 MR. COOK: No, Your Honor.

24 THE COURT: All right.

25 MR. COOK: I'll be happy -- I'm not sure how long

1 counsel wants here.

2 THE COURT: All right.

3 How long do you want?

4 MR. KAROTKIN: Well, I suggest we address it at  
5 the status conference.

6 THE COURT: Is that acceptable?

7 MR. COOK: Yeah, we can address that at the --

8 THE COURT: All right. We'll address it at the  
9 status conference, and it won't be any less than seven days  
10 after the date of the status conference.

11 MR. COOK: Just for this Court, the carve-out --  
12 and I only have one lawsuit here, and to make sure that I  
13 don't end up losing the benefit of that, if the Court does  
14 confirm that, the carve-out is to the Clayton action. The  
15 seven-section Clayton action claims in this adversary  
16 proceeding, not the lawsuit, but the case itself.

17 THE COURT: Well, you lost me when you said not  
18 the lawsuit but the case itself, and maybe I misheard it.  
19 So --

20 MR. COOK: No. My clients had a claim and cause  
21 of action under section seven of the Clayton Act.

22 THE COURT: Right.

23 MR. COOK: It is currently done (sic) --

24 THE COURT: But I think there's at least two  
25 litigations out there, right? There's another litigation in

1 another jurisdiction.

2 MR. COOK: That one we've stipulated that the  
3 matter would be stayed pending relief here.

4 THE COURT: But it's still stayed until it's not  
5 stayed. Listen.

6 MR. COOK: It's stayed.

7 THE COURT: Here's what we're going to do. We're  
8 going to talk about this on the 12th because we're getting  
9 very far afield of what we're going to do today.

10 I understand, as of right now, I have what was  
11 stated in front of me on the record. I have to go back and  
12 take a look at that. I understand that there is a  
13 difference of opinion as to the effective of that. I  
14 understand both parties' positions. If you reached some  
15 resolution that allows me to not think about it, I'd be  
16 happy to not think about it, but, if you don't, I'll take it  
17 all into consideration when I decide what I'm going to do.

18 MR. COOK: Thank you.

19 THE COURT: Thank you.

20 MR. COOK: Thank you.

21 THE COURT: And, Mr. Butler, I believe you had  
22 wanted to add something.

23 MR. BUTLER: I was just briefly going to respond  
24 to Mr. Cook's arguments, and I understand the Court doesn't  
25 have the benefit of the transcript right in front of it.



1 When the Court looks at it, it begins at page 174 at line 7  
2 and continues to page 178 at line number 4, and I don't know  
3 how Mr. Cook can stand up and say to the Court on this  
4 record, quote, "The carve-out did not come to fruition," end  
5 quote.

6 The carve-out couldn't be clearer in the record.  
7 We used the transcript when we were negotiating the form of  
8 order with the debtors' counsel and the ad hocs and others.  
9 Paragraph 59 lays it out.

10 From the committee's perspective, you know, our  
11 position may be slightly different than the debtors in that,  
12 you know, we think that paragraph 59 is clear and should  
13 stay in the order under any circumstance. You know, it just  
14 is -- having these kinds of arguments with Mr. Cook are sort  
15 of nonsensical because you read his -- where he's rested  
16 (sic) in the brief. He filed two or three submissions,  
17 including one or two that were tardy, in connection with  
18 this particular hearing today, but the cases that he cites  
19 -- and I just want to address them because he addressed them  
20 in his record -- are completely distinguishable.

21 You know, he talked about Am. Capital Equipment  
22 Company, a Third Circuit case. That was a case where plan  
23 was found to be infeasible where the proceeds from future  
24 litigation were the sole source of plan payments. Nothing  
25 about a future condition precedent like here that was

1 already in the plan and in the disclosure statement.

2 He talked about in re: Pizza of Haw. That was  
3 where the feasibility argument was about cash and liquidity  
4 and whether there was enough liquidity to fund the plan, and  
5 the evidence that was put in didn't consider significant  
6 disputed and unliquidated claims and what that impact would  
7 be on cash flow. Again, nothing to do with a post-effective  
8 date or an effective date condition.

9 You know, and then, he talked about Sherman B.  
10 Harmon. That was, again, a Ninth Circuit case where the  
11 bankruptcy court was found by the circuit court to fail to  
12 consider whether a pending appeal if resolved unfavorably  
13 would affect the ability of the debtors to comply with the  
14 plan. Again, completely in opposite to where we are here.

15 This plan is before the Court on behalf of the  
16 committee and the universe of unsecured creditors who voted  
17 on this plan. This plan's architecture from the beginning  
18 has been, as it often is in this courthouse, a two-step  
19 plan. What do you got to do for confirmation? What do you  
20 got to do to consummate?

21 Clearly disclosed. The risks were clearly  
22 disclosed, and what would happen if the conditions weren't  
23 achieved was clearly disclosed and is in the form of  
24 confirmation order as we've talked about, Your Honor, that  
25 we're asking you to consider entering.

1 THE COURT: All right.

2 MR. BUTLER: These cases have no impact and should  
3 not cause the Court to not enter the order.

4 THE COURT: All right. Thank you.

5 MR. BUTLER: Thank you.

6 THE COURT: All right. If you are together, I'll  
7 hear one, but not both. That's my general rule. So --

8 MR. ALIOTO: Very good, Your Honor. My name is  
9 Joseph Alioto. I appeared before Your Honor  
10 (indiscernible).

11 THE COURT: Well, but I just said I'm not hearing  
12 two folks argue the same --

13 MR. ALIOTO: I'm not going to be rearguing  
14 anything, Your Honor. I'm going to --

15 THE COURT: But I'm only hearing one counsel for a  
16 party.

17 MR. ALIOTO: Oh, I see.

18 THE COURT: Yeah. Otherwise, I open myself up to  
19 anarchy. It's my general rule. It's not for this case.  
20 It's for all cases. So, if you would like to have a moment  
21 with your colleague to chat, I'm certainly amenable to that,  
22 and that's how I handle instances where there's multiple  
23 counsel.

24 MR. ALIOTO: Very understandable. Thank you.

25 THE COURT: And you want to get the benefit of

1 your co-counsel's wisdom. So, if you want to take a second,  
2 that's fine. Why don't you do that?

3 MR. ALIOTO: I appreciate that, Your Honor. Thank  
4 you.

5 (Pause)

6 MR. BUTLER: Your Honor, while they're consulting,  
7 would you like a clean copy of the excerpt I --

8 THE COURT: Yeah, please. That'd be helpful.

9 MR. BUTLER: May I approach?

10 THE COURT: Yes. And, while we are waiting, I  
11 didn't know if there were any developments after the hearing  
12 of August 15th. Sorry. I was distracted by the paper here,  
13 which is on both sides of the paper, and I'm actually not  
14 used to something that has both sides of the paper for the  
15 same documents because we've been printing on the opposite  
16 sides of the paper.

17 (Laughter)

18 THE COURT: But I digress.

19 (Laughter)

20 THE COURT: Were there any developments after the  
21 hearing on August 15th relating to any objections? I  
22 thought there was a potential discussion involving the U.S.  
23 Trustees. It doesn't have to be addressed now. I just  
24 thought it was appropriate to ask for an update, and we  
25 certainly can do it in another manner, if that's helpful,

1 but I just thought I would ask.

2 MR. MASUMOTO: Your Honor, discussions are still  
3 in progress (indiscernible - 53:07).

4 THE COURT: All right. Is that something that you  
5 wanted an opportunity to reach a conclusion on?

6 So I see Ms. Riffkin nodding yes, so I'll take  
7 that to be a yes. Is there a timeframe under which you  
8 would imagine those discussions would reach a conclusion one  
9 way or the other?

10 MR. MASUMOTO: We haven't discussed a timeframe.

11 THE COURT: All right. Here's what I'm thinking  
12 is the next hearing we have is September 12th. I would  
13 imagine that would give sufficient time for those  
14 discussions to reach a conclusion, notwithstanding the  
15 Jewish holidays and other things like Labor Day, and I need  
16 to go back and look at the transcript, and my thought is  
17 that I'm not going to rule today.

18 I will say that I am finding the arguments in  
19 favor of confirmation currently to be fairly persuasive, but  
20 I'd like to reflect on them a little bit more and go back  
21 and look at the transcript and also wait for those issues  
22 that were raised by the U.S. Trustee that are the subject of  
23 discussion to play themselves out. So that in mind, that's  
24 how I'd like to handle it procedurally and then get back  
25 together September 12th, and, if for some reason that timing

1 becomes a problem in terms of the discussions between the  
2 debtors and the U.S. Trustee's office, just call the  
3 chambers and let us know because I don't want to have that  
4 procedure stand in the way of folks reaching a resolution  
5 that everyone thinks is in the best interests of all  
6 involved.

7 MR. COOK: Thank you, Your Honor. Thank you.

8 After talking to Mr. Alioto here -- and I can see  
9 the debtor has sought an early trial date in the district  
10 court -- I think we can likewise move for early trial date.  
11 Similarly in this court, I'd like the -- since the Court --

12 THE COURT: Well, I can't -- I mean, if there's a  
13 motion to withdraw the reference, we're sort of tugged --

14 MR. COOK: Well, we may end up withdrawing that,  
15 but I think, since the Court is not --

16 (Laughter)

17 THE COURT: Well, again, I just want -- we have a  
18 lot of problems in life that we're not going to solve at  
19 today's hearing. So the future path of this litigation is  
20 obviously going to have many twists and turns. It has  
21 already, and I think it is not now the time to tackle all of  
22 those twists and turns.

23 That's not the purpose of today's hearing, and  
24 that lawsuit and confirmation have some relationship to each  
25 other, but they are not the same. So, if you have anything

1 else you want to address on confirmation, I'm happy to hear  
2 it. If you want to talk about the twists and turns that  
3 lawsuit, I think that's why we have a date in September, and  
4 I suspect we'll have a very vigorous discussion at that  
5 time.

6 MR. COOK: I think what we can do is we can --  
7 I'll be in touch with counsel and perhaps work out the  
8 carve-out issue, which would probably avoid burdening the  
9 Court with that.

10 THE COURT: I think all judges are open to  
11 agreements of the parties that resolve issues, and I think  
12 all judges are always concerned about efficiency in  
13 proceedings, and so, folks have the right to file whatever  
14 they want to file, and I'll sort it out as I need to, and  
15 so, we'll just take it as it comes. I suspect there are  
16 more twists and turns ahead as to this particular  
17 litigation, but we'll see.

18 MR. COOK: Thank you, sir.

19 THE COURT: Thank you.

20 All right. Anything else that needs to be  
21 addressed here this morning?

22 MR. KAROTKIN: No, sir. Thank you very much.

23 THE COURT: All right. I'd like to thank all the  
24 parties for their very helpful submissions in connection  
25 with this question. I thought they were all very

1 thoughtful, and I've considered them all, and we'll take a  
2 look at the transcript and see you all in September and  
3 expect if there are any other developments, you'll give me a  
4 holler. Thank you.

5 MR. KAROTKIN: Thank you.

6 MR. COOK: Thank you.

7 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

8 (Whereupon, these proceeding concluded at 12:07 PM)

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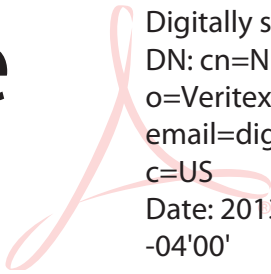


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C E R T I F I C A T I O N

I, Nicole Yawn, certify that the foregoing transcript is a true and accurate record of the proceedings.

Nicole  
Yawn



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