

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 09-13449 (BLS)
. .
. .
ACCURIDE CORPORATION, .
. 824 North Market Street
. Wilmington, DE 19801
. .
Debtor. . February 4, 2010
. 9:40 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY COURT JUDGE

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For Hondo Sen: HONDO SEN

1 THE COURT: Good morning, counsel. This is Judge
2 Shannon. I understand from the operator that all necessary
3 parties are on the call.

4 There are a number of matters that I expect are going
5 to be addressed at this morning's hearing, but the initial
6 matter that I believe to be addressed by the Court are two
7 separate requests; one by the equity committee for an order
8 compelling compliance with the Court's prior order on Rule 2019
9 and a corresponding or related motion for a stay pending appeal
10 of the Court's prior 2019 order.

11 I would like to first address the request for a stay
12 pending appeal and I think in the same context then I'll hear
13 argument with respect to the motion to compel compliance. I'll
14 hear from the movants on the stay pending appeal.

15 MR. SHENFELD: Good morning, Your Honor. Robert
16 Shenfeld, Milbank, Tweed, Hadley and McCloy on behalf of the
17 moving party, the Ad Hoc Group, in connection with the stay.
18 Your Honor, to be brief, as set forth in our moving papers we
19 believe we can satisfy all four elements necessary for granting
20 a stay of the order entered on January 22nd compelling the Ad
21 Hoc Group to comply. If it's all right with Your Honor, I'd
22 like -- those four elements are that we have a strong case on
23 appeal. There is irreparable harm to the group, absent a stay,
24 whether there's harm at all to any other parties in the case if
25 the stay is granted and whether or not there's a public

1 interest involved in the stay. If it's okay with the Court,
2 with your permission I'm going to start first with the prong of
3 the test that relates to harm to other parties in interest, and
4 in particular the equity committee in this case.

5 THE COURT: Okay.

6 MR. SHENFELD: Your Honor, there is no harm to any
7 other party in this case due to the various and numerous
8 disclosures about the members of the group, their various roles
9 and interest in this case. This case is particularly unique in
10 the sense that the various pleadings filed, including the 2019
11 statement and the supplemental 2019 statement filed by Milbank,
12 Tweed and Pachulski, as well as discovery and disclosures, has
13 put forth an enormous amount of the disclosures that might
14 otherwise be made in connection with a Rule 2019 statement.

15 I'm going to address the specific disclosures that
16 have made in a moment, but first I'd like to highlight how,
17 with regard to the equity committee, in particular, that there
18 is no harm to the equity committee.

19 As the Court and the parties are aware, the equity
20 committee has recently filed a motion to adjourn the
21 confirmation hearing. In the motion to adjourn, the equity
22 committee sets forth the bases for the necessity of the
23 adjournment and those are two-fold. One, the equity committee
24 requests adjournment of the confirmation hearing to investigate
25 an alternative financing proposal and an alternative plan. And

1 secondly, to investigate their alleged voting irregularities
2 with regard to Class 10, the equity class.

3 In that motion, in the motion to adjourn, the equity
4 committee does not contest that they need adjournment in any
5 way, shape or form to obtain any further disclosure from the
6 noteholders regarding the notes and any disclosure from the
7 backstop investors or from the last out DIP lenders. And as
8 the Court will remember, those three areas are where the
9 members of the group fit in this case.

10 Further, the motion to adjourn does not say that the
11 equity committee needs an adjournment of the confirmation
12 hearing because they need time to investigate or just conduct
13 any discovery in connection with an objection to confirmation
14 based on Section 1129(a)(3) of the bankruptcy code, that
15 provision which requires the debtor to prove that the plan was
16 proposed in good faith.

17 The equity committee also filed recently another
18 motion -- I'm sorry -- in addition to the motion, the equity
19 committee recently filed its fulsome objections to
20 confirmation. In their objections to the debtors' plan, they
21 do not file an objection based on the absence of any
22 information from the noteholders, the backstop investors or the
23 last out DIP lenders. There's no objection to confirmation on
24 file that in any way implicates or indicates that the equity
25 committee needs to have access to the confidential trading

1 information from the members of the group in order to prosecute
2 and press their objections to confirmation.

3 Further, the objections to confirmation are replete
4 with allegations of the current standing of the noteholders,
5 and by that current standing I mean the reflection that the
6 members of the group own today 16.6 percent of the voting
7 notes, as well as replete with arguments based on those
8 percentages.

9 In addition, the objections to confirmation filed by
10 the equity committee also include numerous allegations and
11 their disputes with regard to the members who are backstop
12 investors, how the backstop investors figure into the equity
13 committee's objections to confirmation. And, again, there's no
14 allegations that information is missing or that the equity
15 committee is unable to present adequately its objection to
16 confirmation regarding the backstop investors or the Rice
17 offering related thereto. So, I would submit that in both
18 those instances it is clear that -- in the motion to adjourn
19 and in the objections to confirmation it is clear that, in
20 light of the disclosures that have previously been made, that
21 the equity committee would not be harmed by a stay because they
22 have indicated through their pleadings that they do not need
23 any additional information at this time to press those
24 opposition.

25 And just for the record in order to be clear, I'm

1 summarizing the equity committee's objections. I don't mean to
2 speak for them with regard to their motion to adjourn or with
3 regard to their objections to confirmation, nor do I suggest or
4 intend to suggest, directly or indirectly, that we concur with
5 what their objections are or their request for adjournment, but
6 just to highlight the fact that in the context of a stay
7 application there's no harm to them.

8 Further, there is proof that there's no harm to any
9 party in interest, and the equity committee in particular, if
10 we issued a stay here today, Your Honor, because the voting on
11 the plan has been concluded. All information regarding all the
12 classes of voting and equity interests has now been made
13 public. Class 7, the noteholder class, has voted
14 overwhelmingly to accept the plan, I believe, from
15 representations to me from the debtor that it's practically
16 99.9 percent of the Class 7 has voted in favor of the plan.
17 And also Class 10, the equity class, has voted to accept the
18 plan and, again, I believe, I think that's over 70 percent of
19 those equity holders have voted to accept the pecuniary
20 treatment under the plan.

21 So, again, there's information regarding all of the
22 claims of all of the parties and all of the equity interests in
23 this case is available. In addition, as put forth in the
24 equity committee's objections to confirmation, they have
25 indicated that they also know the equity holdings of the

1 members of the group, as well as the -- I believe, Your Honor,
2 that the -- those few members of the equity committee of the Ad
3 Hoc Noteholder Group who also in equity have filed public
4 statements, 13(d) statements, detailing their ownership.

5 I'd like to give the Court a quick summary of the
6 existing disclosures that have actually been made available to
7 and directly to the equity committee. First, in the
8 supplemental 2019 statement that was filed, all information
9 regarding the backstop parties has been disclosed to all
10 parties and includes a chart that indicates the specific
11 percentages of each backstop investor. This information has
12 been available since the motion to approve the commitment
13 agreement was filed in the first day or two of the case. But,
14 again, now in this 2019 statement it's in a chart form and
15 available.

16 Similarly, all information regarding the last out DIP
17 lenders' role in the case, their individual commitment of the
18 \$25 million DIP advance has been set forth in a chart annexed
19 to that supplemental 2019 statement.

20 In the supplemental 2019 statement, it also discloses
21 that the current holdings of the -- of current note holdings of
22 the group is 16.6 percent and it discloses that of the original
23 \$193 million that was held pre-petition, 140 million of that
24 amount was held for more than one year prior to the petition
25 date and that the remaining amount which is 45.69 or

1 \$45,690,000, \$43,500,000 of that was also held for a year prior
2 to the petition date and that's a particularly relevant
3 disclosure under what you would get under 2019.

4 In addition to those foregoing public disclosures,
5 pursuant to an existing confidentiality agreement among the
6 debtors, the creditor's committee, the equity committee, the
7 debtors have provided the equity committee with the individual
8 holdings of each of the signatories to the noteholder plan
9 support agreement, that those signatory pages indicate each
10 member of the group, its affiliates and how much each of those
11 affiliates and members held in dollar amount under the notes on
12 the pre-petition basis.

13 The only information that has not been disclosed to
14 the equity committee and to the other parties in interest in
15 this case is trading information that arguably is due under
16 Rule 2019.4. And as -- I think it's fairly obvious in all
17 cases and all situations that that information is highly
18 confidential and protected under Section 107 of the bankruptcy
19 code. It's a fundamental obstacle and would be subject to
20 further discussion, as well as, perhaps, litigation whether or
21 not that information can, in fact, be shared.

22 And in this particular case, unique again to the
23 Accuried case, due to the number of notes that were held for
24 more than a year prior to the petition date for a year and the
25 amount that remain, the overwhelming amount that remain which

1 are subject to 2019.2 which says that when you own the debt for
2 more than a year prior to the petition date, you don't need to
3 disclose the amount or nature of that holding.

4 So, I guess, against that backdrop we've argued --
5 we're arguing today in requesting a stay on the prongs that
6 there is no harm to any parties in interest in this case, and
7 in particular, no harm to the equity committee as they
8 demonstrate their ability to challenge and pursue their
9 strategy in the case without any further information. And,
10 again, it bears noting that no party in interest, other than
11 the equity committee, has requested any information from the
12 members of the group on any of the three areas in which the
13 group participates, not the debtor, not the creditor's
14 committee, not the U.S. Trustee and no other party.

15 Moving on to the next prong of the standard for the
16 granting of a stay today is the issue of whether or not the
17 group has substantive arguments and whether there is strong and
18 substantial case law that would support our appeal. For a set
19 standard, as we put forth in our pleadings, is not whether or
20 not we are going to reargue the prior motion or try to convince
21 Your Honor today that somehow the decision that you rendered
22 was wrong. Rather, the legal basis is whether or not there is
23 a strong and valid opportunity and possibility on appeal the
24 District Court may have a different view than Your Honor on
25 whether 2019 applies to the group. And we submit that that

1 test, here in this particular case, would include the idea that
2 it's the possibility that the District Court, on appeal, would
3 agree with Judge Sontchi's interpretation of how Rule 2019
4 applies to ad hoc groups, or perhaps that the District Court
5 would take the view espoused by Judge Gropper and Judge Walrath
6 in the Northwest and Washington Mutual cases, respectively,
7 that when you -- it is unclear whether or not 2019 applies to a
8 group, or a consortium or, for lack of a better word, a gaggle
9 of creditors who have joined together, whether you look at the
10 conduct of those parties in the case to determine whether or
11 not 2019 applies, whether you look at the specific definitions,
12 dictionary definitions, of the words commitment, instrument,
13 delegated, et cetera.

14 So, we believe that we have also satisfied this prong
15 because the dispute among the courts, specifically the dispute
16 among the courts in the District of Delaware on how apply 2019
17 and when 2019 applies, provides a legal basis going forward for
18 us to perhaps be successful. I hope we would be successful on
19 appeal to the District Court.

20 The next prong is the irreparable harm to the Ad Hoc
21 Group. As set forth simply in our moving papers, the harm here
22 is that the disclosure of confidential trading information
23 which, in our view, is irrelevant completely through a debt for
24 equity plan which is the plan we have in this case, once
25 disclosed cannot be disclosed. And to coin the popular phrase,

1 once the cat is out of the bag there's no way to redress that
2 harm once people who we believe should not have access to the
3 information have it. We would not be protected by a seal in
4 that instance because, again, the information would be
5 disclosed. And there is complications on what do you do once
6 the parties have the information under seal, how would we
7 police oral arguments going forward, testimony going forward,
8 pleadings filed by other parties that make reference to that
9 confidential information? And, again, it would be
10 exponentially, you know, once that disclosure is made, it
11 permeates throughout the proceeding and becomes irreparable.

12 I think that in addition to that fact, you know,
13 we've argued in our brief legally that the disclosure of the
14 confidential information and compelling the disclosure, absent
15 a stay, moots the effective ability to argue the appeal in the
16 District Court. And mootness in this context doesn't simply
17 mean that the equity committee has argued that mootness itself
18 is not grounds for granting a stay, but rather mootness when
19 the issue is the disclosure of information that once disclosed
20 can't be taken back and can't be otherwise protected.

21 So, the harm to the members of our group if that
22 information had to be disclosed, would be substantially
23 irreparable and certainly when weighed against what we've just
24 described as the lack of harm to the other parties in this case
25 if the stay is granted militates in favor of granting the stay

1 based on the irreparable harm to the Ad Hoc Noteholders Group.

2 And I'll also mention again as I touched on briefly
3 before, under Rule 2019.2 it's arguable whether any information
4 about the trading would even be disclosed for all notes that
5 were owned for more than a year prior to the petition date, and
6 so therefore, again, the harm of pressing that issue to our
7 group I believe outweighs significantly the theoretical harm.
8 And, again, as I mentioned earlier there is no harm to the
9 equity committee or the other parties in interest, especially
10 in light of the recent pleadings filed by the equity committee
11 demonstrating that they are able to prosecute their position in
12 this case without any further information.

13 THE COURT: Okay.

14 MR. SHENFELD: Your Honor, just in final I would say
15 that we have endeavored, we are cognizant as a group -- as in
16 our various three roles in this case we are cognizant as a
17 group that the confirmation hearings should proceed, that the
18 equity committee does have its arguments to make and that we
19 have therefore been as fulsome as we possibly can while
20 preserving our good faith belief that we are not subject to
21 Rule 2019 in making all the disclosures available that we have
22 and as giving as much information as we can so that all the
23 parties in interest can proceed with -- to a quick and
24 expeditious confirmation.

25 THE COURT: Okay. Thank you. Response?

1 MS. MACHEN: Good morning, Your Honor. Monica Machen
2 on behalf of the equity committee. Thank you for your time
3 today.

4 Your Honor, I would like to just start with one
5 comment that Mr. Shenfeld made which I really -- I don't think
6 it has a place necessarily in this argument, but I do want to
7 address it, and that is the statement that Class 10 has voted
8 in favor of this plan.

9 I do want to let you know that there is significant
10 dispute regarding that statement and it's beyond today's call
11 and this hearing. But, we are certainly not in agreement that
12 Class 10 has voted, so I just wanted to make sure that I got
13 that out on the record.

14 I will, if you don't mind, Your Honor, just take it
15 in order of the four requirements that are required in order
16 for the stay pending appeal to be granted. First of all, Mr.
17 Shenfeld has done a nice job of explaining what they are, that
18 they must show that they've got a strong case in appeal, that
19 there's prejudice to the party seeking the stay, no prejudice
20 to the opposing party and that it's also in the public
21 interest. These are conjunctive requirements. All four must
22 be satisfied and the burden is there that it's, according to
23 the case law, quite a heavy one and I don't think that it has
24 been met here.

25 First of all, the success on the merits, I do not

1 believe that Mr. Shenfeld has a strong or his clients have a
2 strong or substantially strong argument here. There's
3 significant case law that goes the other way, including two
4 published opinions by both Judge Walrath and Judge Gropper, and
5 Your Honor has confirmed those rulings.

6 I don't want to get into the merits and reargue 2019
7 again, but it's certainly our position that the rule is the
8 rule. It requires disclosure. The Ad Hoc Group is a committee
9 or an entity under Rule 2019, and is required to make certain
10 disclosures. And it certainly is not upon us, the equity
11 committee, to go digging through the record and to be trying to
12 canvas all of this information and crafting their 2019 for
13 them.

14 I do point out, Your Honor, Mr. Shenfeld has laid out
15 all of the disclosures that have been made through various
16 pleadings. It really puzzles me why, if all of this
17 information is already out there, he's got easy access to it,
18 why the Ad Hoc Noteholder Group can't simply just put together
19 a 2019 and file it. The other comment on the information that
20 they believe is sensitive, well, certainly, Your Honor, if it
21 is so sensitive it may have the ability to move for a 107
22 order, which they have not done yet.

23 So, Your Honor, I certainly don't see that they have
24 a strong or substantial argument here in favor of Factor 1. I
25 don't think that they would succeed on the merits on appeal. I

1 think the case law against them is quite strong, and I think
2 that the rule itself is very clear and mandates disclosure by a
3 group such as this.

4 The second point which is that there is prejudice to
5 the noteholders if these disclosures are made. Mr. Shenfeld
6 discussed the fact that a trading strategy might be revealed if
7 his clients were compelled to file a 2019. Your Honor, we're
8 not asking for any trading strategy, we're not asking for any
9 information explaining how they got to where they got. All
10 we're asking for is the price that they paid and the price at
11 which they sold. I don't see why that information would be
12 confidential and what cat would come out of the bag if it's
13 shown that they, in fact, had a -- made a significant profit
14 off of these notes. That does not seem to me to be something
15 that would lead to some kind of great harm or prejudice to the
16 noteholders.

17 Certainly, it's an allegation in our pleadings. It's
18 certainly something that we believe that we are in a position
19 to argue given the rate at which they were trading pre-petition
20 and the rate at which they were trading post-petition, and I
21 certainly don't see any harm to them if they are asked to flush
22 that information out.

23 As to the prejudice to the equity committee, Your
24 Honor, I do take much offense to the fact that they don't think
25 that we're hurt by this failure to disclose. This case has

1 been moving at a lightning pace, as you know, Your Honor.
2 There has been a lot of information thrown at us and there's
3 been a lot of conflicting information.

4 On January 20th, Mr. Shenfeld came to court and told
5 you and told us, and has been representing all along, that he
6 represented 70 percent of the notes. Well, nine days later he
7 and his firm file a 2019 which now shows that actually they
8 only represent 16.6 percent, and that's a huge discrepancy,
9 Your Honor. And there is a lot of information that we don't
10 feel has been shared as honestly as it could have been, and
11 that is the purpose of 2019. It's to compel disclosure and to
12 make people accountable.

13 The Ad Hoc Noteholder Group wants to hide behind
14 Milbank and hide behind Pachulski and say, well, you make these
15 disclosures for me because then I can just say, well, you've
16 made the disclosure and you put in your papers what I told you.
17 Well, the Ad Hoc Noteholder Group needs to be honest to this
18 Court and it needs to be honest to these part -- to the
19 parties, including the equity committee. And for them to have
20 this elaborate shell game where one day they hold 70, one day
21 they hold 16.6, another day they hold five percent, who knows,
22 it's not fair to us because we need to know who are adversary
23 is. And I don't want to reargue 2019, as we did back on
24 January 20th, Your Honor, but this comment that we're not hurt
25 and we don't need this information and we can go through the

1 calendar, (1) for a -- I believe we have a hearing scheduled
2 for Monday morning on the motion to adjourn, is that correct?

3 MS. MACHEN: Yes, Your Honor.

4 THE COURT: Okay. And, obviously, we are presently
5 calendared for 10 a.m. next Wednesday to begin the confirmation
6 or for the confirmation hearing. So, I think I'd like to know
7 from Ms. Machen, you've asked for expedited consideration of
8 your designation motion acknowledging that I have not looked at
9 anything other than the title of the pleading asking for
10 expedited treatment, what is it that you're proposing with
11 respect to calendar?

12 MS. MACHEN: Your Honor, what I would propose is that
13 if it suites Your Honor, we can just have it heard on the -- we
14 can probably have it heard on the 10th if we proceed that day.

15 THE COURT: Okay. Has anybody else had an
16 opportunity to see the motion or at least the motion to shorten
17 time? Does anybody have a position with respect to scheduling?

18 MS. RECKLER: Good morning, Your Honor. This is
19 Caroline Reckler of Latham and Watkins on behalf of the debtor.

20 Your Honor, we have very preliminarily read the
21 motion and we will be prepared to address it on the 10th if
22 Your Honor finds that's appropriate.

23 THE COURT: Okay. I understand. I would note for
24 the parties that are on the phone that Mr. Remming (phonetic),
25 who I believe is counsel for Sun Capital?

1 MR. REMMING: That's correct, Your Honor.

2 THE COURT: Okay. Because of a scheduling conflict,
3 Mr. Remming is present in the courtroom today as a matter of
4 convenience and I have permitted him to do so, and right now
5 he's come on up to the podium. Do you wish to address the
6 Court and the parties?

7 MR. REMMING: Yes, Your Honor. Sun Accuried is fine
8 with the motion being heard on the 10th, as well.

9 THE COURT: Okay. All right.

10 Okay. Here's what I want to do. I am not going to
11 hear further argument on the 2019 motion and on the motion to
12 compel an order. I'm going to take it under advisement and I
13 expect to dispose of the issue on Monday morning where I
14 believe that I'll be able to make my ruling in a somewhat more
15 informed context.

16 The allegations that are raised with respect to the
17 stay pending appeal I think are substantial and interesting.
18 The primary consideration, from my point of view, is the
19 conflict of decisions and the desire and I believe the
20 responsibility of this Court to afford some reasonable
21 opportunity for meaningful appellate review. But, I balance
22 against that the need for, (1) compliance with the rules as I
23 read them, and (2) with the Court's order.

24 So, I've had an opportunity to hear today. I am -- I
25 don't believe that I need to issue any order staying it pending

1 appeal for the weekend, but I want the opportunity to look at
2 the papers that have recently been filed. As noted, there's a
3 motion to stay or adjourn the confirmation hearing. I know
4 that's on. I have not yet read it. And the allegations as I
5 read them and the argument as I hear it from parties is that in
6 some ways this is really all of a piece. So, I'm not going to
7 consider it in the abstract before I've had an opportunity to
8 review the substantial additional pleadings that have been
9 filed and I expect to dispose of this on Monday morning. Are
10 there any questions?

11 MS. MACHEN: No, Your Honor.

12 MR. SHENFELD: Not from the creditor's committee,
13 Your Honor.

14 THE COURT: Okay. All right.

15 Well, again, counsel, I appreciate the argument this
16 morning. And I want to be clear, I'm not renewing the
17 argument. I have heard from everybody and I understand each
18 party's positions, but I do want the opportunity to get my arms
19 around the additional pleadings you've -- you're peppering me
20 right now with a lot of material and I want to make sure as I
21 consider this that I have a full command of the facts. I don't
22 right now, but I expect to by Monday morning.

23 All right. I believe we're on for 9 a.m. Monday
24 morning to consider the motion to adjourn the confirmation
25 hearing, and as I said I will rule on this question on Monday

1 morning, as well. Anything further today, counsel?

2 MS. MACHEN: No, Your Honor. Thank you, very much
3 for your time.

4 THE COURT: Very good. Thank you, very much,
5 counsel.

6 MR. SHENFELD: Thank you, Your Honor.

7 * * * * *

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

9
10 I, AMY L. RENTNER, certify that the foregoing is a
11 correct transcript to the best of my ability, from the
12 electronic sound recording of the proceedings in the
13 above-entitled matter, and to the best of my ability.

14
15 /s/ Amy L. Rentner

16 AMY L. RENTNER

17 J&J COURT TRANSCRIBERS, INC. DATE: February 11, 2010

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25 (CR)

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Accuride Corporation
7140 Office Circle
Evansville, IN 47715
EIN: 61-1109077

Chapter: 11

Case No.: 09-13449-BLS

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