Spring 2010

In Re Crabtree & Evelyn: "Almost Washed Up"

Kristina Chuck

Lin Ye

IN RE CRABTREE & EVELYN

Case No. 09-14267 (BRL)

"ALMOST WASHED UP"

Group #4

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Class: Reorganizations and Workouts

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I. BUSINESS BACKGROUND

Crabtree and Evelyn ("C&E") started in 1972 as an outlet of fine soaps from all over the globe.[1] The name was derived from the crabapple tree and John Evelyn who was a Renaissance Englishman who had works on the conservation of forests and timber.[2] Over the almost forty years since then it has expanded what it has to offer from fine soaps to a variety of other products including "personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements."[3]

It also "manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky." [4] Since opening its first retail store in 1977, C&E has expanded to 126 stores (at petition date) and has added a manufacturing and distributing facility. In 1996, 100 percent of its equity was purchased by Kuala Lumpur Kepong Berhad ("KLK"), a "Malaysian public limited liability company, the stock of which is publicly traded on the Kuala Lumpur stock exchange."[5]

[1] First Amended Disclosure Statement with respect to the debtor's first amended plan of reorganization under Chapter 11 of the Bankruptcy Code at 7, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter Amended Disclosure Statement]

[2] Id

[3] This includes Vera Bradley products.

[4] Id

[5] First Amended Plan

C&E sells its products through multiple channels, including its retail stores (56%), wholesale business (12%), export business (5%), affiliate sales (21%), and the internet (6%).[6] Among them, firstly, as previously mentioned, C&E operates 126 stores in 34 states some of which were full-price merchandise and outlet stores. The outlet stores sell "larger quantity …, discontinued … and slow moving product[s]." Secondly, C&E sells its products through "gift shops, home specialty stores and country stores" including Hallmark.[7] C&E also uses affiliates to distribute its products. These affiliates rely on C&E to supply them with the goods for purchase. Most of these goods are already finished; however, there are some that need to be packaged by the affiliates. There are over 130 C&E retail stores outside of the United States that are operated by C&E affiliates. C&E also exports its products to various gift stores in Mexico, Panama, Japan, and Taiwan. Finally, C&E's customers are able to obtain its products on its website, www.crabtree-evelyn.com. C&E is able to track its customers using the information from a database. The website "offers internet-only promotions, provides customers with the opportunity to sign up to obtain exclusive email-only offers, obtain internet-only promotions, and provides information about the Debtor's product lines and retail store locations."

At the petition date C&E employed approximately 797 non-unionized employees. It enjoys a good relationship with them and "has not experienced a work stoppage." The company's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. C&E also owns its headquarters, manufacturing facility,

[6] Amended Disclosure Statement

[7] Amended Disclosure Statement

distribution center and warehouse in Woodstock, Connecticut. In addition, C&E leases a significant number of retail stores located in 34 states.[8]

There were three major events that led C&E into filing a petition for Chapter 11 bankruptcy: bad market conditions, operational issues, and the inability to negotiate prepetition leases. With the bad housing and credit markets, consumers reduced their discretionary spending. This has led to a significant decrease in sales, especially in the retail sectors and wholesale.

Below is a table showing their declining revenue and operating losses:

	2007	2008	2009
Declining revenue	$112.0 million	$107.5 million	$100.0 million
operating losses	$3.2 million	$8.0 million	$13.3 million (projected)

In addition, changes in its senior management led to shifts in C&E's strategy which impacted their roles, especially in the wholesale division. With the decline in consumer spending there were fewer customers in the malls where most C&E stores are located.

Finally, although KPMG Corporate Finance LLC was hired as a "special real estate advisor"[9], their efforts at renegotiating prepetition leases to a level that was required for C&E to continue operations were unsuccessful. Many of the landlords were unable to accept the terms offered by KPMG. They also tried to terminate the leases of underperforming stores but, although they were able to terminate some, some landlords were not willing "to entertain the termination of leases on the terms suggested by C&E."[10]

[8] Amended Disclosure Statement

[9] Amended Disclosure Statement

[10] Amended Disclosure Statement

II. CAPITAL STRUCTURE

The creditor that holds the largest secured claims is KLK Overseas Investments Limited ("KLKOI"). The aggregate amount of claims is $21,731,528, which consists of two separate claims. First, C&E is a party to that certain Grid Note dated April 6, 2009 (the "Prepetition Note"), in favor of KLKOI. The Prepetition Note provides for a line of credit of up to an aggregate principal amount of $10 million. The note matures on the earlier of December 31, 2010 (or such later date as may be agreed to) and the occurrence of an Event of Default (as defined in the Prepetition Note). As of the Petition Date, the balance owed under the Prepetition Note was approximately $8,000,000. Second, C&E is indebted to KLKOI in the amount of $13,731,528 (together with amounts outstanding under the Prepetition Note, the "Prepetition Obligations"). [11]

C&E alleged that the Prepetition Obligations are secured by security interests in, and liens on, substantially all assets (the "Collateral"), including, without limitation, inventory, receivables, an office building with related parking garage, land and fixtures, and certain other assets, and cash and proceeds of the foregoing.[12] According to C&E, all the amount of claims of $21,731,528 are secured by any and all assets of the company, including proceeds, as set forth in that certain Security Agreement dated as of April 6, 2009. [13] C&E estimated the value of the

[11] Declaration of Stephen W. Bestwick Pursuant to Local Bankruptcy Rule 1007-2 at #, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)[hereinafter Bestwick Declaration]

[12] Bestwick Declaration

[13] Bestwick Declaration

collateral securing the claims is about $25 millions. Thus, C&E alleged that the Prepetition Obligations are over secured.[14]

C&E also listed forty (40) of its largest unsecured claims. Standard Soap is the unsecured creditor that holds the largest amount of claims of $807,068.19. In fact, it is an affiliate of Kuala Lumpur Kepong Berhad ("KLK"), C&E's parent corporation. Interestingly, C&E owes its former CEO Michael Stromberg $395,000.02, which makes him hold the second largest unsecured claim. Most of the claims are from trade. Some of them are from landlord and expenses. It estimated that funds will be available for distribution to unsecured creditors. [15]

III. BEGINNING OF CHAPTER 11

C&E ultimately determined that a restructuring of its business could not be completed outside of the chapter 11 process, and that the commencement of this case would provide the opportunity to, among other things, right-size C&E's business through the evaluation and elimination of liabilities that serve as a drain on the its profitability, and operational improvements. Therefore, on July 1, 2009 (the "Petition Date"), the Debtor C&E filed its voluntary petition for relief under Chapter 11 Title 11, United States Code (the "Bankruptcy Code") with United States Bankruptcy Court Southern District Of New York. C&E continues to operate its business and manage its affairs as a debtor-in-possession (DIP) pursuant to § 1107(a) and 1108 of the Bankruptcy Code.[16] No request for the appointment of a trustee or examiner was

[14] Bestwick Declaration

[15] Bestwick Declaration

[16] Bestwick Declaration

made and no trustee, examiner, or statutory creditors' committee was appointed in this chapter 11 case.

On July 10, 2009, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), appointed five of C&E's largest unsecured creditors to serve as members of the Official Committee of Unsecured Creditors ("Committee"). On July 14, 2009, the U.S. Trustee appointed two additional members to the Committee. The Committee then consisted of: Alpha Logica, Inc.; Carole Hochman Design Group; GGP Limited Partnership; Original Bradford Soap Works, Inc.; Orlandi, Inc.; Simon Property Group, Inc.; and Vera Bradley Designs, Inc.[17]

The goal of this chapter 11 process was the development of a business plan that will recast and streamline C&E's various business segments to position it to compete successfully in the retail, wholesale and e-commerce industries and continue to provide superior products and service to its valued customers. C&E planned to implement this strategy initially through the closing of certain unprofitable retail stores. This would result in immediate cost savings in respect of rent and other payments and overhead. C&E also intended to use the chapter 11 case to continue to negotiate with its landlords and to evaluate its lease portfolio. These immediate restructuring initiatives would allow C&E to focus its resources on stabilizing and strengthening its core and historically profitable stores, and exploring strategies for exiting this chapter 11 case in an expeditious and cost effective manner, all while continuing to operate its retail, wholesale, export, affiliate and internet businesses.

In addition, because C&E failed to negotiate with certain of its landlords with respect to certain leases which it sought to terminate, which was one of the main events that led C&E to the

[17] Appointment of Official Committee of Unsecured Creditors In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y.)

financial trouble, the company intended to use the chapter 11 case to continue its discussions with its landlord constituents and to commence such discussions with the vendor community and, upon the creation of an official committee of unsecured creditors, begin discussing potential exit strategies with its major creditor constituencies.

On the first days of the case, in order to minimize the disruption caused by chapter 11, C&E filed several motions to seek relief from the court as soon as possible after the Petition Date.

Among many statutory prohibitions of the Bankruptcy Code, automatic stay operates as injunction against actions affecting the debtor or its property. It provides a respite for the debtor; however, the debtor usually deems several types of pre-petition claims indispensible to pay and would several first day motions seeking permission to pay them.

First, C&E filed a motion authorizing C&E to pay prepetition wage claims and continue existing employee benefit programs and authorizing financial institutions to honor and process checks and transfers related to such obligations. [18]

As a matter of common sense, any delay or failure to pay wages, salaries, benefits, severance and other similar items would irreparably impair the employees' morale, dedication, confidence, and cooperation, and would adversely impact the Debtor's relationship with its employees at a time when the employees' support is critical to the success of the Debtor's chapter 11 case. This is one of the legitimate concerns that C&E had during the first days of the case.

[18] Motion for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code (I) authorizing payment of wages, compensation and employee benefits and (II) authorizing financial institutions to honor and process checks and transfers related to such obligations, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

C&E pointed out that pursuant to § 507(a)(4)(A) of the Bankruptcy Code, claims against the Debtor for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of $10,950 per individual.[19]

C&E argued that substantially all, if not all, of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under § 507(a)(4) and (5) of the Bankruptcy Code.[20] As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtor may be satisfied. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations, and would not prejudice the rights of general unsecured creditors or other parties in interest.

To the extent employees were owed in excess of $10,950 satisfaction and payment of the amounts owed (other than Severance Obligations exceeding the statutory cap) was necessary and appropriate and may be authorized under § 105(a) and § 363(b) of the Bankruptcy Code pursuant to the "necessity of payment" doctrine.[21] The "necessity of payment" doctrine recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." This doctrine became a powerful weapon employed by the debtor.

Apparently, the court was convinced by C&E's arguments. The motion was granted by an interim order[22] on July 2, 2009 and a final order[23] on July 30, 2009.

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[19] 11 U.S.C. § 507(a)(4)(A)

[20] 11 U.S.C. §§ 507(a)(4) and (5)

[21] 11 U.S.C. § 105(a) and § 363(b)

[22] Interim Order Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code (I) authorizing payment of wages, compensation and employee benefits and (II) authorizing financial institutions to honor and process checks and

Second, C&E filed a motion authorizing payment of prepetition freight forwarding charges, customs broker fees, customs duties, and common carrier charges and payment of pay prepetition claims of certain foreign creditors. [24]

C&E estimated that approximately 37 percent of C&E's merchandise is sourced from foreign countries and must be imported into the United States (the "Foreign Goods").[25]

C&E stressed that in order to obtain physical possession of the Foreign Goods, not only must C&E pay certain freight forwarders, common carriers and U.S. Customs, but C&E must also present the original documentation supplied by Foreign Creditors to facilitate release of the goods. If such claims are not paid by C&E, it is likely that the goods held by freight forwarders, common carrier, U.S. customs and the Foreign Creditors will be subject to possessory liens under applicable state law.[26]

In addition, § 546(b)(1)(A) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession's avoidance powers "are subject to any generally applicable law that . . .

transfers related to such obligations In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[23] Final Order Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code (I) authorizing payment of wages, compensation and employee benefits and (II) authorizing financial institutions to honor and process checks and transfers related to such obligations In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[24] Motion for an order pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004 Authorizing Payment of Prepetition freight forwarding charges, customs broker fees, custom duties, and common carrier charges [hereinafter Freight Motion] and Motion for an order pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004 Authorizing the Debtor to pay prepetition claims of certain foreign creditors In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[25] Freight Motion

[26] Typically, state laws grant an entity that furnishes services or materials with respect to goods a possessory lien on such goods in order to secure payment for such charges and related expenses, if such entity retains possession of the goods at issue. UCC § 7-307.

permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . . ." [27]

Therefore, C&E argued that notwithstanding the automatic stay imposed by § 362(a) of the Bankruptcy Code, the freight forwarders, common carrier, and the Foreign Creditors may (i) be entitled to assert and perfect liens against C&E's property, which would entitle them to payment ahead of other general unsecured creditors, and (ii) hold the property subject to the asserted liens pending payment, to the direct detriment of C&E, its estate and other parties in interest.[28]

Furthermore, any claims for Customs Duties are priority claims in accordance with § 507(a)(8)(F) of the Bankruptcy Code and, therefore, would be paid in full pursuant to a confirmed plan of reorganization.[29]

The motions were granted by the court quickly on July 2, 2009. [30]

Other motions also reflect C&E's effort to minimize the disruption and operate the business as "normally" as it could. For example, in order to avoid needless inefficiencies in the management of C&E's businesses and serve the best interests of its estate and creditors, C&E successfully convinced the court to waive requirements of § 345(b) of the bankruptcy code[31] and

[27] 11 U.S.C. § 546(b)(1)(A).

[28] 11 U.S.C. § 362(a)

[29] 11 U.S.C. § 507(a)(8)(F)

[30] Order pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004 Authorizing Payment of Prepetition freight forwarding charges, customs broker fees, custom duties, and common carrier charges and Order pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004 Authorizing the Debtor to pay prepetition claims of certain foreign creditors, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[31] § 345 of the bankruptcy code requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise. 11 U.S.C. § 345(a), (b).

"Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11", which mandate the closure of C&E's prepetition bank accounts, the opening of new accounts and the immediate printing of new checks with a "Debtor in Possession" designation on them.[32]

In another motion, in order to make sure C&E obtains uninterrupted Utility Services that are essential to its ongoing operations and the success of its reorganization, C&E requested a court order prohibiting utilities from altering, refusing, or discontinuing service. [33]

C&E's worries came from the statutory right of the utility companies. Pursuant to § 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from C&E or the trustee within 30 days of the commencement of C&E's chapter 11 case "adequate assurance of payment" for post-petition utility services. [34]

C&E proposed to establish a segregated account of blocked funds (the "Segregated Account") to be held by Bank of America (the "Bank"), which would serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to C&E after the Petition Date.

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[32] Motion for an order pursuant to sections 105(a), 345(b), 363(c) and 364(a) of the bankruptcy code authorizing the debtor to (I) continue to use existing cash management system, (II) maintain existing bank accounts and business forms, and (III) waive requirements of section 345(b) of the bankruptcy code and Order pursuant to sections 105(a), 345(b), 363(c) and 364(a) of the bankruptcy code authorizing the debtor to (I) continue to use existing cash management system, (II) maintain existing bank accounts and business forms, and (III) waive requirements of section 345(b) of the bankruptcy code, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[33] Motion for an order pursuant to sections 105(a) and 366 of the bankruptcy code (I) prohibiting utilities from altering, refusing, or discontinuing service, (II) deeming utilities adequately assured of future payment, and (III) establishing procedures for determining adequate assurance of payment, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[34] 11 U.S.C. § 366(c)(2).

The Court, having been satisfied with the proposal, granted the motion and further ordered that C&E shall comply with the proposal.[35]

IV. BATTLES ON POST-PETITION LENDING

C&E had taken many steps to restructure its operations and reduce its overall cost structure. For example, it reduced its occupancy and administrative costs relative to its retail lease locations, reconstituted its senior management and in an effort to increase liquidity, obtained additional financing in April 2009 from KLKOI. But C&E's liquidity position had not improved. It had an immediate need to borrow more money and use cash collateral in order to permit the orderly continuation of the operation of its businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational, financial and general corporate needs. Therefore, C&E filed the motion for Interim and Final (I) Approval of Post-petition Financing, (II) Authority to Use Cash Collateral, (III) Granting of Liens and Providing of Superpriority Administrative Expense Status, (IV) Granting Adequate Protection. [36]

In the motion, C&E asserted that despite best efforts, it has been unable to procure sufficient financing (i) in the form of unsecured credit allowable under section 503(b)(1), (ii) as an administrative expense under section 364(a) or (b), (iii) in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1), or (iv) without granting

[35] Final Order Pursuant to Sections 105(a) and 366 of The Bankruptcy Code (I) Approving the Debtor's Proposed Form of Adequate Assurance of Payment, (II) Resolving Objections by Utility Companies, and (III) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[36] Motion and Memorandum of Law for Interim and Final (I) Approval of Postpetition Financing, (II) Authority to Use Cash Collateral, (III) Granting of Liens and Providing of Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Scheduling a Final Hearing, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

priming liens pursuant to section 364(d). Furthermore, it is unable to obtain sufficient financing from sources other than the DIP Lender on terms more favorable than under the DIP Facility and the DIP Agreement. Under the agreement, it sought authorization and approval to:

1) obtain post-petition financing up to the principal amount of $40,000,000 (the "DIP Facility") from Kuala Lumpur Kepong Berhad ("KLK", the "DIP Lender"), the parent company of C&E;
2) all loans and obligations under the DIP Facility constitute superpriority claims against the Debtor, with priority over any and all administrative expenses and all other claims against the Debtor, subject only to the Carve-Out;
3) all loans and obligations under the DIP Facility shall be secured by the "DIP Liens", which shall prime and be senior in all respects to the existing liens that secured the obligations of the Debtor under or in connection with the Prepetition Obligations;
4) use cash collateral of the Prepetition Lenders;
5) grant adequate protection to the Prepetition Lenders for the use of its cash collateral;
6) use advances under the DIP Facility to pay in full in cash the obligations arising under and in connection with the Prepetition Obligations and any accrued but unpaid interest, fees and charges.[37] (the roll-up of the prepetition obligations)

In consideration for C&E's use of Cash Collateral, C&E proposed giving the Prepetition Lender the following (collectively the "Adequate Protection"):

[37] It is helpful to know the relationships among the whole KLK "family". The Debtor is a direct, wholly-owned subsidiary of Crabtree & Evelyn Holdings Limited ("Crabtree & Evelyn Holdings"), a United Kingdom based investment holding company. Crabtree & Evelyn Holdings owns all of the Crabtree & Evelyn foreign trademarks. Crabtree & Evelyn Holdings is a direct, wholly-owned subsidiary of CE Holdings Ltd. ("CE Holdings"), a British Virgin Islands based investment holding company. CE Holdings is a direct, wholly-owned subsidiary of KLKOI. KLKOI is a direct, wholly-owned subsidiary of Kuala Lumpur Kepong Berhad, a Malaysian corporation ("KLK"). KLKOI is also the largest secured creditor of debtor. KLK is a Malaysian public limited liability company, the stock of which is publicly traded on the Kuala Lumpur stock exchange.

1) To the extent there is a diminution in Prepetition Collateral, the Prepetition Lender is granted a replacement lien in the Collateral, subject to the Carve-Out, which liens are valid, binding, enforceable and fully perfected and are only subordinate to the DIP Liens;
2) An allowed administrative claim against the Debtor's estate under § 507(b) of the Bankruptcy Code to the extent that the Prepetition Lender Replacement Lines do not adequately protect the diminution in the value of the Prepetition Collateral, which Prepetition Lender Administrative Claim, if any shall be junior and subordinate only to the DIP Facility Superpriority Claims; and
3) Payments of each of the Prepetition Lender's reasonable fees and expenses for legal counsel, auditors, financial advisors and other professionals for services rendered prepetition or postpetition.

The Court entered interim orders on the Motion authorizing C&E to borrow up to $10 million from the proposed $40 million DIP Facility. Under the Interim Order, the DIP Lender was granted a superpriority claim (the "DIP Facility Superpriority Claim") payable from any prepetition or postpetition assets of C&E (excluding any Avoidance Actions and proceeds thereof) (the "Collateral") subject only to the Carve-Out. In addition, the DIP Lender, as security for the repayment of the DIP Financing, was granted DIP Liens on and in the Collateral without the need to file or record any documents.[38]

[38] Interim Order signed on 7/2/2009 (i) Authorizing Debtor To Obtain Postpetition Financing Pursuant To Section 364 of The Bankruptcy Code, (ii) Authorizing Use of Cash Collateral Pursuant to Section 363 of The Bankruptcy Code, (iii) Granting Liens and Super-Priority Claims, (iv) Granting Adequate Protection to The Prepetition Lender and (v) Scheduling a Final Hearing on The Debtors Motion to Incur Such Financing on a Permanent Basis [hereinafter Cash Collateral Interim Order] and Interim Order, signed on 7/2/2009, (i) Authorizing Debtor to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (ii) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (iii) Granting Liens and Super-Priority Claims, (iv) Granting Adequate Protection to the Prepetition Lender and (v) Scheduling a Final Hearing on the Debtors Motion to Incur Such Financing on a Permanent Basis [hereinafter Second Cash Collateral Interim Order] In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

Several Landlords[39] filed Limited Objection to Motion.[40] However, these are not real objections. The Interim Order recognized that the Leases contain specific and bargained-for language that prohibit or restrict C&E's ability to grant a lien in the Leases and the Premises. Therefore, it did not provide for a direct lien on the Leases, limited the lien to only the proceeds of a disposition of the Leases.

In order to make sure that the final order will keep these necessary protections, the Landlords object to any attempt to mortgage, encumber, hypothecate, or otherwise pledge the Leases, as well as any attempt to grant access rights to the Premises beyond those granted in the Interim Order.

The real objection came from the Official Committee of Unsecured Creditors, who filed Limited Objection to Motion on July 22, 2009.[41]

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[39] List of the landlords: The Macerich Company, The Related Companies, Cousins Properties, Inc., and RREEF Management Company, The Taubman Landlords, Carousel Center Company, L.P., Grove City Factory Shops Limited Partnership, Ohio Factory Shops Limited Partnership, Orlando Outlet Owner, LLC, Prime Outlets at Pleasant Prairie, LLC, Pyramid Walden Company, L.P., San Marcos Factory Stores, LTD, Williamsburg Outlets, L.L.C.,General Growth Properties, Inc., Turnberry Associates.

[40] Limited Objection of The Macerich Company, The Related Companies, Cousins Properties, Inc., and Rreef Management Company to the Debtors Motion and Memorandum of Law for Interim and Final (I) Approval of Postpetition Financing, (II) Authority to Use Cash Collateral, (III) Granting of Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, And (VI) Scheduling a Final Hearing, Joinder in Limited Objection of Macerich Company, et al., (related document 90) to Debtor's Motion and Memorandum of Law for Interim and Final (I) Approval of Postpetition Financing (II) Authority to Use Cash Collateral (III) Granting of Liens and Providing Superpriority Administrative Expense Status (IV) Granting Adequate Protection (V) Modifying Automatic Stay and (VI) Scheduling Final Hearing and Certificate of Service, The Pyramid Landlords and Prime Landlords' Joinder to the Limited Objection of the Macerich Company, the Related Companies, Cousins Properties, Inc. and RREEF Management Company to Debtors' Motion and Memorandum of Law for Interim and Final (I) Approval of Postpetition Financing, (II) Authority to Use Cash Collateral, (III) Granting of Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay and (VI) Scheduling a Final Hearing, and Objection to Motion for Final Order (i) Authorizing Debtor to Obtain Post-Petition Financing Pursuant to Section 364 of the Bankruptcy Code, (ii) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (iii) Granting Liens and Super-Priority Claims, (iv) Granting Adequate Protection to the Pre-Petition Lender, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[41] Limited Objection of the Official Committee of Unsecured Creditors to Debtor's Motion and Memorandum of

The Committee does not object to the DIP Facility or C&E's use of Cash Collateral and does not object to the Prepetition Lender being granted appropriate and reasonable adequate protection for such use. But the Committee claimed that the Motion contained numerous provisions that are neither reasonable nor "standard and customary" and would improperly benefit the Prepetition Lender and prejudice general unsecured and other creditors of C&E's estate.

More particularly, The Committee objected the roll-up of the Prepetition Obligations into the DIP Obligations because it asserted that the Prepetition Obligations do not appear to be fully secured by valid and binding interests in C&E's assets. The Committee claimed that the documents provided only demonstrate the existence of a security interest on behalf of KLKOI with respect to the $8,000,000 Prepetition Note entered into in April, 2009 and there is no evidence that KLKOI ever obtained a note, security agreement or other document to demonstrate that the $13,731,528 of additional Prepetition Obligations was to be secured by the Collateral. Accordingly, a roll up of the Prepetition Obligations should only include the $8,000,000 in Prepetition Obligations arising under the Prepetition Note.

Furthermore, the Committee challenged a specific provision in the interim order which provided "neither the Collateral, Prepetition Collateral nor the DIP Lender or Prepetition Lender shall be subject to surcharge, pursuant to section 506(c) of the Bankruptcy Code or otherwise, by C&E or any other party in interest without the prior written consent of the DIP Lender and Prepetition Lender and no such consent shall be implied from any other action, inaction, or acquiescence by such parties in this proceeding, including but not limited to funding of C&E's

Law for Interim and Final (I) Approval of Postpetition Financing, (II) Authority to Use Cash Collateral, (III) Granting of Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, And (VI) Scheduling a Final Hearing, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

ongoing operation by the DIP Lender."[42] It asserted that this provision serves to strip unpaid administrative creditors, even those whose claims arise in the ordinary course of business or those whose claims arise directly from the disposition of the Collateral, of any right even to seek payment in the event that they go unpaid by C&E. The Committee alleged that a surcharge waiver is particularly inappropriate where the Prepetition Lender may not have a security interest in substantially all C&E's assets and may use the chapter 11 process to liquidate its collateral at the expense of the unsecured creditors.

In addition, the Committee requested to increase the amount of the Investigation Cap and extend the Investigation Deadline to challenge the pre-petition claims, liens, acts and conduct of the Prepetition Lender.

Generally, provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance therewith.[43]

In the final order, first, the court found that all the Prepetition Obligations indebted to KLKOI were fully secured by substantially all of C&E's property and assets.[44] The court also found that C&E's businesses have an immediate need to obtain the DIP Facility and use Cash Collateral and C&E is unable to obtain sufficient financing from sources other than the DIP Lender on terms more favorable than under the DIP Facility and the DIP Agreement. In addition,

[42] Cash Collateral Interim Order and Second Cash Collateral Interim Order

[43] See In re Ames Dep't Stores, Inc.,115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)

[44] Final Order signed on 7/31/2009 (I)Authorizing Debtor to obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing Use of Cash collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Liens and Super-Priority Claims, (IV)Granting Adequate Protection to the Prepetition Lender, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter Final Cash Collateral Order]

the court found that the terms of such financing and use of Cash Collateral were negotiated in good faith and at arm's length.

Second, the court granted the motion as set forth in the order. Although the total amount of the DIP Facility has been reduced from $40,000,000 to $26,300,000, this was still a big victory for C&E as any objections that have not previously been withdrawn were overruled. Most importantly, the court recognized the effect of the DIP Agreement when the court held C&E is immediately authorized to borrow under the DIP Facility from the DIP Lender pursuant to the terms and conditions of the DIP Agreement.

Both the DIP Lender and the Prepetition Lender are winners here. The DIP Lender is granted, pursuant to § 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out, the allowed DIP Facility Superpriority Claims.[45] In addition, the DIP Lender was granted the DIP Liens on and in the Collateral and all proceeds, which shall prime and be senior in all respects to the Prepetition Liens. As to the Prepetition Lender, the Court permitted the roll-up of the Prepetition Obligations into the DIP Facility because it ordered that C&E shall use advances under the DIP Facility to pay in full in cash the Note Indebtedness. In addition, inconsideration for the use of Cash Collateral and the priming of the Prepetition Lender's liens, claims and interests in the Prepetition Collateral, the Prepetition Lender is allow to receive all the "Adequate Protection" C&E has proposed. The Prepetition Lender is granted a replacement lien in the Collateral, subject to the Carve-Out and subordinate only to the DIP Liens (the "Prepetition Lender Replacement Liens"). Furthermore, the court upheld the limitation on additional surcharges that was objected to by the Committee.[46]

[45] § 364(c)(1)

[46] Final Cash Collateral Order

The landlords also got what they want. The court provided that the term "Collateral" and the DIP Lender's DIP Liens shall not include C&E's leases and leasehold interests themselves, but only the proceeds of such leases and leasehold interests. The DIP Lender's DIP Liens shall not include liens on C&E's leases and leasehold interests themselves, but only on the proceeds of such leases and leasehold interests.

In this case, it is necessary to point out the special relationship among C&E, the Prepetition Lender KLKOI and the DIP Lender KLK. KLK is the parent corporation of Debtor and KLKOI, which means to some extent, all of them have some interests in common. The special bond might have made the negotiations easier. KLK, the parent corporation, came to rescue and agreed to lend money only if it would obtain the extraordinary secure, which is Superpriority Claims plus priming lien. In addition, it is understandable when KLK demanded to add terms such as "Roll-up" and "Adequate Protection" to protect the Prepetition Lender as conditions of this financing arrangement. The parties also agreed that C&E shall use advances under the DIP Facility to pay in full in cash the obligations arising under and in connection with the Prepetition Obligations. Since the Prepetition Lender got advanced protection, it had no problem with C&E's use of Cash Collateral in the ordinary course of business in accordance with the Budget. This is a win-win-win situation.

V. MIDDLE OF THE CASE

Activities slow down after the first week. C&E was able to conduct business in a more normal way. Usually, this is a period when the Debtor would have a chance to breathe and think about the business and legal strategies. In our case, C&E already has established well-planned

business strategies aiming at optimization of the size since the beginning. Therefore, this is a stage where C&E can utilize to do the dance.

One of the most important ways to implement the business strategies is to close certain unprofitable retail stores. The corresponding legal strategies would be assumption or rejection of executory contracts and unexpired leases. § 365 of the Bankruptcy Code allows the debtor assume or reject an unexpired lease, as well as other "execudtory contracts". [47] In this case, C&E only seeks to reject certain unexpired leases but no executor contracts.

First, under authorization from the court, C&E established procedures for the rejection of unexpired leases and the abandonment of related personal property. [48] Later, by motions for orders pursuant to § 365(a) and 554(a) of the bankruptcy code and bankruptcy rules 6006, 6007 and 9014, C&E requested authorization to reject certain unexpired leases.[49] C&E explained that it has used those premises to operate thirty-five retail stores and store inventory. However, C&E has determined in its business judgment that these Leases are unnecessary to the continued operation of C&E's businesses, have no value to the estate, and should be rejected.[50]

[47] 11 U.S.C. § 365.

[48] Motion Pursuant to Sections 105(a), 365 and 554(a) of the Bankruptcy Code for Authorization to Establish Procedures for the Rejection of Executory Contracts and Unexpired Leases and Abandonment of Related Personal Property, Order signed on 7/30/2009 Pursuant to Sections 105(a), 365 and 554(a) of the Bankruptcy Code for Authorization to Establish Procedures for the Rejection of Executory Contracts and Unexpired Leases and Abandonment of Related Personal Property, and Order Approving Rejection of Executory Contracts or Unexpired Leases, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[49] 11 U.S.C. § 365(a) and 554(a)

[50] Notice of Motion and Motion for an Order Pursuant to Sections 365(a) and 554(a) of the Bankruptcy Code and Bankruptcy Rules 6006, 6007 and 9014 Authorizing the Debtor to Reject Certain Unexpired Leases of NonResidential Real Property and to Abandon Personal Property, Notice of Motion and Amended Motion for an Order Pursuant to Sections 365(a) and 554(a) of the Bankruptcy Code and Bankruptcy Rules 6006, 6007 and 9014 Authorizing the Debtor to Reject Certain Unexpired Leases of NonResidential Real Property and to Abandon Personal Property, and Notice of Motion and Motion for an Order Pursuant to Section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014 Authorizing the Debtor to Reject Certain Unexpired Leases of Nonresidential Real Property, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

The courts' standard to approve these motions in practice is sometimes called "business judgment test." In this case, the court understood that occupying too many retail stores is one of the important reasons that made C&E involved into financial trouble and re-sizing the business is one of the goals that C&E hoped to achieve by filing chapter 11. Therefore, C&E passed the test without difficulties. In addition, there are no objections from the landlords.[51] Thus, the motions were granted by the court. [52]

As C&E further carried out the strategies by reducing expenses and improve profitability, it submitted to the court Operating Report on a monthly base. At the same time, it conducted a lot of negotiations with the secured lenders, the Committee, landlords, the UST and other players in the case. There is barely any other litigation interspersed into the smooth process. As the "golden years" began, C&E started to focus on formulating the Chapter 11 Plan.

VI. CHAPTER 11 PLAN

C&E filed the *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* on November 17, 2009. The negotiations were conducted among C&E, C&E's parent KLK (DIP Lender and proposed Exit Financing provider), C&E's prepetition lender KLKOI (an affiliate of C&E's parent) and the Committee.

C&E received five timely objections to the Plan (each, an "Objection") — an extremely small number considering the multitude of interested parties. It endeavored to negotiate with the

[51] Notice of Rejection of Executory Contracts or Unexpired Leases, No Objection Certificate of No Objection to Notice of Rejection of Executory Contracts or Unexpired Leases, and Certificate of No Objection to Notice of Rejection of Executory Contracts or Unexpired Leases, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[52] Order approving rejection of executory contracts or unexpired leases, Order authorizing the Debtor to reject certain unexpired leases of nonresidential real property, and Order Approving Rejection of Executory Contracts or Unexpired Leases, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

parties who brought objections. As a result of these efforts, no contested Objections remain. All objections were withdrawn after the confirmation. At the end of this section there is a chart detailing the objections and resolutions.

The plan was modified on January 12, 2010. In interest of clarifying, and consensually resolving Objections to confirmation of the Plan, C&E made certain non-material modifications to the First Amended Plan (the "Modifications"). These modifications did not materially and adversely affect the way any Claim or Interest holder is treated under the version of the Plan circulated to voting creditors with the Disclosure Statement.

Accordingly, because (i) the proposed Modifications (and those that may be made prior to or at the Confirmation Hearing), are (A) non-material and (B) do not materially and adversely affect the treatment of any creditor that has previously accepted the Plan and (ii) the Plan, as modified, continues to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code, resolicitation is not required.

On January 14, 2010 the Bankruptcy Court of the Southern Division of New York confirmed the first amended plan put forward by Debtor dated November 17, 2009. This is the only plan to satisfy sections 1129(a) and (b) of the Bankruptcy Code and so, it has also satisfied section 1129(c) which requires that the Court only confirm one plan. Below are the details of the Plan.[53] Moreover, the court found that as required by 1129(a)(3) the plan was proposed in good faith.[54]

[53] Order Confirming First Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code as modified on January 12, 2010, at 7, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter Confirmation Order]

[54] Confirmation Order

1. Provisions for treatment of Administrative Claims

All allowed administrative claims shall receive cash in the amount of their claim either on the initial distribution date or the next interim distribution date.[55] Any order allowing payments to be made on interim distribution dates are final orders.[56]

All claims that arise out of the ordinary course of business shall be satisfied by the debtor pursuant to the terms and conditions of the particular transaction.[57]

All administration claims that are also DIP claims shall be satisfied in full by payments of cash.[58]

All payment requests for administrative claims (not including professional fee claims) that are made between July 1, 2009 and the effective date must be done within thirty days of the effective date.[59] Any claims not requested by the effective date are forever barred and are deemed to be discharged.[60] Objections to requests must be filed and served by the claims objection deadline.[61]

Professionals who render services from the petition date to the effective date, and have claims for such services, must serve a final fee application within forty-five days of the effective

[55] First Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as Modified on January 12, 2010 at #, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter First Amended Plan]

[56] Id

[57] Id

[58] First Amended Plan

[59] First Amended Plan

[60] First Amended Plan

[61] First Amended Plan

date.[62] However, according to the ordinary course professionals order, professionals who render services pursuant to that order may continue to receive compensation and reimbursement of expenses without further approval from the bankruptcy court.[63] All outstanding, non-filed interim requests payments maybe be included in the professional's final fee application.[64] This satisfies 1129(a)(9) of the Bankruptcy Code.[65]

2. Classification of claims and interests, impairment and voting

There are five classes of claims.[66] Below is a table that explains how the classes are classified, whether or not they are impaired, whether or not they are entitled to vote, and their distributions.

Class	Designation	Impairment	Entitled to Vote	Distributions
1	Secured claims	Unimpaired	No (deemed to accept)	i) Cash in an amount equal to the allowed secured claim, or ii) Return of the holder's collateral securing the claim
2	Priority non-tax claims	Unimpaired	No (deemed to accept)	i) Cash in an amount equal to the allowed priority non-tax claim
3	General Unsecured claims	Impaired	Yes	i) Cash payments
4	Class Action Settlement Claims	Impaired	Yes	i) In accordance with the potential class action settlement approval order, or ii) Share pro rate with class 3 claims

[62] First Amended Plan

[63] First Amended Plan

[64] First Amended Plan

[65] Confirmation Order

[66] First Amended Plan

5	Interests	Unimpaired	No (deemed to accept)	i) Reinstated ii) Remain in full force and effect on the effective date and thereafter

The above table and its implications satisfy the relevant subsections of sections 1122(a) and 1123(a) of the bankruptcy code as ordered by the bankruptcy court.[67] As required by 1129(a)(8) of the Bankruptcy Code, classes 3 and 4 have accepted the plan.[68] Also, as required by 1129(b), all classes have either voted for the Plan or are unimpaired classes. [69] Moreover, as required by 1129(a)(10), the plan has been accepted by at least one impaired, non-insider class.

3. Means for implementation of the plan

The debtor will continue to exist after the effective date and all property of the estate of the debtor will vest in the reorganized debtor, free and clear of all claims, encumbrances and interests.[70] It may continue to operate its business and is permitted to use, acquire and dispose of property without the supervision of the Bankruptcy Court or with any restrictions under the Bankruptcy Code.[71]

The reorganized debtor is permitted to enter into transactions it determines to "be necessary or appropriate to effect a corporate restructuring of their respective businesses or

[67] Confirmation Order

[68] Confirmation Order

[69] First Amended Plan

[70] First Amended Plan

[71] First Amended Plan

simplify the overall corporate structure of the reorganized debtor."[72] Any successor corporation will be required to perform the obligations of the debtor.[73]

The first Certificate of Incorporation and By-Laws of the Reorganized Debtor will not allow for the issuing of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.[74] After the effective date, the reorganized debtor is authorized to amend the certificate of incorporation and by-laws.[75] The certificate of incorporation and the by-laws of the debtor may become those of the reorganized debtor if the reorganized debtor is not a new corporate entity.[76]

The initial officers of the reorganized debtor will be those of the debtor immediately prior to the effective date.[77] Each new director and officer shall service until a successor is appointed or until such director dies, resigns or is removed.[78] This is consistent with the interests of the creditors and public policy and as such it meets the requirements of section 1123(a)(7) of the Bankruptcy Code. [79]

With regards to employees, their retirement packages and other compensation programs, the reorganized debtor will be permitted to "maintain, amend or revise existing" agreements or enter into new ones. This complies with section 1129(a)(13) of the Bankruptcy Code which

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[72] First Amended Plan

[73] First Amended Plan

[74] First Amended Plan

[75] First Amended Plan

[76] First Amended Plan

[77] First Amended Plan

[78] First Amended Plan

[79] Confirmation Order

requires that "[t]he plan provides for the continuation after its effective date of payment of all retiree benefits."[80]

The debtor or the reorganized debtor is permitted to obtain cash funding for the Plan either from the reorganized debtor's cash balances, the proceeds from exit financing, and/or any other necessary or appropriate sources.[81] The reorganized debtor will make the cash payments under the plan.[82]

The above provisions adhere to the requirements of section 1123(a)(5) of the Bankruptcy Code which requires that the Plan "provide adequate means for the plan's implementation."[83]

The Plan complies with section 1123(b)(3) of the Bankruptcy Code, as it provides that the Reorganized Debtor has the authority to retain and enforce any claims, demands, rights and causes of action on behalf of the Debtor or its Estate against any entity.[84]

4. Treatment of executory contracts and unexpired leases

All executory contracts and unexpired leases are to be rejected by the debtor as of the effective date except those executory contracts and unexpired leases that have been assumed, assumed and assigned, or rejected prior to the effective date; those in which a motion or notice

[80] 11 U.S.C. § 1129(a)(13)

[81] First Amended Plan

[82] First Amended Plan

[83] 11 U.S.C. § 1123(a)(5)

[84] Confirmation Order

for approval has been filed and served before the confirmation date; or those listed on Exhibit D of the plan that are to be assumed.[85]

When the executory contracts and unexpired leases are assumed, payments will be made by cash or as otherwise agreed by the debtor and counter party and will be in the amount needed to cure the claim.[86] There will be no penalty rate included in the cure amount claim.[87] If there are any disputes the payments will be made after the final order.[88] This is in accordance with 1123(d) of the Bankruptcy code.[89]

If there is a "dispute as to whether a contract or lease is executory or unexpired", the debtor may ask for an extension that is "thirty days after entry of a final order by the bankruptcy court."[90] If the debtor discovers that an expired contract or unexpired lease was not included on exhibit D, they can ask for an extension of thirty days after being notified of the existence of such contract or lease.[91] The debtor is not required to assume any leases or contracts entered into after the petition date.[92] "Any such contract or lease shall continue in effect … unless the debtor has obtained a final order of the bankruptcy court approving rejection or other termination of such contract or lease."[93]

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[85] First Amended Plan

[86] First Amended Plan

[87] First Amended Plan

[88] First Amended Plan

[89] Confirmation order

[90] First Amended Plan

[91] First Amended Plan

[92] First Amended Plan

[93] First Amended Plan

Pursuant to section 365 of the Bankruptcy Code, any utility agreement that has not been assumed, rejected or terminated, shall be deemed to be assumed.[94] However, there will be no cure amount claim owed and if "a utility asserts any cure amount claim" the utilities agreement shall be deemed rejected.[95]

Employee compensation and benefit programs shall be treated as executory contracts that are assumed and assigned.[96] The existing terms shall remain the same.[97] For all existing employees that have not received a termination notice, their vacation policies shall be reinstated on the effective date and they "will be entitled to a cash payment of earned but unused vacation time in the event of a subsequent termination of employment after the effective date, if such payment is in accordance with the vacation policies."[98]

Executory contracts that are assumed and assigned "shall survive and be unaffected by entry of the confirmation order, irrespective of whether such indemnification or advancement is owed for an act or event occurring before or after the petition date.[99]

All contracts and leases entered into after the petition date shall be performed by the debtor according to the terms of the contract and leases.[100]

[94] First Amended Plan

[95] First Amended Plan

[96] First Amended Plan

[97] First Amended Plan

[98] First Amended Plan

[99] First Amended Plan

[100] First Amended Plan

These provisions are in accordance with section 1123(b)(2) of the Bankruptcy Code and are pursuant to section 365 of the Code.[101]

5. Provisions governing distributions

Distributions on allowed claims that are to be made on the effective date will be deemed to have been made on that date.[102] Distributions will be made by "cash and other instruments or documents required under the plan."[103] These distributions will be kept in a separate account for the claimants and shall be invested according to the reorganized debtor's investment and deposit guidelines.[104] Distributions that remain undeliverable sixty days after the effective date or after the last attempt to deliver shall be discharged and holders of those claims "shall be forever barred from asserting any such claim against the debtor."[105] These "unclaimed distributions will become the property of the reorganized debtor, free of any restrictions." [106]

The reorganized debtor is only required to make distributions to holders of allowed claims that exist "as of the close of business on the distribution record date."[107] Any transfer of claims will be "treated as the holders of such claims for all purposes" so long as the time for objecting to such a transfer has not passed. [108]

[101] Confirmation order

[102] First Amended Plan

[103] First Amended Plan

[104] First Amended Plan

[105] First Amended Plan

[106] First Amended Plan

[107] First Amended Plan

[108] First Amended Plan

All cash payments shall be made "in U.S. currency by checks drawn on a domestic bank" by a bank chosen by the reorganized debtor.[109] However, for foreign creditors, the reorganized debtor has the option to make distributions in a foreign currency where it is necessary and appropriate.[110]

The debtor will not be required to make distributions on claims that amount to less than fifty dollars ($50.00).[111] Those claims will be discharged and forever barred and holders of such claims will not be allowed to assert those claims on the debtor or organized debtor.[112] The property relating to these claims will belong to the reorganized debtor and will be free of any restrictions.[113]

6. Procedures for resolving disputed claims

All objections to claims are required to be filed and served by the claims objection deadline.[114] The debtor has the authority to deal with objections.[115] For objections on claims valued over twenty-five thousand dollars ($25,000) the reorganized debtor will need an order that allows the claim and that has been approved by the bankruptcy court.[116] For claims less than

[109] First Amended Plan

[110] First Amended Plan

[111] First Amended Plan

[112] First Amended Plan

[113] First Amended Plan

[114] First Amended Plan

[115] First Amended Plan

[116] First Amended Plan

twenty-five thousand dollars ($25,000) the reorganized debtor is free to deal with the objections without any further action by the bankruptcy court.[117]

The debtor is authorized to amend schedules without action by the bankruptcy court so long as they occur before the claims objection deadline.[118] After that date, the debtor will need approval from the bankruptcy court.[119] If the amendment to the schedule makes the amount less than the allowed claim, the debtor must give notice to the holder of the claim and the holder has thirty (30) days to file a proof of the amount.[120]

A failure to file a claim by the required time will bar the holder from asserting any claim against the debtor if the amount is more than the schedule describes or if the claim is different from that described on the schedule.[121] If claims are not filed after the applicable date they will be disallowed and expunged "without further action required by the Debtor, the Reorganized Debtor or the Bankruptcy Court."[122]

7. Conditions precedent to consummation of the plan

[117] First Amended Plan

[118] First Amended Plan

[119] First Amended Plan

[120] First Amended Plan

[121] First Amended Plan

[122] First Amended Plan

Section 8.1 stipulated that there were conditions that had to be met before the plan could be consummated and before an effective date could occur.[123] Firstly, the Court had to allow the debtor and reorganized debtor to take all the necessary actions to implement the plan.[124] Secondly, a final confirmation order had to be entered by the Court.[125] Thirdly, said confirmation order had to be "in full force and effect".[126] Fourthly, "the exhibits and any other necessary documents" had to be "fully executed and delivered to the debtor."[127] Also, the bankruptcy court had to have ordered the execution and approval of the agreements necessary for the provision of exit financing.[128] And, finally, the debtor had to have filed a notice indicating the occurrence of the effective date.[129] Based on the requirements of section 8.1 of the plan, the plan may be consummated and the effective date has occurred.[130] Had these requirements not been met, the plan would have been null and void.[131]

8. Discharge, injunction, release, and exculpation

[123] First Amended Plan

[124] First Amended Plan

[125] First Amended Plan

[126] First Amended Plan

[127] First Amended Plan

[128] First Amended Plan

[129] First Amended Plan

[130] First Amended Plan

[131] First Amended Plan

In exchange for the rights given to the claim holders, the confirmation of the Plan serves to discharge the debtor from all claims.[132] Any holder of a discharged claim will no longer be able to assert the claim against the debtor or the reorganized debtor if that claim arose before the entry of the confirmation order. [133]

As of the effective date, no holder of claims (as of the effective date) may make any further assertions on the debtor or reorganized debtor with respect to that claim.[134]

Also, as of the effective date, the debtor and the reorganized "shall be deemed to release unconditionally" all of their related parties, KLK and all of its related parties, KLKOI and all of its related parties, and the Creditors' Committee and all of its related parties, from all possible liability as it relates to the filing of the Chapter 11 case so long as none of the related parties were grossly negligent or conducted any willful misconduct and that "the foregoing release applies to the Released Parties solely in their respective capacities described above." This complies with section 547 of the Bankruptcy Code. [135]

9. Miscellaneous provisions

[132] First Amended Plan

[133] First Amended Plan

[134] First Amended Plan

[135] First Amended Plan

The creditors' committee will be dissolved as of the effective date and all members shall be free of any duties, responsibilities, and obligations as it relates to this chapter 11 case.[136]

Pursuant to 28 U.S.C. 1930 and 31 U.S.C. 3717, all statutory fees plus interest incurred prior to the effective date shall be paid in full by the debtor or reorganized debtor. All fees incurred after the effective date will be paid by the reorganized debtor pursuant to section 350(a).[137]

According to the Order set forth by the Court confirming the Plan, "[t]he Plan is feasible, within the meaning of section 1129(a)(11) of the Bankruptcy Code.[138] The Debtor's projections of the capitalization and financial information of the Reorganized Debtor as of the Effective Date are reasonable and made in good faith, the Reorganized Debtor is deemed to be solvent as of the Effective Date, and confirmation of the Plan is not likely to be followed by the liquidation or the need for the further financial reorganization of the Debtor. The Debtor has demonstrated a reasonable assurance of the Plan's prospects for success."[139]

In confirming the Plan, the Court stated that if there was a "direct conflict between the terms of the Plan and the terms of [the] Confirmation Order, the terms of [the] Confirmation Order shall control."[140] It also went on to state that any objections that have not been "withdrawn, waived or settled" or are not cured are overruled.[141]

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[136] First Amended Plan

[137] First Amended Plan

[138] Confirmation Order

[139] Confirmation Order

[140] Confirmation Order

[141] Confirmation

Furthermore, the provisions set out in the Plan and the Confirmation Order serve to bind the Debtor, the Reorganized Debtor, "any and all holders of Claims … any other person giving, acquiring or receiving property under the Plan … [and] any and all non-Debtor parties to Executory Contracts or Unexpired Leases with the Debtor."

Summary of Objections to Confirmation of the First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan")

OBJECTION	STATUS
1. Travis County, City of Austin, Austin Independent School District, Austin Independent School District CED, Eanes Independent School District, Austin Community College and Travis County Hospital District (collectively, "Travis County") (Docket No. 276) – RESOLVED	
Travis County's objections to the Plan are as follows: (i) The Plan does not allow for payment of Travis County's claim as secured along with the payment of 12% interest. Debtor's failure to include Travis County's fully secured claim with 12% interest renders the plan unfair and inequitable under the Bankruptcy Code and also violates the Texas Property Tax Code. Moreover, the treatment of Travis County's claim under the Plan is much less favorable than the statutory treatment of the claim under state law.	The Debtor has resolved this Objection by confirming that to the extent Travis County has an Allowed Secured Claim, the Debtor will include interest in the payment of such claim(s) at the rate under applicable non-bankruptcy law.
2. Westfield, LLC and Various Affiliates (collectively, the "Westfield Landlords") (Docket No. 277) – RESOLVED	
The Westfield Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Westfield Landlords' objections to the Plan are as follows: (i) The Westfield Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the Westfield Landlords' objection to cure amounts. (ii) The Debtor should preserve the Westfield Landlords' rights to assert the Unliquidated Claims (as such term is defined in the Westfield Landlords' Objection) under the Westfield Landlords' leases on a post-assumption/post-confirmation basis.	(i) The Debtor has resolved this Objection by agreeing to insert the following language (the "Cure Amount Language") into the Confirmation Order: "To the extent a lessor of nonresidential real property timely filed an objection with respect to the Cure Amount Claim that the Debtor asserts is required to be paid in connection with assumption of a nonresidential real property lease, and such objection has not been resolved prior to the Effective Date of the Plan, notwithstanding any language in the Plan, this Confirmation Order or any related documents, the rights of each party with respect to the objection are reserved and nothing herein shall moot, adversely affect or otherwise be determinative of the rights and obligations of the parties with respect to any such objection or the underlying cure claim." (ii) The Debtor has resolved this Objection by agreeing to insert the following language (the "Unliquidated Obligations Language") into the Confirmation Order: "Notwithstanding anything to the contrary in the Plan or this Confirmation Order, nothing in the Plan or this Confirmation Order shall release the Debtor from liability for year-end adjustments and true-ups pursuant to the terms of the Unexpired Leases which accrued prior to December 21, 2009 but which did not become due and payable until after December 21, 2009, or from any contractual indemnification obligations which were not known to the counterparty to the Unexpired Leases on or prior to December 21, 2009."
3. Carousel Center Company, L.P., Pyramid Walden Company, L.P., Grove City Factory Shops Limited Partnership, Ohio Factory Shops Limited Partnership, San Marcos Factory Stores, LTD, Williamsburg Outlets, L.L.C., Orlando Outlet Owner, LLC and Prime Outlets at Pleasant Prairie, LLC (collectively, the "Prime and Pyramid Landlords") (Docket No. 280) – RESOLVED	
The Prime and Pyramid Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Prime and Pyramid Landlords' objections to the Plan are as follows: (i) The Prime and Pyramid Landlords have objected to the proposed Cure Amount Claims. The Debtor has not resolved	(i) The Debtor has resolved this Objection. (ii) The Debtor has resolved this Objection by agreeing to pay all undisputed Cure Amount Claims of the Prime and Pyramid Landlords within fourteen (14) calendar days of the Effective

the Prime and Pyramid Landlords' objection to cure amounts. (ii) Cure amounts should be paid within ten (10) days of entry of an order confirming the Plan. (iii) The Debtor should not be permitted to amend Exhibit D to the Plan by deleting or adding any leases to or from the list after confirmation. (iii) (iv) The Exit Financing cannot include liens against the Prime and Pyramid Landlords' leases.	Date of the Plan. (iii) Because the Debtor has resolved the Prime and Pyramid Landlords' objection to cure amounts, this Objection has also been resolved. (iv) The Debtor has resolved this Objection by agreeing to enter into a side letter with the Exit Lender confirming that the Exit Financing does not include liens against the Prime and Pyramid Landlords' leases.
4. General Growth Properties, Inc. and Turnberry Associates (collectively, "GGP and Turnberry Landlords") (Docket No. 282) - RESOLVED	
The GGP and Turnberry Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The GGP and Turnberry Landlords' objections to the Plan are as follows: (i) The GGP and Turnberry Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the GGP and Turnberry Landlords' objection to cure amounts. (ii) The Debtor must be responsible to satisfy the Adjustment Amounts (as such term is defined in the GGP and Turnberry Landlords' Objection), if any, when due in accordance with the terms of the leases, regardless of when such Adjustment Amounts are billed. (iii) The Debtor should be required to comply with all contractual indemnification obligations and hold the GGP and Turnberry Landlords harmless with regard to events which may have occurred pre-assumption but which were not known to the GGP or Turnberry Landlords as of the date of assumption.	(i) The Debtor has resolved this Objection by agreeing to insert the Cure Amount Language into the Confirmation Order. (ii) and (iii) The Debtor has resolved this Objection by agreeing to insert the Unliquidated Obligations Language into the Confirmation Order.
5. The Related Companies, The Forbes Company, and RREEF Management Company (collectively, the "Related/Forbes/RREEF Landlords") (Docket No. 285) – RESOLVED	
The Related/Forbes/RREEF Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Related/Forbes/RREEF Landlords' objections to the Plan are as follows: (i) The Related/Forbes/RREEF Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the Related/Forbes/RREEF Landlords' objection to cure amounts. (ii) The Debtor is responsible for amounts that have not yet been reconciled and/or adjusted from prepetition or post-petition periods. (iii) The Debtor should be required to comply with all contractual indemnification obligations and hold the Related/Forbes/ RREEF Landlords harmless with regard to events which may have occurred pre-assumption but which were not known to the Related/Forbes/RREEF Landlords as of the date of assumption.	(i) The Debtor has resolved this Objection by agreeing to insert the Cure Amount Language into the Confirmation Order. (ii) and (iii) The Debtor has resolved this Objection by agreeing to insert the Unliquidated Obligations Language into the Confirmation Order.

VII. CLAIMS ADMINISTRATION

On August 14, 2009, C&E filed its schedules of assets and liabilities (the "Schedules")[142], which identified approximately 1,800 potential creditors of its estate. By order entered on August 20, 2009, the Court established the general bar date for creditors to file proofs of claim asserting prepetition liabilities against C&E (the "General Bar Date").[143] Approximately 450 unsecured, secured, priority and administrative proofs of claim have been filed in this case. However, the more important purpose for establishing claims at this point was to voting on the Plan. To confirm a plan, the Debtor has to get the approval of a majority in number and two thirds in amount of claims in each voting class. So C&E allowed claims in an estimated amount for voting purpose only and deferred the ultimate resolution of the claims to the post-confirmation period. This is a typical way how the successful chapter 11 debtors handle the claim.

After the Plan was confirmed, C&E started claims administration. On December 1, 2009, the Court entered the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) authorizing C&E to File Omnibus Claims Objections on numerous grounds and approving Procedures for Settling Certain Claims.[144]

After reviewing the proofs of claims one by one, on February 23, 2010, the Reorganized Debtor filed the First Omnibus (Non-Substantive) Objection to Claims to object superseded and duplicated claims.[145] On March 31, 2010, the Court entered an order granting the objection.[146]

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[142] Schedule of Assets and Liabilities, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[143] Order establishing the deadline for filing proofs of claim and approving the form and manner of notice thereof, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[144] Order signed on 12/1/2009 Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b)(i) Authorizing the Debtor to File Omnibus Claims Objections and (ii) Approving Procedures for Settling Certain Claims, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[145] Notice of and Reorganized Debtor's First Omnibus (Non Substantive) Objection to Claims, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

On April 20, 2010, the Reorganized Debtor filed the Second, the Third, the Fourth and the Fifth Omnibus Objection to Claims,[147] which are waiting for the court's order to grant. Based on the arguments supporting the motion and the court's prior attitude to the case, we predict that the court will grant this motion.

Furthermore, in order to obtain sufficient time to continue the claim analysis, C&E sought an order pursuant to section 105(a) of the Bankruptcy Code and Rule 9006 of the Federal Rules of Bankruptcy Procedure extending the Claims Objection Deadline by sixty-two (62) days.[148] The court granted the motion on April 27, 2010. [149]

VIII. PROFESSIONAL RETENTION AND COMPENSATION

On July 1, 2009, C&E sought to employ and retain Cooley as its bankruptcy counsel in connection with this chapter 11 case.[150] Before the Petition day, Cooley had performed extensive legal work for C&E. As a sophisticated big law firm, Cooley has taken efforts to avoid

[146] Order signed on 3/31/2010 Granting Debtors First Omnibus (Non-Substantive) Objection To Claims, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[147] Notice of and Reorganized Debtor's Second Omnibus Objection to Claims, Notice of and Reorganized Debtor's Third Objection to Claims, Notice of and Reorganized Debtor's Fourth Omnibus Objection to Claims, and Notice of and Reorganized Debtor's Fifth Omnibus Objection to Claims, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[148] Order Granting Reorganized Debtor's Motion Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006 Extending Time to Object to Certain Claims, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[149] Order signed on 4/27/2010 Granting Reorganized Debtor's Motion Pursuant to Section 105(a)of the Bankruptcy 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[150] Debtor's Amended Application for Order Under Bankruptcy Code Sections 327(a) and 328 and Bankruptcy Rules 2014 and 2016 Authorizing Employment and Retention of Cooley Godward Kronish LLP as Attorneys for Debtor, Nunc Pro Tunc to the Petition Date, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) Code and Bankruptcy Rule 9006 Extending Time To Object to Certain Claims, In re Crabtree & Evelyn, Ltd., Ch.

disqualification for allegedly holding an interest adverse to C&E as a result being a pre-petition creditor. What Cooley did is to obtain sufficient pre-petition advance payment retainer before commencing the bankruptcy work. C&E rendered payment to Cooley in the year prior to the Petition Date in advance of the services being rendered.[151] Therefore, Cooley is not an interested pre-petition creditor.

As an accommodation to C&E and in an effort to reduce fees in this case, Cooley had agreed to voluntary reduce fees for timekeepers at the counsel and partner levels in the amount of between fifteen percent and twenty percent of Cooley's standard hourly rates. This application was approved by an order on July 2, 2009. [152]

On July 1, 2009, C&E, applied for Epiq Bankruptcy Solutions, LLC ("Epic") to be retained and appointed as Claims Agent for the Clerk of the Bankruptcy Court as allowed under 28 U.S.C. 156(c)[153] on the ground that it would be impracticable for C&E to be able to serve the notices on the holders of claims related to the case as the number of claims was expected to be high. Epic was chosen after a "solicitation and consideration of competing bids."[154] This application was approved by an order on July 2, 2009.[155]

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[151] Debtor's Amended Application for Order Under Bankruptcy Code Sections 327(a) and 328 and Bankruptcy Rules 2014 and 2016 Authorizing Employment and Retention of Cooley Godward Kronish LLP as Attorneys for Debtor, Nunc Pro Tunc to the Petition Date

[152] Order signed on 7/29/2009 Authorizing Employment and Retention of Cooley Godward Kronish LLP as Attorneys for Debtor, Nunc Pro Tunc to the Petition Date, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[153] Application of the debtor for order authorizing retention and appointment of Epiq Bankruptcy Solutions, LLC as claims agent for the clerk of the bankruptcy court under 28 U.S.C. § 156(c) and granting related relief, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter Epiq Appointment Application]

[154] Epiq Appointment Application

[155] Order authorizing retention and appointment of Epiq Bankruptcy Solutions, LLC as claims agent for the clerk of the bankruptcy court under 28 U.S.C. § 156(c) and granting related relief, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

On the same day, C&E also submitted an application to employ Clear Thinking Group LLC ("Clear Thinking") as Financial Advisor to C&E pursuant to sections 327, 328, and 330 of the Bankruptcy Code.[156] C&E requested that Clear Thinking be permitted to assist C&E "(i) in the preparation of necessary schedules, budgets and court related reporting, (ii) with Court required records retention processes, (iii) in the preparation of a bankruptcy reorganization plan."[157] On July 29, 2009, the Court entered an order permitting C&E to employ Clear Thinking.[158]

On July 6, 2009, C&E submitted an application for the employment of KPMG Corporate Finance LLC ("KPMG") as Special Real Estate Advisor pursuant to sections 327(a) and 328 of the Bankruptcy Code and rules 2014 and 2016 of the Bankruptcy Rules.[159] Prior to the Petition day, KPMG had been employed to assist the negotiation of lease modification agreements for certain of C&E's underperforming retail stores.[160] On July 29, 2009, the Court entered an order approving the employment of KPMG.[161]

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[156] Debtor's Application For Entry of an Order Under Bankruptcy Code Sections 327, 328 and 330 Authorizing Retention and Employment of Clear Thinking Group LLC as Financial Advisors to the Debtor, Nunc Pro Tunc to the Petition Date, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter Clear Thinking Appointment Application]

[157] Clear Thinking Appointment Application

[158] Order signed on 7/29/2009 Authorizing Retention and Employment of Clear Thinking Group LLC as Financial Advisor to the Debtor, Nunc Pro Tunc to the Petition Date

[159] Debtor's Application for order under bankruptcy code sections 327(a) and 328 and Bankruptcy rules 2014 and 2016 authorizing employment and retention of KPMG Corporate Finance LLC as special real estate advisor for Debtor, nunc pro tunc to the petition date, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y) [hereinafter KPMG application]

[160] KPMG application

[161] Order signed on 7/29/2009 Authorizing Employment and Retention of KPMG Corporation Finance LLC as Special Real Estate Advisor for Debtor, Nunc Pro Tunc to the Petition

When C&E applied to employ Clear Thinking and KPMG, they were already retained by C&E prior to the Petition day. In situations like this, C&E could have filed motion pursuant § 363 seeking to approve a post-petition engagement agreement. However, because C&E had paid the advisors for the pre-petition work prior to the Petition Day, they are not creditors. C&E still applied § 327 standard to hedge against likely objection from the other parties.

On August 5, 2009, the Official Committee of Unsecured Creditors submitted an application to employ Hahn & Hessen LLP to serve as Counsel for the Official Committee of Secured Creditors.[162] The Court approved the application stating that it was satisfied that "(i) the employment of Hahn & Hessen is necessary and in the best interest of C&E's estate, (ii) Hahn & Hessen serves no interest adverse to C&E and its estate, and (iii) Hahn & Hessen is a 'disinterested person.'" [163]

The Committee also submitted an application to employ Scouler & Company, LLC ("Scouler") as financial advisors and, if needed, forensic accountants pursuant to section 1103 of the Bankruptcy Code.[164] This application was approved in an order by the Court dated August 26, 2009.[165]

[162] Application to Employ Hahn & Hessen LLP as Counsel for the Official Committee of Unsecured Creditors, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[163] Order signed on 8/26/2009 Authorizing the Retention of Hahn & Hessen LLP as Counsel for the Official Committee of Unsecured Creditors, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[164] Application to Employ Scouler & Company, LLC as Financial Advisors and, if needed, Forensic Accountants to the Committee of Unsecured Creditors filed by Mark T. Power on behalf of The Official Committee of Unsecured Creditors, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

[165] Order signed on 8/26/09 Authorizing the Retention of Scouler & Company, LLC as Financial Advisors and, if Needed, Forensic Accountants for the Official Committee of Unsecured Creditors, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

In big cases like this one, courts usually permit "interim fees" to reduce the burden on professionals. [166] In addition, the professionals need to file final fee application. Usually, UST tends to object to the fee application. The court may raise issues and concerns of its own, too. But in this case, the professionals explained fees and expenses in details in their applications, including rates, hours, categories and etc.[167] No one raised objections and the court awarded the fees and expenses exactly as the professionals requested.

FOR ALL PROFESSIONALS OTHER THAN SCOULER & COMPANY, LLC: OCTOBER 1, 2009 THROUGH JANUARY 27, 2010
FOR SCOULER & COMPANY, LLC: OCTOBER 1, 2009 THROUGH NOVEMBER 30, 2010

Applicant	Date/ Document No. of Application	Fees Requested	Fees Awarded	Expenses Requested	Expenses Awarded
Cooley Godward Kronish LLP	3/11/10 – Doc. # 338	$322,484.50	$322,484.50	$8,189.01	$8,189.01
Clear Thinking Group LLC	3/11/10 – Doc. # 340	$58,472.50	$58,472.50	$3,628.82	$3,628.82
KPMG Corporate Finance LLC	3/11/10 – Doc. # 341	$288,570.00	$288,570.00	$0.00	$0.00
Hahn & Hessen LLP	3/11/10 – Doc. # 339	$114,758.20	$114,758.20	$1,813.39	$1,813.39

[166] This is contemplated by §331, which provides for interim fee application for every 120 days.

[167] Second Interim and Final Application of Cooley Godward Kronish LLP, Counsel for the Reorganized Debtor, For Compensation and Reimbursement of Expenses For (I) The Interim Period From October 1, 2009 Through January 27, 2010, and (II) The Final Period From July 1, 2009 Through January 27, 2010, Final Application of Hahn & Hessen LLP, for allowance of compensation and reimbursement of expenses incurred for the period July 15, 2009 through January 27, 2010, Second Interim and Final Application of Clear Thinking Group LLC, Financial Advisor for the Debtor, for Compensation and Reimbursement of Expenses for (I) The Interim Period From October 1, 2009 Through January 27, 2010 and (II) The Final Period From July 1, 2009 Through January 27, 2010, Second Interim and Final Fee Application of KPMG Corporate Finance LLC As Special Real Estate Advisor to the Debtor and Debtor in Possession, and Final Application of Scouler & Company, LLC, for allowance of compensation and reimbursement of expenses incurred for the period July 21, 2009 through November 30, 2009, In re Crabtree & Evelyn, Ltd., Ch. 11 Case No. 09-14267 (BRL) (Bankr. S.D.N.Y)

Scouler & Company, LLC	3/11/10 – Doc. # 342	$66,700.00	$66,700.00	$1,576.30	$1,576.30

SUMMARY: ALL FEE PERIODS
(INCLUDING THIS FEE PERIOD)

Applicant	Date/ Document No. of Application	Total Fees Requested	Total Fees Awarded	Total Expenses Requested	Total Expenses Awarded
Cooley Godward Kronish LLP	3/11/10 – Doc. # 338	$623,160.50	$623,160.50	$18,358.56	$18,358.56
Clear Thinking Group LLC	3/11/10 – Doc. # 340	$415,370.00	$415,370.00	$51,582.68	$51,582.68
KPMG Corporate Finance LLC	3/11/10 – Doc. # 341	$319,638.00	$319,638.00	$44.65	$44.65
Hahn & Hessen LLP	3/11/10 – Doc. # 339	$278,579.15	$278,579.15	$7,300.04	$7,300.04
Scouler & Company, LLC	3/11/10 – Doc. # 342	$427,435.75	$427,435.75	$20,637.73	$20,637.73

IX. THE DEBTOR'S SUCCESS

Although the court's confirmation of the Plan is not the end of the case, it is a significant achievement of C&E. Once C&E enters the post-confirmation stage of its life cycle, it regains control of its assets without many of the regulations and enters into a "business normal state".

As we have noticed, C&E is going through the chapter 11 "tunnel" very smoothly. There are several important elements, we believe, that are critical to the success and deserve to be mentioned here.

First, the critical players in this case have a special relationship other than the usual debtor-creditor, which lessens the hostility among the parties. In this case, as we have mentioned before, both the largest secured creditor (pre-petition lender) and the largest unsecured creditor are affiliates of the Debtor's parent company. The parent corporation further actively got involved in the case by becoming the DIP lender.

Usually, in a chapter 11 case, the other parties would have been suspicious of C&E's business. Is this business worth more as a going concern than they are in liquidation? It is not the case here. C&E has been confident that it would use chapter 11 as a venue to reorganize the business and then go back to the normal world from the beginning. The other parties seem to be supportive. The tension between the equity holder and creditors is less intense. C&E dominates in this case.

Of course, the parties made many reciprocal agreements and compromise. For example, C&E has waived, discharged and released any right it may have to challenge any of the Prepetition Obligations, including the Note Indebtedness, and the security for any of those obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action and/or choices of action against the Prepetition Lender and/or any of its affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors and employees. Another example is the agreement regarding to post-petition financing. As we have analyzed before, it is a win-win-win situation, in which C&E was authorized to borrow more money, the DIP lender obtained superpriority claim status and priming lien, and the Pre-Petition Lender's claim would be paid in full in cash by using advances under the DIP Facility.

Second, C&E's counsel, Cooley, has played a vital role in this game. Cooley has intensive experiences with regards to chapter 11. It was fully prepared and armed with

established legal strategies when it filed the chapter 11 petition for C&E. It filed all the necessary and appropriate first day motions in a timely manner. In addition, Cooley always made convincible arguments in the motions. Thus, the court has granted every single motion the firm has filed so far. It is clear that C&E and Cooley have earned credit in front of the judges and obtained the court's support. In a word, Cooley made this case look like a textbook example, in a good way.

The firm intensively relied on a few statutes when it filed motions to request the court's order. One of the statutes the firm frequently utilized was § 105(a) of the Bankruptcy Code, which empowers the court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title."[168] Therefore, the court may exercise its equitable powers to grant the relief requested. C&E employed this statute in almost all of its first day motions as ground to request relief. The statute was especially helpful when C&E sought to operate its business in a comparatively "normal" way under chapter 11. For example, C&E had successfully convinced the court that "under § 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor."[169]

Other powerful statutes that the firm often cited to request relief included § 363(b) and (c). § 363(c)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee "may use, sell, or lease, other than in the ordinary course of business, property of the estate." [170] § 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to "use property of the

[168] 11 U.S.C. § 105(a).

[169] In re NVR L.P., et al., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177).

[170] 11 U.S.C. § 363(b)(1).

estate in the ordinary course of business without notice or a hearing."[171] The purpose of § 363(b) and (c) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unnecessary oversight by its creditors or the court. Therefore, these statues are most used in motions for courts' order authorizing C&E to dispose property.

Specific goals, feasible business strategies, sophisticated legal strategies and hardworking – all of these lead C&E's chapter 11 case to the end of success.

X. CONCLUSION

It is true that a number of important aspects remain to be completed after the confirmation and the case is not over without a final decree from the court. But we are confident that C&E will be one of the few retailers to successfully reorganize since the enactment of the 2005 amendments to the Bankruptcy Code.

C&E has made the best of the process of chapter 11 and its future of returning to financial and operational health is promising. It will emerge as a healthier and more profitable company, capable of continuing the Crabtree &Evelyn tradition of English-style elegance.

[171] 11 U.S.C. § 363(c)(1).