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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-10614-mg

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In the Matter of:

BORDERS GROUP, INC., et al.,

Debtors.

- - - - -x

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

February 17, 2011
10:06 a.m.

B E F O R E:
HON. ARTHUR J. GONZALEZ
CHIEF U.S. BANKRUPTCY JUDGE

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MOTION Requesting an Order Authorizing the Debtors to Conduct Store Closing Sales and Bulk Inventory Sales, Approving Procedures With Respect to Ordinary Course Store Closing Sales, and Granting Ancillary and Related Relief.

Transcribed by: Esther Accardi

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A P P E A R A N C E S : (continued)

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P R O C E E D I N G S

THE COURT: Please be seated. Mr. Friedman.

MR. FRIEDMAN: Good morning, Your Honor. David Friedman for the debtors.

This morning -- Your Honor, again, we're grateful that you're hearing us this morning of the single matter on the calendar this morning is the debtors' motion to proceed with its store closing program.

As a matter of housekeeping, I just would like to report to the Court that we have this morning distributed to the parties-in-interest, and we will be filing, as an exhibit to the interim DIP financing order, a copy of the -- what's referred to as the weekly DIP cash flow budget. It's a sixteen-week budget in the manner that was provided to the DIP lenders. And I would just say that while this DIP budget shows more than ample liquidity for the company over the entire period, it is a budget that we hope we will do better than. It does not reflect all of the operational initiatives that we hope will kick in. And we're optimistic that we'll do even better than what's in this budget.

Your Honor, on the interim order, Ms. Walker is out in the hallway. There's been a complete redraft circulated to the parties, that's been blacklined, to show parties' concerns. I believe we will be done with this prior to the conclusion of the store closing hearing. But that's still -- that's still

1 being -- there's still some knits that are being worked out.

2 But I don't anticipate anything of significance.

3 On the store closing program, Your Honor, the auction
4 concluded last night about 8 p.m. The results, as I alluded to
5 yesterday, were very encouraging. I think it probably makes
6 sense for me to yield to my partner; Mr. Shiff, who was there
7 during the entire day, and can, I think, be in a better
8 position than I to answer your questions, because he observed
9 it first hand.

10 But I think that we have -- made significant progress
11 with the landlords, with all the other parties-in-interest, and
12 I don't anticipate that other than, perhaps, taking a break to
13 work out the precise terms of the order, we've been getting
14 comments throughout the night and throughout the morning, other
15 than taking a break I don't anticipate significant issues, but
16 I do think we ought to make the case why this is important to
17 the estate and should be approved.

18 THE COURT: Well, I think you have to make the case on
19 the 6003 to me.

20 MR. FRIEDMAN: Yeah, of course. Of course. So with
21 the Court's permission I would turn -- turn this over to Mr.
22 Shiff, who I think is in the best position to report on what
23 happened and to make the case that we need to make. Thank you.

24 THE COURT: All right, thank you.

25 MR. SHIFF: Good morning, Your Honor. For the record

1 Adam Shiff of Kasowitz, Benson, Torres & Friedman on behalf of
2 the debtors.

3 And I do want to reiterate what Mr. Friedman said at
4 the outset, that we really do appreciate the Court taking the
5 time to hear us again. And I think as you will hear the time
6 spent yesterday that the Court allotted us was very well spent.

7 Your Honor, we're here on the debtors' emergency
8 motion for entry of an order authorizing the debtors to sell
9 certain assets through store closing sales, and to enter into
10 agency agreement with the joint venture at the auction,
11 approving a stalking horse fee, authorizing debtors to abandon
12 unsold property, waiving compliance of contractual store
13 closing sale restrictions, exempting state and local fast pay
14 laws and laws restricting store closing sales, and granting
15 related relief.

16 That was a mouthful, Your Honor, but I am pleased to
17 report that a number of the items that were set forth in that
18 initial request for relief, we will no longer need to seek
19 today. So let me walk through each of the prongs first, as I
20 think that might be the easiest.

21 Your Honor, first prong would be authorizing the
22 debtors to enter into an agency agreement with the successful
23 bidder at the auction. As the Court will hear briefly in a
24 moment, we did conduct an auction yesterday. At the conclusion
25 of the auction the winning bidder was a consortium that was a

1 combination or a break apart of consortium that had started
2 earlier in the day. And the winning bidder is a consortium
3 comprised of Gordon Brothers, Hilco, SBK (sic), and Tiger.

4 Your Honor, the second prong that we were going to be
5 seeking today was entry of an order approving stalking horse
6 protections. As a result of the result of the auction
7 yesterday, we do not need to seek and will not be seeking the
8 approval of a breakup fee as we previously had sought.

9 Obviously, the motion will seek to authorize the
10 debtors to sell the merchandise and owned FF&E in accordance
11 with the agency agreement, the waiving of compliance with
12 certain contractual restrictions. And as you will hear
13 shortly, we have reached agreements with over a third of the
14 landlords -- lawyers representing over a third of the landlords
15 that are subject to this motion, and are in discussions with
16 others, and have set forth a procedure to address those. Your
17 Honor, for the seeking of exempting of applicable restrictions
18 with respect to fast pay laws. We've reached an agreement with
19 the National Association of the Attorney General's office, that
20 we will not seek that relief from Your Honor today, but,
21 rather, to the extent we continue to seek such relief we'll
22 come back at a further hearing on a schedule to be agreed with
23 them. Obviously, it needs to be done fairly quickly to address
24 that issue.

25 The final provision would be to authorize the

1 abandonment of certain property at the end of the auction.

2 Your Honor, this motion was filed on the first day
3 together with the filing of the petitions. And was
4 accompanied, both by the affidavit of Scott Henry; the CFO of
5 the company, who I believe the Court was introduced to
6 yesterday and is sitting in the courtroom -- Mr. Henry. As
7 well as an affidavit of Holly Etlin of AlixPartners, who as the
8 Court is aware is working with the company and headed up the
9 effort with respect to the GOB sales.

10 Your Honor, I think it might be helpful to walk the
11 Court -- and we would ask Your Honor maybe at this point to --
12 I believe that the Henry affidavit was admitted into evidence
13 yesterday, we would like to include that as part of the record
14 today. And we would also ask the Court at this point to -- we
15 would ask the Court to admit into evidence the affidavit of Ms.
16 Etlin.

17 Ms. Etlin, obviously, is in court. I'm happy to make
18 a more fulsome proffer, and there are issues that we will
19 supplement to the affidavit, you know, as a result of
20 yesterday's auction. But we would ask the Court, if it would,
21 to admit that into evidence at this time.

22 THE COURT: Well, I'm not clear what you mean you're
23 going to supplement them. Because what I would do, as I did
24 yesterday, was ask the declarant if that would be their direct
25 testimony and then give them -- it wasn't an issue yesterday

1 but give them an opportunity to modify, change or otherwise add
2 to the declaration and make the person then available for
3 cross-examination.

4 MR. SHIFF: Your Honor, if it's okay with the Court
5 why don't you allow me to make the rest of the presentation. I
6 can then at that time do the proffer as a result of yesterday's
7 auction and then seek to admit and address it altogether in one
8 evidentiary matter.

9 THE COURT: Yes.

10 MR. SHIFF: That's fine, Your Honor.

11 THE COURT: Go ahead.

12 MR. SHIFF: No problem.

13 Your Honor, just by way of background as to the
14 process, Your Honor, the debtors back in early February, having
15 recognized that in order to move forward with their
16 reorganization plans, which would involve, as the Court heard
17 yesterday from Mr. Friedman, I don't want to belabor the point,
18 reorganizing around a core group of stores, made a decision
19 that it needed to immediately close a certain number of stores.

20 Starting back in February the debtors, through their
21 advisors, began to contact the nation's largest liquidating
22 firms. Ultimately, two groups emerged that were interested in
23 these assets, and I think they're names that are probably very
24 familiar to this Court. The Great American Group, Gordon
25 Brothers Retail Partners, Hilco, Tiger and SBK (sic) Capital.

1 Your Honor, bid solicitation packages were mailed out
2 at around February 7th to the various groups. Ultimately, two
3 groups sort of formed; what we call the Gordon Brothers Group
4 as well as the Hilco Group.

5 The Gordon Brothers Group was comprised of Great
6 American and Gordon Brothers. And the Hilco Group of Hilco,
7 Tiger and SBK (sic) Capital.

8 Your Honor, we ran through a process with them, which
9 I won't belabor the Court with now, as we will address it, I
10 think, through Ms. Etlin's testimony. But as a result of that,
11 received ultimately two bids for the assets. And the company
12 ultimately negotiated a stalking horse agreement, which is
13 attached to the motion pap -- the moving papers that were filed
14 on the first day to provide for a sale to what we call the
15 Hilco Group, which essentially at that time provided that Hilco
16 would pay seventy-three percent of the guaranteed amount of the
17 debtors' inventory, which is an amount sum or equal to about
18 131 to 148 million dollars.

19 The agent, as is customary in these agreements, and I
20 think these agreements have, at this point, sort of adopted a
21 fairly generic form and followed the general same course,
22 essentially, the agent would be responsible for all operating
23 costs at the store. Above that, the agent was entitled to a
24 five percent fee. And beyond that, if there were going to be
25 any proceeds, there would be a sharing percentage. At the time

1 it was fifty/fifty.

2 Your Honor, the debtor believed that bringing in and
3 hiring a professional liquidator to liquidate the assets would
4 enable them to maximize their sale proceeds, while minimizing
5 the distraction from management from having to address the
6 closing stores, but rather focusing their efforts on the stores
7 around which they would seek to reorganize.

8 Your Honor, I think as the Court is certainly
9 familiar, it is fairly common in debtor cases, particularly
10 retail cases, to hire such liquidation firms to conduct such
11 sales. I believe we cited a number of them in our moving
12 papers. They include the Goody's case from Delaware, Circuit
13 City from -- in Virginia, Linens 'n Things, as well as other
14 cases. In this Court, Steve & Barry's, and certainly, the Ames
15 case.

16 Your Honor, as I had indicated at the outset the
17 original deal provided for a seventy-three percent guaranteed
18 amount, as well as some other sharing. It also significantly
19 provided that the agents would not be allowed to augment any of
20 the inventory at the stores. And this was considered an
21 important point because we obviously recognized that we were
22 going to be moving on fairly, you know, short notice, and
23 augmentation has traditionally been an issue that could
24 cause -- you know, raise the ire of either some of the attorney
25 generals or some of the landlords. So we were able to

1 negotiate and focus on an agency agreement that didn't include
2 such provisions.

3 Your Honor, I think one of the key questions the
4 Court's going to have and we will address it again through Ms.
5 Etlin, is really why the expedited timing of these sales and
6 why do we want to move forward at this time?

7 Your Honor, the stores that we're talking about
8 selling here -- and to be clear, I indicated before -- all
9 right, let me take a step back. The agency agreement provides
10 that we will sell right now the inventory at 200 stores. It
11 also gives the company the option to put an additional seventy-
12 five stores from a designated list to the agent. So it could
13 be a maximum of 275 stores.

14 With respect to the other seventy-five, however, Your
15 Honor, there is a provision in the order, and in the motion,
16 that does provide if we do seek to put those we will provide
17 additional notice at that time to the applicable -- obviously,
18 to the agents who will be conducting the sale, but to the
19 landlords and the applicable authorities as well.

20 Your Honor, the need to move forward quickly here
21 really results from the significant loss that these stores
22 provide. There's approximately a two million dollar weekly
23 burn from maintaining these stores. Also, Your Honor, the
24 debtors have been -- due to the pre-petition liquidity
25 problems, have been unable to continue to stock these stores.

1 And as we continue to sit with the inventory in the stores they
2 become less and less valuable, and, certainly, as I'm sure the
3 Court could appreciate, books and other items that, you know,
4 become old, become old and stale. Maybe not quite like food,
5 but they, certainly, you know, lose some of their appeal.

6 Your Honor, it was also our belief that as a result of
7 that not only would we lost two million dollars, but that a
8 delay would result in a significant decrease in the potential
9 offers we would get from the liquidators. And, in particular,
10 the liquidators had expressed a desire and actually conditioned
11 their contract, on getting into the stores before the
12 President's weekend, and our estimate through our negotiations
13 with them, is that a delay in that would result in a decrease
14 in consideration of at least three percent -- or two -- I'm
15 sorry, up to two percent of the guaranteed percentage.

16 Finally, Your Honor, we believe that operating the
17 unprofitable stores, we indicated before will distract
18 management from the important tasks at hand that we had laid
19 out yesterday.

20 Your Honor, in order to move forward expeditiously, we
21 tried to craft this in a manner that would be as amenable and
22 as appealable to as many of the constituents as possible. We
23 included in the agency agreement that was filed close store
24 guidelines that were not sort of a first request. Hey, we're
25 going to take our best shot at trying to get something through.

1 But, rather, resulted from the state of art of the existing
2 agreements that are out there.

3 In that regard, we -- our firm, at least, had
4 discussed these extensively with the Kelley Drye firm that has
5 represented a number of the landlords and I believe is present
6 in Court today. And I know counsel for the buying consortium
7 had discussed them with -- another group of the landlords, Mr.
8 Pollack, in advance of today's hearing.

9 And I think as you will hear later, we have agreement
10 from -- as I had indicated earlier, we've agreement from a
11 third of the landlords with respect to those, and expect that
12 those agreements will also work with the other parties. And I
13 think they include, you know, no neon signs, the, you know,
14 adhering to stores hours, and the like.

15 Your Honor, when we filed the motion on the first day
16 we sought to give as wide of distribution of notice as
17 possible. This included the Office of the United States
18 Trustee, with whom, as the Court knows, we had extensive
19 contact with prior to filing the Chapter 11 case. It included
20 the creditors holding the thirty largest unsecured claims
21 against the estates, counsel for the DIP agents, who also
22 reviewed the documents extensively prior to the filing, counsel
23 for GA Capital; who are the second term -- the term B lender
24 under the DIP facility, as well as our pre-petition lenders.
25 As I indicated earlier, Kelley Drye & Warren; attorneys for

1 certain landlords, Lowenstein Sandler; who the Court's aware,
2 represents quite a number of the trade vendors here, to Fried
3 Frank; attorneys for General Growth Partners. We also served
4 the attorney general -- we also served the attorney generals
5 for each state in which the debtors operate, and we served the
6 landlords for each of the closing stores, as well as where we
7 had it, you know, local municipalities where the stores are
8 operating.

9 Your Honor, as I think Mr. Friedman indicated, as a
10 result of all that service, as well as numerous discussions
11 we've had, I don't believe there are any remaining objections
12 to the relief that we seek. We do, however -- we are working
13 out a few language issues with a number of those parties. I
14 believe counsel for Seattle Growth Coffee was on the phone
15 yesterday, for example, and I believe we've reached an
16 agreement with them, subject to -- including in the order,
17 which we'll have to do.

18 Your Honor, just very briefly, as to why we think the
19 relief is warranted beyond what we've indicated.

20 Your Honor, we've -- the debtors and their advisors,
21 engaged in a strategic analysis and have determined in their
22 business judgment to close the stores that are underperforming
23 or unprofitable. And as I indicated, there's a two million
24 weekly drain on the debtors.

25 THE COURT: Let me -- let me interrupt you so you can

1 focus on what I think are the two key issues --

2 MR. SHIFF: Okay, great, Your Honor.

3 THE COURT: -- under 6003. And that is the immediate
4 harm which you've addressed, any irreparable harm, which you,
5 you know, have alluded to. That is what needs to be found by
6 the Court in order to enable the sale to go forward within the
7 first twenty-one days of the case.

8 The Ames case you cite did approve the sale on the
9 first day, procedures, et cetera. However, that predates the
10 6003 amendments. I believe that was probably in 2001/2000.
11 And the Steve & Barry case, I certainly don't believe it was on
12 the second day of the case.

13 MR. SHIFF: No, Your Honor.

14 THE COURT: And it may well have been in full
15 compliance with Rule 6003.

16 MR. SHIFF: I think ultimately it took three weeks or
17 something of that nature.

18 THE COURT: All right. So that's what I would like,
19 you know, among other issues that you think are relevant to
20 focus on. There's really the issue of irreparable harm.

21 MR. SHIFF: Okay. Your Honor, maybe it makes sense
22 then in order to make a record of that, at this point, to
23 proffer the testimony of Ms. Etlin from the Alix firm. Because
24 I believe, as the Court will see, in the affidavit, she, I
25 believe, addresses directly the issues with respect to the

1 losses that the company will suffer from continuing to operate
2 these stores, as well as -- and I think from -- if we continue
3 through her testimony, as well as the potential losses that
4 will result from the auction that took place yesterday.

5 THE COURT: I will hear that testimony. But to a
6 great extent, I think the irreparable harm would have to have a
7 nexus or stem from the inability of the debtors -- potential
8 inability of the debtors to reorganize, as a result of any
9 financial loss.

10 In other words, just because the state will get -- the
11 estate will likely realize less if this process is done three
12 weeks from now, instead of tomorrow or the next day, doesn't
13 normally establish irreparable harm.

14 What I believe needs to be established for irreparable
15 harm under these circumstances would be the impact of the
16 inability to do this now versus later. And what impact that
17 will have, what impact that could have on the debtors' ability
18 to reorganize.

19 MR. SHIFF: Okay, Your Honor, that's fine.

20 If you just give me one second, please.

21 (Pause)

22 MR. SHIFF: Okay. Your Honor, I think this then falls
23 into -- I mean, there are a couple of buckets here I think that
24 we need to address.

25 I think the first step will be addressing what I think

1 is getting into the record what we believe the losses would be,
2 and then taking that through and how that would then flow
3 through or affect the rest of the reorganization.

4 So, in other words, if we talk about what the losses
5 are and the like, then we can address potentially how that
6 impacts the DIP and our ability to continue operations as we
7 seek to do.

8 So with the Court's permission, what I would like to
9 do now is to offer -- or address the issues in Ms. Etlin's
10 affidavit. Your Honor, I would like to proffer her testimony
11 with respect to the issues on the losses in the first instance.
12 I believe they are addressed in her affidavit in paragraph 27,
13 in particular, through -- I guess through 28.

14 Your Honor, can we -- can I ask that that affidavit
15 be -- I'd like to highlight the provisions in that affidavit,
16 but if it's okay with the Court, at this time -- let me first
17 highlight what those provisions are.

18 Your Honor, I would proffer for Ms. Etlin as set forth
19 in her affidavit, and if called to testify, she would say that
20 the closing stores are operating at a significant loss and
21 represent a drain on the debtors' liquidity. Indeed, she
22 estimates that keeping the stores open will cause the debtors
23 to suffer approximately two million dollars of losses and have
24 a continual cash drain.

25 She would further testify that the sooner the debtors

1 can liquidate the assets at the closing stores, and reject the
2 corresponding leases, the sooner and the better the debtors can
3 mitigate their strain on their liquidity.

4 She would also testify that the debtors have ceased
5 supplying the closing stores, and any delays in the liquidation
6 process to close portions of the closing store's inventory that
7 become less valuable, not only due to a lack of replenishment
8 of such items, but due to changes in the quality of the
9 inventory mix due to ongoing sales, would further diminish such
10 values.

11 She would also testify, Your Honor, that the
12 guaranteed amount that the liquidators are willing to pay to
13 conduct the store closing sales, would drop substantially if
14 the sales cannot commence prior to the President's Day weekend.

15 She would further testify that that is because of the
16 aforementioned lack of replenishment and the resulting decrease
17 in the quality of the inventory available in the stores.

18 Your Honor, she would further testify that based on
19 her discussions with the liquidators even prior to yesterday's
20 auction that delaying such sales would result in approximately
21 two to four million dollars less in proceeds. And as a result
22 of the bidding, which we haven't yet addressed, would result in
23 an even significant reduction in potential proceeds.

24 Your Honor, I think at this point it might be relevant
25 now to sort of tie that into how that fits into the debtors'

1 overall restructuring plans, and including the DIP agreements,
2 for which I will turn to Mr. Friedman, who has greater
3 familiarity with that part of the process.

4 MR. FRIEDMAN: Your Honor, I'm sorry that we're doing
5 this back and forth, but we wanted to -- we wanted to be as
6 responsive as possible to your concerns on irreparable harm.

7 The incremental points that I think are non-monetary,
8 or, at least, they're monetary, but monetary in the context of
9 a need to -- of a need to achieve this in the context of the
10 reorganization, really are the following additional points.

11 The first is that the conditions of the stores right
12 now are such that if the liquidation of these stores does not
13 occur now, it's not clear and highly doubtful that they can be
14 conducted at a later point. Because these are all neglected
15 stores, and these are assets that are diminishing in value
16 because of the nature of the neglect. Not just because they
17 are understocked, but because they are -- because the
18 consequence for them being understocked is such that it daily
19 drives away customers, not only to those stores, but it
20 diminishes the brand as well.

21 The values that are achievable at the auction today,
22 as a consequence, are not achievable at a later date. The
23 inability, and this is I think where we really get into the
24 significant irreparable harm, the inability of the debtors to
25 achieve a liquidation of these stores will place grave pressure

1 upon the debtor-in-possession budget, which as I handed out to
2 everyone this morning, and which, in fact, contemplates the
3 store liquidation taking place beginning in the month of
4 February.

5 The budget certainly contemplates that this
6 liquidation occur now. Your Honor, management is simply not in
7 a position to focus on the core stores, if it has to operate
8 these stores at the same time. While these stores are not part
9 of Borders' future in any way, because of the pressure on these
10 stores and the risk, they take up a huge amount of time with
11 respect to management. And if management has to keep these
12 stores open and focus on them, as compared or contrasted with
13 handing it over to the liquidators and having them pay all the
14 expenses there was significant risk upon management's ability
15 to govern the debtor in a way that will permit it to
16 reorganize.

17 And, finally, Your Honor, given the runway the debtors
18 have; both under the DIP budget, under the 2005 amendments to
19 the Bankruptcy Code, there simply is not enough time to conduct
20 this liquidation at a later date and meet the deadlines imposed
21 upon us by 365(d)(3), by the DIP budget, and by our desire and
22 need to reorganize.

23 So I add all of that, not -- it's not true because I
24 say it, but it is something that Ms. Etlin is in court to
25 testify to and I would proffer her testimony in that regard.

1 And she is in court and subject to cross-examination on all
2 those points.

3 THE COURT: All right, thank you.

4 MR. SHIFF: Your Honor, I think it might make sense at
5 this point to finish maybe with the proffer of Ms. Etlin, which
6 I've started, Mr. Friedman's continued. We're going to go off-
7 track a little bit, I think it's going to include some of the
8 results of yesterday's auction, so we can do it altogether, if
9 that's okay with, Your Honor.

10 THE COURT: All right, go ahead.

11 MR. FRIEDMAN: All right, Your Honor --

12 THE COURT: At the conclusion I will ask Ms. Etlin to
13 be sworn in and then confirm that the statements in her
14 declaration, as well as those by counsel -- by both counsel of
15 the debtor, would be part of her direct testimony this morning
16 if called upon to testify, and whether she wants to add or
17 modify any of that. And then she would be made available for
18 cross.

19 So you can complete all of what you want to be
20 considered as the proffer first.

21 MR. SHIFF: All right, thank you, Your Honor.

22 And Ms. Etlin, as we've indicated, is sitting here and
23 would testify in addition to the affidavit and what's already
24 been proffered on her behalf, that, both the DIP and an exit
25 facility, in her belief will be based on inventory quality.

1 And proceeding with the closing of the stores right now is the
2 only way to ensure that the stores would have the appropriate
3 inventory quality to satisfy, both the DIP and ultimately an
4 exit facility.

5 She would also testify, Your Honor, that an auction
6 was conducted yesterday at the offices of Kasowitz Benson,
7 beginning at approximately 11 a.m. That in attendance at that
8 auction were representatives of the debtors, the Hilco Group;
9 which is comprised of Hilco, Tiger and SB Capital. And the GB
10 Group, which is comprised of Gordon Brothers and Great
11 American. That in attendance also were GE Capital as the DIP
12 lender, GA Capital as agent for the term under the DIP, the
13 Lowenstein and Alvarez firms on behalf of the publishers, and
14 numerous other parties.

15 That at the outset of the auction she explained the
16 rules of the auction, including that we will be bidding off the
17 same contract, as well as that opening bids had to not only
18 beat the existing seventy-three percent bid, but also cover a
19 potential breakup fee with an initial bidding increment of .5
20 percent, and additional increments beyond that of .25 percent.

21 That the auction lasted approximately nine hours, and
22 ended at approximately 8 p.m.

23 That at the auction group, the Hilco Group and the
24 Gordon Group collectively submitted approximately thirty-eight
25 bids, back and forth, through very spirited bidding. That the

1 structure of the compensation changed during the course of the
2 bidding from a guaranteed amount, plus some expenses, plus some
3 potential additional amounts to focus rather on the guaranteed
4 amount. That each subsequent bid of a half a point, equated to
5 approximately a one million dollar increase in consideration,
6 that each group was given ample time to discuss its bids
7 amongst itself and its advisors. That bids continued to
8 proceed, usually in quarter point increments, sometimes in half
9 point increments, and at other times in other amounts.

10 That about 5 p.m. Gordon Brothers informed her -- I
11 apologize, Your Honor. At about 5 p.m. Gordon Brothers made a
12 bid of approximately 85.3 percent, as opposed to the initial
13 bid of seventy-three percent, which is more than twelve points
14 greater than the opening bid. And that at that point Gordon
15 Brothers indicated that its partner; Great American, was no
16 longer part of its bidding consortium and it was bidding alone.
17 That this bid would have yielded approximately twenty-four
18 million dollars of incremental value to the estate, less the
19 one million dollar breakup fee from the initial bid. Your
20 Honor, that assumes 200 million dollars of inventory. The
21 number may be 190, so it might be a little bid different from
22 that, Your Honor.

23 That at that point, the Hilco Group indicated that it
24 would no longer be able to bid at that point. That Ms. Etlin
25 wanted to achieve greater consideration for the estates beyond

1 what was already achieved at the auction, including trying to
2 avoid having to pay the breakup fee, but she realized that
3 Hilco would not be able to bid any further.

4 That she would also testify that she realized Gordon
5 Brothers, without its partner, would not bid any further. That
6 at that point she asked whether Gordon, who no longer had Great
7 American as part of its bidding consortium, would include the
8 Hilco group in a final bid, so that she could avoid -- or the
9 estates could avoid the potential million dollar break-up fee.

10 That ultimately that group; that combined group,
11 indicated that it would bid 85.75 of the guaranteed amounts.
12 That that bid would result in incremental value to the estates
13 of approximately 1.7 million dollars over the preceding bid,
14 and in excess of twenty-five million dollars over the bid for
15 which -- it was attached as the stalking horse to the motion.

16 That that bid; that combined bid, was discussed
17 amongst the numerous constituents at the auction. That
18 following consultation with all such constituents, the bid was
19 announced as the winning bid. And, in addition, the parties
20 who had combined to make that bid, made a commitment that they
21 would not combine together in any future bids, without consent
22 of the debtors as well as the DIP lenders.

23 That that bid was the highest and best bid for the
24 estate's assets. That yesterday's auction will result in the
25 proceeds -- if approved by this Court, would result in proceeds

1 of approximately 175 million dollars, which, of course, is
2 subject to various adjustments under the contract for inventory
3 levels and the like.

4 That consistent with her affidavit, such bid is
5 conditioned upon getting the agent in the stores before the
6 holiday weekend. That such bid will decline significantly, if
7 that does not occur. And that she believes it is in the
8 debtors' business judgment to move forward with such bid
9 immediately.

10 Your Honor, at this point we would like to proffer the
11 combined proffer -- offer, rather, the combined proffer of the
12 affidavit, my earlier oral proffer, Mr. Friedman's oral
13 proffer, as well as this as Ms. Etlin's combined testimony.
14 Ms. Etlin.

15 (Witness sworn)

16 THE COURT: Ms. Etlin, would statements made by
17 counsel -- both counsel for the debtors be -- including your
18 declaration, by your direct testimony this morning if called
19 upon to testify?

20 MS. ETLIN: Yes, Your Honor.

21 THE COURT: Do you wish to modify or in any way change
22 that testimony?

23 MS. ETLIN: No. If Your Honor wishes, I can
24 supplement it somewhat with the urgency and --

25 THE COURT: If you wish to do that, you'll have to

1 come up here.

2 MS. ETLIN: Why don't we see if there's cross-
3 examination first.

4 THE COURT: No. Just come forward then.

5 MS. ETLIN: Yes, sir.

6 THE COURT: Because other than a simple answer of yes
7 or no won't get picked up by the microphones.

8 (Pause)

9 THE COURT: All right, go ahead.

10 MS. ETLIN: Yes, good morning, Your Honor.

11 So, Your Honor raised an issue with regard to the
12 impact of being unable to commence these sales as quickly and
13 on this kind of urgent notice on the ultimate ability of the
14 debtors to reorganize.

15 As I think Your Honor and those of us who work in the
16 retail sector and restructuring is very painfully aware, there
17 have been very few retailers, since the 2005 code amendments,
18 who have been able to file and successfully reorganize because
19 of the shortened period of time that they have to establish
20 viability within the Chapter 11 process.

21 The reason that we're seeking the relief we are, is
22 that the company is closing approximately forty percent of its
23 super stores as part of this GOB process. They cause a very
24 significant distraction to management every day that they stay
25 opened. And in the management's ability to do the kinds of

1 things it needs to do to the business to show that the business
2 is capable of reorganizing.

3 In addition, lending in retail is based, primarily, on
4 an advanced rate, based upon liquidation values. And slippage
5 in the values from the values that we've achieved in this
6 auction will have a negative impact on the ability of the
7 company to obtain sufficient exit financing which will be
8 critical for it to reorganize.

9 Finally, the DIP budget is based -- is very tight from
10 a point of view of liquidity. And it is absolutely critical,
11 and was the reason that I asked the two bidding groups
12 yesterday to come together even to just achieve an additional
13 two million dollars worth of liquidity for the company. It is
14 critical that we preserve every dollar of liquidity in order to
15 be able to demonstrate to all the constituents that the company
16 has sufficient runway and capability in this process to
17 successfully reorganize.

18 THE COURT: All right, thank you. Does anyone care to
19 cross-examine the witness.

20 MR. MASUMOTO: Yes, Your Honor, I have a few
21 questions.

22 THE COURT: All right. If you do -- then please take
23 the stand. The witness, please take the stand then.

24 MR. MASUMOTO: Good morning, Your Honor, Brian
25 Masumoto for the Office of the United States Trustee.

1 Good morning, Ms. Etlin. I just have a few questions
2 regarding your declaration and your statements that you have
3 made.

4 CROSS-EXAMINATION

5 BY MR. MASUMOTO:

6 Q. What analysis did you conduct regarding the amount of
7 sales that will be generated for the President's Day weekend?

8 A. So we looked at the historical records of the company, and
9 we looked at the current comp sales trends. Those are the
10 trends by which sales for the current year are compared to
11 comparable periods last year. And made a reasonable estimate
12 of what we believe the sales over that weekend would be.

13 Q. And what was your estimate?

14 A. I'm sorry, I don't specifically recall what it was in the
15 declaration, it was completed a few days ago. We haven't had
16 much sleep.

17 Q. Well, in terms of valuing the President's Day weekend sale
18 as part of the auction bid, there is statements in your
19 declaration which indicated that absent that liquidation period
20 by the liquidators, their bid would be reduced, correct?

21 A. That is correct. And it's based upon specific discussions
22 with both bidding groups about the continuing diminution and
23 the quality of the inventory. As I'm sure you're aware,
24 different items of inventory sell at different rates. And the
25 things that are of higher value in a liquidation are the things

1 that typically sell through first. You know, the best seller
2 list. You know, the latest Tom Clancy novel. Those kinds of
3 things.

4 The company is not restocking the stores. And so every
5 day that goes by that the quality of the inventory diminishes
6 it's not only just the aggregate value, but it's also the
7 qualify of the inventory that remains and what the potential
8 liquidation value is. So you have sort of a two-prong effect.

9 You have lower inventory because we're not restocking the
10 stores. Of course, we are selling it, so I understand we've
11 got those proceeds. But it does also reduce then the ultimate
12 liquidation bid on that diminished inventory. And both groups
13 said that their bid would go down by somewhere between one and
14 two percent on the remaining inventory. Two percent of the
15 remaining inventory is a pretty large difference; it's about
16 four million dollars.

17 Q. All right. So, perhaps, you can -- I assume that you've
18 run the numbers. If, for example, the liquidation were to
19 begin after President's Day sale, their bid would be reduced.
20 However, as you've just indicated the debtor would reap the
21 benefit of those sale proceeds during that -- during the
22 President's Day weekend, is that correct?

23 A. It is. However, because the bid on the remaining amount
24 of inventory would be reduced, the net negative effect on the
25 debtors would be substantial.

1 Q. Okay. Well, what is that calculation? What exactly is
2 the determination, taking into account the reduced bid by the
3 liquidators, but the debtors also receiving the proceeds. And,
4 I assume, you factored into your account, as you've indicated,
5 the fact that during the President's Day weekend, perhaps the
6 better quality merchandise might be sold with, perhaps, higher
7 margins. Is that -- is that assumption correct? Did you make
8 that analysis?

9 A. Yes. Again, we looked at that, yes.

10 Q. All right, so what exa --

11 A. And the conclusion is as stated in my affidavit.

12 Q. So what exactly is the comparison? If, in fact, the
13 liquidation sale were to begin after President's Day sale, or
14 taking into account the debtor would receive the benefits of
15 its sales in its stores as owners of the stores during the
16 President's Day weekend, what exactly are those figures?

17 How do we compare the net result to the liquidating bid,
18 prior to President's Day, or after President's Day?

19 A. I think I testified the net result is the diminution in
20 the bid, not only as to the lower inventory value, but, in
21 excess, of four million dollars in the percentage, sir.

22 Q. Yes. I know you've -- you've identified the reduction in
23 the liquidator's bid. You haven't indicated what value the
24 debtor would achieve through conducting its own sales during
25 the President's Day weekend. Wouldn't that have to be added in

1 terms of the overall net benefit to the estate?

2 A. Yes, it would be.

3 Q. So what is that amount? If we take into account a
4 reduction of the two percent, or whatever, for the post-
5 President's sale liquidation, plus the proceeds available to
6 the debtor, by conducting its own -- by conducting the sales by
7 itself during the President's Day weekend, what is the net --
8 what is the comparison of those figures? Wouldn't that be a
9 more accurate comparison than to the liquidators taking over
10 prior to the President's Day weekend?

11 A. I'm sorry, that was a really long question.

12 Q. All right. Let me --

13 A. I lost you partway through.

14 Q. Let's assume that the current bid that you've achieved
15 will be reduced by two percent if it were conducted after
16 President's Day, doesn't the debtor get some value for
17 conducting the sale -- its own sales during the President's Day
18 weekend? It doesn't lose four million dollars and never
19 recapture that. Isn't that -- isn't the reason for the
20 reduction in the bid is because the debtor is achieving some
21 profit by conducting its own sales during the President's Day
22 weekend?

23 A. No, sir. These stores lose two million dollars a week,
24 net loss.

25 Q. Yes. But --

1 A. They lose two million dollars a week.

2 Q. So --

3 A. Net.

4 Q. So you're saying that even if the debtor conducted the
5 President's Day sales on its own -- in other words, it didn't
6 begin the liquidation until after President's Day, the net
7 value to the estate would be -- would be that two percent
8 reduction? There would essentially be no benefit to the estate
9 for it to conduct its own sales during President's Day weekend?

10 A. That's correct. Because as included in my affidavit these
11 stores, after rent, lose two million dollars a week.

12 Q. What exactly is the amount that the store generates in
13 revenues over the President's Day weekend?

14 A. I can't specifically tell you as I'm sitting here today.
15 I do know that they lose two million dollars a week. And
16 that's net of sales, that's sales, less the cost of merchandise
17 sold, less the cost of the payroll, less the cost of the rent.
18 All of which have to be paid to operate the stores during the
19 President's Day weekend. So if we say that we're going to now
20 keep them open for three to four more days because it's a long
21 holiday weekend, you're talking about losing money over that
22 weekend.

23 You know, we can divide the two million a week in half and
24 say they're going to lose an additional million dollars on top
25 of the amount of the bid going down across all the remaining

1 inventory.

2 Q. Would you say --

3 A. And the inventory being lower.

4 Q. Would you say that there's a loss of two million dollars
5 per week, per store, does that matter whether or not there are
6 holiday sales included during that week?

7 A. So the holiday sales weekend is not typically a
8 dramatically higher sales weekend, than any other weekend, in
9 this particular business. The big sale period is the Christmas
10 period.

11 Q. So, again, you're saying that, in fact, a two million
12 dollar average loss is regardless of whether or not there's any
13 holiday weekend?

14 A. Yeah. Excluding the Christmas timeframe, yes.

15 Q. So, again, there's no particular significance to the
16 President's Day weekend, is that your testimony?

17 A. Other than we lose an additional day because of the
18 federal holiday on Monday. We can't even start -- you know,
19 come back into court on Monday and get the sale started on
20 Monday, we're going to lose three days rather than two.

21 Q. But, again, I just want to understand, you're saying that
22 the President's Day weekend doesn't represent a large bump in
23 sales, or unusual sale revenues for that three-day period?

24 A. Not dramatic enough to lift these stores out of the net
25 loss that they generate on an average weekly basis.

1 Q. And, so, again, if the debtor, in fact, rather than filing
2 on Wednesday, had filed last Friday, or Monday, they would, in
3 fact, have eliminated the additional loss that you're referring
4 to, is that correct?

5 A. That's correct.

6 Q. All right. So -- and, again, just to make sure I do
7 understand. You're saying that other than the number of days
8 involved, the President's Day sale doesn't represent an
9 unusually large revenue for the debtor?

10 A. No, sir, it does not.

11 Q. Okay. And with respect -- as your -- as you've testified,
12 I'm not that familiar with the publishing industry, but I
13 believe there's references to stale books, best sellers and so
14 forth, you had mentioned that in these stores, which are, I
15 guess, undersupplied, do they have -- what is the composition
16 of the current inventory?

17 A. Well, the company's done its best as it's continued to
18 operate to try to place inventory into the stores. However,
19 most of the major publishers have not shipped the company for
20 approximately six weeks now. So the company had available
21 inventory in its DCs and other places that its been able to
22 place in the stores. Plus it has sought to purchase certain
23 key items through alternative channels other than the primary
24 publishers, so that it could try to keep the stores stocked.

25 However, once the decision was made in this group of

1 stores to -- that they would cease operations very early in the
2 proceeding, the company stopped stocking these stores at all.

3 Q. And, so, during the upcoming weekend for President's sale,
4 would you -- would you be able to determine whether or not
5 there would be a greater sale of the more attractive books, or
6 does it make a difference? For example, by not beginning the
7 liquidation prior to the President's Day weekend, would the --
8 would the liquidators receive a better rate of return
9 because -- well, I'm sorry, let me --

10 MR. MASUMOTO: Withdrawn.

11 Q. Would the sale of the books over the course of the weekend
12 represent the sale of books that are less stale, for example?
13 Or does it not make any difference?

14 A. I believe I understand your question. That's why the
15 liquidator bid would be reduced by one to two percent across
16 all the remaining inventory. It is a inventory mix issue,
17 which is what you're trying to refer to. Which is that certain
18 items sell through at a greater velocity than others, and it's
19 important to have that mix of items to achieve a certain level
20 of recovery on a liquidation sale.

21 Q. And so is it your testimony that the sell through of the
22 more desirable items would be more likely to occur during the
23 President's Day weekend, than it would subsequent?

24 A. It's not the President's Day weekend, it's every day that
25 goes by that these stores do not commence their GOB sales. You

1 know, some books sell at a higher rate than others, and we're
2 not restocking them. So if we only have ten copies in this
3 store of the latest Tom Clancy novel, once those ten copies are
4 all sold, they're all sold. And if those ten -- you know, I'm
5 just trying to microcosm it so you understand. If those ten
6 novels are gone and they had a higher value recovery in the
7 liquidation sale than let's say a book that's three or four
8 years past, once they're gone then that value to the
9 liquidation sale doesn't exist anymore. And it's the
10 diminution in the quality of the inventory mix that causes the
11 entire bid to go down as referenced in my affidavit.

12 Q. And, again, just to understand, that diminution would
13 occur regardless of whether or not there's a President's Day
14 weekend sale? I mean, it's just a -- it's a normal diminution
15 over time.

16 A. Yes, sir. But, you know, again, because of the legal
17 timing issue, it's an extra day because it's a three-day
18 weekend. We would not be able to get back in court, for
19 example, on a Monday. So it's an extra period of time that
20 goes by during this period of time. And everyday that goes by
21 the value diminishes.

22 Q. All right, thank you.

23 Switching gears a little bit, I believe counsel to the
24 debtors testified that agreements were reached with the one-
25 third of the landlords who are subject to, I believe, the store

1 closing sale, is that your understanding also?

2 A. Yes, that's my understanding.

3 Q. All right. Now, if, in fact, all of the landlords had
4 been available to make their agreements or deals with the
5 liquidators, would that have changed the potential outcome of
6 the terms of the liquidation bid?

7 A. I don't believe so. The -- there have been so many
8 liquidations that have occurred in the retail world over the
9 past twenty years, close to thirty that I've actually been in
10 the retail restructuring business. Most landlords understand
11 the terms and conditions that these sales are generally
12 conducted under. And I don't think that adding an additional
13 group of landlords to the mix would have resulted in
14 dramatically different terms of the sale guidelines that are
15 attached to the agency agreement. I think that the landlords
16 who were in the process represented a pretty good cross-sample
17 of people and their views.

18 Q. What about the publishers, were there agreements with the
19 publishers, between the liquidators and the various publishes
20 who attended the bidding procedure?

21 A. I'm not sure -- if you mean by agreements, there were
22 discussions between the debtors. The attorneys representing a
23 substantial group of publishers and the liquidators themselves,
24 we all worked together to make sure that everybody's concerns
25 were addressed.

1 Q. Okay. But not all of the publishers were present, is that
2 correct?

3 A. No. I believe the Lowenstein firm -- the Lowenstein firm
4 can indicate how many of the major publishers they represent,
5 but I think it's a substantial group.

6 Q. I believe there's some statements yesterday to the effect
7 that seven of the top ten publishers were represented by the ad
8 hoc committee. Is that your understanding, or do you have a
9 different one?

10 A. Again, I wasn't in Court yesterday, I was conducting the
11 auction. So -- but that sounds about right. It would be my
12 understanding that it's a substantial majority of the major
13 publishers.

14 Q. But not all the publishers?

15 A. That's correct.

16 Q. Okay.

17 A. But, again, the major concern the publishers had was that
18 there not be a bulk sale of their inventory to another party
19 who could then turn around and return it to them at full value.
20 And that has been addressed in the agency agreement.

21 Q. All right. During the course of the liquidation bid, was
22 there any discussion regarding the impact on the employees?
23 I'm sorry, the employees who would be affected by the store
24 closing?

25 A. There have been substantial discussions, both within the

1 debtors, themselves, and between the debtors and the agents,
2 yes.

3 Q. Were there any representatives of the employees who were
4 present at those discussions?

5 A. Well, the debtors own management employees.

6 Q. But management is not being terminated, is that correct?

7 A. That's correct.

8 Q. All right.

9 A. That's correct. Although, it's my understanding that
10 there is no organized labor in this -- in this chain. And so
11 it would have been difficult to poll a group that is not
12 organized nor represented. I think, frankly, management went
13 out of its way to make sure that their employees would be taken
14 care of as part of this process.

15 MR. MASUMOTO: No further questions, Your Honor.

16 THE COURT: All right. Any further cross-examination?
17 Any redirect?

18 MR. WAISMAN: Good morning, Ms. Etlin.

19 THE WITNESS: Good morning, Mr. Waisman.

20 THE COURT: You're here on behalf of whom and
21 performing what function.

22 MR. WAISMAN: Sorry, Your Honor. I apologize. Shai
23 Waisman, Weil Gotshal & Manges on behalf of the agent group
24 consisting of Hilco, Gordon Brothers, SB Capital and Tiger
25 Capital.

1 THE COURT: All right, go ahead.

2 REDIRECT EXAMINATION

3 BY MR. WAISMAN:

4 Q. Ms. Etlin, drawing your attention to Mr. Masumoto's
5 question, he asked you several questions regarding the impact
6 of the President's weekend sales to the company. Had you had
7 discussions with the various bidding groups as to the
8 importance or impact of the President's weekend sales to their
9 bids?

10 A. Yes. And that discussion -- a summary of that discussion
11 is reflected in my affidavit.

12 Q. And could you please, for a moment, explain to the Court
13 what the -- how the response of the bidder group would vary
14 from the company's view of the importance of the holiday
15 weekend sales?

16 A. Well, the bidder group was very concerned about the long
17 weekend sales. Because you, in effect, have three weekend
18 days. It's not necessarily the holiday, it's the weekend days,
19 which are the better shopping days of the week, in most retail
20 businesses. And the continuation -- the continuing diminution
21 and the quality of the inventory over that period of time, as
22 the better items sold through, and their ability to then
23 conduct a sale within the parameters we agreed to.

24 Q. And did they indicate -- any of the bidding groups
25 indicate whether or not they would have to revise their

1 guarantee bids if they were required to delay implementation or
2 commencement of the sales until after the weekend?

3 A. Yes, absolutely, they indicated that they would. And both
4 groups specifically indicated that just, you know, speaking off
5 the cuff and not having a chance to relook at where the
6 perpetual inventory would be after the weekend, they would have
7 an adjustment of one to two percent in the full value of the
8 inventory. I suspect by the time that they actually looked at
9 it it would be even more.

10 Q. And to extrapolate off of Mr. Masumoto's questions which
11 focused on a three-day delay, if I could ask you to consider a
12 delay in the sale, not for three days but for twenty-one days.
13 What would a twenty-one day delay in the sale, in your
14 estimation, have on the issues you were discussing on direct
15 and cross related to inventory mix and value of merchandise in
16 the closing stores?

17 A. Well, first of all, I want to emphasize that the stores
18 will continue to lose money and probably lose money at an
19 accelerating pace as now it's public, which stores are going to
20 be closed. The customer is going to be looking -- wondering
21 why there isn't a GOB sale going on. And so sales will start
22 to decline further in these stores. They're already losing two
23 million dollars a week. Let's assume that they'll lose -- it
24 will go up to two and a half million dollars a week if sales
25 fall. You know, because every dollar of sales that go out the

1 door just falls right to the bottom-line at this point in those
2 stores.

3 However, the more important issue, is the liquidators bid,
4 and then the overhang it would have on the company's
5 availability under its debtor-in-possession financing, which is
6 predicated on the DIP lenders having comfort on the overall
7 liquidation proceeds.

8 And, you know, I'm been privy at least in a couple of
9 circumstances to the actual models that the liquidator used --
10 liquidators use in the past, and it has a huge impact when
11 inventory starts to get rundown and the quality runs down.

12 You know, I can't -- you'd be asking me to speculate, but
13 it could go down easily ten/fifteen points, if not twenty
14 points on the liquidation for a three-week delay, which would
15 have devastating results on this estate and its ability to
16 reorganize.

17 Q. Just to cover a few more points. During any twenty-one
18 day period from here, assuming liquidators did not take --
19 could not commence their sales, who would cover the expenses at
20 the closing stores?

21 A. It's all on the debtors' time. It's the debtors loss.

22 Q. And contrast that to the liquidators coming in, what does
23 the agency agreement that has been signed require in terms of
24 the expenses at the closing stores?

25 A. The expenses of the closing stores immediately become the

1 obligation of the agents.

2 Q. And given the effect that you indicated a twenty-one-day
3 delay in commencing the sale would have on the inventory, the
4 mix and the ultimate value, do you have any indication or
5 assurance that any of the bidding groups would be interested in
6 a liquidation bid with respect to the inventory that would
7 exist three weeks hence?

8 A. If the debtors did not proceed to attempt to stock the
9 stores I would have some substantial concerns about interest
10 and level of interest in the ability to liquidate the stores.
11 But the more important issue, at the end of the day I believe
12 they would bid, they would just bid much, much lower. and then
13 it would have substantial overhang on a variety of other things
14 in addition to the lack of liquidity.

15 The debtors' DIP budget is tight as it is for what the
16 debtor needs to do in this process. And to have those -- that
17 additional liquidity pulled out of the budget by this process
18 would really pose a real risk for the debtors' ability to
19 reorganize in my opinion.

20 Q. Thank you.

21 THE COURT: Any redirect from the debtor?

22 MR. FRIEDMAN: Mr. Waisman did such a good job, I
23 think I only have one question, Your Honor. Well, one or two.

24 REDIRECT EXAMINATION

25 BY MR. FRIEDMAN:

1 Q. Ms. Etlin, in addition to helping us yesterday with the
2 auction, is it fair to say that you are providing restructuring
3 advice to the debtors?

4 A. Yes, I am. I'm part of the team from AlixPartners.

5 Q. And you've been working through various operational and
6 financial structuring to help the company reorganize?

7 A. Yes, we have.

8 Q. Is there any plan, of any kind, that could accommodate a
9 twenty-one day delay in the conduct of these sales?

10 A. Not and give the debtors a substantial ability to
11 reorganize.

12 Q. Okay, thank you.

13 THE COURT: Any recross?

14 You may step down. Thank you.

15 MR. SHIFF: Your Honor, I believe that's the testimony
16 we had for Your Honor. I think the bulk of the argument
17 section is covered probably in the motion and I think I
18 addressed quite a bit of it at the outset. I'm certainly happy
19 to go through it again. I think what might be more relevant at
20 this point, unless the Court wants to go through that again, is
21 to talk about where we stand with a number of the parties that
22 we had heard from, you know, yesterday or have been alluded to
23 so far. I think --

24 THE COURT: All right. One of the points that you
25 need to clarify for me, when you went through the items that

1 were not going to be addressed by this order and you mentioned
2 the pay fast laws that states may have --

3 MR. SHIFF: Correct, Your Honor, fast pay laws,
4 correct.

5 THE COURT: -- what about the laws restricting closing
6 of stores, municipality, states, et cetera, how were those
7 addressed? That was not clear to me.

8 MR. SHIFF: Okay. Well, Your Honor, I think it's
9 addressed -- it's two-fold, Your Honor. We think Your Honor
10 has the authority, as has been done in a number of these other
11 cases, to rule that with the exception of items which we do
12 specifically carve-out, you know, health, safety and the like,
13 the Court certainly has the ability to overrule those, relying
14 principally on federal law to trump state law.

15 I think more importantly, however, Your Honor, we
16 have, as I think Your Honor had suggested yesterday,
17 incorporated -- we've been in discussions with the National
18 Association of Attorneys Generals -- I think that's the right
19 term -- who represent all the attorney generals, and I think
20 consistent with Your Honor's suggestion yesterday, have
21 included in a proposed order a provision that would allow any
22 such attorneys generals or the like who had issues such as Your
23 Honor is raising to come first to the debtors and the agents to
24 try to resolve it consensually, and if not then come back to
25 the Court to have the Court make a determination.

1 So Your Honor, I think a combination -- and I think
2 that has been -- I don't know if the National Association of
3 Attorney Generals, if I get it right, is on the phone now or
4 not, but that has been agreed to with them, including, as I
5 mentioned, our agreement to withdraw the request at this time
6 to address the fast pay laws.

7 THE COURT: All right. But that ten-day window -- I
8 think if you didn't mention ten days I know ten days was spoken
9 about yesterday.

10 MR. SHIFF: Yeah, I don't know if it's ten or fifteen,
11 Your Honor.

12 THE COURT: Whatever the number may be, does that
13 apply to municipalities as well? I mean, you do have certain
14 municipalities, one, for example, in New York City, that have
15 their own requirements that under this order would be --

16 MR. SHIFF: Yeah, Your Honor, I don't know if it's
17 expressly in there or not, but I understand where Your Honor is
18 coming and we will make it include that as well.

19 THE COURT: All right. That needs to be in there as
20 well.

21 MR. SHIFF: Yes --

22 THE COURT: Because when you look at --

23 MR. SHIFF: -- I understand.

24 THE COURT: -- the Steve & Barry order, although it
25 exempts the debtor from complying with these orders, by the

1 same token it says it's not a ruling on preemption. I mean, it
2 says the debtor doesn't have to conduct its sales without
3 complying with them but then there's another provision in the
4 order that says that this is not -- doesn't abrogate the
5 state's rights under its laws.

6 MR. SHIFF: Right, I believe that was a negotiated
7 provision with the attorneys generals in that case,
8 understandably. Right, Your Honor. I do believe there are
9 other cases which we cite in our papers which do hold that.
10 And I believe what was negotiated in that case was -- I think
11 similar to what we're proposing here is let's come to an
12 agreement on this rather than asking the Court perhaps to make
13 a ruling it might prefer not to do. And I think that's what
14 we're talking about doing here as well, Your Honor.

15 THE COURT: All right.

16 MR. SHIFF: So I think, Your Honor, we will follow,
17 certainly to the extent the Court's inclined to grant relief
18 today, the Court's suggestion with respect to both the
19 attorneys generals as well as the other municipalities.

20 With respect to landlords, who I think is the other
21 group that's largely impacted by this, as I had indicated
22 before, we have agreements already with more than a third of
23 the landlords. Our guidelines, as Ms. Etlin testified, are
24 consistent with others. And we also will include a provision,
25 similar to the attorneys general provision, that will allow us

1 to give them an opportunity, if there is a problem, to redress
2 it. We're hoping we can address all this and expect to address
3 all this outside of the courtroom, Your Honor.

4 I think the other group that raised an issue yesterday
5 on the phone was Seattle's Best Coffee. I believe we are
6 substantially done with them. I think we need to have a brief
7 conversation with them to tweak some language, but I believe
8 all issues with them have been resolved.

9 I also -- I mean, I certainly can allow others to
10 speak for themselves but I do think it's important to note, and
11 I think the Court heard yesterday that the proposed sale does
12 have the support of the publishing group. It actually has the
13 affirmative support of some of the landlords and certainly has
14 the support of the lending groups that we had discussed
15 earlier.

16 Your Honor, with that, I think that comes to the end
17 of our presentation, certainly, unless the Court has any other
18 questions. If the Court is inclined to, and we would hope,
19 grant us the relief, as I indicate, I think we need a little
20 time to work out an order with some people. I don't think it
21 will take very long. I think we're ninety-eight percent of the
22 way there. And if the Court would grant the relief we would
23 ask just for a recess so we could try to address those issues.

24 THE COURT: All right. Anyone else wish to be heard
25 in support of the motion?

1 MR. SHIFF: Your Honor, I've been asked to confirm by
2 the publishing group that I think there was a provision, as
3 stated by Ms. Etlin, that related to bulk sales and not
4 allowing the agent to sell them to someone who's then going to
5 turn them back and flip them back to the publishers. And I
6 think they just wanted to clarify that the language in the
7 agency agreement is intended to include all such sales, that
8 they won't do that unless we get consent from, I guess,
9 ultimately an official committee.

10 THE COURT: All right. Does anyone wish to be heard
11 in opposition to the motion?

12 MR. LEHANE: Opposition or support? I'm sorry, Your
13 Honor.

14 THE COURT: You're not going to oppose it, are you?

15 MR. LEHANE: Me?

16 THE COURT: All right.

17 MR. LEHANE: No, I didn't know if you wanted
18 opposition or support. I'm sorry.

19 MR. MASUMOTO: Good morning again, Your Honor, Brian
20 Masumoto for the Office of the United States Trustee.

21 Your Honor, as indicated yesterday, the U.S. Trustee's
22 Office continues its opposition to the entry of the order at
23 this time. I guess as a matter of notice that we referred to
24 yesterday we were concerned about the shortened notice to the
25 affected parties.

1 Certainly by the tenor of Your Honor's questions
2 regarding the state and local authorities, we have similar
3 concerns as to whether or not there's been sufficient time for
4 those parties to receive effective notice and participate in
5 the process, notwithstanding the communication with the
6 National Association of Attorneys General.

7 In addition, Your Honor, I would like again to
8 reiterate that when we were first contacted by debtors' counsel
9 about the prospective filing last week Friday, we immediately
10 notified them of our concerns regarding the entry of a store
11 closing order without the participation of creditor committee
12 counsel, and in fact established our willingness to try to
13 accelerate the process to provide for the participation of an
14 official committee before such an order were entered.

15 The debtors made the decision that that timing did not
16 suit their particular needs and in fact delayed the filing,
17 which in fact, according to the testimony of Ms. Etlin,
18 resulted in a further diminution or loss to the estate by
19 virtue of not having liquidators in place. That delay was
20 approximately --

21 THE COURT: Let me understand what you're saying.
22 You're alleging the debtor intentionally delayed the filing?

23 MR. MASUMOTO: No, Your Honor, not necessarily
24 intentionally.

25 THE COURT: I mean, I know as a fact that the case

1 wasn't filed last Friday.

2 MR. MASUMOTO: Yes, Your Honor, and based upon the
3 testimony elicited today they made the determination that the
4 loss to the estate would have to be borne. If in fact they're
5 estimating a loss of two percent or up to four million dollars
6 for a three-day delay in the filing, the delay in filing
7 between Monday and Wednesday would have accounted for an
8 additional four million dollar loss.

9 So all I'm saying, Your Honor, is that many
10 bankruptcies that file, in fact most of them, have a wasting
11 asset, there is a loss, and the decisions have to be made as to
12 whether or not agreements have been achieved and other
13 considerations. All during that time there is a significant
14 loss to the estate.

15 Our office did, again, as I said, immediately express
16 concern regarding the input of relevant and what we regarded as
17 important parties. The debtor made a decision that they had
18 other concerns that they had to address. I'm not saying, Your
19 Honor, that the delay was occasioned simply to avoid the
20 participation of an official committee. I'm sure they had a
21 lot -- they indicated a great deal of concern in negotiating
22 the DIP and perhaps with the liquidators. But they made the
23 choice and in fact made a deliberate calculation that the loss
24 that was entailed by that delay would have to be incurred.

25 From our standpoint, the projected loss for the

1 additional delay is no different than the delay that they
2 accepted in delaying the filing. From our standpoint -- well,
3 from my understanding of the testimony, the three-day weekend
4 is not like an end of year or holiday sale period that might
5 occasion a huge leap in revenue that would be impossible to
6 replicate. So here the three-day weekend would seem to be just
7 an additional three days which affects the bidding results, but
8 not to an extent that one might see on an exceptional holiday.

9 THE COURT: Who are the major creditors in this
10 case --

11 MR. MASUMOTO: Well --

12 THE COURT: -- unsecured creditors?

13 MR. MASUMOTO: I don't know entirely, Your Honor, but
14 it seems based upon the top-twenty list -- top-thirty list of
15 creditors and the supplemental list of landlords, it would be
16 the book publishers and vendors and the landlords. To what
17 extent employees who are being affected by this store closing
18 may have claims over and above the amounts that were paid under
19 the wage claim I don't know. But as indicated by Ms. Etlin, I
20 believe that the employees are not unionized so there appears
21 to be no organized representative who can speak and represent
22 those employees. From our stand -- and Your Honor, I have no
23 idea whether or not any employees would be willing or desire --
24 would desire to serve on the creditors' committee. But it is
25 clear that a large number of employees will be out of jobs upon

1 the completion of the store closing process. Accordingly, Your
2 Honor, it is our recommendation that the sale order -- the
3 store closing order be delayed until such time as an unsecured
4 creditors' committee is in a position to weigh in on the
5 matter.

6 Having said that, I know that the debtor has indicated
7 that they made great efforts to fund ad hoc committees with
8 respect to publishers and the landlords, who may very well in
9 fact represent the bulk of the unsecured creditors. However,
10 those counsels represent narrow constituencies, and in fact if
11 those attorneys desire and do ultimately represent the official
12 committee their fiduciary obligation will be to the entire
13 unsecured class, not to their narrow constituencies.

14 As demonstrated by the presence of Mr. Pollack, the
15 fact that there was an ad hoc committee representing landlords
16 was not sufficient to indicate that Mr. Pollack and his clients
17 need not have a voice in the matter. As indicated, only a
18 third of the landlords who are affected by this store closing
19 motion have participated and had an opportunity to negotiate
20 with the landlords. And again, I believe --

21 THE COURT: Well, they all have an opportunity to come
22 back before the Court if there's something in the GOB sale that
23 they take issue with in terms of what they may believe their
24 rights are under the leases.

25 MR. MASUMOTO: I understand, Your Honor, but I can't

1 necessarily foreclose the possibility that had they been able
2 to participate in the process prior to its approval by the
3 Court they may not have taken positions that may affect the
4 sale -- I mean, the store closing order. Similarly, again --

5 THE COURT: They may have, but they could have -- you
6 know, they still had the right to come in and they may have
7 impacted. But also at this point it's well publicized that
8 Borders was going to file. It's well publicized that it did
9 file. The Court has made telephonic appearances available.
10 It's clear from the Internet that you could participate. And I
11 understand the concerns you have about employees and their
12 inability to organize themselves and possibly be heard at a
13 hearing like this, but certainly from a landlord and
14 publisher's standpoint, it would be a surprise to me that if
15 they had a concern it wouldn't have been heard in some form.
16 Maybe they would have sought more time to examine some aspect
17 of it, but the fact that they're quiet, it would seem to me at
18 this point, may be construed as they don't have -- may have
19 issues they want to raise in the future but I don't think
20 there's a great number of landlords out there that don't know
21 this process is going on, and if they really had something they
22 wanted to say they would figure out a way to say it, as well as
23 publishers.

24 MR. MASUMOTO: Yes, Your Honor, I don't disagree with
25 that sentiment. I guess our only point is that an official

1 committee represents the entire class of unsecured creditors
2 and as such those interests may not necessarily be solely the
3 concerns that affect publishers and/or the landlords. And
4 accordingly, we do feel that the presence and the participation
5 of an official committee is warranted under these
6 circumstances. Thank you.

7 THE COURT: All right, thank you.

8 MR. LEHANE: Good morning, Your Honor. Robert LeHane,
9 Kelley Drye & Warren. You had asked for statements in support
10 before objections and I meant to rise essentially in support of
11 the process.

12 As noted yesterday, Kelley Drye & Warren represents an
13 ad hoc committee of landlords. That committee of landlords
14 includes: Centro Property Group, Kimco, Westfield, Simon
15 Property Group, General Growth Properties, Developers
16 Diversified Realty, Inland Realty, Agree Realty, Chuck Miller
17 Development. Those nine major landlords constitute
18 approximately 250 of the debtors' super stores and at the time
19 we were engaged in discussions with the company of the 550
20 super stores. My understanding was that's approximately two-
21 fifths of the debtors' total store base.

22 Our other clients include, at this point, Phillips
23 International, Jones Lang LaSalle, Turnberry Associates,
24 National Retail Properties, Regency Centers, Pyramid, Gregory
25 Greenfield & Associates and the Pyramid Group.

1 Your Honor, I just want to give some background, I'll
2 try to be brief. We agree that notice was short for those
3 landlords that weren't involved at the outset of the process
4 and we certainly understand and appreciate the U.S. Trustee's
5 concerns in that regard.

6 But we were involved in the pre-petition discussions
7 with the company and we think in several respects they're going
8 about this in the appropriate way. It's a very painful process
9 for the landlords, having approximately 200 stores close right
10 off the bat. But the landlords knew about that process and
11 they asked for input, and they asked for input in a process
12 that would allow the company to reorganize and in a way that
13 would allow the company to move forward, maximizing value for
14 those creditors that have claims, but also to allow a company
15 going forward and the landlord committee and the landlord
16 community, by and large, is very supportive of that process.
17 And as a result, the landlord committee is supportive of the
18 debtor being able to start sales immediately for the reasons
19 described at length by Ms. Etlin and described by the debtors.
20 We firmly believe that if these sales don't commence
21 immediately it would have a material impact on the company's
22 ability to reorganize. And we think that is an adequate
23 demonstration of the irreparable harm and the need to commence
24 them immediately provided, however -- and we think this has
25 been addressed; we discussed it yesterday and we heard from

1 debtors' counsel -- that we do have that adequate time to work
2 out those issues with the liquidators. We believe that's in
3 agreement and that's in place here. It's a model that's been
4 used successfully in other cases and we believe it's
5 appropriate here.

6 One point I did want to clarify, the debtor does have
7 the ability to put other stores into the sales, to the extent
8 that there are locations later on that the company decides it
9 needs to close. The current form of order would only provide
10 landlords with notice that their stores are being added to
11 that. We've had some discussion with the companies about that.
12 We believe at the time that any landlords are later notified
13 that their stores are going to be added to the process, they
14 should similarly have a period of time within which they can
15 have discussions with the liquidators and the company with
16 respect to any side issues and that they can work those out.

17 The sticking points, Your Honor, and as I had said
18 yesterday, we know the liquidators that are conducting these
19 and they're efficient and they're good. But the sticking
20 points, frankly, come down to issues like how many banners can
21 you put on an exterior mall. And we hope to be able to resolve
22 all of those. To the extent that the liquidators have paid a
23 great deal of money for this we understand that. If there's
24 questions about whether or not banners should be going up on
25 exterior malls within the next five or ten days or this

1 weekend, we don't want the liquidators to be in a position
2 where they've spent money putting banners up and have to take
3 them down. We suggest that they just be, perhaps, circumspect
4 about the extent to which they put up several banners at any
5 given location.

6 With respect to the issue of whether or not we should
7 wait until an unsecured creditors' committee is formed to allow
8 these sales to start, landlords will absolutely comprise a very
9 large portion of the unsecured creditors body in this case.
10 With our unsecured creditors' cap on we certainly would have a
11 concern about the breakup fee. However, the initial breakup
12 fee that was proposed was very small in comparison to the size
13 of the transaction. And at this point there is no breakup fee
14 to pay and as a result we understand that we don't have any
15 concerns with respect to that. We know that there is a sharing
16 with the estate for a good deal of the proceeds that are above
17 and beyond what the stalking horse bid was, and we believe that
18 it's critical that the company be allowed to commence these
19 sales immediately.

20 The only other issue I would raise with respect to the
21 sale order is to make it clear that the side letter agreements
22 that are negotiated would control with respect to the terms and
23 the guidelines and the agency agreement, and we have some minor
24 comments in that regard that we would ask that we be able to
25 work out with the debtor and the liquidators.

1 Thank you very much, Your Honor.

2 THE COURT: All right, thank you.

3 Anyone else?

4 MR. BUECHLER: Your Honor, Bruce Buechler from
5 Lowenstein Sandler. I spoke yesterday. We represent a group
6 of the larger publishers. Pre-bankruptcy that group at certain
7 times consisted of six and at times seven of the larger
8 publishers who would be in the top-ten, twenty list set forth
9 in the debtors' bankruptcy petition.

10 And as I said yesterday, Your Honor, the publishers
11 that we represent today support this sale going forward for a
12 lot of the reasons that we set forth yesterday. But most
13 importantly the concerns that we had have been addressed by
14 language in the agency agreement as well as the statement
15 placed on the record today.

16 Ultimately, wearing our unsecured creditor hat we're
17 looking to maximize the value of the estate. And what is clear
18 to us is that if we wait, whether it's the twenty-one days to
19 let it transpire pursuant to the rule, or we simply wait until
20 next week, the amount of money to be realized for this estate,
21 which is crucial no matter what the outcome may be, will
22 diminish. You'll have the loss and diminution in the inventory
23 if you delay on the auction sale. The estate will continue to
24 bear all of the costs related to the operation of these 200
25 stores, which if the sale is approved and the liquidators get

1 going tomorrow or Saturday they immediately pick up all of the
2 costs and the overhead related expense pursuant to the agency
3 agreement which relieves the estate of that burden, both
4 economically and financially as well as from the management
5 perspective.

6 The sale proposes taking twenty-four million dollars,
7 I believe at cost, inventory from the distribution center and
8 moving that back to these stores to sell that inventory as part
9 of this liquidation sale, which is a better use of that book
10 inventory than we can imagine, especially at the increased
11 price that was achieved at yesterday's auction sale.

12 And when we look at the loss to the estate it's not
13 just the loss of the two million dollars, and as Ms. Etlin said
14 if we had to go out two or three weeks the loss may go up
15 another half a million dollars because of inventory in the
16 stores that are not being restocked, but you wouldn't get the
17 increased value that was achieved at what we thought was a very
18 successful auction sale. And when we look back, at least in
19 our experience in book inventory auctions such as this in
20 bankruptcy cases, this is the highest that I'm aware of, having
21 been involved in pretty much all of the major book liquidations
22 in probably the last ten years related to bankruptcies, none of
23 them that have achieved a number as achieved yesterday. In
24 addition, this includes the right of the debtor to put the
25 seventy-five additional stores, if a business decision is made

1 for what they call the bubble stores to put them into the
2 auction sale.

3 And so for all of the reasons set forth, for our group
4 we believe that this is an appropriate thing for the Court to
5 do at this point in time. The appropriate requirements in the
6 way of testimony to show irreparable harm to the estate have
7 been met. And if you simply put from the unsecured creditor
8 cap on what's going to maximize value, then waiting until the
9 committee is formed until next Thursday and the committee would
10 get itself together to potentially be in a position to organize
11 for the Court, this GOB sale for these initial 200 stores would
12 not commence until, the earliest, a week from tomorrow, if not
13 later. And that's a loss that the estate shouldn't have to
14 bear which ultimately will impact upon the unsecured creditors
15 at the end of the day.

16 The only thing I'd ask is that before the debtors
17 submit the order to the Court that we see simply the final
18 order, which I anticipate won't be an issue.

19 Unless Your Honor has any questions we do support the
20 proposed GOB sales commencing as quickly as possible to get the
21 benefits starting this weekend. Thank you.

22 THE COURT: Anyone else?

23 MR. WAISMAN: Again, Your Honor, Shai Waisman, Weil
24 Gotshal & Manges for the agent group comprised of Hilco, Gordon
25 Brothers, SB Capital and Tiger Capital.

1 I rise, Your Honor, to address a few of the points
2 that were just raised in the various presentations and to
3 address Your Honor's questions.

4 As to the issues of concern to the attorneys general
5 as well as to the municipalities, as Mr. Shiff indicated and as
6 has become routine in these cases, the National Association of
7 Attorneys General has a bankruptcy specialist. All of the
8 various state AG's organize under the bankruptcy specialist,
9 and typically the debtor and the liquidating agent coordinate
10 with that specialist to come to a form of order that all can
11 agree to.

12 We have spent the good portion of the evening and this
13 morning working with the Association and have reached an
14 agreement on the form of order. It does not just include the
15 fifteen-day notice and right to come back to court for
16 concerns. It includes significant other revisions requested by
17 the Association and agreed to and everyone has agreed -- or at
18 least the Association, on behalf of the states, has agreed to
19 the form of order.

20 And to address Your Honor's question, this all
21 pertains to the term "Governmental Unit" as defined in the
22 order. And the defined term "Governmental Unit" tracks a
23 definition in 101.27 of the Code, which includes municipalities
24 as well.

25 As to the landlords, we have included or will be

1 including in the final form of order a provision that the
2 debtors, the agent and any aggrieved landlord will endeavor to
3 work out any issues with respect to the sales. And the
4 landlords will have a ten-day period to come back to the Court.
5 And as agreed with Mr. LeHane prior to the hearing, that ten-
6 day period will trigger upon entry of this or -- service of the
7 order as well as service of notice that a store has become a
8 put option store down the road to resolve the concern that the
9 debtor would put additional stores to the agent and those
10 landlords wouldn't have an opportunity to come back. They
11 would be able to take advantage of this provision.

12 One final note. As Your Honor knows from having
13 overseen enough of these types of transactions, for the agents,
14 the key to the effectiveness of the sales and built into
15 everyone's model is the agent's ability to promote the sale by
16 using some of what has been already discussed: banners,
17 signage, advertising, sign walkers off of landlord's
18 properties, and similar promotions.

19 As happens in every case, the liquidating agent works
20 very closely with the landlords to come to agreements as to the
21 sale guidelines. At times there are side letters, which of
22 course will be honored as an extension of the order. And we
23 believe that we will reach accommodation with all of the
24 landlords here, and notwithstanding that this provision has
25 appeared in prior orders, I don't think it has ever actually

1 been utilized, and we expect not to have to come to court here.

2 But given the provision and the fact that, as we've
3 heard, bidding increased substantially yesterday and the agents
4 are putting a significant amount of money on the table for this
5 transaction, including paying the guaranteed amount if the
6 order is entered today, paying that to the debtors tomorrow.
7 To the extent that we do have subsequent hearings and the
8 agent's ability to effectively promote these sales is curtailed
9 by any determination that would otherwise affect what the
10 models show on the pricing and the recoveries, and just given
11 the effect of this provision, the agents reserve their right to
12 come back to the debtor, and want to make sure the Court is
13 aware, to discuss pricing changes should there be a material
14 effect on the agent's ability to promote the sales. No one
15 expects that to happen. We routinely work out all issues with
16 landlords and we hope to do so here. But we just wanted to
17 make sure that everyone is aware of that issue should it come
18 to pass.

19 THE COURT: Thank you.

20 MR. POLLACK: Good morning, Your Honor. David Pollack
21 for landlords noted with my appearance. Just a couple of
22 short points. I'll try not to repeat anything that Mr. LeHane
23 already covered.

24 First is the notice issue, Your Honor. People are
25 assuming that this case was recently filed and people are just

1 getting notice, et cetera, but frankly, that's not the case.
2 This case has been in virtually every landlord's watch list for
3 I would say at least two years. We have negotiated for our
4 client and talked to at least one client about deals they were
5 doing with Borders who were asking for rent restructuring a
6 year ago. As to the one-offs, just last week I got a call from
7 somebody who's now a client in California saying, you know:
8 We're worried about Borders; What happens if Borders files?

9 People have been watching this case for a long time
10 and you would have to have your head buried in the sand as a
11 landlord or a vendor if you didn't know that something was
12 happening with Borders for the last several months at the very
13 least. The newspaper reports were coming out last week. We
14 were talking to the liquidators prior to this case being filed
15 in anticipation of it being filed and knowing who they were.
16 So this is not something that just cropped up and, you know,
17 nobody had notice about it.

18 But despite that fact the liquidators have agreed that
19 they're going to give the landlords who have not reached an
20 agreement ten days to come back in and make their voices heard
21 if there is an issue. I will tell the Court that as of
22 probably 9 o'clock this morning we're settled with the
23 liquidators. We had, as I suspected and mentioned to the Court
24 yesterday, been talking with Mr. Malfitano (ph.) who is leading
25 the liquidator group and we really don't have any issues. And

1 if we have issues I'm sure they'll get resolved.

2 All of the -- I would say virtually all of the
3 multiple location landlords are represented or have been
4 represented and have dealt with these liquidators before. The
5 one-offs will be dealt with the same way. I got an e-mail from
6 a client last night when I sent out the report of yesterday's
7 hearing that said I don't want any banners. Well, you know, I
8 kind of laugh because the client has been through multiple
9 liquidation sales, knows that banners are going to be there and
10 it's a matter of, you know, how do you balance where they go
11 and what they say, et cetera. And you know, we worked that out
12 already before the hearing this morning. And these liquidators
13 don't want fights, they want to make money.

14 The second point, Your Honor, is that I hate
15 liquidation sales, as a landlord. As a consumer I love them.
16 But the fact that my landlords don't like them means the sooner
17 they get started the sooner they're over. There's only a
18 finite amount of inventory and so we'd like these to be
19 started, over and done and out of there.

20 And that brings us to the last point, and that is the
21 dollars coming in. Of the thirty locations that I represent at
22 this point in time, unfortunately fourteen of them are subject
23 to GOB sales. I have one landlord with ten locations that's
24 losing six. I have another landlord with four locations that
25 is losing four. And I have several landlords that have one

1 office that are losing their only stores. They are creditors
2 in this estate.

3 Ms. Etlin testified that they're losing two million
4 dollars a week at these stores. To me that says they're losing
5 roughly 300,000 dollars a day. So that while the money may be
6 coming into the debtor, as Mr. Masumoto brought out, it's still
7 a net loss to the debtor every day. So in addition to this
8 three, four million dollar loss from the liquidators
9 themselves, there is no positive delta from the sales. There's
10 a negative because they're losing money every single day and
11 that's taking money out of any potential return to unsecured
12 creditors. And we are a large part of that creditor body.
13 We'd like to see the money in there rather than lost. Thank
14 you.

15 THE COURT: All right. Anyone else?

16 All right, thank you.

17 As for notice, the Court finds under the circumstances
18 notice of today's proceeding was adequate and sufficient. And
19 that's not only in a context of the notoriety of the filing of
20 this case but also in a context of the protections that are
21 afforded both the landlords and the governmental entities with
22 respect to the order that is proposed.

23 Regarding the immediate and irreparable harm that may
24 impact or may be present in this case if this order were not
25 entered, the Court finds that the debtor has established such

1 elements, and not only the loss of money but the loss of
2 management's time and efforts towards the reorganization.

3 Further, the Court finds that with respect to the
4 issues raised about the formation of the committee, certainly
5 the significant dollar amounts that would be present, likely,
6 on a committee, their constituencies are here and each support
7 this motion, at least large members of those constituencies
8 that have been heard support the motion. And although they
9 don't have the fiduciary obligations to all of the unsecured
10 creditor body, nonetheless they comprise a substantial, if not
11 almost the entire body of the unsecured creditors in this case.

12 And with respect to the employees that arguably may
13 serve on a committee, may express an interest to serve on a
14 committee, it is unfortunate for anyone to lose a job, but by
15 the same token the risk of a failed reorganization, which the
16 record would support could happen if this sale is not
17 immediately allowed to go forward, would be a loss of thousands
18 more employees in terms of their jobs and that impact would far
19 outweigh the impact on the unfortunate number of employees that
20 may lose their jobs as a result of these stores closing. At
21 the end of the day, there's no doubt the stores are going to
22 close, people are going to lose jobs. The issue is just how
23 many. This seems to put a potential limitation on that amount
24 such that the debtor may go forward as a thriving entity into
25 the future.

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With that said, I'll grant the relief as modified.
The parties should circulate the order. I'll overrule any
objections that have been interposed, and in granting the
relief, grant the relief not only of the waiver on the 6003(b)
but also 6004(h).

And you may submit the order when it's been circulated
amongst the parties. Thank you.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 11:46 a.m.)

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I N D E X

WITNESS	EXAMINATION BY	PAGE
Holly Etlin	Mr. Masumoto	34
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Holly Etlin	Mr. Friedman	49

R U L I N G S

DESCRIPTION	PAGE	LINE
Relief granted, as modified, not only of the waiver on 6003(b) abut also 6004(h)	75	1

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

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

Esther Accardi
Digitally signed by Esther Accardi
DN: cn=Esther Accardi, c=US
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Date: 2011.02.24 14:14:10 -05'00'

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Date: February 24, 2011