

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11233

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In the Matter of:

CHEMTURA CORPORATION, et al.

Debtors.

- - - - -x

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

January 6, 2010
2:09 PM

B E F O R E:

HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for an Order Authorizing Certain Debtors to Modify or Terminate Certain Other Post-Employment Benefits

HEARING re Motion of PPG Industries, Inc. for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(9) and 105(a)

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

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THE COURT: Good afternoon. Have seats, please, folks. Okay. We're here on Chemtura, the union's OPEB issues. I want to get appearances and then I want you folks to sit down and then I'll address the matters that I'd like to focus on, if you would, please. So, for the debtors?

MS. QUALLS: Alyssa Qualls, Kirkland & Ellis.

THE COURT: Having trouble hearing you, Ms. Qualls.

MS. QUALLS: Alyssa Qualls with Kirkland & Ellis.

THE COURT: Okay.

MR. LEVINE: For the USW, Your Honor, Bruce Levine and Josh Ellison from Cohen, Weiss and Simon in New York.

THE COURT: Okay. Your colleague is Mr. Ellison, did you say, Mr. Levine?

MR. LEVINE: I did.

THE COURT: Okay.

MR. DUBLIN: Good afternoon, Your Honor. Phil Dublin and Meredith Lahaie from Akin Gump for the creditors' committee.

THE COURT: Okay, Mr. Dublin. All right.

MS. QUALLS: Judge, excuse me. I forgot to mention. I have two colleagues on the telephone, Mr. John Irving and Mr. Dominic DeMatties.

THE COURT: Yeah. I see them. Okay. All right. Do I have West Virginia counsel, a Mr. Cogan or anybody on behalf

1 of the chemical workers, Local 698C here? I guess not -- or on
2 the phone? Okay. Well, if counsel for Local 698C were here, I
3 would want him to address the contention that there are
4 something less than the reservations of rights that the company
5 needs or is relying upon because the reservations of rights,
6 insofar as I could tell, at least applying to Local 698C were
7 there. So I'm going to assume for the sake of this argument --
8 and I didn't see that contention so much in the Steelworkers'
9 papers. I'm going to assume that the reservations of rights
10 are there and that the real issues that I need to deal with are
11 whether collective bargaining agreements remain in place and
12 trump any reservations of rights that might appear in either
13 summary plan descriptions or in any of the applicable
14 contractual documents. And I'm glad that you folks are here,
15 Mr. Levine and Mr. Ellison, because the area where I need the
16 most help on oral argument after reading your briefs is how I
17 juggle and work together with the collective bargaining
18 agreements and summary plan descriptions.

19 Now, Ms. Qualls, it seems to me, based on all the time
20 that you spent on disputing that the Evergreen provisions took
21 hold, that if or to the extent that any collective bargaining
22 agreement remained in place, you seem to acknowledge that, at
23 least under certain circumstances, the collective bargaining
24 agreement could impair your right to terminate or modify the
25 pension plans even though you've got those reservations of

1 rights.

2 But I'd like a lot of help from you on that. I would
3 like to know how a collective bargaining agreement incorporates
4 or does not incorporate a benefit plan dealing with either
5 health insurance or life insurance and whether we need to look
6 at the particular collective bargaining agreement to see how
7 specific it is or how we deal with it. Or if, by way of
8 example, a collective bargaining agreement says that during the
9 pendency of this agreement or during the term of this
10 agreement, we're going to provide you health insurance as
11 provided under our company plan whether that creates an
12 absolute obligation which can't then be walked away from or
13 whether it incorporates provisions in the plan which, by way of
14 example, could include the right to modify or terminate under
15 these reservations of rights.

16 So, I have a little problem with the circularity of
17 this perhaps because I don't understand how you guys do it in
18 the real world. And I would like both sides, or both remaining
19 sides, to spend the bulk of your time on the interplay between
20 the collective bargaining agreement and the separate health
21 insurance and life insurance plans for the retirees that might
22 be in question.

23 I also think I'm going to need you guys to address
24 especially what are arguably different circumstances among the
25 four U.S. -- United Steelworkers' plans.

1 Mr. Levine, I think at this point -- Mr. Ellison, I
2 think at this point -- I think we're really talking about the
3 first three because unless you can show me something in the
4 fourth plan where nobody's been able to find any documents, I
5 have some difficulty seeing any basis on which the reservations
6 of rights could be trumped.

7 On Uniroyal, I'm going to need you, Ms. Qualls, to
8 talk about what is arguably a significant distinction which is
9 different provisions dealing with -- I'd have to go back in my
10 notes and it would take me too long to find -- savings and
11 something else, on the one hand, and medical benefits, on the
12 other. It's the point that Cohen, Weiss made in its brief.
13 Because I don't know if I can just assume that the difference
14 in provisions is inadvertent.

15 On Nitro, I need to get my arms better around the
16 supplemental agreement that was signed when it was clear that
17 the plan was being shut down. And I have some difficulty, Mr.
18 Levine and Mr. Ellison, seeing how if you entered into an
19 agreement to meet your workers' needs and concerns when that
20 plant shut down how -- I can just assume that the underlying
21 agreement just continued under its Evergreen provisions.

22 On the third one -- and its name is escaping me but
23 it'll come back to me.

24 MR. LEVINE: Richardson, Your Honor?

25 THE COURT: Yes, sir. Richardson it is, Mr. Levine.

1 Although it had some similarities to Uniroyal, it also seemed
2 to not have that contrast that you talked about in your brief.
3 And I'm wondering if that could be significant or should be
4 regarded as immaterial and I'll let each side argue that.

5 So with those things in mind, let me hear from you
6 first, Ms. Qualls, and then I'll give Mr. Levine or Mr. Ellison
7 a chance to be heard.

8 MS. QUALLS: Yes, Judge. Should I stay right here --

9 THE COURT: Main lectern, if you would, please.

10 MS. QUALLS: Okay. Yes, Your Honor. In response to
11 your questions, I think, first and foremost, you're correct
12 that the Evergreen clause, in our position, the debtors'
13 position, is the central issue here. We simply think under the
14 existing case law, it -- specifically the Senviro case -- that
15 it's not possible given that these plants have all been shut
16 down or closed for these CBAs to continue indefinitely. I
17 don't think anyone from the unions has disputed that between
18 seven and fifteen years ago each of these plants has shut down
19 or have been sold.

20 THE COURT: I understand that. But wouldn't the
21 shutdown of a plant actually trigger employee needs and
22 concerns that they would want to invoke their collective
23 bargaining rights to protect them against?

24 MS. QUALLS: Well, no one, I believe, has done that in
25 these intervening seven to fifteen years.

1 THE COURT: So your point is that while it might
2 Evergreen long enough so that the agreement doesn't drop dead
3 the moment you close the plant, it closes some -- it comes to
4 an end sometime thereafter so that the union can protect its
5 guys for the consequences of the shutdown?

6 MS. QUALLS: I believe that's right. I mean, as
7 you've noted with respect to the Nitro and Uniroyal plants,
8 those plants were subject to shutdown agreements. I don't
9 believe that a shutdown agreement is required. I think that's
10 something that the union can elect to pursue or not. But
11 certainly in the instance where there was a shutdown agreement,
12 I think you made that point earlier, that the absence of any
13 contemplation that the CBAs would continue certainly cast grave
14 doubt on the argument that the Evergreen clause could continue
15 it indefinitely.

16 THE COURT: Well, the "indefinitely" I hear you on,
17 but I take it you agree that when a plant is shut down, that's
18 the time when workers need their union's protection the most.

19 MS. QUALLS: That's right. And perhaps the fact that
20 there wasn't a shutdown agreement suggests that, in certain
21 instances, that they didn't think there were any rights that
22 needed to be protected or altered. Certainly, if these plants
23 weren't shut down, they were sold to other companies that were
24 going to continue negotiating with these unions protecting the
25 employees. So it's not at all clear that the absence of an

1 agreement proves anything one way or another.

2 THE COURT: Well, it's not a bad point you're making
3 that when a plant is sold and the workers keep having jobs then
4 you might look at it differently than when the plan is closed.
5 To what extent in your view, Ms. Qualls, can I deal with that
6 without more evidence and hearing? And can I do it on the
7 present record?

8 MS. QUALLS: Well, I think -- I guess --

9 THE COURT: It does seem to me, and I take your point,
10 that if the workers are just working for another employer under
11 an alternative collective bargaining agreement then it does
12 sound a little nutty to me that you can say that they continue
13 to have rights under the old agreement. It would seem to me
14 that the new agreement would take its place. But I don't know
15 if I can do that without a greater evidentiary record and
16 whether I can do it on a feeling in my bones or whether I need
17 something more in the nature of true evidence or a basis for
18 ruling.

19 MS. QUALLS: Right. Well, I guess perhaps it's
20 something we can ask opposing counsel because I'm not sure --
21 to the extent they don't dispute that certain of their retirees
22 are being covered by other CBAs as with where other parties
23 are -- employers and a party to it then I think Your Honor
24 could rule. But I guess the question is whether this is a
25 factual issue that's in dispute. And at this point in time,

1 I'm just not sure what they would say.

2 THE COURT: I'm not either. Forgive me for
3 interrupting. Continue if you wish.

4 MS. QUALLS: No, no. I was finished.

5 THE COURT: Okay. Go on.

6 MS. QUALLS: Oh. Sorry, Judge. So with respect --
7 for the plants where they were not just sold but closed, I
8 still don't think that a CBA should exist indefinitely until a
9 problem may or may not arise in some distant time in the future
10 with respect to retiree benefits. I think it's incumbent on
11 the union to negotiate on behalf of those retirees at the time
12 of the closure of the facility. And --

13 THE COURT: Like they did for Nitro?

14 MS. QUALLS: Right. And now on this record, between
15 seven and fifteen intervening years, to come back now and say,
16 oh, we've been relying on the fact that there was this
17 Evergreen clause that was going to renew these agreements year
18 after year while we've been sitting silently by simply seems
19 that that can't possibly be an accurate statement of the law.

20 With respect to -- looking at Your Honor's other
21 point, with intersection of the underlying plan documents and
22 the CBAs, I think that, in specific instances, those plan
23 documents are incorporated by reference into the CBAs and I
24 believe that does effectively bring in those terms,
25 specifically terms that allow for reservation of rights,

1 modification and termination of those benefits.

2 THE COURT: Well, if the CBA says in baby talk that
3 the reservation of rights in the underlying plans continues,
4 are there any that are that clear because I would have thought
5 that your opponents, being pretty good lawyers, wouldn't be
6 quibbling with you on those. I take it, it's grayer.

7 MS. QUALLS: Well, there -- I think there are some --
8 I mean, I wouldn't say that it's un -- ambiguous or -- but I
9 think that the plans provide benefits. And they have a
10 specific -- these are the CBAs I'm talking about actually.
11 They have a specific length of time that they are written
12 under, putting aside the Evergreen issue for a second. They
13 have a natural termination. And they provide for benefits,
14 like the Uniroyal plan does, during the life of the agreement,
15 the CBA. So I think certainly certain agreements -- and I can
16 see that not every CBA has that language, but certainly when
17 you specifically identify that you're providing benefits during
18 the life of the CBA, I don't see how you can say that they're
19 vested beyond that without getting into this Evergreen
20 argument.

21 THE COURT: The problem I have, Ms. Qualls, aggravated
22 by the fact that the only labor law I know is from a course
23 that I took forty years ago, is that to my novice eye, it would
24 seem that some of the benefits that a company gives to its
25 workers, it provides to its workers during the term of the

1 agreement, such as pay, working conditions, work rules, things
2 of that sort, and medical benefits if you get sick during the
3 pendency of the collective bargaining agreement, and others
4 reasonably can be expected to benefit the worker only at a time
5 in the future after the agreement is expired, like the medical
6 benefits you get when you're retired. And the first part of
7 what you said, I find it easier to understand that they
8 disappear when the agreement comes to an end. But when
9 everybody knew that if you retired you could be staying retired
10 until you died years after the collective bargaining agreement
11 ended, how do I get my arms around that?

12 MS. QUALLS: Well, I think when that may be true if
13 the collective bargaining were to continue to exist between the
14 employees at that facility and the employer. When each
15 agreement says that the new CBA supersedes the old one and so
16 if another -- after you retire, workers -- the plant continues
17 to operate and another CBA comes into effect, I think that's a
18 different circumstance when the plant is sold or shuts down and
19 there are no further agreements although I think -- and I'm not
20 a labor lawyer either, Your Honor, but I have one on the
21 telephone, John Irving, and he may have some more specific
22 insight into this question.

23 THE COURT: Mr. Irving, do you want to weigh in here?

24 MR. IRVING (TELEPHONIC): Yes, I do, Your Honor. This
25 is John Irving. I think what we're talking about is a matter

1 of contract and what the parties intend with respect to what
2 survives and what survives during the relationship between the
3 union and the employer which, after -- and after the kind of
4 sale or close in a particular sale that Ms. Qualls is talking
5 about, vis-à-vis that employer, there is no further bargaining.
6 There is no further bargaining unit. There is no further
7 representation of the selling employer's employees. So no
8 continuation of dues are collected by the seller employer under
9 the old contract. It simply is being collapsed.

10 THE COURT: Does the employer collect the dues or does
11 the union collect the dues? Or are you talking about something
12 where the employer withholds the dues from the worker and then
13 passes them over to the union?

14 MR. IRVING: Yeah. I'm talking about the normal
15 check-off kind of provision where the dues are collected by the
16 employer and sent to the union.

17 THE COURT: All right. Continue, please.

18 MR. IRVING: So that, you know, if the parties were so
19 to provide that these things continue beyond the course of the
20 relationship, they could do that by contract but it's not
21 something that it automatically occurs as is alleged here
22 simply because there's an Evergreen provision that goes on and
23 on and on in perpetuity which doesn't make any common sense.

24 THE COURT: Okay. Do you want to rely -- back to Ms.
25 Qualls at this point?

1 MR. IRVING: Yes, Your Honor. If it pleases the
2 Court, I'd like to make one other comment on an --

3 THE COURT: Sure. Go ahead.

4 MR. IRVING: -- earlier question by the Court. We're
5 talking about a closing where there is no new employer coming
6 on the scene and the employees should be concerned. Certainly
7 that's the case and under the National Labor Relations Act,
8 there's a clear statutory right -- a statutory right on the
9 part of the union to request bargaining over the "effects" of
10 that kind of a closing and a clear statutory obligation on the
11 part of the employer to do that, to bargain over the effects.
12 Now way back when I'm not clear exactly what happened. But
13 certainly there's no unfair labor practice charge pending to
14 the effect that in any of these closings the employer failed
15 and refused -- violated the National Labor Relations Act by
16 refusing to bargain over effects whatever they may have been
17 and whatever may have been the understanding between the
18 parties.

19 THE COURT: The effects again being the effects of a
20 plant closing?

21 MR. IRVING: That's correct. That can be required
22 bargaining over the decision to do certain -- make certain
23 kinds of operational changes like the relocation of work to
24 subcontracting, that sort of thing. There is always an
25 obligation to bargain about the effects of even an

1 entrepreneurial decision by an employer whether it's a closing
2 or a partial closing or whatever, even a sale. And so -- but
3 it's up to the union to request bargaining over effects and the
4 statute provides that in the course of bargaining there's no
5 obligation for an employer to agree to anything particular.
6 And that generally takes place and an understanding is reached
7 in connection with those effects the other employer will either
8 do x, y or z or nothing. And again, if there's a failure to do
9 that then the union normally would file an unfair labor
10 practice charge with the NLRB. And the NLRB is able to remedy
11 that kind of a failure which -- and a charge must be filed
12 within six months of the occurrence under the statute of
13 limitations under the National Labor Relations Act.

14 THE COURT: Okay. Thank you. Ms. Qualls, back to
15 you.

16 MS. QUALLS: Yes, Judge. In terms of -- did you still
17 want to talk about the Uniroyal plans?

18 THE COURT: Well, I told you what I cared about you
19 covering in your argument by the time you're done. I don't
20 care what order you want to make your points and as long as you
21 have answered my questions by the time you're done. And I know
22 it's hard for any lawyer to try to get out a whole argument
23 without me interrupting, but I'll try to give you something
24 close to that opportunity.

25 MS. QUALLS: Yes, sir. Well, with respect to -- I

1 think where we were before we went on the labor point was I do
2 think with respect to the CBAs and their description of
3 benefits, regardless of what kind of benefits, I still believe
4 that absent from clear unambiguous promise vesting benefits to
5 extend beyond the life of the agreement, you still come back to
6 the general clause which the agreement terminates by its own --
7 at the end of its own term.

8 I guess, in other words, I don't think -- I think you
9 need the Evergreen clause. I think the unions need to prevail
10 on this Evergreen clause argument which, for the reasons we've
11 just discussed, I don't think makes any sense. But you need to
12 get that because all of the other provisions regardless of how
13 they're worded, unless they make a specific promise to extend
14 beyond the term of the agreement, they are all, by their own
15 terms, limited.

16 And so I guess I see that -- I don't think that the
17 unions have been able to point to any language that establishes
18 that there is vested benefits under these agreements. And I
19 think that is what's fatal to their -- in addition to the
20 Evergreen argument.

21 THE COURT: Okay. Any further points you'd like to
22 make before you get to hear your opponent and your chance to
23 reply?

24 MS. QUALLS: Well, I think I'll just reserve on my
25 reply.

1 THE COURT: Okay.

2 MS. QUALLS: Thank you.

3 THE COURT: Mr. Levine, will it be you?

4 MR. LEVINE: Thank you, Your Honor. Your Honor, a
5 couple of preliminary matters first, if I may. With respect to
6 the Allied-Kelite group, that fourth group -- I call them the
7 Michigan employees -- in fact, Your Honor, we've had an ongoing
8 cordial but joined dispute with debtors over their duty to
9 supply us with information. On Christmas Eve, Your Honor, we
10 received an e-mail from debtors' counsel. I believe Mr.
11 DeMatties is on the phone. And I hope I pronounced his last
12 name correctly. If I didn't, I apologize -- that they had,
13 without notice to the Steelworkers, made contact to -- with
14 four retirees from those facilities. And they told us -- Mr.
15 DeMatties told us by e-mail that those retirees did not want to
16 talk to the union which was trying to protect their retiree
17 benefits.

18 You talked about the real world, Your Honor? And this
19 is without any disrespect to anybody in this courtroom. But in
20 the real world, in the labor law world, it is extraordinary to
21 have an employer advise the union what formerly covered people
22 and retirees whom the unions are representing in this
23 proceeding have to say. We should have been able to get the
24 names and addresses of those people so that we could talk to
25 them and try and get information about what happened. That was

1 denied to us on the basis of a flawed rationale under the HIPAA
2 statute, the privacy statute. We addressed that by letter on
3 Monday urging Mr. DeMatties to reconsider what we believe to be
4 an utterly flawed and unexplained argument that they were
5 withholding that information from us under HIPAA. We've not
6 heard from them formally. Informally, I heard from counsel
7 before today's hearing that they --

8 THE COURT: Pause. I thought HIPAA's -- the statute
9 that says your doctor or your nurse isn't going to talk about
10 your private medical condition.

11 MR. LEVINE: Well, that's right. That's what HIPAA,
12 in general, is supposed to be about. But when an employer has
13 information -- identities of employees, HIPAA does not prevent
14 an employer who has gotten that information in the capacity of
15 an employer to disclose information to a union that is trying
16 to represent those retirees. It's a flawed legal argument. If
17 Your Honor permits, I have a copy of our letter that I sent to
18 Mr. DeMatties on Monday and I would like to make that a part of
19 the record. And we object to the fact that they've invoked
20 HIPAA, we believe, improperly as a matter of law. We believe
21 that this matter should be adjourned at least with respect to
22 the Allied-Kelite employees, those four retirees whom we've not
23 been able to contact in our capacity as their representative.
24 So with Your Honor's permission, I would like to --

25 THE COURT: Well, what I'd really like to do is make

1 all of your points, Mr. Seltzer --

2 MR. LEVINE: Mr. Levine.

3 THE COURT: -- then -- oh, forgive me.

4 MR. LEVINE: That's okay. Mr. Seltzer's my partner
5 and I take that as a compliment.

6 THE COURT: No. Forgive me. Then, yes, I'm going to
7 hand it up. I think Mr. DeMatties is entitled to be heard at
8 some time today because I've only heard your side of the story
9 so far. And then at the end, I'll decide, along with whatever
10 else I'm in a position to decide, whether I should carve out
11 the Michigan Steelworkers from the remainder of the motion or
12 not.

13 MR. LEVINE: Very well, Your Honor.

14 THE COURT: So continue, please.

15 MR. LEVINE: Yeah. And the other preliminary matter,
16 Your Honor, is that in light of the fact that there are many
17 different facilities -- there's four groups and there's
18 subcategories within those groups -- we have prepared a
19 demonstrative that we would like to present to the Court that
20 sets forth the language in each of the agreements, the relevant
21 collective bargaining agreements, which we believe provide a
22 reasonable -- withdrawn. Can be reasonably interpreted to
23 provide for vested benefits under the various collective
24 bargaining agreements. This is not new map material, it's just
25 organized in a way, I believe, that --

1 THE COURT: Like any other demonstrative.

2 MR. LEVINE: Correct, Your Honor.

3 THE COURT: Have you already given a copy to your
4 opponent?

5 MR. LEVINE: I have not, Your Honor. I can do that.

6 THE COURT: Okay.

7 MR. LEVINE: May I approach, Your Honor?

8 THE COURT: Yes.

9 MS. SPEAKER: Do you have more copies of that?

10 MR. LEVINE: I do.

11 (Pause)

12 MR. LEVINE: Your Honor, I want to address at the
13 threshold this notion about the reservation of rights and the
14 interaction of the summary plan descriptions and other plan
15 documents with the collective bargaining agreement. The
16 collective bargaining agreement, we have argued, Evergreen
17 clause, and, in addition, it's not just the Evergreen clause,
18 but the collective bargaining agreement is the bargain between
19 the parties which creates the vested benefits for retirees.
20 The SPDs, the unilaterally established SPDs, are just that and
21 nothing more. They do not supersede -- and we argued this is
22 in our objection, and it wasn't addressed by counsel.

23 THE COURT: Look. Pause, please, Mr. Levine --

24 MR. LEVINE: Yes.

25 THE COURT: -- because I thought your brief was vague

1 as to whether the SPDs were issued before or after the
2 collective bargaining agreement was entered. If the SPD is
3 issued after the collective bargaining agreement has been
4 entered into I have some difficulty, subject to what Ms. Qualls
5 tells me, of seeing how it can change the agreement that was
6 entered into between the union and the company, but if it was
7 the lay of the land beforehand, and then the collective
8 bargaining agreement was entered thereafter, I would have
9 thought that I have to put the two together to see how they
10 mesh with each other.

11 MR. LEVINE: Well, as far as we know, Your Honor, from
12 the records that have been provided to us, the SPDs post date
13 the collective bargaining agreements which established the
14 benefits in the first place in the ordinary course, again, in
15 the real world the parties agreed on benefits. These are
16 single employer plans as far as I know, that is to say that the
17 union does not have joint responsibility to administer these
18 plans. The SPDs are created afterwards, as far as I know. I
19 don't believe there's any dispute, and I wasn't aware that
20 there had been any dispute about that. So I would say on that
21 basis it corroborates the assertion that we believe is a given,
22 and that is to say that the documents which establish, we say,
23 or can be reasonably interpreted to establish vested benefits,
24 trump unilaterally established post-dated post-hoc summary plan
25 descriptions.

1 THE COURT: The point is if you have a two-party deal
2 you can't unilaterally change the two-party deal that's been
3 made --

4 MR. LEVINE: Correct.

5 THE COURT: -- single-handedly.

6 MR. LEVINE: That is correct. And, of course, the
7 collective bargaining agreement, as counsel points out, can, at
8 some point -- does, in fact, sometimes, in the ordinary course
9 and in the real world, incorporate SPDs by reference. To our
10 knowledge that's not the case in one or more of the agreements
11 at issue here, and to our knowledge that wasn't an argument
12 that was presented to us or to the Court in support of this
13 motion to terminate the OPEB. So, at best, I think that
14 creates yet another question of fact which should preclude the
15 granting of the requested relief without additional fact
16 finding.

17 THE COURT: The issue of fact being how you mesh the
18 SPDs with the collective bargaining agreement?

19 MR. LEVINE: Correct, including the history in terms
20 of when they were established and by whom, whether they were
21 established unilaterally, which I believe they all were. I
22 don't think there's any dispute about that either.

23 THE COURT: No, but the issue is, as you articulated
24 it a moment ago, isn't it, which is parties could, and, if
25 they're happy with it, very possibly would, simply say that

1 we're taking that summary plan description that you guys issued
2 a year ago and we're making that part of the promise that you
3 guys owe to the union --

4 MR. LEVINE: That could happen.

5 THE COURT: -- in exchange for our no-strike promise.

6 MR. LEVINE: I'm sorry, Your Honor. I didn't mean to
7 interrupt you, but, yes, absolutely, a collective bargaining
8 agreement could provide that. I haven't seen the language in
9 any of the agreements, and I don't believe that debtors have
10 pointed out any such language either in any of the agreements.
11 I don't believe that exists in these cases.

12 And, again, in the real world it is not unusual for a
13 collective bargaining agreement, for example, to say that with
14 respect to either a jointly administered or single employer
15 plan that the trust agreement established by the trustees or
16 the plan administrator is incorporated by reference into this
17 collective bargaining agreement. And there's all kinds of
18 reasons for that, particularly in the multi-employer context
19 where you want to be able to invoke audit procedures and stuff
20 like that.

21 But I don't think that's the case here. And I don't
22 believe that debtors claim that is the case here. So we are
23 fairly steadfast in urging the Court to join us in finding that
24 the relevant document for debtors to establish a reservation of
25 rights would be the myriad collective bargaining agreements at

1 issue in this proceeding.

2 Your Honor, we believe as to the specific vesting
3 language, or demonstrative, is very clear. I think Your Honor
4 has addressed the Uniroyal situation very well. At best that
5 creates an ambiguity, and with respect to counsel, I believe,
6 didn't accurately describe the relevant standard here. There
7 is no requirement. In fact, there is not a requirement in this
8 circuit for the union to establish that there is express
9 lifetime guarantees in a collective bargaining agreement in
10 order for there to be vested benefits. That, in fact, is not
11 the case. For the Court, for the record, just as an example to
12 a case decided by Judge Daniels in the Southern District of New
13 York, Asarco Inc., and its 2004 WL 2997872 (2004), where the
14 Court decides precisely to the contrary, based upon Second
15 Circuit case law, that there is no such need for express
16 language, and I think that language in the Asarco case mirrors
17 much of the language that exists in the contracts in these
18 cases, which we say establish the vested rights. And with
19 respect to vested rights, moving away from the 1113 argument,
20 1114 is required to be utilized by the debtors to get rid of
21 benefits when such vested rights exist. And we believe that
22 the contracts uniformly create at least a reasonable inference
23 that benefits did, in fact, vest.

24 I believe Your Honor was particularly concerned, or,
25 at least, you expressed to me, Your Honor, in your opening

1 comments, about the language in Richardson not meeting the
2 standards of the language in the Uniroyal agreements. Your
3 Honor, I think if you would peruse the demonstrative beginning
4 on the bottom of page 2, we believe that there is language
5 establishing vested benefits, or that could reasonably be
6 interpreted to establish vested benefits for a --

7 THE COURT: Could you slow down for a second, Mr.
8 Levine?

9 MR. LEVINE: Yes, I'm sorry.

10 THE COURT: I first want to go back to your brief
11 insofar as it talks about Uniroyal.

12 MR. LEVINE: Yes, sir.

13 THE COURT: And get my arms around the contrast that
14 it caused me to ask my question.

15 MR. LEVINE: Certainly, Your Honor.

16 THE COURT: Then we can talk -- turn to -- okay. I
17 think we have it now.

18 MR. LEVINE: Yes, and, also, the --

19 THE COURT: There was a trilogy. Pension, savings and
20 insurance. And your point was that pension and savings had
21 clauses saying, in baby talk, that the benefits were not
22 vested, that language was lacking vis-à-vis insurance.

23 MR. LEVINE: Your Honor, what we had said was that the
24 incumbent employees' health insurance was only applicable for
25 the duration of the agreement, but the retiree health insurance

1 was not so limited. And so we believe that that distinction is
2 significant, material, and, in fact --

3 THE COURT: Well, I thought it said, on page 6, "no
4 such reservations of rights with respect to insurance benefits
5 for either active employees or retirees.

6 MR. LEVINE: I'm sorry. Excuse me one second, Your
7 Honor.

8 THE COURT: Yes, sure.

9 (Pause)

10 MR. LEVINE: Oh, I'm sorry, Your Honor. That's an
11 additional argument. I agree with you. Right. There were
12 specific limitations with respect to the pension benefits that
13 were not applicable with respect to the medical. I'm sorry,
14 Your Honor. That's correct.

15 THE COURT: Okay. But you were then going to call my
16 attention to your demonstrative and impliedly put Richardson in
17 the same boat as Uniroyal?

18 MR. LEVINE: Correct, Your Honor. I believe that with
19 reference to Exhibit 25 to the debtors' motion, which are 1991
20 amended agreements, it provides for group life insurance for
21 retirees who retire with normal earlier disability pensions, no
22 limitations for the duration of the agreements.

23 THE COURT: Okay. Can I turn your attention in your
24 demonstrative to the second bullet point in the middle?

25 MR. LEVINE: Yes, Your Honor.

1 THE COURT: Because this was what triggered the
2 question I had asked at the beginning.

3 MR. LEVINE: Okay. I'm sorry. Are you looking at
4 Richardson, Your Honor?

5 THE COURT: Yes.

6 MR. LEVINE: I'm sorry.

7 THE COURT: And if you look at the middle portion on
8 page 3 of your demonstrative.

9 MR. LEVINE: Okay.

10 THE COURT: It says "shall continue to receive the
11 benefits as described in (ii) of this Exhibit B", which, of
12 course, is a cross-reference back to the section on medical
13 benefits of various types.

14 MR. LEVINE: Right.

15 THE COURT: The problem I have is whether that's
16 supposed to refer to those plans along with their reservations
17 of rights to change them, which is a fairly reasonable reading,
18 or whether that creates some kind of absolute right to get
19 those benefits separate and apart, or without the restrictions,
20 without the reservations of rights that the company has under
21 the plans themselves.

22 MR. LEVINE: Well, I think you're talking about --
23 unless I'm missing something, Your Honor, and forgive me if I
24 am. There is durational language in a separate section,
25 Exhibit D, that the debtors cite to. That is not applicable.

1 We are referring to Exhibit B of the agreement. Exhibit D was
2 for major medical for employees, but the retiree benefits that
3 we're talking about refer to the benefits provided in a
4 separate exhibit, Exhibit B, which provides benefits for
5 hospital expenses and prescription drugs. And, therefore, we
6 believe that durational language cited by the debtors is not
7 applicable to the retirees.

8 THE COURT: Yes, but my question is, is the (i) of
9 this Exhibit B -- is that part of the collective bargaining
10 agreement or is that part of the separate pension plan, or
11 benefit plan?

12 MR. LEVINE: Excuse me, Your Honor. I'm sorry.
13 That's right. It's a separately bargained agreement between
14 the parties in addition to the collective bargaining agreement.
15 It's a collective bargaining agreement, in addition to the
16 master agreement --

17 THE COURT: It's just another of a bundle of
18 collective bargaining agreements?

19 MR. LEVINE: Correct, Your Honor.

20 THE COURT: Which is, presumably, why you and your
21 opponents agree that whether the collective bargaining
22 agreement survives is so important, because it appears in the
23 collective bargaining agreement, not in a separate document.

24 MR. LEVINE: Well, we've made two arguments, Your
25 Honor. One, we argue that in this particular set of

1 circumstances, a rather unique case, we have Evergreen clauses
2 that are uniform. We do not, under any circumstances, accept
3 the premise that our case is based upon the existence of
4 Evergreen clauses. We have made two arguments. One, that the
5 debtors, because of the Evergreen clauses, may not, or cannot,
6 terminate the benefits without going through 1113. But even if
7 Your Honor were to object and reject that 1113 argument, which
8 is, candidly, something not addressed by any Court, bankruptcy
9 or otherwise, and with respect to Mr. Irving, with whom I have
10 the utmost respect for, we are, I think, the debtors have
11 conflated two issues. This is not an issue with respect to the
12 Evergreen clause about whether they have a continuing duty to
13 recognize the union as the representative of incumbent
14 employees who don't exist. This is a case not under the
15 National Labor Relations Act with respect to bargaining. It's
16 a case under Section 301 of the Labor Management Relations Act,
17 which deals with the enforcement of collective bargaining
18 agreements. So the fact that there might not be a continuing
19 duty to negotiate with nonexistent incumbent employees doesn't
20 mean that a contract which provides for vested benefits cannot
21 be enforced. In fact, there are many collective bargaining
22 agreements that die, with plants that close, that provide for
23 vested benefits. That's why we're here, and that's why you
24 have 1114. Otherwise there would be no need for 1114 in ninety
25 percent of the cases.

1 THE COURT: Well, a huge number of the 1114 issues I
2 deal with are with white-collar folks who weren't represented
3 by unions.

4 MR. LEVINE: And that's correct, and I think that even
5 corroborates the point even further, that even if the
6 collective bargaining agreement was no longer in effect you
7 look to the promises of the parties, and the fact that the
8 collective bargaining agreement contains the promise to vest
9 the benefits is what you would use, just as you would use in
10 the white-collar situation, where you look to the promises made
11 to the non-unionized employees. That's why you have 1114 in
12 the unionized setting as well, Your Honor.

13 THE COURT: Keep going, please.

14 MR. LEVINE: Excuse me one second, Your Honor.

15 (Pause)

16 MR. LEVINE: Your Honor, there is reference -- I just
17 want to point out a couple of other things. Debtors rely on
18 the Nitro MOU, but that doesn't refer -- they don't focus on
19 the Naugatuck MOU, which doesn't have the same kind of language
20 that they say exists in Nitro. With respect to Naugatuck,
21 where they do address Naugatuck there is no language whatsoever
22 provided by debtors.

23 THE COURT: Pause, please. Those are two separate
24 memoranda of understanding?

25 MR. LEVINE: Correct. Paynesville, we don't have

1 anything, nor do they argue that there's anything in writing to
2 suggest that benefits were supposed to be terminated.

3 Your Honor -- oh, oh. And that's right, Your Honor.
4 I'm sorry. And Mr. Ellison reminds me of a point that I did
5 want to make. If you look at the Nitro memorandum of
6 understanding, in trying to interpret it, it is again, at best,
7 ambiguous because the last page of the Nitro memorandum of
8 understanding contains a list of retirees receiving medical
9 benefits. And there is nothing in that agreement that suggests
10 anything to the effect that they will no longer receive medical
11 benefits. It's a list of retirees currently receiving
12 benefits. I think in the real world one would assume that
13 that's something like what we call a grandfather clause, that
14 those folks who are getting the retiree health benefits are
15 still going to get it. Otherwise, they would have put down in
16 the body of the memorandum of agreement, as is done in the real
17 world, that these folks who had collective bargaining
18 agreements, in which they were guaranteed retiree health,
19 aren't getting it anymore. That's the kind of thing you do.

20 Now, Mr. Irving, once again -- and with all due
21 respect to Mr. Irving. He's got a very impressive history
22 among us labor lawyers, and I really do mean this. But I think
23 he would agree that even though effects bargaining is something
24 that the parties can do, if the union doesn't believe there is
25 a need to do effects bargaining, then they -- or additional

1 effects bargaining, then they don't do it. You can't come back
2 nine years later, and you have an agreement like this with a
3 docket, with a piece of paper at the end of the agreement which
4 has a list of retirees receiving medical benefits, and say,
5 without evidence, that that doesn't mean that these people
6 aren't going to keep getting those benefits. It seems to me
7 you need to do a little bit more on the company's part.

8 THE COURT: Well, it cuts in several different
9 directions. At least seemingly cuts in the direction you're
10 arguing for, Mr. Levine, but it also suggests that whatever was
11 in that supplemental agreement that was entered into at the
12 time of the Nitro shutdown, that that, in essence, supersedes
13 the idea that the Evergreen agreement was going to keep going
14 on forever. So, in fact, that was the original mindset I had
15 for comparing and contrasting Nitro from the others, because
16 without concluding that the inference is valid one could draw
17 the inference that the Nitro supplemental agreement was, in
18 fact, the latest and greatest way to button up the various
19 obligations under the Nitro various collective bargaining
20 agreements.

21 MR. LEVINE: Wouldn't that, then, we argue, I mean, we
22 would, we argue and we believe that that list of retirees
23 indicates that buttoning up includes providing them with the
24 benefits they were promised, Your Honor.

25 THE COURT: Well, I guess the question is to see

1 exactly what it said when it listed those guys.

2 MR. LEVINE: I mean, it doesn't say much, Your Honor,
3 and that creates a reasonable inference that the promised
4 benefits in collective bargaining, and, by the way, when you
5 promise retiree benefits, again, in the real world, you get
6 retiree benefits, as I think Your Honor suggested in another
7 context, in exchange for something else, like less wages. And
8 in this day and age, particularly, you know, you bargain for
9 things like retiree health, and often take nothing else just to
10 preserve that. It's a very important benefit in this economy.
11 So we would suggest that those circumstances buttress the
12 reasonable inferences that the Court should draw that it is, at
13 best, ambiguous as to whether or not the agreements in question
14 do not, rather -- withdrawn.

15 The agreements in question vest benefits for retirees.

16 THE COURT: Continue, please.

17 MR. LEVINE: Oh, yes. Just on the Michigan point,
18 Your Honor, the Allied-Kelite, those four, I mean, we've been
19 working with the debtors. I think they've cooperated with us.
20 And I don't mean to suggest that Mr. DeMatties hasn't
21 cooperated with us. We do have an objection, fundamentally and
22 philosophically, with the notion that retirees would be
23 contacted by the company instead of letting the union do it.
24 It just cuts against everything that we understand about labor
25 laws.

1 THE COURT: Were there discovery requests going,
2 either formal or informal, between you guys --

3 MR. LEVINE: Informally.

4 THE COURT: -- where you asked for the location of
5 relevant documents --

6 MR. LEVINE: Absolutely, Your Honor.

7 THE COURT: -- and for anybody who might have knowledge
8 on this controversy?

9 MR. LEVINE: Absolutely, Your Honor, and I will say
10 that debtors have made extraordinary efforts to comply with our
11 request. And I think we work, by and large, very cooperatively
12 in trying to come up with a set of documents. And we did that,
13 Your Honor, because we wanted to see what was there. We
14 weren't sure. You know, there have been a lot of mergers and
15 re-affiliations and that type of thing, and we wanted to make
16 sure, and we haven't objected to quite a few -- to the
17 elimination of benefits for quite a few retirees. That's not
18 what we're in the business of doing. But we haven't objected,
19 because we've taken the documents that they provided to us
20 seriously. We didn't start out with four groups of retirees,
21 Your Honor. That's what we're left with. But we do have a
22 dispute, and a good faith dispute, and a legal dispute, with
23 respect to the HIPAA assertion made by the debtors that somehow
24 they are a covered entity within the meaning of HIPAA and,
25 therefore, may not, cannot, are prohibited from disclosing the

1 names and addresses and telephone numbers of retirees whom they
2 spoke with. I mean, it just boggles our mind, respectfully,
3 because, again, from a labor law perspective, that's just not
4 what happens. I mean, when you have an organizing drive, for
5 example, the one right, I say, that unions have in an
6 organizing drive that hasn't been taken away by the board
7 since Mr. Irving was general counsel, is the right to receive
8 the names and addresses of the employees whom you're trying to
9 organize. So in that spirit we think that it's absolutely
10 wrong that they -- and I don't say they're doing it in bad
11 faith. I think they're concerned about violating HIPAA. But I
12 think that they're legally wrong, and I think we showed them
13 why they were legally wrong, and we haven't had a response from
14 them.

15 So I would urge the Court, to the extent that you are
16 going to take silence on -- or the lack of documents cited by
17 us as to those Michigan employees as evidence that those four
18 retirees should now lose their retiree health benefits, I would
19 urge Your Honor to defer on that and urge the parties to work
20 this out or, as we say in our letter, we're going to ask you to
21 order the debtors, because I think you can do that, and I think
22 it's the right legal thing to do, to order them to produce
23 those documents to use, those records to us, so that we could
24 talk to these folks about bargaining. What happened? What
25 documents they have?

1 Your Honor, that's all I have for now. And, again,
2 I'd be happy to answer any additional questions.

3 THE COURT: Okay.

4 MR. LEVINE: And I do have that letter, Your Honor,
5 and --

6 THE COURT: Yes, you can hand it up.

7 MR. LEVINE: Thank you, Your Honor.

8 THE COURT: I assume Kirkland has a copy here in the
9 courtroom as well as anything you may have sent to Mr.
10 DeMatties?

11 MS. QUALLS: I do, Your Honor, have a copy of their
12 letter from the 4th.

13 THE COURT: Well, I'm --

14 MS. QUALLS: I --

15 THE COURT: Basically, what I'm driving at is I don't
16 want anything given to me unless you have a copy, Ms. Qualls.

17 MS. QUALLS: Oh, yes. I have that. Yes.

18 THE COURT: Okay.

19 MS. QUALLS: Yes.

20 MR. LEVINE: Yes, Your Honor, we had sent that -- I'm
21 sorry. For the record, Your Honor, that letter was e-mailed by
22 us on Monday to Mr. DeMatties. I believe he's on the phone.

23 THE COURT: Okay.

24 MR. LEVINE: Thank you, Your Honor.

25 THE COURT: All right. Unless the creditors'

1 committee wants to weigh in substantively I'm going to give you
2 a chance to respond, Ms. Qualls. But, Mr. DeMatties, do you
3 want to be heard at this point?

4 MR. DEMATTIES (TELEPHONIC): Thank you, Your Honor.
5 Dominic DeMatties, Kirkland & Ellis, for the debtors. Mr.
6 Levine is correct. We've had an ongoing discussion with
7 respect to a lot of these union matters, and it's been very
8 mutually cooperative. With respect to the HIPAA issue, in
9 particular, I respectfully disagree. The debtors respectfully
10 disagree with the characterization that the law is as clear as
11 has been specified. And, indeed, there are treatises published
12 by the CCH regarding this very issue that is specified, that
13 this type of information that's gathered that the plaintiff's
14 consort may come in contact with, which is information such as
15 enrollment material, names and address information is, indeed,
16 protection health information. And there's a lot of
17 uncertainty as to whether or not a company, in its corporate
18 capacity, can take whatever it sees to a plan sponsor and get a
19 good health plan in its capacity, even though it may be an
20 individual at the company who, essentially, wears two hats, and
21 pass that on to a third party. And in this case it's a third
22 party, correct -- it's a union, but these are retirees, and
23 while they may have been represented by the union many years
24 ago when they worked, they're certainly not represented by the
25 union right now.

1 THE COURT: Mr. DeMatties, are we talking about
2 protecting the company's interests in its own capacity or
3 protecting the company from criticism by workers that it
4 violated their HIPAA rights?

5 MR. DEMATTIES: Well, I mean, ultimately you may not
6 get criticism from the workers in this case, because I think
7 it's obvious that the union is trying to work on behalf of
8 these retirees, whether or not the retirees have asked for
9 that. But it's more, and, you know, a straight line concern
10 with respect to a violation that occurs under HIPAA and ERISA
11 where a company provides information that it's not authorized
12 to provide. And, you know, there is, you know, honestly, if
13 this hadn't specifically faced this union, you know, there
14 certainly hasn't been any interest in not disclosing
15 information for any particular purpose. So, alternately, what
16 Mr. Levine suggests with respect to a court order, actually
17 would provide the company with the cover as an exception to the
18 nondisclosure requirements and would allow the company to
19 provide the information that the union requests without concern
20 in violation of HIPAA.

21 THE COURT: All right. So if after I did the due
22 diligence I need to confirm that I'm not issuing a lawless
23 order, that I concluded that this was not protected under HIPAA
24 and/or that the integrity of the litigation process requires
25 sharing this information and I gave you the order that would

1 give you the safe harbor, then presumably you could provide
2 that information?

3 MR. DEMATTIES: Right, Your Honor.

4 THE COURT: Okay. All right. Ms. Qualls? Thank you.

5 MS. QUALLS: Yes, Your Honor, a couple of points.
6 First, in the debtors' original motion, in the appendix we went
7 to great lengths to list all of the relevant plan documents
8 that are applicable to the debtors' motion from 1984 to the
9 present, listing all of the reservation of rights language in
10 those documents, and I think that those documents are
11 undisputed here.

12 So I guess I was surprised to hear that there is now a
13 dispute that there was a predated -- an SPD that predated a CBA
14 in this case containing any reservation of rights language
15 because I think that Appendix A to the debtors' motion laid
16 that out in quite a lot of detail, and I didn't see anything in
17 the union's response that contradicted it.

18 THE COURT: In essence what you're saying is there
19 were reservation of rights both before and after the collective
20 bargaining agreement --

21 MS. QUALLS: That's right.

22 THE COURT: -- was entered into?

23 MS. QUALLS: That's right, Judge.

24 THE COURT: And on this we're talking about Richardson
25 or a different one?

1 MS. QUALLS: All of them. I mean, all of the un --
2 all of the plans contain the reservation of rights language. I
3 can walk through the different --

4 THE COURT: Well, I haven't -- subject to both side's
5 ability to be heard, I haven't seen a marked difference in the
6 reservation of rights substance. The question is -- which is
7 one reason why I don't see much on Local 698C's point here, at
8 least on that regard. But what I understood to be the dispute
9 between you and Mr. Levine is whether the company was
10 unilaterally, by means of a summary plan description, imposing
11 or establishing rights for itself that weren't in existence
12 when the collective bargaining agreement was entered into.

13 Now, am I hearing you right that what you're telling
14 me now is that there may have been such SPDs, summary plan
15 descriptions, issued after the collective bargaining agreements
16 were entered into but they were merely restating things that
17 said substantially the same thing before the collective
18 bargaining agreements were entered into?

19 MS. QUALLS: I believe that's right.

20 THE COURT: Okay.

21 MS. QUALLS: I think the appendix lists, you know,
22 year by year, so you'd have to go through and match up, which I
23 can do for you here. But for example, you know, you'll see
24 going back in many instances to 1984 or to the early '90s
25 reservation of rights language contained in all of these SPDs.

1 But let me continue, with respect to the Nitro plan,
2 which I think was the focus of some -- of the prior discussion,
3 a couple points that I want to make. In our reply we have a
4 chart on pages 10 to 13 which --

5 THE COURT: Of your initial brief or of your reply?

6 MS. QUALLS: No, I'm sorry, Judge, our reply.

7 THE COURT: Give me a second. Okay.

8 THE COURT: And this chart, I would submit, is
9 effectively a counter demonstrative to the demonstrative that
10 the union has provided. But if you look on the Nitro box on
11 page 11, there is a discussion of the benefits that are set
12 forth in a summary of benefits.

13 And as we note in footnote 11, the operative summary
14 of benefits is a Great Lakes retiree health care plan which
15 does contain clear and unambiguous reservation of rights. So I
16 don't think it's accurate, and I will concede that not every
17 CBA has a -- such a direct reference to an underlying SPD, but
18 I don't think it's accurate to say that they all don't. Also,
19 I --

20 THE COURT: Wait, you had a double negative in there,
21 MS. Qualls. The point you were referring to is in the second
22 box in the nitro box --

23 MS. QUALLS: Yes.

24 THE COURT: -- that says "Details of the various
25 benefits are defined in the detail in the summary of benefits".

1 And your point is --

2 MS. QUALLS: That --

3 THE COURT: -- saying that that's as close to, in baby
4 talk, as you can imagine, is that you've got to go back to look
5 at the summary of benefits and whatever the summary of benefits
6 says is incorporated by the -- is part of this deal.

7 MS. QUALLS: That's right.

8 THE COURT: Okay.

9 MS. QUALLS: And I'd also note too that in, I believe,
10 the paragraph right above the one that you were just reading
11 from, one point that I just also wish to make is that the CBA
12 itself, actually the benefits that they're providing, also it
13 asks the retirees to pay premiums for those benefits in full,
14 which is precisely what the debtors are seeking to do in this
15 motion. So the benefit that the Nitro retirees have, I don't
16 believe are more expensive than, in the first instance, than
17 how we're seeking to modify them here.

18 THE COURT: Well, the issue from the perspective of my
19 questions at the outset of this argument was whether Nitro
20 retirees had less in the way of benefits than other people.

21 MS. QUALLS: And I think they do.

22 THE COURT: Okay, continue.

23 MS. QUALLS: Okay. And then with respect to -- I
24 guess I'd like to sort of bring this argument back to the
25 Multifoods case because I still think that when you come -- and

1 I don't think I heard anything to the contrary, but you have
2 to -- that case, my understanding of that case is it stands for
3 the proposition that there are no vested benefits beyond the
4 life of the agreement.

5 When the agreement says that the benefits are to be
6 provided for the life of the agreement and the agreement
7 expires, then that's -- there are no vested benefits beyond the
8 term of that agreement. And that's why the unions go to such
9 great pains to make this Evergreen argument because they know
10 that they can't get around that, they need to extend the
11 agreements in perpetuity to get around -- try to get around the
12 Multifoods case and others with that language.

13 And I submit that they haven't provided an answer to
14 that because they are still -- I think we've made -- for the
15 points I made in my opening, we've explained why this Evergreen
16 argument can't be the case, that the agreements can't just
17 continue indefinitely, particularly where the plants have
18 closed or been sold.

19 And I think you can't come back to -- regardless of
20 which -- if you want to cherry pick certain clauses from
21 different places and say that there may or may not have been
22 certain language, you still come back to when the agreement
23 says that they're going to provide benefits for the length of
24 the agreement, which -- for example, the Uniroyal union
25 provides that.

1 I believe also the Richardson CBA also states that,
2 that you can't get beyond the life of the agreement without the
3 Evergreen clause. And I think that once we've shown how the
4 Evergreen clause argument has to fail, and I think that
5 disposes of the arguments for those plants.

6 As for -- there was an invocation, I believe of
7 Section 301 of I think the Labor Management Act, and I'd like
8 to have an opportunity for Mr. Irving to address that since
9 that's beyond the scope of my knowledge.

10 THE COURT: All right. That's the provision that says
11 that you're allowed to enforce a collective bargaining
12 agreement? Or, Mr. Irving, why don't you tell me?

13 MR. IRVING: I think it's that provision, Your Honor,
14 but there has to be a collective bargaining agreement to do
15 that. And not one that's lapsed or expired.

16 THE COURT: Now, suppose the agreement says in baby
17 talk that after it is expired the following rights will
18 survive, is it possible to draft an agreement of that
19 character?

20 MR. IRVING: I think it would be, Your Honor. There
21 would be perhaps different forms where that could be -- that
22 the intention could be addressed. It could be under Section
23 301, it would have been a collectively bargained agreement. It
24 might be an assertion like some of the other cases that the
25 union, you know, could file a grievance and go to arbitration

1 on something like that which would just, you know, carry its
2 own difficulties, or we're in -- it's something to put before
3 the bankruptcy judge.

4 THE COURT: Okay.

5 MR. IRVING: But you still have to have, I think, a
6 collective bargaining agreement where it's clear that there are
7 terms like that that do survive.

8 THE COURT: Right. Okay. Anything further, Mr.
9 Irving?

10 MR. IRVING: No. I have nothing further, Your Honor.
11 Thank you.

12 THE COURT: Okay. Ms. Qualls, anything further?

13 MS. QUALLS: Not from me, but I would like to just
14 inquire whether Mr. DeMatties has any comments he'd like to
15 add.

16 THE COURT: That's okay with me. Mr. DeMatties,
17 anything further?

18 MR. DEMATTIES: Thank you, Your Honor. I guess I
19 wanted to point out that Ms. Qualls mentioned the Multifoods
20 case. There's also the Joyce v. Curtiss-Wright Corporation
21 case which was decided after Multifoods, 171 F.3d, 130, 1999.
22 And the facts of that case are very similar to what we have
23 here with respect to Uniroyal and with respect to Richardson.
24 And in that case there were similar allegations, you know, with
25 respect to how in fact the CBA had expired and -- but there

1 were allegations that there should be an inference that
2 retiring benefits should continue beyond the expiration of the
3 agreement.

4 And essentially the Second Circuit said no even though
5 in that case -- unlike Multifoods, in that case there was not
6 specific durational language surrounding the provision of
7 retiree benefits. There was only the durational clause with
8 respect to the CBA itself, and that was enough, absent life
9 time vesting -- or language that promised life time vesting,
10 that was enough for the Second Circuit to find that the CBA did
11 not vest benefits.

12 And, you know, I think that's an important
13 distinction. One of the questions you asked was with respect
14 to retiree benefits, you know -- and I don't want to
15 mischaracterize but I heard it almost as: Why shouldn't there
16 be an inference when retiree benefits are specified in a CBA,
17 by definition wouldn't they continue beyond the date that the
18 CBA expires?

19 And if I'm properly characterizing that question, the
20 answer to that is no. The CBA will define the bilateral
21 agreement between the parties during the term of the CBA. And
22 so when a person retires during the term of that CBA, it's true
23 that the promise, if there is one, of retiree medical benefits
24 would continue until the expiration of the CBA.

25 But unless the CBA has language in it that says, as

1 you just indicated in your discussion with Mr. Irving, it says
2 that this retiree medical benefit is intended to survive for
3 life or to live on past the termination of this agreement, that
4 there is no vesting based on that language beyond the
5 expiration of the CBA.

6 THE COURT: Okay.

7 MR. DEMATTIES: The other point I wanted to raise is
8 you raised a question about the difference between pension
9 benefits and savings, which is like a 401K type or a profit-
10 sharing type benefit and medical benefit, why there might be
11 different types of provisions in a CBA with respect to each of
12 those benefits.

13 The pension benefits and the 401K type benefits are
14 -- the vesting of those benefits is regulated very heavily by
15 ERISA and so it makes perfect sense that those types of plans,
16 if you will, to the extent that they're included within a CBA,
17 will have very specific references to vesting because in many
18 cases they're legally required to do so. Whereas, with medical
19 benefits there's no required vesting under ERISA, so the only
20 time there would be a specific mention of vesting with respect
21 to medical benefits would be if the parties intend for the
22 benefits to be vested.

23 THE COURT: Okay. Anything else, Mr. DeMatties? Mr.
24 DeMatties, anything else?

25 MR. DEMATTIES: That's all, Your Honor. Thank you.

1 THE COURT: Okay. Ms. Qualls, anything further from
2 you?

3 MS. QUALLS: No, Your Honor.

4 THE COURT: All right. Mr. Levine, you rose, I'll
5 allow you to be heard very briefly.

6 MR. LEVINE: Very briefly, Your Honor. And first of
7 all, I think that we want to be clear that the Second Circuit
8 has never stated that there has to be an express lifetime
9 guarantee in a collective bargaining agreement that expires in
10 order for medical benefits to be vested. We cited a case for
11 that. It cites to Second Circuit case law, including Schonholz
12 v. Long Island Jewish Medical Center, 87 F.3d 72 and the
13 Multifoods case cited by the debtors just now again as to the
14 SPDs.

15 Once again, we say that we look to the bargain between
16 the parties in order to assume -- in order to interpret whether
17 or not language in the SPD somehow can constitute reservation -
18 - an effective reservation of rights when the parties have not
19 so bargained. The durational language that has been cited by
20 the debtors, all of it that has been cited by the debtors,
21 relates to active employees. In those closing agreements or
22 collective bargaining agreements there is no such durational
23 language with respect to retirees.

24 And finally, Your Honor, just to clarify, we do have
25 one document, really one CBA from the Allied-Kelite group and

1 that has language similar to that language in the Richardson
2 agreement that we rely upon for the purpose of saying that it
3 creates a reasonable inference that benefits vest, such that
4 debtors are not entitled to what would amount to summary
5 judgment here. We believe it creates the kind of question of
6 fact that precludes -- precludes awarding the relief requested
7 by the debtors based upon the record before the Court.

8 Finally, Your Honor, this is a real world point. We
9 have worked with the debtors. We believe -- and we've done
10 quite a few of these 1114 and 1113 cases and 1114 and 1113-like
11 cases with counsel for debtors and involving my client and our
12 client in this case and the United Auto Workers which is also
13 involved in this case but it's not appearing based upon the
14 cooperative efforts that we made.

15 This case -- let's be clear, this case is about
16 setting a precedent that would not require the debtors to
17 bargain with the union over reductions or elimination of
18 medical benefits. That's what this case is about. So just so
19 that we could be clear, I don't think that an offer has ever
20 been made to the unions to negotiate the kinds of modifications
21 they want to make, but they know our phone number and we're
22 available to do what we've done before.

23 Finally, with respect to the Nitro agreement --

24 THE COURT: Well, pause, please, Mr. Levine, because
25 you talked about a precedent. I mean, this goes both ways.

1 Somehow I suspect the next time that any union negotiates with
2 a company, at least a union that's represented by your firm or
3 the firms with which you network, there won't be the
4 ambiguities in the collective bargaining agreements going
5 forward.

6 And if, conversely, the company wants to reserve the
7 right to discontinue or modify the payments to the retirees,
8 either anticipating its bankruptcy or hoping that it will stay
9 out of bankruptcy going forward, it will make its desires clear
10 and see if it can get the union to agree to them. My ruling is
11 going to last for as many weeks or months as it takes for well-
12 counseled unions and companies to make sure that this is not a
13 bone of contention going forward, isn't it?

14 MR. LEVINE: Unfortunately, Your Honor, prospectively
15 you might be right, the world is changing. There are hundreds
16 of thousands if not millions of people in the kind of
17 situation, the people from Rust Belt, the manufacturing base
18 who have retired and retired with retiree health benefits.
19 Your Honor has to decide on the basis of the law, I don't
20 question that.

21 But I don't think that it's fair to say, and
22 respectfully, that we can take care of things going forward
23 because all these cases deal with the folks who hung up their
24 tools a long time ago and this is what they're living on, Your
25 Honor. And that's why we fight like heck to preserve these

1 benefits within the meaning of the law and with the meaning of
2 equity too.

3 THE COURT: Okay. All right, we're going to take a
4 recess and I can't -- I'm going to try to give you as much of a
5 ruling as I can today, and how much that is is yet to be
6 determined. I can tell you guys confidently that it's going to
7 take at least an hour. You can go downstairs. Tell the
8 marshals you got a cell phone waiver. The folks who are on the
9 phone can put their phones on mute and hold and stay on the
10 line, or if you want to arrange with my chambers to have a
11 repeat call-in, I don't know if it's doable or not. And I'll
12 get back to you as soon as I can. We're in recess.

13 (Recess from 3:30 p.m. until 5:21 p.m.)

14 THE COURT: Do I still have people on the phone?

15 THE OPERATOR: Yes.

16 THE COURT: Okay. I apologize for keeping you all
17 waiting. Please put your phones on mute, though, those of you
18 who are on the phone.

19 The motion is granted in part and continued in part
20 for the reasons and to the extent I'll discuss below.

21 In our last session, based on my earlier decisions in
22 GM and Lyondell, along with Judge Drain's decision in Delphi, I
23 ruled consistent with those earlier decisions that in the
24 absence of any other contractual documents to the contrary,
25 where a benefit plan contains a reservation of rights to modify

1 or terminate the plan, such a provision is enforceable and
2 trumps a claim that entitlements to health benefits or life
3 insurance were vested and can't be modified or taken away.

4 That principle is no less applicable here. So unless
5 there are documents that are reasonably susceptible to
6 interpretation as a promise to provide vesting which could give
7 rise to an issue of fact, or special considerations apply to
8 workers protected under collective bargaining agreements,
9 Chemtura may modify or terminate health benefits and needn't go
10 through the requirement Section 1114 imposes for those whose
11 benefits may not be modified or terminated under applicable
12 nonbankruptcy law.

13 And because the issues relate to health benefits and
14 life insurance rather than pensions, the requirements of ERISA,
15 as discussed by Local 698C at pages 24 and 25 of its brief,
16 don't apply.

17 I must disagree with the contentions made by Local
18 698C that the reservation of rights in the Crompton and OSi
19 plans are weak, ambiguous or non-germane. I think they're
20 exactly on point, and in the absence of anything negating them
21 they give Chemtura the rights to modify or terminate that
22 Chemtura wishes to enforce.

23 I find, in fact, that the language that Local 698C
24 relies on describe the plan as it then exists but don't cut back
25 on the right to terminate or modify. To the contrary, the 1995

1 OSi language and the 2003 Crompton summary plan description are
2 quite explicit in giving the company the right to amend to
3 terminate.

4 As a fact, I find the same deficiency with respect to
5 the contention, principally by Local 698C at pages 11 to 14 of
6 its brief, that the benefits would survive termination of the
7 collective bargaining agreement. The language Local 698C
8 relied upon just doesn't say that.

9 So then we turn to the more debatable issues,
10 principally raised by the Steelworkers 1) whether any of the
11 plans were reasonably susceptible to interpretation as a
12 promise to provide vesting; and 2) whether the collective
13 bargaining agreements continued by reason of their "Evergreen"
14 provisions and instances where the plants were closed down or
15 closed to others.

16 The parties seemed to agree that even though the
17 company reserved the right to modify or terminate benefits, as
18 for example in its benefit plan or summary plan description,
19 the requirements of a collective bargaining agreement could
20 trump that right. Thus all parties address whether certain of
21 the collective bargaining agreements did in fact trump that
22 right, and if so, whether those agreements continued or came to
23 an end when plants were closed or resold.

24 Now, turning first to points applicable to several of
25 the retiree groups, and then I'll deal with points applicable

1 to them individually.

2 I agree with the Steelworkers that closing a plant by
3 itself doesn't necessarily mean that obligations of a
4 collective bargaining agreement have to come to an end and that
5 in each and every case an Evergreen would self destruct.
6 Rights negotiated with respect to that plant closing could
7 still have meaning, and I don't think it's such a big deal for
8 an employer to say that it doesn't intend to continue an
9 Evergreen agreement if that's its desire.

10 I can see no reason why the employer couldn't
11 implement the right to terminate the agreement upon the plant
12 closing. All it would have to do is say the Evergreen has come
13 to an end. And putting it in real world terms, the union
14 couldn't do much to protest, in part because the employer would
15 have the right, as a matter of the earlier contract, and in
16 part because the union strike option wouldn't then be much of a
17 threat.

18 But it's also, at least arguably, unreasonable to
19 expect that many years after a plant has been closed an
20 Evergreen agreement would still have remained in place,
21 consistent with the parties' mutual intent. In fact, I find
22 that after the passage of many years, such an inference would
23 be close to absurd.

24 The problem is, however, that without further evidence
25 I'm not sure if I can make a finding in that regard or as to

1 what extent it's reasonable that the Evergreen would have some
2 kind of modest tail, and to what extent finding the agreement
3 to still be in place years thereafter goes over the line and
4 would in fact become totally absurd. In short, I see an issue
5 of fact in terms of when and how the Court should draw the
6 line.

7 A similar analysis applies, in part, when a plant is
8 sold. And I think that while the debtors' position is stronger
9 here, there are here, too, strictly speaking, issues of fact as
10 to intent to continue the agreement under the Evergreen after
11 the plants had been sold, even though with no workers left to
12 cover there would be little purpose in doing so, and that would
13 be especially true if the buyer entered into a new collective
14 bargaining agreement.

15 In fact, if the buyer had entered into a new
16 collective bargaining agreement, I think one might be hard
17 pressed to find, as a factual agreement, an intent nevertheless
18 to continue under the Evergreen. But I don't know the extent
19 to which successor employers here agreed to new collective
20 bargaining agreements, and I don't know what was said between
21 any union and employer representatives at the time of any such
22 sale.

23 I think here we're talking about the plants in
24 Sistersville, West Virginia; a Local 698C plan; and four
25 Richardson company facilities in Indiana, California, and

1 Michigan where the employees were represented by the United
2 Steelworkers.

3 If Ms. Qualls is right in what she told me in oral
4 argument today and any summary plan descriptions with
5 reservation of rights preceded, as well as followed, collective
6 bargaining agreements, the issue that I was concerned about in
7 oral argument, an employer unilaterally changing deals that had
8 been made under earlier collective bargaining agreements, drops
9 out of the picture. But she spoke in terms of that being her
10 understanding. That is something that I don't have a basis for
11 doubting but which falls a little bit short of being evidence.
12 I think that's something that the parties can stipulate to
13 after you both compare the dates of the summary plan
14 descriptions and the CBAs.

15 I assume, without today deciding, that you can't
16 unilaterally change a CBA by a subsequent summary plan
17 description. But I also assume, again without today deciding,
18 that unless a CBA changes the entitlements with respect to a
19 benefit plan as described under an earlier summary plan
20 description, the CBA incorporates the plan as the summary plan
21 description described it, including with respect to any
22 employer rights to modify or terminate benefits.

23 I think my assumptions are sensible, but this is a
24 potentially important point if it's not factually moot. So
25 since I'm going to need evidence as to some of the other

1 matters at issue here, as I'll discuss momentarily, I'll give
2 both sides the right to challenge my assumptions in this
3 regard, giving me any applicable law on point, if either of you
4 thinks my assumptions are not well taken.

5 Now turning to specific retiree groups, first,
6 Uniroyal. Here, I find an issue of fact with respect to
7 whether or not the Uniroyal plan provided for vesting as it may
8 have been reasonably susceptible to interpretation as a promise
9 to do so. The Uniroyal plan provided that employees receiving
10 retirement or disability allowance would, "continue to receive
11 the benefits under this program described herein." That could
12 be construed as describing the benefits alone or as describing
13 benefits as modified and qualified by more detailed provisions
14 of the plan, including the summary plan descriptions. And if
15 it's the latter, which may be the better interpretation but
16 which isn't necessarily the only one, the company would still
17 have the right to modify or terminate. But I still see that
18 language as ambiguous.

19 Additionally, there's here at least an ambiguity in
20 the documents since the Steelworkers appropriately observed
21 that the Uniroyal pension, savings, and insurance agreements
22 have several clauses making clear that the pension and savings
23 sections benefits were not vested, but they don't have
24 comparable clarifications with respect to insurance benefits
25 for either active employees or retirees. That at least creates

1 an ambiguity requiring a further hearing to explore whether
2 that distinction was intentional or not. It suggests, though
3 it may not compel the conclusion, that insurance benefits
4 should be in a different category. And that's true whether or
5 not provisions in ERISA require that understandings with
6 respect to pensions and savings plan contributions like 401Ks
7 be more explicit. Each side will be able to make its own
8 arguments in that regard.

9 Thus, because of the distinction in the manner by
10 which vesting was covered with respect to pensions and savings
11 plans, on the one hand, and health plans on the other, I find
12 an issue of fact that will have to be determined in further
13 proceedings as to whether that distinction was or was not
14 intentional.

15 As far as continuation under the Evergreen is
16 concerned -- that's the Uniroyal Evergreen -- here it's
17 undisputed that with respect to Uniroyal Steelworkers retirees,
18 no notice of intent to pull the plug on the Evergreen was
19 given. That raises at least an issue of fact as to whether or
20 not the parties intended that the CBA continue after the plant
21 was closed. It also raises the issues of fact that I noted a
22 moment ago as to the extent to which I could reasonably find
23 the requisite intent to keep the CBA alive so many years after
24 plant closing.

25 Since the rights, if any, of the Uniroyal retirees

1 will arise from the CBA and not the underlying plan, the
2 Uniroyal retirees will at least seemingly have to prevail on
3 many of the factual issues that I identified to have their
4 objection ultimately sustained. But they're entitled to
5 further proceedings in this regard.

6 Turning now to Nitro retirees, the Nitro CBA says that
7 medical insurance for employees retiring after March 2, 2001
8 will be continued until they reach age 65, which is seemingly
9 pretty explicit. But it goes on to say that the employee will
10 be enrolled in the retiree medical insurance in effect on
11 February 28, 2001. And that raises the same ambiguity as to
12 whether the promise to provide insurance is absolute or whether
13 the substance of the promise or whether the actual promise is
14 to simply include the retiree in the plan, which includes as
15 part of that plan the reservation of rights to modify or
16 terminate the plan. So we have the same need for an
17 evidentiary hearing as to the parties' intent as to that.

18 Also, the retiree would also have to show that the
19 Nitro CBA continued in effect either under the Evergreen or
20 under any successor agreement that came into place providing
21 the same rights. With respect to those latter issues, the
22 situation with the Nitro retirees is different than that of the
23 Uniroyal retirees. While the Nitro CBA also had an Evergreen
24 clause, the parties entered into another agreement, that being
25 the 2001 Nitro memorandum of understanding, when the Nitro

1 facility was shut down, that at least arguably could bear on
2 whether the parties intended that their earlier collective
3 bargaining agreement or parts of it would automatically renew
4 under that pursuant to the Evergreen.

5 It's at least arguable that when they entered into the
6 new agreement, the 2001 Nitro memorandum of understanding, that
7 they understood that the earlier CBA wouldn't continue to
8 automatically renew. It's also at least arguable that the 2001
9 memorandum of understanding defines all of their rights,
10 superseding the earlier CBA.

11 But it's then a matter of fair debate whether the 2001
12 memorandum of understanding has language sufficiently concrete
13 to provide for vesting, and what I should find from the
14 "medical census" which listed retirees. It's possible to find
15 as a fact that if there weren't -- if the retirees weren't
16 supposed to be getting benefits they wouldn't have been listed,
17 but it's also possible to find that the Nitro retirees would
18 continue to get benefits under the 2001 Nitro memorandum of
19 understanding but their entitlement would be subject to the
20 same right on the part of the employer to modify or terminate
21 that was part of the benefit plan itself. Thus I need to get
22 evidence on the intent underlying the 2001 memorandum of
23 understanding, especially with respect to its listing of
24 retirees.

25 Now turning to Richardson, the so-called "amended

1 agreements" for the Richardson steelworker retirees don't
2 present the contrast in language that appears in the Uniroyal
3 pensions, savings and insurance agreements, but they still have
4 the same basic ambiguity that I described above as to whether
5 the promise that they'd "continue to receive the benefits as
6 described in (ii) of this Exhibit B", is absolute or subject to
7 limitations in the underlying plan.

8 And while the argument may be weaker with respect to
9 language saying they'd be "eligible for the prescription drug
10 plan contained in this Exhibit B", as the word eligibility
11 would seem to connote that you're eligible for the plan but
12 then have to live with its terms, there's a similar ambiguity
13 here. So once more we'll have to continue the motion to
14 address the ambiguities I found.

15 Turning now to the Michigan Steelworker retirees,
16 after reading the briefs and before today's oral argument, I
17 was inclined to rule that we'd now had months for the Michigan
18 steelworker retirees to come up with any documents or other
19 evidence to trump the reservation of rights upon which the
20 debtors rely.

21 But I think it's at least arguable that HIPAA would
22 not be an appropriate basis for the debtors to deny the union
23 the opportunity to consult with its retirees. And I think it's
24 at least arguable that I could and should issue an order
25 determining that disclosure and the opportunity to consult must

1 be provided and that the debtors would be protected from any
2 HIPAA liability if they comply with any order that I would then
3 issue.

4 The parties are to submit to me -- to keep this matter
5 as simple as possible -- copies of any arguably relevant HIPAA
6 statutory provisions, and they are to give to me cites with
7 parentheticals but not full briefing to any cases that they
8 think I should see before issuing or declining to issue any
9 order compelling disclosure with respect to the retirees in
10 question, unless the debtors are willing to consent to entry of
11 an order compelling disclosure without further substantive
12 consideration as to what HIPAA authorizes or requires.

13 Until this matter is resolved -- that is the matter of
14 what HIPAA makes immune from disclosure, I think that this
15 motion, insofar as it affects the Michigan Steelworkers
16 retirees, must be continued as well. Thus the motion, insofar
17 as it affects the Michigan Steelworkers retirees must be
18 continued to allow a reasonable time to address the claimed
19 HIPAA exemption.

20 Turning back to some observations generally, as the
21 Second Circuit held in *Feifer v. Prudential Insurance* 306 F.3d
22 1202, 1211: "We have held that the vesting in question cannot
23 be determined as a matter of law where a plan is not explicit
24 one way or the other." For benefits, including retiree health
25 insurance benefits, it further stated: "We have held that the

1 question of vesting is for the trier of fact so long as the
2 plaintiff can 'point to written language capable of reasonably
3 being interpreted as creating a promise on the part of the
4 employer to vest benefits'", 306 F.3d, 1211, brackets deleted,
5 citing earlier Second Circuit decisions, in Schonholz v. Long
6 Island Jewish Medical Center, 87 F.3d 72, 78 and Joyce v.
7 Curtiss-Wright Corporation, 171 F.3d, 130, 134, these all being
8 decisions of the Second Circuit.

9 For that reason, though I think some of the inference
10 is still pretty strongly in various directions, I think that
11 the documents aren't explicit enough to determine the vesting
12 questions as a matter of law and that I should deal with them
13 in my capacity as the trier of fact. I will do that in a
14 follow-up hearing, unless by reason of the guidance that my
15 observations have provided you earlier resolve this
16 consensually between yourselves. I encourage you to do so but
17 won't insist upon it.

18 For the preceding reasons, the motion will be
19 continued for a further hearing, evidentiary, unless the need
20 for an evidentiary hearing can be obviated by stipulation or
21 agreement as to particular facts on the issues of fact that I
22 identified.

23 However, with the Local 698C retirees not having
24 raised similar issues of fact, by reason of having given me
25 language comparable to the specific language that was presented

1 by the Steelworkers, the motion will be granted as to them.

2 The debtors may, if they wish, settle an interim order
3 on the matters that have been resolved by my decision today, or
4 if they prefer they can await the conclusion of all of the
5 matters that were presented by their motion, both those that
6 have been resolved and those that must be continued for an
7 evidentiary hearing. They are to advise the Steelworkers and
8 Local 698C of their desire in this regard at their earliest
9 reasonable convenience.

10 And with that, I apologize for the lateness of the
11 hour. We're adjourned.

12 (Whereupon these proceedings were concluded at 5:48 p.m.)

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I N D E X

R U L I N G S

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

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

LISA BAR-LEIB (CET**D-486)
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Date: January 8, 2010