

1 Newman - Cross - Weisfelner  
2 present during the intercreditor negotiations  
3 which resulted in the split reflected in the  
4 Hutch-Sing arrangement?

5 A Yes. Very substantially all of them.

6 Q On one fact Hutch-Sing insisted, did  
7 they not, that there would be a consensus for  
8 meeting their creditor agreements as part of  
9 their transactions?

10 A Yes. That was part of their  
11 requirement.

12 Q You are familiar with the participants  
13 who prepared during the course of those  
14 negotiations?

15 A Yes.

16 Q Is it your view that the creditor  
17 groups were ably represented by counsel during  
18 the course of those negotiations?

19 A Yes.

20 Q Would you characterize those  
21 negotiations as having been at arm's length?

22 A Absolutely.

23 Q sometimes contentious?

24 A Often.

25 Q Sometimes very contentious?

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P.44/53

OCT-14-2002 15:24

Received Oct-16-02 11:08

From-973 410 0503

To-

Page 44

1 Newman - Cross - Weisfelner

2 A Sometimes.

3 Q You are aware. are you not, that the  
4 splits that resulted from those negotiations are  
5 being relied upon by the unsecured creditor  
6 constituency to forego other alternatives that  
7 might have otherwise been available to the public  
8 restructuring?

9 A Yes.

10 Q As I have said, it was the debtors'  
11 goal, and your goal in assisting the debtor in  
12 this process would be to identify, *not* only the  
13 highest, but *the highest* and best transaction  
14 available to the estate; is that correct?

15 A Yes.

16 Q The criteria of highest and best, in  
17 your opinion, are related, but different?

18 A Yea.

19 Q would you advise the Court how, if at  
20 all, the consensual nature of ~~the~~ *allegations*  
21 proposed between the creditor groups helps you  
22 reach an opinion on either a highest or best?

23 A It helps to reach an opinion on best.  
24 I think there were *two* factors. One, as I  
25 indicated before, the fact that this is a

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P.45/63

Received Oct-16-02 11:08

From-873 410 8583

To-

22:16 2002-14-100

Page 45

1 Newman - Cross - Weisfelner  
 2 consensual arrangement. It will permit the  
 3 company to emerge from bankruptcy, I believe,  
 4 rather rapidly. Everything else taken into  
 5 account, given the size and the scape. and  
 6 clearly the lack of a due diligence out and the  
 7 lack of a financing out also go to the fact that  
 8 it was the highest and best bid.

9 MR. WEISFELNER: I have no further  
 10 questions.

11 JUDGE GERBER: Is there anybody else?  
 12 (whereupon, there was no response.)  
 13 Is there any redirect?

14 MR. WALSH: No, your Honor.

15 JUDGE GERBER: Mr. Newman, you are  
 16 excused.

17 (Whereupon, the witness was excused.)

18 JUDGE GERBER: Is there anything  
 19 further in the way of evidentiary showings  
 20 anybody wants me to take into account?

21 (Whereupon, there was no response.)

22 Now, I would like to hear any comments  
 23 that either Mr. Garrity on behalf of the  
 24 JPLs, the Creditors' Committee, or Bank  
 25 Group, or any other party in interest wants

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to express.

Mr. Garrity, do you want to be heard in any way?

MR. GARRITY: Yes, Your Honor.

Good morning, Your Honor. My name is Jim Garrity. I am with the law firm of Shearman & Sterling. I appear this morning, Your Honor, on behalf of Phil Wallace and Jane Moriarty and Malcolm Butterfield.

AS YOUR HONOR will recall, they are the Joint Professional Liquidators of those debtors or the Chapter 11 debtors, who have filed insolvency proceedings in Bermuda.

As Your Honor will further recall, there are dual insolvency proceedings pending for 12 of the debtors. The Joint Provisional Liquidators have been appointed by the Bermuda Court as officers of that Court. The chart of their agenda, Your Honor, is overseeing the affairs of the debtors and reviewing the transactions that the debtors would undertake, with an eye towards ensuring that the best interests of all creditors of those entities are served.

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Received Oct-16-02 11:08

From-973 410 8583

To-

OCT-14-2002 16:24

Page 47

1 Proceedings

2 Your Honor, the Joint Provisional  
3 Liquidators and their professionals nave  
4 consulted with the debcors and the various  
5 creditor groups that have undertaken an  
6 independent analysis of this transaction.

7 Your Honor, I would like to report chat  
8 they support it. As Your Honor is aware,  
9 based upon a review of the purchase  
10 agreement, they have signed off on that  
11 agreement. Albeit, for the purposes set  
12 forth.

13 JUDGE GERBER: Thank you.

14 Mr. Weisfelner, do you wish to be  
15 heard?

16 MR. WEXSFELNER: I will defer to the  
17 bank lenders, and I will speak last.

18 JUDGE GERBER: Mr. Brilliant, come on  
19 up, please.

20 MR. BRILLIANT: Thank you, Your Honor.

21 Allan S. Brilliant on behalf of JP  
22 Morgan chase, as administrative agent for  
23 the senior secured lenders.

24 Your Honor, JP Morgan Chase supports  
25 entry of the order today approving the

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P. 48/63

Received Oct-16-02 11:08

From-973 410 8583

To-

OCT-14-2002 16:25

Page 48

## 1 Proceedings

2 Hutch-Sing's best offer and authorizing the  
3 debtors' entry of the purchase agreement to  
4 Hutch-Sing.

5 Obviously, the Bank Group has hoped for  
6 a better result of the sale process, but the  
7 Bank Group recognizes that the company  
E exists today in a very challenging  
9 telecommunications environment. It is very  
10 difficult circumstances to find an investor  
11 or a purchaser for the assets of the  
12 company. The agent believes, at this time,,  
13 it is the best alternative available for the  
14 secured lenders.

15 As Mr. Basta painted out, the agreement  
16 between the debtors and Hutch-Sing will be  
17 implemented through a plan of reorganization,  
18 and it is incorporating certain splits  
19 between the creditors that were negotiated  
20 by the agent of the bank by JP Morgan Chase,  
21 as the agent for the senior secured lenders.  
22 and by the creditors' committee.

23 The entire agreement, including the  
24 splits, is subject to the approval process  
25 for a plan. All the creditors are voting on

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P.49/63

Received Oct-16-02 11:08

From-979 410 8583

To-

OCT-14-2002 16:25

Page 48



1 Proceedings

2 As I said. given where we are today and  
3 the other alternatives available to the  
4 senior secured lenders, we are hers today in  
5 support of the entry of the order by the  
6 debtors.

7 JUDGE GERBER: Thank you,  
8 Mr. Brilliant.

9 Mr. Weisfelner?

10 MR. WEISFELNER: Your Honor, I will  
11 attempt to be brief, and I am sort of  
12 reminded of how many hours we have all spent  
13 together and been up, and sometimes messages  
14 that we think we hear aren't as clear as we  
15 were otherwise hoping they would be.

16 Your Honor, you have driven the parties  
17 towards a singular goal I think that we all  
18 have to keep in mind. That is, to maximize  
19 the value at this estate. What appeals to  
20 the committee about this transaction is it  
21 not only, in our judgment, satisfies that  
22 obligation and that goal of maximization,  
23 but gives us an opportunity to go even  
24 further. and that was to determine relative  
25 splits between creditor groups that could

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P. 51/63

52:91 2002-14-100

Received Oct-16-02 11:08

From-873 410 8583

To-

Page 51

1 Proceedings  
2 have otherwise been very divisive.  
3 contentious, expensive litigated matters.  
4 For that reason, perhaps? my primary, among  
5 all reasons, the unsecured creditors'  
6 committee endorses and supports the entry of  
7 the Order sought today.

8 I think it is important to note that  
9 this is a 13-person committee. It contains  
10 representatives of the Global Crossing  
11 bondholders, what is commonly referred to as  
12 the North American Bondholders, the  
13 Rochester Bondholders, as well as the  
14 trade. There were no dissenting views,  
15 among that seemingly otherwise disparity  
16 creditor approval.

17 Your Honor, we did, in fact, rely on  
18 the negotiations. Understand that with a  
19 constituency as large and diverse as we  
20 understand the Bank Group to be, we know  
21 sometimes the terminology is not as accurate  
22 as it might otherwise be. There are both  
23 banks and non-banks within that group.

24 The process works only if we can rely  
25 on someone to step forward and represent a

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P.52/63

Received Oct-16-02 11:08

From-873 410 8583

To-

OCT-14-2002 16:25

Page 52

1 Proceedings

2 Bank Group. In that context, we rely on the  
3 agent bank JP Morgan Chase with their  
4 counsel, Milbank Tweed. and their  
5 performance.

6 As Your Honor knows and as the record  
7 reflects, the estate bears the expense of  
8 all of debt professional's as part of  
9 priority orders entered by the Court. The  
10 record should reflect that we negotiated  
11 over a considerable period of time directly  
12 with Chase, representing the ability to  
13 bring to bear the agreement of a steering  
14 committee that they report to. This  
15 transaction, together with the creditors'  
16 splits, was made known to the entirety of  
17 the Bank Group who we understand to be over  
18 150 institutions.

19 Your Honor, obviously, we are familiar  
20 with the process. This agreement will be  
21 incorporated into a plan of reorganization  
22 consistent with the deadlines of the chart.  
23 The parties will continue to work diligently  
24 towards a prompt and speedy resolution of  
25 this case, looking for confirmation, as Your

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1 Proceedings

2 Honor has heard during the early part of  
3 January. if not before year's end.

4 Your Honor, there are any number of  
5 reasons why the committee who at the early  
6 stages of this case, up until very recently,  
7 was otherwise looking at a stand-alone  
8 option as potentially the highest and best  
9 outcome for the value of recovery. Our  
10 constituency ultimately agrees with the  
11 debtor in possession and with the Bank Group  
12 to support the Hutch-Sing proposal. You  
13 have heard many of the issues being reported  
14 on by Mr. Newman about the lack of  
15 originality, including no developing outs  
16 and no financing outs.

17 The very fact that this is a major job  
18 that would have otherwise been ahead of us  
19 to deal with the litigation issues. Your  
20 Honor knows that there was an August 15th  
21 deadline established by prior order of this  
22 Court, pursuant to which the parties in  
23 interest and the committee, in particular,  
24 who would have otherwise been required to  
25 challenge the banks' claimed secured

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P. 54/63

16:26 2002-10-14

Received Oct-16-02 11:08

From-973 410 8583

To-

Page 54

## Proceedings

interest and guarantee position.

Your Honor, one of the benefits of this agreement is the ability, subject to the banks agents' agreement, stipulated to extend those times pending resolution of the proposed plan. The vote which resolved that litigation would otherwise have been filed. But I can assure Your Honor that the litigation would have been heavy and would have been contentious. We are happy with the results that were made within the range of results that one could have reasonably expected in the litigation. It is not to say that we haven't had opportunity: obviously, we are crusting the merits which are considerably better. But the reality is they are not considerably worse.

For all those reasons, Your Honor, this committee does support this agreement and the order being sought today in the transaction-

JUDGE GERBER: Thank you,  
Mr. Weisfelner.

Is these any other party in interest

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p.55/63

OCT-14-2002 16:26

Received Oct-16-02 11:08

From-973 410 8583

To-

Page 55

## Proceedings

1  
2 who would like to be heard who hasn't had  
3 that opportunity?

4 (Whereupon, there was no response.)

5 We are going to pause for a moment.

6 Mr. Lane?

7 MR. LANE: Good morning, Your Honor.  
8 Sean Lane from the United States Attorney's  
9 Office.

10 JUDGE GERBER: Yes, Mr. Lane.

11 MR. LANE: I have two brief comments.  
12 First. Mr. Basta noted the agreement subject  
13 to necessary governmental approvals, and  
14 these approvals include those necessary for  
15 purchase of domestic assets by a foreign  
16 entity.

17 Accordingly, the government requests  
18 that the proposed order today be amended to  
19 make clear that the agreement as being  
20 approved subject to those necessary  
21 governmental approvals.

22 Secondly, it is my understanding that  
23 the agreement does not provide for control  
24 of the assets by the investors prior to the  
25 closing. I just wanted to confirm that this

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Received Oct-16-02 11:08

From-873 410 8583

To-

Page 56

1 Proceedings

2 was the case en the record. because it  
3 alleviates: other potential government  
4 concerns.

5 JUDGE GERBER: Mr. Basta, would you  
6 Like to respond to those?

7 MR. BASTA: Absolutely, Your Honor. We  
8 have confirmed that the agreement does not  
9 provide control to the investors prior to  
10 the closing. There are some oversight  
11 provisions, but they are not consultation  
12 provisions and they are not control. I am  
13 also happy to report that the agreement  
14 itself is subject to regulatory approval, as  
15 is customary. I don't believe the order  
16 needs to be changed. I am happy to  
17 stipulate to that for the record, if that is  
18 all right with the government.

19 JUDGE GERBER: Is that sufficient for  
20 your purposes, Mr. Lane?

21 MR. LANE: Yes, Your Honor. Thank you.

22 JUDGE GERBER: Mr. Basta?

23 MR. BASTA: Yaur Honor, Mr. Brilliant  
24 reminded me that there is one aspect of the  
25 agreement where it kind of gave the Court

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Received Oct-16-02 11:08

From-973 410 8583

To-

OCT-14-2002 15:26

Page 57

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Proceedings

the flip side, which is that of the fiduciary out in the agreement. The flip side of the fiduciary out is the no solicitation clause, and I think that the estate views this as the end of the marketing process. We are going to work very hard to implement the deal that we will obtain, subject, of course, to our fiduciary responsibilities.

JUDGE GERBER: Have we now covered the field in terms of people's opportunities to be heard?

The record will reflect no further response.

I have read the proposed findings that were in the order that was submitted to me, if I were to approve this transaction. In my view they are fully supported by the record, and in particular by the testimony of Mr. Newman, and I will make those findings. However, I think it is useful for me to just add a couple of observations to put some meat on the bones for the reasons why I am going to approve this transaction,

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which is. indeed, what I am going to do.

Mr. Newman talked at same length about the efforts that the debtor in cooperation with its major constituencies made to market this company and to maximize the value that would be realized for the stakeholders in this case, which unfortunately is just creditors. In particular about the efforts that were made to really ascertain the extent of interest, not just interest in terms of sticking one's toe in the water, but making serious proposals and engaging in serious due diligence and making proposals that would not be subject to financing or due diligence contingencies, which would raise serious risks from the stakeholders in this case.

I am entirely comfortable in finding and do expressly find that the management of this company and its professionals engaged in all of the effort one hopes and expects that they would engage in to try and maximize value on behalf of the stakeholders in this case.

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From-873 410 8583

To-

OCT-14-2002 16:27

Page 59

## Proceedings

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2 Obviously, I noted that this case,  
3 unlike many, did not result in a transaction  
4 that was capped by an auction in the  
5 technical sense. I listen very hard to that  
6 aspect of Mr. Newman's testimony, and he  
7 satisfied me that in all material respects  
8 this was the best of both worlds. The words  
9 that Mr. Newman used were in substance that  
10 in effect we had an auction, and I found  
11 that credible and persuasive, and I accept  
12 that as a fact.

13 In essence it was the best of both  
14 worlds. The markets were tested with the  
15 kind of exploration of alternatives that an  
16 auction entails, and at the same time the  
17 estate developed the flexibility to craft  
18 what would be the best for the parties in  
19 interest. I am satisfied, as I said, that  
20 the debtors and the professionals did what  
21 they were supposed to do.

22 I also find that: it was at least  
23 appropriate and also highly desirable to  
24 favor a deal that would be a consensual. I  
25 heard Mr. Weisfelner make the observations

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P.60/63

Received Oct-16-02 11:08

From-973 410 8589

To-

22:21 2002-10-16

Page 60

## 1 Proceedings

2 he made in that respect. They were already  
3 obvious to anybody who has followed this  
4 case, and I concur bath with  
5 Mr. Weisfelner's observations about the  
6 desirability of consensual transactions and  
7 concur with the debtors' efforts to try to  
8 strike a deal. That result in eliminating  
9 discord between competing constituencies for  
10 an estate of value that was hardly  
11 limitless.

12 I don't need to decide whether the  
13 debtors' reasonable business judgment by  
14 itself would be sufficient for me to approve  
15 this transaction, because I can additionally  
16 find under the facts of this case that, as  
17 Mr. Newman stated, the transaction proposed  
18 is the best alternative and is fully  
19 supportive on the merits, even under  
20 ab initio type of review.

21 For all of those reasons, I am going to  
22 enter the order that was presented to me  
a3 today, based upon the evidence and argument  
24 that was presented to me today.

25 Mr. Basta, do we have any further

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P.61/63

Received Oct-16-02 11:08

From-873 410 8583

To-

OCT-14-2002 16:27

Page 61

1 Proceedings

2 business?

3 MR. BASTA: No. Thank you very much,  
4 Your Honor-

5 JUDGE GERBER: Here as what we are  
6 going to do. I have a major Adelp~~h~~ia  
7 calendar coming up 15 minutes lace. I would  
8 like to ask all of chose who were here  
9 solely on Global Crossing, unless you want  
10 to hear about Adelp~~h~~ia matters, to have a  
11 nice day.

12 If there is anything else that *needs*  
13 done of an administrative nature, you can  
14 use my conference room behind the  
15 courtroom.

16 we are going to have a ten-minute  
17 recess. We will be reconvened at five of  
18 10:00 at which I will hear first the  
19 Adelp~~h~~ia Communications corporation's  
20 administrative matters, then, without a  
21 recess, go into the ML Media. ACC, Highland  
22 adversary proceeding.

23 We are in recess. Thank you.

24

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P. 62/63

OCT-14-2002 16:27

Received Oct-16-02 11:08

From-873 410 8583

To-

Pas 62

Proceedings

C E R T I F I C A T E

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3 STATE OF NEW YORK )  
: SS:  
4 COUNTY OF NEW YORK )

5  
6 I, **DEBORAH HUNTSMAN**, a Shorthand  
7 Reporter and Notary Public within and for the  
8 State of New York, do hereby certify:

9 That the within is a true and accurate  
10 transcript of the proceedings taken on the 9th  
11 day of August, 2002.

12 I further certify that I am not  
13 related by blood or marriage to any of the  
14 parties and that I am not interested in the  
15 outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 11th day of August, 2002.

18   
19 DEBORAH HUNTSMAN

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2s