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Proposed Counsel to the Official Committee of Unsecured Creditors

Hearing Date: March 15, 2011 at 10:00 a.m.
Objection Date: March 11, 2011 at 10:30 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
BORDERS GROUP, INC., ***et al.*****,**	Case No. 11-10614 (MG)
Debtors[1].	Jointly Administered

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507 (1) APPROVING POST-PETITION FINANCING, (2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (4) GRANTING ADEQUATE PROTECTION, (5) MODIFYING THE AUTOMATIC STAY, AND (6) SCHEDULING FINAL HEARING

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases (the "Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its undersigned proposed counsel, submits this objection (the "Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the*

[1] The Debtors in these cases are: Borders Group, Inc.; Borders International Services, Inc.; Borders, Inc.; Borders Direct, LLC; Borders Properties, Inc.; Borders Online, Inc.; Borders Online, LLC ; and BGP (UK) Limited.

Debtors (A) To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (the "DIP Motion") [Docket No. 27]. In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee objects to the DIP Motion and the DIP Facility[2] because they include certain provisions, which in the context of this case, are unreasonable, overreaching and otherwise inappropriate. The objectionable provisions, which will be addressed in more detail below, are as follows:[3]

- The DIP Facility grants the DIP Lenders liens on the proceeds of Avoidance Actions and would allow the DIP Lenders to satisfy their Superpriority Administrative Claims from the proceeds of the Avoidance Actions. These provisions must be stricken. In addition, proceeds of the Avoidance Actions should not be subject to the Adequate Protection Liens granted to the Prepetition Lenders nor should the proceeds of the Avoidance Actions be subject to the Adequate Protection Superpriority Claims of the Prepetition Lenders. See Interim DIP Order, ¶¶ 6, 8, 10,12 and 13:

- The DIP Facility provides for an aggregate $4.0 million carveout cap for the Debtors' and the Committee's professionals (including accrued and unpaid fees through an event of default plus fees incurred after a notice of event of default). Id. at ¶ 32. For a case of this size, and given the number of professionals retained by the Debtors, a $4.0 million carveout is unreasonably small and should be increased to no

[2] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Motion.

[3] In addition to the issues raised in this Objection, the Committee identified additional issues which have been resolved (the "Resolved Issues") consensually with the DIP Lenders, Prepetition Lenders and Debtors. The Resolved Issues relate to the mechanics for the delivery of monthly budgets, objection rights with respect to the fees and expenses of the DIP Lenders, the cap on fees relating to the investigation of, inter alia, prepetition secured claims and liens, the Challenge Period, providing reports to the Committee, and clarifying certain other points, all as set forth in a proposed final financing order filed on March 8, 2011 [Docket No. 323].

less than $6.5 million. In addition, paragraph 32(a) suggests that professionals would not be entitled to receive any of their fees or expenses from the carveout until after the "the application of all available funds of the Debtors' estates." This provision must be revised to allow/require payment of professional fees from the carveout before the exhaustion of the estates' funds.

- The DIP Facility contains unreasonable and severe borrowing base limitations including, but not limited to, minimum availability reserves for the revolver of $30 million and an unreasonably low borrowing base value that fails to take into account the successful result of the GOB Sale. Moreover, if the minimum availability reserve drops below $25 million, another $15 million reserve block is added on top of that. These borrowing based limitations are unreasonable and excessive given that the DIP Facility is not providing any "new" money to the Debtors and the value of the DIP Collateral is substantially greater than the amounts that will be borrowed. These reserves must be substantially relaxed to avoid choking the Debtors' cash availability and forcing the Debtors to breach covenants that would trigger defaults leading to an unnecessary and premature liquidation of the Debtors' assets.

- The 10% variance covenants for both receipts and disbursements should be replaced with a 15% cumulative net operating cash flow variance and restructuring fees should be excluded from the variance analysis.

- The Unused Revolver Fee Margin is 0.50%. Given that the projected unused amount of the revolver is projected to be in excess of $200 million throughout the term of the DIP Facility, this fee is clearly excessive and should be reduced to 0.25%.

- In addition to the payment of over $1.0 million in fees to the DIP Lenders' professionals, the DIP Facility provides for the payment of approximately $15 million in aggregate financing fees. These fees include approximately $4.3 million to the lenders under the $55 million Term B Facility (or approximately 6% of the amount of the facility). Moreover, the $4.3 million fee includes a $1.46 million Make Whole Payment that would be waived if parties do not object to the DIP Motion or take other actions adverse to the lenders. The Make Whole Payment is essentially a penalty and poison pill designed to deter parties from raising objections to the DIP

> Motion and otherwise taking actions adverse to the lenders. In sum, the Term B Facility fees, including the Make Whole Payment, are unreasonable and excessive in light of both the minimally increased availability offered by the Term B Facility and the value of the DIP Collateral.

2. The proposed modifications to the objectionable features of the DIP Facility are necessary to strike a reasonable balance among the interests of the Debtors, the DIP Lenders, the Prepetition Secured Lenders, and the Debtors' unsecured creditors. Accordingly, final approval of the DIP Facility should be conditioned upon the modification of the DIP Facility to include the changes set forth in this Objection.

BACKGROUND

The Debtors and Their Business

3. On February 16, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code").

4. Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed or requested in the Cases.

5. On February 24, 2011, the United States Trustee appointed the Committee as the statutory fiduciary for the Debtors' unsecured creditors pursuant to section 1102(a)(1) of the Bankruptcy Code.

6. The Debtors operate book, music and movie superstores and mall-based bookstores. The Debtors report that as of January 29, 2011, they operated 642 stores under the Borders, Waldenbooks, Borders Express and Borders Outlet names, as well as Borders-branded airport stores in the United States, of which 639 are located in the United States and 3 in Puerto

Rico.[4] All of the Debtors' store locations are leased from nearly 300 landlords. In addition, the Debtors operate a proprietary e-commerce web site, www.Borders.com, that was launched in May 2008. See DIP Motion, ¶ 2.

7. For the fiscal year ended January 29, 2011, the Debtors recorded net sales of approximately $2.3 billion and as of December 25, 2010, they reported net year-to–date losses of approximately $168.2 million. Id. at ¶ 4.

The Prepetition Credit Facilities

8. As of the Petition Date, the Debtors were parties to two secured credit facilities. The first was the Third Amended and Restated Revolving Credit Agreement dated March 31, 2010 (the "Prepetition Revolver Credit Agreement" and together with all related documents and agreements, the "Prepetition Revolver Agreements"), with Bank of America, N.A., as administrative agent (the Prepetition Revolver Agent"), and other lenders (collectively, the "Prepetition Revolver Lenders").[5] Pursuant to the Prepetition Revolver Agreements, the Prepetition Revolver Lenders committed to provide up to $970.5 million in loans under a secured revolving credit facility (the "Prepetition Revolver").

9. The Prepetition Revolver was allegedly secured by a first priority security interest in substantially of all of the inventory, accounts receivable, cash and cash equivalents and certain other collateral of the borrowers and guarantors under the Prepetition Revolver Agreements, a first priority pledge of equity in certain subsidiaries, and a second priority security interest in

[4] Pursuant to an order (the "GOB Order") of this Court entered on February 18, 2011 [Docket No. 91], the Debtors, through their court approved sales agent, are conducting going out of business sales (the "GOB Sales") at approximately 200 stores and have authority to conduct GOB Sales at an additional 75 store locations.

[5] The Prepetition Revolver Credit Agreement amended and restated a Second Amended and Restated Multicurrency Revolving Credit Agreement dated July 31, 2006. Id. at 7.

equity interests in certain other subsidiaries, intellectual property, equipment and certain other property (collectively, the "Prepetition Collateral"). Id. at ¶ 9.

10. As of the Petition Date, approximately $196.05 million was outstanding under the Prepetition Revolver. Id.

11. The Debtors were also parties to a Term Loan Agreement, dated March 31, 2010 (the "Prepetition Term Loan Credit Agreement" and, together with all related documents and agreements, the "Prepetition Term Loan Agreements") with GA Capital LLC, as administrative agent (together with the Prepetition Revolver Agent, the "Prepetition Agents"), and other lenders (the "Prepetition Term Lenders" and, together with the Prepetition Revolver Lenders, the "Prepetition Lenders"). Under the Prepetition Term Loan Agreements, the Prepetition Term Lenders committed to provide a secured term loan facility (the "Prepetition Term Loan Facility" and, together with the Revolver, the "Prepetition Facilities") comprised of an $80 million tranche and a $10 million tranche. The obligations owed under the Prepetition Term Loan Facility are allegedly secured by a first-priority security interest in the Borders Group, Inc.'s ownership interests in certain subsidiaries, intellectual property (subject to certain subordination provisions), and fixed assets and by a second priority security interest in all of the other Prepetition Collateral. Id. at ¶¶ 10 and 11.

12. According to the Debtors, as of the Petition Date, approximately $48.6 million was outstanding under the $80 million tranche of the Prepetition Term Loan Facility, and no amounts were outstanding under the $10 million tranche. Id. at ¶ 10.

13. In sum, as of the Petition Date, the total amount due under the Prepetition Facilities was approximately $244.7 million (the "Prepetition Secured Debt"). Moreover, as of the Petition Date, the book value of the Debtors' inventory alone, which allegedly secured

amounts due under the Prepetition Facilities, was approximately $662 million, or nearly 270% greater than the amount owed.[6] See Debtors' Budget attached hereto as Exhibit A.[7]

THE DIP MOTION

14. On the Petition Date, the Debtors filed the DIP Motion seeking approval of the DIP Credit Agreement and DIP Loan Documents, pursuant to which the Debtors would be authorized to borrow a maximum amount of up to $505 million (the "DIP Loan") secured by a first priority lien on substantially all of the Debtors' assets, including the proceeds of Avoidance Actions.

15. On February 17, 2010, the Court entered an order (the "Interim DIP Order") granting the DIP Motion on an interim basis and authorizing the Debtors to borrow up to $400 million under the DIP Facility [Docket No. 69].

16. The DIP Facility consists of a (i) Working Capital Facility of up to $450 million which includes a Revolving Credit Facility in a committed aggregate principle amount not to exceed $410 million (including a letter of credit subfacility of up to $75 million and a swingline subfacility of up to $50 million) and a (ii) a term loan facility (the "Term B Facility") in a committed aggregate amount of up to $55 million.

17. Upon the entry of the Interim DIP Order, a portion of the Revolving Credit Facility was used to repay all amounts due (approximately $196 million) under the Prepetition Revolver and a portion of the $55 million Term B Facility was used to satisfy all amounts due

[6] Although the Committee is not objecting to the DIP Facility in its entirety and is not seeking to unwind the Interim DIP Order, the existence of this extremely large equity cushion (which also exists for the DIP Lenders) raises questions as to why the DIP Facility was needed and supports the Committee's position that certain covenants and restrictions of the DIP Facility must be modified.

[7] This Budget is also attached as exhibit A to the Interim DIP Order.

under the Prepetition Term Loan Facility (approximately $48.6 million). In addition, in excess of $1.0 million in fees and expenses were paid to the DIP Lenders professionals.

18. As security for the obligations incurred under the DIP Facility, the DIP Lenders were granted first-priority liens on all of the Debtors' assets, including assets that were unencumbered prepetition (such as the proceeds of the Debtors' leasehold interests in all real property), and a superpriority administrative claim against the Debtors' estates. The DIP Facility also provides that the proceeds of all Avoidance Actions will be subject to all liens and superpriority claims that are granted under the DIP Facility upon the entry of a final financing order. See Interim Order at ¶¶ 6, 8, 10, 12 and 13.

19. Although the face amount of the DIP Facility is $505 million, the actual amount that the Debtors can and will actually borrow under the facility is substantially less due to availability formulas and unreasonably large reserve requirements. For instance, the borrowing base for inventory is 90% of book value of eligible inventory and it is then further reduced to the net orderly liquidation value ("NOLV"), which value was established by the DIP Lenders at 71.6% (notwithstanding that the Debtors received 85.75% of book value in connection with the GOB Sale recently approved by the Court). In addition, the DIP Facility includes a $30 million minimum availability reserve for the revolver and had included a $13.1 million minimum availability reserve under the Term B Facility.

20. As reflected in the Budget, except for the first week of the case when the Debtors repaid $198.05 million to the Prepetition Revolver Lenders, the Debtors do not expect to owe more than $165 million under the revolver during the term of the DIP Facility. Moreover, although the Term B Facility was initially drawn in the amount of $55 million to pay the $48.6 million due under the Prepetition Term Facility and millions of dollars in fees to the Term B

Facility Lenders, there was a mandatory prepayment of $5 million that was quickly paid from the proceeds of the GOB Sale literally several days after the Petition Date and an additional $3.0 million is budgeted to be paid during the week of March 19, 2011, from anticipated proceeds generated from the sale of fixtures and equipment at the GOB Sales. Therefore, after taking into account the payment of millions of dollars in fees to the Term B Facility Lenders, the Term B Facility provided the Debtors with no additional availability when compared to the Prepetition Term Facility. During the course of this case it is expected that the combined balance due under the both the revolver and Term B Facility will not exceed $215 million.[8] This is substantially less than the approximate $244 million that was owed to the Prepetition Lenders on the Petition Date.

21. Significantly, as of March 2, 2011, the book value of the Debtors' inventory alone was approximately $450 million and, as reflected in the Budget, it is expected to be in the $500 million range, more than twice the amount of expected borrowings under the DIP Facility, through the term of the DIP Facility. See Inventory Line Item on Budget attached hereto as Ex. A. Moreover, it should be noted that the Debtors received 85.75% of book value for the inventory that was sold pursuant to the GOB Sale and that the GOB Sale has already raised approximately $129 million that was used to repay a substantial portion of the DIP Revolver that was originally drawn to repay the Prepetition Revolver and $5 million of the Term B Facility.

22. Furthermore, the term of the DIP Facility is just as illusory as the face amount of the DIP Facility. Although the maximum term of the DIP Facility is one year after the closing of the facility [See Interim Order ¶ 24], as a practical matter, the Debtors' will not have sufficient availability under the DIP Facility to place orders during the later part of the third quarter of

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[8] The projected amount due under the Term B Facility is not reflected on the Budget.

2011 for the critical upcoming Christmas season. Thus, the Debtors must develop and consummate an exit plan (be it a sale or infusion of capital) by mid to late June, 2011.

23. In exchange for what is essentially a short term financing facility which provides the Debtors with little, if any, new money beyond what was available and owing under the Prepetition Facilities as of the Petition Date, the Debtors have paid some $15 million in fees to the DIP Lenders, plus over $1.0 million more in professional fees to the lenders' professionals. The fees include an exorbitant $2.9 million to the lenders under the $55 million Term B Facility, and a $1.46 million "make whole" payment (the "Make Whole Payment") to the Prepetition Term Lenders. See DIP Motion, p. 9, ¶ 13. The Make Whole Payment would be waived if no objections were filed to the DIP Motion and if other actions adverse to the lenders are not taken. Id. The Make Whole Payment is essentially a penalty and poison pill which must not be approved.

JURISDICTION AND VENUE

24. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

OBJECTION

25. The Committee objects to the unreasonable, overreaching and onerous provisions contained in the DIP Facility. In the face of the Debtors' continuing large losses and the inability to obtain the trade credit necessary to survive, the DIP Lenders knew that the Debtors were on the brink of collapse prior to the Petition Date. The DIP Lenders used their leverage to impose the objectionable provisions on the Debtors and the Debtors were forced to agree to them on the eve of their chapter 11 filing. The Committee seeks to modify the DIP Facility to strike a

reasonable balance among the competing interests of the Debtors, the DIP Lenders, the Prepetition Lenders, and the Debtors' unsecured creditors.

26. Indeed, courts recognize that chapter 11 debtors have little bargaining power when dealing with post-petition lenders. In re Ames Dep't Stores, Inc., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). Accordingly, a court must review and examine the terms of a debtor-in-possession facility closely to determine whether those terms are fair, reasonable, and adequate given the circumstances of the case. In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (holding that proposed financing should be beneficial and reasonable); In re Ames Dep't Stores, 115 B.R. at 40 (courts should focus on whether the terms of proposed DIP financing are reasonable). Similarly, courts reviewing proposed postpetition financing "focus their attention on proposed terms that would tilt the conduct of the bankruptcy case [or] prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers for the right of all creditors[.]" Id. at 37.

27. As set forth below, the DIP Facility contains numerous provisions that are unfair and unreasonable. The Court must condition final approval of the DIP Facility upon the modification of these provisions.

Avoidance Power Actions And The Proceeds Thereof Should Not Be Encumbered Or Subject To Superpriority Claims

28. The DIP Facility and DIP Order grant the DIP Lenders and Prepetition Lenders DIP Liens and Adequate Protection Liens on the proceeds of Avoidance Actions as well as superpriority claims that would be payable from the Avoidance Action proceeds. See Interim DIP Order, at ¶¶ 6, 8, 10, 12 and 13. The Committee objects to these provisions.

29. Under no circumstances should the Avoidance Actions or their proceeds be subject to the liens and superpriority claims granted under the DIP Order. Although uncertain at

this point, the proceeds of the Avoidance Actions may be unsecured creditors' only sources of value and recovery in these cases. Permitting the Debtors to give that value to the DIP Lenders and Prepetition Lenders is unnecessary and unreasonable. The DIP Motion seeks to shift an undue amount of value into the hands of the DIP Lenders and Prepetition Lenders at the sole expense of unsecured creditors without justification or economic risk given that the DIP Lenders appear to be vastly oversecured.

30. Avoidance power actions, designed to facilitate equality of distribution among a debtor's general unsecured creditors, are not truly property of a debtor's estate, but instead are rights that the estate holds in trust for the benefit of creditors. See Official Comm. of Unsecured Creditors v. Chinery (In re Cybergenics Corp.), 330 F.3d 548, 567 (3d Cir. 2000) (noting that the underlying intent of the avoidance powers is the recovery of valuable assets for the benefit of a debtor's estate); In re Sweetwater, 55 B.R. 724, 731 (D. Utah 1985), rev'd on other grounds, 884 F.2d 1323 (10th Cir. 1989) ("The avoiding powers are not 'property' but a statutorily created power to recover property."). Accordingly, bankruptcy courts customarily restrict the ability of debtors-in-possession to pledge avoidance power actions as security. See, e.g., Official Comm. of Unsecured Creditors v. Goold Electronics Corp. (In re Goold Electronics Corp.), 1993 WL 408366, *3-4 (N.D. Ill., Sept. 22, 1993) (vacating DIP financing order to the extent that the order granted the lender a security interest in the debtor's preference actions).

31. Because of the unique nature of avoidance power actions, courts have recognized that "empowering the trustee or debtor in possession to avoid a transaction by pursuing an individual creditor's cause of action is a method of forcing that creditor to share its valuable right with other unsecured creditors." Cybergenics, 226 F.3d at 244; see also Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. P'ship IV, 229 F.3d 245, 250 (3d Cir. 2000)

("When recovery is sought under § 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer."); In re Sweetwater, 884 F.2d 1323, 1328 (10th Cir. 1989) ("[P]ost-petition avoidance actions should be pursued in a manner that will satisfy the basic bankruptcy purpose of treating all similarly situated creditors alike . . . ."); Bear Stearns Sec. Corp. v. Gredd, 275 B.R. 190, 194 (S.D.N.Y. 2002) ("[T]he purpose of § 547 is to ensure fair distribution between creditors, while the purpose of § 548 is to protect the estate itself for the benefit of all creditors.").

32. Fundamentally, it is inequitable to grant liens and superpriority claims on the Avoidance Actions or their proceeds. The formulation of a successful chapter 11 plan requires cooperation and risk-sharing by all parties in interest. Granting liens and superpriority administrative expense claims payable on the Avoidance Action proceeds unfairly places the risk on unsecured creditors, to the exclusive benefit of the secured lenders. This is especially the case where, as here, the DIP Lenders are providing a short term credit facility which does not provide any new money to the Debtors.[9]

The Carveout Provision Is Unreasonable

33. The DIP Facility provides for a $4.0 million carveout for the Debtors' and the Committee's professionals. See Interim DIP, ¶ 32. Moreover, the carveout would cover not only fees and expenses incurred after an event of default, but all accrued and unpaid fees and expenses incurred prior to an event of default. In addition, paragraph 32(a) of the Interim DIP Order provides that professionals would not be entitled to receive any of their fees or expenses from the carveout until after the "the application of all available funds of the Debtors' estates."

[9] At a minimum, any final financing order should require the DIP Lenders and, to the extent applicable, the Prepetition Lenders, upon exercising any remedies, to marshal the Debtors' assets and exhaust all other collateral before realizing any recovery from the Avoidance Actions proceeds.

34. The amount of the proposed carveout is plainly unreasonable in the context of this case. The Debtors alone have filed applications to retain general bankruptcy counsel, two sets of special counsel, financial advisors, investment bankers, real estate consultants, and numerous ordinary course professionals. Each of these professionals, together with the Committee's counsel and financial advisors, will seek monthly fees and expenses (in certain cases fixed monthly fees), and the Debtors financial advisors, investment bankers and real estate consultants would be entitled to certain success fees based on achieving certain results. Therefore, the monthly fees and expenses in this case will be substantial and, given the lag between the submission of monthly fee requests and payment, it is likely that their will be substantial accrued and unpaid professional fees throughout the course of this case.

35. A reasonable carveout for this case, which covers both fees and expenses incurred both before and after an event of default, is not less than $6.5 million. Moreover, the final order must delete the provision that restricts payment of professional fees from the carveout until after "the application of all available funds of the Debtors' estates."

The Borrowing Base and Reserve Provisions Are Unreasonable

36. The DIP Facility includes severe, unreasonable and unnecessary borrowing base limitations and covenants that are harmful and prejudicial to the interest of the Debtors' estates and unsecured creditors.

37. In particular, the borrowing base for inventory is 90% of book value of eligible inventory multiplied by the net orderly liquidation value ("NOLV"), which value was recently established by the DIP Lenders at only 71.6% (notwithstanding that the Debtors received 85.75% of book value in connection with the GOB Sale). In addition, the DIP Facility includes a $30 million minimum availability reserve for the revolver. Moreover, if the minimum availability

reserve drops below $25 million, another $15 million reserve block is added on top of that which will choke the Debtors ability to operate and force a default. Furthermore, the DIP Facility contains minimum availability requirements that if breached, could trigger a default and could potentially lead to the forced liquidation of the Debtors' assets.

38. In light of the fact that the value of the DIP Collateral (at least $500 million of inventory collateral plus other assets) is and will be substantially greater than the amount of the DIP obligations (no more than approximately $250 million at any point in time) that are expected to be secured by the DIP Collateral, there is no reasonable basis for the inclusion of these onerous limitations and covenants. They only serve to grant the lenders undue leverage over this chapter 11 case notwithstanding that the lenders' interests are more than adequately protected by an enormous equity cushion.

The Budget Variance Covenants Are Unreasonable

39. Section 5.21 of the DIP Credit Agreement includes a negative covenant that precludes both actual receipts and disbursements from varying from their budgeted amounts by more than 10% over a rolling four week period. A breach of this covenant would trigger an event of default and permit the DIP Lenders to exercise their remedies at the expense of the Debtors' estate and unsecured creditors.

40. The use of this type of rolling four week 10% cumulative variance analysis is unreasonable in this case where the lenders' equity cushion is at least double the value of the DIP obligations. This variance covenant unnecessarily and substantially increases the risk of default and would permit the lenders to call a default and exercise undue leverage over the Debtors.

41. In order to level the playing field and provide the Debtors the flexibility they need to operate, and still provide appropriate protection to the DIP Lenders, the 10% cumulative four

week variance covenant should be replaced with a 15% cumulative net operating cash flow variance and restructuring fees (which the Debtors have little control over and are not regularly scheduled payments) must be excluded from the variance analysis.

The Unused Revolver Fee is Excessive

42. The DIP Facility includes an unused revolver fee that is tied to an Unused Revolver Fee Margin of 0.50%. As noted above, although the revolver maximum is up to $410 million, the Debtors project that the revolver balance will always be well below the $200 million mark (except for the first week of the case when it was projected at $200 million), leaving a large unused portion that will be subject to the unused revolver fee.

43. Given the magnitude of the other fees payable to the DIP Lenders, combined with the fact that the Debtors will not receive any benefits from the unused portion of the revolver, there is no legitimate reason to apply a 0.50% Unused Revolver Fee Margin. The margin must be reduced to a more reasonable 0.25%.

The DIP Fees Are Unreasonable And Excessive

44. The DIP Facility, which is a short term facility that does not provide the Debtors with any "new money," requires the payment of unreasonably high financing fees of approximately $15 million in financing fees to the DIP Lenders (plus over $1.0 million to their professionals). These fees include approximately $2.9 million payable to the Term B Facility Lenders under the $55 million Term B Facility, and the $1.46 million Make Whole Payment to the Prepetition Term Lenders. See DIP Motion, p. 9, ¶ 13. As described above, the Make Whole Payment would be waived if no objections were filed to the DIP Motion and if other actions adverse to the lenders are not taken. Id. The Make Whole Payment is essentially a penalty and poison pill which should not be approved. The Make Whole Payment is essentially a penalty

which would be waived if certain conditions are satisfied, including the absence of an objection to the DIP Motion. Id.

45. The proposed fees payable to the Term B Facility Lenders, plus reimbursement of their professional fees, are clearly excessive. As noted above, $48.6 million of the Term B Facility was used to repay the Prepetition Term Loan and approximately $4.3 million (approximately 6%) would be used to pay fees to the Term B Facility lenders, resulting in no additional borrowings available for the Debtors under the term loan. Given these facts, and the vast security that the Term B Facility lenders enjoy, it is totally unreasonable to permit the Term B Facility Lenders to receive the fees that they are demanding.

46. The payment of the Make Whole Payment is particularly egregious. It is essentially a penalty provision designed to deter creditors and the Committee from objecting to the DIP Motion, taking other actions adverse to the interests of the Prepetition Lenders and Term B Facility Lenders, and otherwise exercising their rights and duties.[10] Accordingly, the fee provisions, including the Make Whole Payment, must not be approved.

RESERVATION OF RIGHTS

47. The Committee reserves the right to raise further and other objections to the DIP Motion prior to or at the hearing thereon in the event changes are made to the terms of the DIP Facility.

[10] To the extent the Term B Lenders argue that the Make Whole Payment of $1,460,000 can be charged as a fee against the Debtors' estates as an administrative claim, the Committee respectfully submits that the enforcement of the Make Whole Payment is not permissible because it has been utilized by the Term B Lenders as a poison pill in this case to prevent legitimate objection to the DIP Facility and is an unenforceable penalty, See, e.g. HSBC Bank, USA v. Calpine Corporation, 2010 U.S. Dist. Lexis 96792 (SDNY September 15, 2010). This specific issue, if required, can be adjudicated at a later date.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (a) condition final approval of the DIP Motion upon including the modifications contained in this Objection and (b) grant the Committee such other and further relief as the Court deems just and appropriate.

Dated: March 10, 2011

Respectfully Submitted,

LOWENSTEIN SANDLER PC

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Proposed Counsel to the Official Committee of Unsecured Creditors

EXHIBIT A

Borders Group, Inc.
Weekly DIP Cash Flow
DIP Budget
($ in 000's)

	February		March				April					May				June	
Week Ending	**Forecast 19-Feb**	**Forecast 26-Feb**	**Forecast 5-Mar**	**Forecast 12-Mar**	**Forecast 19-Mar**	**Forecast 26-Mar**	**Forecast 2-Apr**	**Forecast 9-Apr**	**Forecast 16-Apr**	**Forecast 23-Apr**	**Forecast 30-Apr**	**Forecast 7-May**	**Forecast 14-May**	**Forecast 21-May**	**Forecast 28-May**	**Forecast 4-Jun**	**Forecast Total**
I. Cash Flow																	
Receipts Subtotal	33,527	140,871	31,501	26,426	29,674	26,414	26,672	55,160	27,174	26,679	26,760	22,565	23,157	22,752	22,767	23,111	565,410
Operating Disbursements																	
Merchandise	(7,577)	(8,644)	(9,000)	(11,896)	(21,440)	(24,849)	(24,096)	(23,426)	(17,654)	(13,083)	(9,137)	(10,893)	(10,522)	(9,527)	(12,848)	(13,093)	(227,686)
Payroll & Payroll Taxes	(3,049)	(9,264)	(2,291)	(6,996)	(2,291)	(6,996)	(2,440)	(7,845)	(2,440)	(7,845)	(2,440)	(7,154)	(2,339)	(7,154)	(2,339)	(7,250)	(80,131)
Rent & Occupancy	(2,900)	-	(12,887)	-	-	-	(14,416)	-	-	-	(14,813)	-	-	-	-	-	(45,016)
Sales Tax	(5,728)	(2,117)	(283)	(231)	(4,471)	(1,553)	(234)	(238)	(4,205)	(1,512)	(1,506)	(233)	(2,921)	(1,570)	(1,584)	(241)	(28,627)
Freight	(613)	(616)	(549)	(534)	(273)	(126)	(741)	(535)	(494)	(457)	(479)	(755)	(634)	(649)	(705)	(755)	(8,915)
Utilities	(1,021)	(1,021)	(608)	(608)	(608)	(608)	(567)	(567)	(567)	(567)	(567)	(619)	(619)	(619)	(618)	(678)	(10,457)
Store OpEx, G&A, & Other	(2,943)	(3,124)	(3,841)	(1,359)	(1,129)	(4,490)	(3,684)	(1,404)	(1,749)	(1,752)	(1,410)	(3,587)	(2,704)	(2,703)	(1,592)	(3,192)	(40,664)
Operating Disbursements Subtotal	(23,831)	(24,786)	(29,458)	(21,624)	(30,213)	(38,620)	(46,178)	(34,015)	(27,108)	(25,215)	(30,350)	(23,241)	(19,739)	(22,221)	(19,686)	(25,210)	(441,495)
Operating Cash Flow	9,696	116,085	2,043	4,802	(539)	(12,207)	(19,506)	21,145	66	1,663	(3,590)	(676)	3,418	531	3,081	(2,098)	123,914
Non Operating Disbursements																	
GOB Disbursements	(625)	(5,625)	(5,625)	(5,625)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	-	-	-	-	-	-	(47,500)
Bankruptcy Payments	(3,972)	-	-	-	(1,000)	-	-	-	-	-	-	-	-	-	-	-	(4,972)
Financing Expenses	(15,000)	(5,008)	(738)	(8)	(3,008)	(8)	(2,247)	(8)	(8)	(8)	(8)	(4,615)	(8)	(8)	(8)	(1,858)	(32,539)
Other	(500)	(1,200)	(2,100)	(1,000)	(900)	(500)	(500)	(500)	(2,853)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(13,553)
Non Operating Disbursements Subtotal	(20,097)	(11,833)	(8,461)	(6,633)	(9,908)	(5,508)	(7,747)	(5,508)	(7,860)	(5,508)	(508)	(5,115)	(508)	(508)	(508)	(2,358)	(98,563)
Net Cash Flow (Weekly)	(10,401)	104,252	(6,419)	(1,830)	(10,446)	(17,714)	(27,253)	15,637	(7,794)	(3,844)	(4,097)	(5,791)	2,911	24	2,574	(4,456)	25,351
Net Cash Flow (Cum, Post-Petition)	(10,401)	93,851	87,433	85,602	75,156	57,442	30,189	45,826	38,031	34,187	30,090	24,299	27,210	27,234	29,807	25,351	
II. Inventory Roll Forward																	
Ending Inventory	662,222	461,730	457,915	455,923	465,384	477,794	491,114	502,127	509,721	508,046	505,144	501,978	499,360	496,760	495,337	493,914	493,914
Less: Ineligibles	(33,111)	(23,087)	(22,896)	(22,796)	(23,269)	(23,890)	(24,556)	(25,106)	(25,486)	(25,402)	(25,257)	(25,099)	(24,968)	(24,838)	(24,767)	(24,696)	(24,696)
Net Inventory	629,111	438,644	435,019	433,127	442,115	453,904	466,559	477,021	484,235	482,644	479,887	476,879	474,392	471,922	470,570	469,218	469,218
III. Net Availability																	
Borrowing Base (After Reserves)	369,401	252,688	248,816	247,566	253,789	261,193	270,541	277,186	282,101	285,319	283,998	283,058	281,556	280,394	280,150	279,897	279,897
Less: Loan Balance	(200,151)	(95,899)	(102,317)	(104,148)	(114,594)	(132,308)	(159,562)	(143,924)	(151,719)	(155,583)	(159,660)	(165,451)	(162,540)	(162,517)	(159,943)	(164,399)	(164,399)
Less: LC's	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)	(33,700)
Less: Minimum Availability Reserve	(36,940)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)
Less: TL Minimum Availability Reserve	-	(2,363)	(3,054)	(3,262)	-	-	(3,296)	(2,381)	(12,122)	(12,247)	(12,438)	(12,583)	(12,795)	(12,968)	(13,049)	(13,131)	(13,131)
Less: Seasonal Availability Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	(270,791)	(161,962)	(169,072)	(171,110)	(178,294)	(196,008)	(226,558)	(210,005)	(227,541)	(231,509)	(235,798)	(241,733)	(239,035)	(239,184)	(236,691)	(241,230)	(241,230)
Net Availability	$ 98,610	$ 90,726	$ 79,744	$ 76,456	$ 75,495	$ 65,185	$ 43,983	$ 67,180	$ 54,560	$ 53,610	$ 48,200	$ 41,325	$ 42,524	$ 41,210	$ 43,459	$ 38,666	$ 38,666