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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

United States Bankruptcy Court  
One Bowling Green  
New York, New York

March 2, 2011

3:04 PM

B E F O R E:  
HON. MARTIN GLENN  
U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for Order Pursuant to 11 U.S.C.  
Section 365(a) and Fed. R. Bankr. P. 6004 and 6006 and 9014  
Authorizing Debtors (i)to Assume Unexpired Non-Residential Real  
Property Lease with NCC Westwood Associates Limited  
Partnership; and (ii)to Enter into First Amendment to  
Assignment Agreement with Ross Dress for Less

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Please be seated. All right. We're here in In re Borders Group, Inc. It's number 11-10614. I have the list of appearances in front of me. Who is going to speak for the debtor?

MR. FRIEDMAN: Your Honor, good afternoon. David Friedman, Kasowitz, Benson, Torres & Friedman for the debtor. With me is my partner, Andrew Glenn. On the motion, Mr. Glenn will argue. If Your Honor would like to hear a short update on the case, I'm happy to provide it as well.

THE COURT: I would. Before you do that, I just want to indicate on the record that Andrew Glenn is not related to me.

MR. GLENN: That is correct. I was going to make that clear myself. Thank you.

THE COURT: Okay. Go ahead. You want to make your appearance?

MR. BUECHLER: Your Honor, Bruce Buechler from Lowenstein Sandler on behalf of the official committee of unsecured creditors.

THE COURT: Thank you, Mr. Buechler. All right. Mr. Friedman, do you want to give me just a background and overview?

MR. FRIEDMAN: I would, Your Honor. Thank you. Welcome to Borders. We missed you last week. We were, I

1 believe, able through the help of Judge Gonzalez to achieve the  
2 proverbial soft landing into Chapter 11. As Your Honor knows,  
3 we had many of the traditional first day orders were entered,  
4 in some cases on an interim basis. We'll be back before Your  
5 Honor on March 15th to hear those on a final basis. We had  
6 interim debtor-in-possession financing approved. Your Honor  
7 will hear more about that on the 15th as well at the final  
8 hearing. And we obtained relief from Judge Gonzalez to proceed  
9 with a closing of 200 stores with the option to sell another  
10 seventy-five stores. If we use the full 275 -- we're in the  
11 process now of closing the 200. If we go to the full maximum  
12 of 275 stores, that will be roughly half of Borders'  
13 superstores. Borders has essentially two retail structures:  
14 the main one -- overwhelmingly main structure is the superstore  
15 which does not exist in a mall but exists in one of these -- I  
16 think they're called power centers with major large box  
17 retailers. And then there's another hundred to two hundred  
18 stores based in malls, largely, Waldenbooks as well as Borders  
19 Express. And there's some Borders stores in airports as well.

20 So the store closings was entirely with respect to the  
21 superstores. We ran an auction literally on the filing date  
22 and invited all the, if you will, the usual suspects to attend,  
23 all the major liquidators. We had an initial expression of  
24 interest to liquidate these stores at approximately a seventy-  
25 three percent -- percent on inventory cost. The liquidator

1 comes in, takes over all the employment costs and all the lease  
2 expenses during liquidation period and pays a net amount  
3 against the cost of the inventory. We started at seventy-three  
4 percent through an auction that resulted in thirty-eight bids.  
5 We rose to almost eighty-six percent, eight-five and -- I  
6 believe it was eighty-five and three-quarter percent.

7 That liquidation is ongoing as we speak. Those  
8 sources --

9 THE COURT: What is the status?

10 MR. FRIEDMAN: Going, from what I'm told, very well.  
11 The interest has been significant. I believe they're still --  
12 I mean, it's not really for the estate's account. I mean, it  
13 really is for the liquidator's account. We have our -- we're  
14 on a fixed recovery there. But I believe that the liquidators  
15 are doing well. Even though we're not getting any of that  
16 money, it is good for us in two respects. Number one, it  
17 places a good valuation on the inventory which is always going  
18 to be important to us as we deal with our lenders. And second  
19 of all, the ability not to deeply discount is good for the  
20 brand and good for other stores. So it's going well. And we  
21 expect that it'll be concluded some time in April.

22 We began an out-of-court restructuring effort about  
23 six weeks before we filed. And it, obviously, did not succeed.  
24 But in so doing, we had engaged our lenders and ultimately they  
25 became our DIP lenders as well as our publishers and our

1 landlords which are really the -- I don't want to oversimplify  
2 the case but I think this is a case that could easily be viewed  
3 as having three constituencies: landlords, publishers and the  
4 lenders. And we engaged with all of them before the Chapter 11  
5 filing for a good number of weeks. And while that did not  
6 result in any kind of an adequate restructuring, we did have  
7 when we filed a highly engaged and informed group of  
8 constituents. Obviously, our lenders were prepared to extend  
9 DIP financing. The publishers had hired Mr. Buechler's firm.  
10 The landlords had hired the Kelley Drye firm. So part of what  
11 I think helped us on the first day was, even though we were  
12 seeking a significant amount of relief, primarily with the  
13 store closings, we had the support of all those constituencies  
14 at that time because they recognized how important it was to  
15 the overall business plan with which they had become somewhat  
16 familiar.

17 When one -- Your Honor, the creditors' committee was  
18 formed last Thursday. They selected Mr. Buechler's firm as  
19 their counsel. They selected the BDO Seidman firm as their  
20 financial advisors. We've met. We're going to meet again next  
21 week. The debtors, as I said at the organizational meeting,  
22 and I've told Mr. Buechler, and hopefully our actions reflect  
23 that, we are committed to a completely transparent process with  
24 the creditors' committee. We welcome their views and we need  
25 their support. We absolutely need the support of the



1 publishers to continue to provide the product to Borders  
2 hopefully to restore some credit with the publishers. We  
3 obviously need our landlords/

4 THE COURT: Are publishers delivering -- I had seen  
5 some press accounts that said that pre-petition publishers  
6 had -- some publishers, at least, had stopped delivering  
7 product.

8 MR. FRIEDMAN: I think we're back on track. I think  
9 all publishers are now delivering. But it's all without credit  
10 at this point. At this point, we're paying cash for what we  
11 need. But we are getting -- we are stocking the stores. And  
12 they are -- the landlords, the publishers are absolutely our  
13 partners in this process. We cannot emerge without their  
14 support. And we've -- we welcome the creditors' committee's  
15 input and their insight and their advice and we will try to get  
16 through this together with them through some type of a core  
17 business platform that works.

18 Every case, I think, has its unique issues apart from  
19 the ultimate plan/disclosure statement emergence issue. I  
20 think this case is really all about the runway. And when I say  
21 the runway, it's really how long can we continue to not face  
22 sort of the, if you will, the Draconian outcome that's visited  
23 upon debtors under Section 365(d)(4). You know, I was --  
24 before -- most of my practice was before 2005, before that  
25 amendment occurred. And it's the law. I don't think it's a

1 good law. I don't think it necessarily even helped the  
2 landlords. But it has put tremendous pressure on retailers  
3 because it gives them a maximum of 210 days to decide what to  
4 do.

5 THE COURT: Unless landlords consent.

6 MR. FRIEDMAN: Unless the landlords consent.

7 THE COURT: In a number of cases, I've had the  
8 landlords, particularly in the current real estate market, that  
9 have been willing to consent to longer time.

10 MR. FRIEDMAN: Well, you hit the nail on the head  
11 there because that's exactly what's happening here. We're  
12 trying very hard and we've had good results so far in trying to  
13 extend that 210-day period. And I think it's all because of  
14 the market and we are fortunate in that regard. But it's  
15 something that we have to get to early on in the case. And the  
16 reason for that is because -- it's primarily relating to the  
17 DIP financing because if you're -- our DIP loan is almost  
18 entirely predicated off of our inventory. These are asset-  
19 based loans that are all geared towards -- I mean, they have  
20 liens on everything. But it's primarily -- relates to the  
21 inventory. We have -- even after the smoke settles with the  
22 store closures, we'll have, I believe, over 400 million dollars  
23 of good inventory. And that's what's really supporting us from  
24 a financing perspective. Now, the only way that collateral is  
25 worth anything to a lender is if they can sell it. And the

1 only way they can sell it is if you have stores to sell it in.  
2 So the lenders are not going to wait until the 209th day or  
3 whatever that date might be to see if we are able to emerge.  
4 Their view is not longer than twelve weeks. Twelve weeks  
5 before that -- before you hit that cliff, you better start  
6 liquidating if you haven't got something better to do.

7 So right now, today that runway is really short. It's  
8 120 days right now as we speak. 120 days minus twelve weeks is  
9 only thirty-six days. That actually runs out on March 24th.  
10 So that's obviously no good. And we're hoping on March 15th to  
11 -- we filed last night our motion to extend the period for the  
12 extra ninety days to get the 210 days. And that would get us  
13 to about September 14th if Your Honor grants that motion. And  
14 we're not anticipating significant opposition. I mean, I don't  
15 know -- we have so many landlords. But the primary landlords  
16 are not only supportive of that but have already talked to us  
17 about going beyond the 210 days. So on the 15th of March,  
18 we're hoping to be at least that, September 14th. And then  
19 we'll do the work of getting stipulations with the landlords to  
20 extend that runway. And if we do, I think we have a real  
21 fighting chance to get to a core store base that is -- that I  
22 think, in contrast, unfortunately, to some of the other  
23 retailers, that has a real chance of surviving. We have a  
24 business plan in the works. The company had taken a different  
25 path before it filed. It was trying to approach this in an

1 out-of-court way. The bankruptcy has essentially taken us from  
2 a scaffold to a hacksaw in terms of the nature of the business  
3 plan modifications which, in the long run, may be very good for  
4 the company. We're sharing our work in real time with the  
5 creditors' committee. We're not going to dump on them our  
6 business plan when it's fully baked and expect them to react.  
7 We're hoping to get their buy-in to steps along the way.

8 And so, really, the case is about extending the  
9 runway, working out a business plan with the creditors,  
10 determining whether or not -- and I suspect the answer to this  
11 question will be yes, whether there is a need for new money  
12 into this case whether through a transaction or at least an  
13 investment, sourcing that money in cooperation with our  
14 partners, and emerging. And I think if we have the time, we'll  
15 get there. And I think that's -- but I think all of it,  
16 really, is driven off of, in the first instance, off of the  
17 leases which is where we're spending a huge amount of our time  
18 focusing. We've hired a consultant called DJM. Their  
19 retention will be considered by Your Honor on the 15th.  
20 They're really, we think, the experts in the field. They've  
21 done a lot of these cases in terms of reaching out to  
22 landlords. That process is well underway. And we hope to get  
23 through a Christmas season if we can under the Court's  
24 protection. If not, we will deal with any time frame we have,  
25 but we're optimistic that we can extend the runway and

1       revitalize the business.

2               THE COURT:   Okay.  Let me ask a few questions about  
3       what's likely to arise in the next few months.  With your first  
4       day motions, you had filed a utility motion.  It wasn't  
5       noticed.  We had given your office a hearing date and then this  
6       week received a call wanting to delay that.  That's all well  
7       and good from the Court's standpoint, but I'm sure you're very  
8       familiar with the changes that were made to the Code.  I don't  
9       want to get orders to -- you know, emergency motions because  
10      utilities are about to shut off your utilities when we provided  
11      a date within the time limits with the Code and your office has  
12      elected not to go forward with it.  If your relations with your  
13      utilities are all just fine and you don't need the hearing,  
14      that's fine.  But don't expect that you're going to get -- I'm  
15      going to get an emergency application for a hearing on a couple  
16      of days notice.  It isn't going to happen.

17              MR. FRIEDMAN:  Your Honor, I fully understand the  
18      Court's position on that.  I do not believe that will happen or  
19      that's at risk of happening.  Am I right about that?

20              MR. GLEIT:  Yes, Your Honor.  Jeff Gleit with Kasowitz  
21      Benson.  Your Honor, I can't say with all certainty, but I  
22      don't expect that to happen.  We've been in contact with  
23      utilities and been in discussion with many of them already.  So  
24      our goal is to not have that happen.  And to be a smooth  
25      hearing on the utility motion there are not to be issues with

1 utilities.

2 THE COURT: Okay. And right now there is no hearing  
3 on the utilities motion. So --

4 MR. GLEIT: Your Honor, I thought -- actually, it's my  
5 understanding and maybe I was -- I believe it's scheduled now  
6 for the 15th.

7 THE COURT: Is it now scheduled for the 15th? 'Cause  
8 the last I -- my courtroom deputy told me that somebody from  
9 your office called wanting to adjourn it. Was it put on to the  
10 15th now?

11 MR. GLEIT: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. GLEIT: And there was a notice was sent out last  
14 night --

15 THE COURT: All right. That's fine.

16 MR. GLEIT: -- scheduling it for the 15th.

17 THE COURT: Okay. That's fine. Maybe I  
18 misunderstood, Mr. Gleit. Thank you.

19 MR. GLEIT: No problem.

20 THE COURT: Okay. Does the committee want to be  
21 heard? Anything else you want to add, Mr. Friedman?

22 MR. FRIEDMAN: No, no, Your Honor. Thank you very  
23 much.

24 THE COURT: Mr. Buechler?

25 MR. BUECHLER: Thank you, Judge.

1 THE COURT: Just make your appearance again.

2 MR. BUECHLER: Bruce Buechler from Lowenstein Sandler  
3 on behalf of the official committee of unsecured creditors. We  
4 have worked with the Kasowitz firm both pre-bankruptcy when we  
5 were retained by a group of the large publishers in early  
6 January through the petition date. We now are representing the  
7 official committee of unsecured creditors. We'll be filing our  
8 retention papers probably next week but, as you can imagine,  
9 the full CompuCheck -- there's a lot of names to go through in  
10 the system. And some people aren't happy to be typing them all  
11 in today.

12 In regard to the big picture, Your Honor, we  
13 understand what the debtor says with regard to the timeline  
14 vis-à-vis the leases. But there's another component that is  
15 critically important for this company from the unsecured  
16 creditors' perspective which includes not just the landlords,  
17 publishers and other vendors for this company, which really is  
18 the business plan. And that business plan needs to be done  
19 quickly and out there because while the debtor may think it can  
20 slide this along, if they don't have a business plan that's  
21 trading, specifically the publishers, in large part, are going  
22 to accept, have faith in and then ultimately provide credit to  
23 this debtor, when it gets to the third quarter of this year and  
24 it has to be in a position to start making large orders and  
25 large volumes of books for the upcoming Christmas season to

1 have them manufactured and in line, they will not be able to  
2 place those orders to the volume that they would like to see.  
3 And while they may be able to say that they can go to other  
4 outlets, wholesalers such as Baker & Taylor or Ingram, at the  
5 volume difference between the wholesalers and the actual  
6 publishers on this volume, it is cost prohibitive, we believe,  
7 to the debtors.

8           So from our perspective, the business plan, getting  
9 that to the creditor body, moving this case ahead sooner so  
10 that we can be at a transaction date sometime in the third  
11 quarter is, from our perspective, really where this has to be  
12 for this company to be able to hopefully get the credit, be in  
13 a position to pull this out and be able to withstand and be  
14 ready for the Christmas season with the inventory that it needs  
15 because if it doesn't have that business plan and that business  
16 plan is not something that people, from their own individual  
17 credit perspectives as individual creditors, but it's primarily  
18 the larger midsize publishers as well as other vendors who  
19 supply orders with the goods they sell in retail locations are  
20 engaged in there then this debtor won't have the credit or the  
21 funding available to start ordering what it needs to be  
22 prepared for its key season which is the fourth quarter that  
23 covers Christmas. And we've made that clear to the debtors and  
24 Mr. Friedman is correct. We had a professionals meeting  
25 yesterday. We have a full meeting next week between the entire



1 committee, the debtors' professionals as well as senior  
2 management in New York City. And a large part of that will be  
3 devoted toward discussing the business plan. And we welcome  
4 the opportunity to have our financial advisors, BDO, involved  
5 in the process of helping to have input. Asset business plan  
6 is built out and fleshed out so it can cover the issues that we  
7 think it needs to cover to make sure that some of the concerns  
8 that creditor constituencies raised prior to the bankruptcy  
9 when they were involved as to why the out-of-court was not  
10 acceptable to creditors can make it acceptable to and can reach  
11 an ultimate resolution of this case that allows Borders in a  
12 really skinny down fashion, less stores than it started, to go  
13 forward. But that is a pre-component of where we come at. The  
14 committee clearly has some issues with the proposed DIP  
15 financing and we'll be reaching out to it in our preliminary  
16 conversations with counsel for both GE and the senior lender  
17 and counsel for the second tier lenders. We've also had  
18 conversations with debtors' counsel about some other issues on  
19 some of the first day motions with the goal of trying to  
20 resolve those before March 15th. But if we do not then we will  
21 be filing objections as required next week and bringing those  
22 issues before the Court on the 15th if we cannot reach  
23 resolution. We'd like to think that we can but time will tell.

24 THE COURT: Okay.

25 MR. BUECHLER: Thank you.

1 THE COURT: All right. Mr. Friedman, just I don't  
2 know whether you or anyone in your chambers have had any  
3 discussions with my courtroom deputy. Are you seeking omnibus  
4 hearing dates at this point? Have you talked with Deana about  
5 a schedule, Mr. Gleit?

6 MR. FRIEDMAN: I think we have omnibus dates, yes.

7 MR. GLEIT: Yes, Your Honor. We have two omnibus  
8 dates. One is, I believe, April 7th. And I believe the other  
9 one is May 11th. And if I'm off by a day or two, I apologize.  
10 But I believe those are the two dates that we worked on with  
11 your clerks, Your Honor.

12 THE COURT: And other than what's on for March 15th,  
13 are there additional motions I should be looking for?

14 MR. BUECHLER: I think the Coventry -- I think one of  
15 the stay relief motions was actually listed for the 24th --

16 THE COURT: Mr. Buechler, if you want to be heard on  
17 the record, you've got to go to the microphone.

18 MR. BUECHLER: I just saw one of the -- a creditor  
19 filed a stay relief motion that I believe was scheduled for  
20 March 24th. I don't know if that got changed.

21 THE COURT: Mr. Gleit?

22 MR. GLEIT: Yes, Your Honor. There was one motion  
23 that was filed. They had not counseled with us. It was a lift  
24 stay motion that was -- I don't know if they reached out to  
25 chambers or just scheduled it on their own for March 24th.

1 THE COURT: I haven't seen it yet. I don't know --

2 MR. GLEIT: We actually are in discussions with that  
3 landlord and I'm hoping it will be resolved on a consensual  
4 basis. But we're not there yet.

5 THE COURT: Okay.

6 MR. GLEIT: But that was on an off-omnibus date,  
7 obviously.

8 THE COURT: Yeah, because, typically, what I try to do  
9 is provide -- and if you need additional omnibus days going  
10 forward after May 11th, I'd like to get those scheduled. I'd  
11 like all motions in a case to be heard on an omnibus day. It  
12 reduces the number of appearances counsel have to make. And I  
13 didn't look. I mean, in large cases such as this, I usually  
14 provide for telephonic appearances for out of town counsel.  
15 Any counsel who are principal spokesmen for -- in support of or  
16 opposition to motions, I generally expect them to be here  
17 unless there's some really unusual circumstances. Otherwise,  
18 other counsel whose office is outside New York can appear by  
19 telephone with CourtCall. I have some -- I don't know whether  
20 my clerks provided -- and I didn't check to see whether we'd  
21 given you the customary language that we use for that.

22 MR. GLEIT: We used that -- actually, Mr. Harris from  
23 your clerk's office had provided us language --

24 THE COURT: My law clerk.

25 MR. GLEIT: -- that we used for the --

1 THE COURT: Right.

2 MR. GLEIT: -- first hearing.

3 THE COURT: Okay.

4 MR. GLEIT: And we do have that available.

5 THE COURT: That's fine. All right. So just let  
6 me -- are there other motions I ought to anticipate over the  
7 next few months that you think are going to be coming before  
8 me?

9 MR. FRIEDMAN: Your Honor, none come to mind.

10 THE COURT: Okay.

11 MR. FRIEDMAN: I say that with some trepidation  
12 because we've had the occasional surprise. It's a big case.  
13 But none really come to mind. If all goes well, we will be  
14 extending the leases and then hunkering down with business  
15 plans and negotiations and a process all which would be out of  
16 the Court's purview in the first instance. So, you know, God  
17 willing, that's where we'll be.

18 THE COURT: All right. For the March 15th hearing, to  
19 the extent anyone anticipates the need for evidence to be  
20 taken -- I don't know whether there are going to be objections  
21 to any of these motions or whether they're going to require  
22 evidentiary hearings, I'd like my chambers to know about that  
23 sooner rather than later. Generally speaking, in any  
24 evidentiary hearings unless credibility is an issue, my  
25 preference is to have written direct in the form of a

1 declaration. I try -- it's my strong preference not to have  
2 proffers but rather to have written declarations of direct  
3 testimony that are offered in evidence. If there are no  
4 objections to admitting the declarations in evidence, I accept  
5 that as the direct testimony. The declarants need to be  
6 present for cross-examination.

7 MR. FRIEDMAN: Your Honor, do --

8 THE COURT: That's typically the way I prefer to  
9 operate.

10 MR. FRIEDMAN: And I should probably know this but  
11 I'll just ask. Does Your Honor accept uncontested allegations  
12 in pleadings as --

13 THE COURT: No. I really want declarations. And  
14 typically, the declarations and the moving papers, the brief,  
15 parrot each other. And you shouldn't feel the necessity to  
16 repeat the identical language. If it appears in a motion, you  
17 can indicate that the facts are set forth in the declaration of  
18 x, y, z without having to set them all forth twice, once in the  
19 moving papers -- but I do require evidence. I don't think that  
20 creates an undue burden because usually the same thing either  
21 way. But I like to have an evidentiary record for any rulings  
22 that I make.

23 MR. FRIEDMAN: Very well.

24 THE COURT: Okay? Mr. Buechler?

25 MR. BUECHLER: Just in the way of upcoming motions, I

1 anticipate the committee will file a motion under Section 1103  
2 to deal with communications with the creditor body at large, in  
3 this case just given some of the inquiries we've received to  
4 date, so that there are clear guidelines with regard to that  
5 under 1103 as modified a few years ago requires us to do.

6 THE COURT: Okay. That's fine.

7 MR. BUECHLER: But that won't be teed up until the  
8 April hearing. We're not going to ask that to be heard on  
9 short notice for the March 15th hearing.

10 THE COURT: Okay. All right. All right. So let's go  
11 on to the debtors' motion to assume and assign the one lease.  
12 Mr. Glenn?

13 MR. GLENN: For the record, Andrew Glenn, Kasowitz,  
14 Benson, Torres & Friedman, on behalf of the debtor. We filed  
15 this motion, Your Honor, pursuant to Section 365(a) of the  
16 Bankruptcy Code to assume and assign the lease covering the  
17 property of 1360 Westwood Blvd. in Los Angeles. As we set  
18 forth in the motion, Your Honor, the property was vacated pre-  
19 petition. It's one of our former superstores and the lease on  
20 the property is substantially above market.

21 In July of last year, the debtors negotiated an  
22 agreement pursuant to which they would assign the lease to the  
23 Ross Dress for Less chain with the landlord's consent. The  
24 agreement called for the debtors to pay what's called an  
25 assignment fee of 588,000 dollars and the debtors were

1 obligated to pay a 75,000 dollar brokerage commissions and were  
2 potentially liable for real estate taxes and other charges.

3 The assignment was scheduled to close on February 21st  
4 of 2011 but, obviously, the bankruptcy intervened and the  
5 parties needed to renegotiate the deal because it didn't close.  
6 They've done so and that's the focus of this motion before the  
7 Court. The parties have agreed that Westwood and Ross will  
8 receive a general unsecured claim for that assignment fee and  
9 the brokerage commission. We are currently -- we are current  
10 on all rent obligations under the lease through the end of the  
11 month. If the Court approves this assignment, it can deliver  
12 possession to Ross by March 4th and cut off all of our rent  
13 payment and cure obligations and eliminate any other  
14 administrative expense. If we reject the lease, there's the  
15 potential that there could be a significantly larger rejection  
16 claim, as much as 2.2 million. We tried to market the lease  
17 and this was the best that we could do. And we believe that's  
18 exemplified by the fact that we were prepared pre-petition to pay  
19 the significant amount to get out.

20 The agreement gives the landlord and Ross a out if the  
21 Court does not approve the assumption and assignment by  
22 tomorrow. So we think this mater makes all the business sense  
23 in the world and is just one small example of our grander  
24 strategy to shed unprofitable and unfavorable leases. The  
25 decision to reject is subject to our business judgment which we

1 think is supported. We vetted this with the creditors'  
2 committee and nor has any party objected. Accordingly, unless  
3 Your Honor has any further questions, I have a proposed order  
4 in hard copy and on a disk.

5 THE COURT: Anybody else wish to be heard with respect  
6 to this motion? All right. I'm going to grant the motion but  
7 the order needs to be modified in a couple respects. First,  
8 because the debtor has requested authority to enter into the  
9 first amendment and to do that post-petition, the motion  
10 properly should be in two parts: one, under Section 363(b)(1)  
11 for authority to use, sell, lease property other than in the  
12 ordinary course of business. The standard is essentially the  
13 same business judgment standard that would apply under 365 on  
14 assumption and assignment. So the order should be revised to  
15 reflect that the Court has considered and approved the entry  
16 into the first amendment to the lease under Section 363(b)(1).

17 With respect to the assumption and the assignment of  
18 the lease under Section 365, the Court finds that the debtor  
19 has established that it was an approximate exercise of business  
20 judgment by the debtor to assume the lease and assign it as it  
21 has been proposed.

22 Will the debtor have -- are you getting an ovation  
23 from the landlord? Are you being released of any --

24 MR. GLENN: We're being released.

25 THE COURT: You're getting released, okay. Mr.



1 Buechler?

2 MR. BUECHLER: In that case, the 365(k) language  
3 should probably also be added to the order.

4 MR. GLENN: We can --

5 THE COURT: Yeah.

6 MR. GLENN: -- add that as well.

7 THE COURT: Thank you. Debtors likely -- has likewise  
8 requested authority to pay cure amounts. The delayed closing,  
9 I gather, has resulted in the incurrence of a daily additional  
10 charge which I don't think fits the definition of a cure amount  
11 or the Code really would -- seems to me, it's a post-petition  
12 administrative amount. But treating it either way, the Court  
13 concludes that the debtor is authorized to pay the additional  
14 amount either as a cure amount or as an administrative claim.  
15 Viewed as an administrative claim rather than a pre-petition  
16 cure amount, the Court would have discretion to determine when  
17 that amount should be paid. And the Court concludes that it's  
18 appropriate for it to be paid now as proposed in the agreement.

19 The debtor has also requested that the Court waive the  
20 stays -- stay periods under --

21 (Pause)

22 MR. GLENN: 6004.

23 THE COURT: Well, you've styled it in a motion under  
24 6004(h) and (g) but I think the (g) is actually a typo and  
25 should be (d) as in David -- 6006(d) (sic). 6006(d) provides

1 that an order authorizing the trustee to assign an executory  
2 contract or unexpired lease under 365(f) is stayed until the  
3 expiration of fourteen days after the entry of the order unless  
4 the Court orders otherwise. Collier notes that neither the  
5 rule nor the advisory committee addresses the question of when  
6 a Court should either terminate or reduce the fourteen day stay  
7 period. But Collier also points out in the absence of  
8 objections, and that's the case here, it's appropriate to waive  
9 it.

10 So the Court approves the waiver of the stay under  
11 6004(h) and under 6004(d), as in David.

12 (Pause)

13 THE COURT: There may be another change that the Court  
14 is going to make to the final order but doesn't change the  
15 substance of it. So if you provide it to us on disk -- if you  
16 can get it to us yet today, it'll get entered today.  
17 Otherwise, it'll certainly get entered in the morning. I  
18 think --

19 MR. GLENN: We're trying to close so we will try to  
20 get that to your chambers today.

21 THE COURT: Okay. I ordinarily require that it be on  
22 disk. But in light of the circumstance -- unless you have a  
23 computer with the disk with you to make the changes you need to  
24 make, I'll -- you can e-mail it to my law clerk.

25 MR. GLENN: Thank you.

1           THE COURT: Okay. And we'll get it entered today. I  
2 will -- I don't know how quickly you can get it down -- I'll  
3 let you talk to my law clerk. We'll make sure -- because my  
4 courtroom deputy leaves. It'll be somebody in the clerk's  
5 office, I think who can enter it yet today even if you don't  
6 get it in before my courtroom deputy leaves.

7           MR. GLENN: Thank you, Your Honor.

8           THE COURT: Okay. Thank you very much. See you all  
9 on March 15th.

10          MR. BUECHLER: Thank you, Judge.

11          MR. FRIEDMAN: Thank you.

12                 (Whereupon these proceedings were concluded at 3:36 p.m.)  
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' motion to assume and assign lease covering property of 1360 Westwood Blvd. in LA granted with modifications as stated on the record	24	6

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

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

**Lisa Bar-Leib**  
Digitally signed by Lisa Bar-Leib  
DN: cn=Lisa Bar-Leib, o, ou,  
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LISA BAR-LEIB

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Date: March 4, 2011