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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

April 22, 2011  
10:04 AM

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

1       **MOTION to Authorize Notice of Hearing on Debtors' Motion**  
2       **Pursuant to Sections 363(b), 365(a) and 503(c) of The**  
3       **Bankruptcy Code and Fed. R. Bankr. P.6006 and 9014 for and**  
4       **Order Authorizing (I) Implementation of (A) Key Employee**  
5       **Incentive Plan and (B) Key Employee Retention Plan, and (II)**  
6       **Assumption of Certain Employment Agreements**

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**Transcribed by: Ellen S. Kolman**

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## P R O C E E D I N G S

THE COURT: All right. Please be seated. We're here in Borders Group, Inc., number 11-10614. This is the continued hearing on the debtors' motion for approval of the key employee incentive plan and key employee retention plan. Mr. Glenn?

MR. GLENN: Good morning, Your Honor. Andrew Glenn for the record, Kasowitz, Benson, Torres & Friedman on behalf of debtors and debtors-in-possession.

Your Honor, in the week since we've last seen you, we've used that time very profitably. Thanks, in no small part, to the efforts of Mr. Schwartzberg, Ms. Golden and the rest of the office of the United States Trustee. Also, with Mr. Buechler and Mr. Kizel's assistance from Lowenstein Sandler on behalf of the committee.

The fruits of those efforts resulted in the filing last evening of a revised notice of order with an order. The primary change of which was the term sheet that we attached to that that lays out basically the plan from A to Z.

Now, Mr. Buechler read the terms of the agreement we've reached with the committee as of the last time we saw Your Honor, so, what I'd like to do is point out the significant pieces that we've changed. Does Your Honor have a copy of that? We can hand one up to you.

THE COURT: I do. I have a copy of the notice of revised of proposed order, et cetera, that was received last

1 night and the term sheet is dated April 21, 2011.

2 MR. GLENN: That's the correct version.

3 So, what we've done from a structural perspective, and  
4 this was the case last time we saw you, the KEIP has been  
5 divided into the so-called management participants and the so-  
6 called senior management participants. The management  
7 participants, the last time we saw Your Honor, the sole trigger  
8 or triggers for payment of the forty percent bonus of base  
9 compensation, in effect, as of the petition date was solely a  
10 sale of the business substantially as a going concern or a plan  
11 of reorganization for substantially all of the debtors' assets  
12 confirmed or approved within a certain time frame.

13 What we've done, Your Honor, is we've added a layer of  
14 what we've defined as incentives as a second trigger. So,  
15 these incentives have to be reached and within the time frame  
16 previously disclosed a sale has to be approved or a plan must  
17 be confirmed. Those are laid out in Section 1(a)(1) and 1 --  
18 1(a)(1) and they are annualized rent reductions for each of  
19 2011 and 2012 of ten million dollars each excluding any savings  
20 allocable to store closings. Or we have to implement  
21 nonheadcount annualized cost reductions with either a contract  
22 rejection or renegotiation excluding, again, any lease  
23 amendments or contract rejections associated with store  
24 closings.

25 And I think what you have here is a general agreement

1 among all the parties that these are important, necessary, and  
2 value added and clear benchmarks that we believe would be the  
3 stepping stones, in any event, for a successful sale for a plan  
4 of reorganization.

5 For the senior managements, the last time we saw Your  
6 Honor, there were two tranches for the senior management to  
7 earn bonuses. One had the recovery thresholds built into them  
8 for recoveries to unsecured creditors. But the other either  
9 seventy-five percent or fifty-five percent of base salary  
10 previously had that same sole trigger sale -- going concern  
11 sale or plan of reorganization. So, what we've done for those  
12 folks is added in the same incentives so that everyone is  
13 rowing with the same oar for these same incentives that I just  
14 articulated for the management participants.

15 What we've done, after consultation with the U.S.  
16 Trustee, is we filed, last evening with this, the supplemental  
17 declaration of Holly Etlin, the senior vice president of  
18 restructuring, who, again, is in court today and what we've  
19 done here is we've articulated a few important points.

20 First of all, that all the people individually and/or  
21 collectively are -- from the key participants -- are involved  
22 in one capacity or another with those incentives.

23 Number two, we've confirmed at the U.S. Trustee's  
24 insistence, actually, that achievement of those incentives is  
25 anything but certain in light of the facts and circumstances of

1 this case and will require diligent efforts beyond those that  
2 the people exercised on a pre-bankruptcy basis.

3 Ms. Etlin has also made clear to alleviate any  
4 concerns on behalf of the office of the U.S. Trustee with  
5 respect to the KERP, last time we saw Your Honor there was some  
6 lingering issues about whether KERP participants could or could  
7 not be deemed insiders of the company --

8 THE COURT: There's an issue about one individual.

9 MR. GLENN: One individual in particular but I think  
10 the trustee wanted some additional factual confirmation that  
11 none of his people were insiders so. I believe that this  
12 substantially resolves the objections that the U.S. Trustee  
13 finally we previously resolved the objections that the  
14 committee had raised to us informally. There were no other  
15 objections for the last time we filed the motion and no party  
16 has objected informally or formally to the plan as revised.  
17 So, we would ask, number one, that the various declarations be  
18 submitted into the record and into evidence as that testimony  
19 would have been received had people actually taken the stand.  
20 No party has asked to cross-examine any of the witnesses. And  
21 unless Your Honor has any follow-up questions, we continue to  
22 believe that this relief is critical to the debtors' efforts to  
23 reorganize this company and continue the business as a going  
24 concern and we would ask that Your Honor approve the revised  
25 order submitted last night.

1           THE COURT: All right. So that the record is clear, I  
2 believe you're offering in evidence declaration of Joan (sic)  
3 Dempsey in support of the debtors' motion, et cetera, dated  
4 March 24, 2011, the declaration of Holly Felder Etlin in  
5 support of debtors' motion, et cetera --

6           MR. GLENN: Yes.

7           THE COURT: -- dated --

8           MR. GLENN: It's also March 24th, 2011.

9           THE COURT: -- March 24th, 2011.

10          MR. GLENN: That's docket number 459.

11          THE COURT: Right. The supplemental declaration of  
12 John Dempsey in support of debtors' motion, et cetera, and that  
13 is dated April 12, 2011. And then the supplemental declaration  
14 of Holly Felder Etlin which is dated April 21, 2011. Do I have  
15 those described correctly?

16          MR. GLENN: Those are the ones, Your Honor. Yes.

17          THE COURT: ALL RIGHT. Any objections to the Court  
18 admitting those four declarations in evidence?

19          MR. SCHWARTZBERG: None from the U.S. Trustee, Your  
20 Honor.

21          THE COURT: All right. So, those four declarations  
22 are admitted in evidence for purposes of the pending motion.

23                 Does anybody wish to cross-examine either Ms. Etlin or  
24 Mr. Dempsey? All right. Hearing none, so, the evidentiary  
25 record, therefore, is closed. I have a few factual questions

1 about the revised plan.

2 First, I want to be sure I understand correctly  
3 looking at the term sheet for the KEIP that with respect to  
4 paragraph 1(a)(1), the rent reduction alternative effectively  
5 requires that on or before May 31 that rent reductions really  
6 covering two years. So, it's really ten million for each of  
7 two years.

8 MR. GLENN: Correct.

9 THE COURT: Okay. And the alternative is annualized  
10 nonheadcount reduction of ten million dollars by June 30th.  
11 That's -- that is assures that ten million for one year or more  
12 than one year? I mean you refer to annualized. I'm just  
13 trying to under -- I just want to be sure I understand what  
14 is -- what the financial triggers are.

15 MR. GLENN: Okay. The annualization factor for 2011  
16 is just to take into account that we're partially through the  
17 year. So, we're going to assume once these reductions are  
18 implemented that they would cover a full year for 2011 on a pro  
19 forma basis.

20 THE COURT: Right.

21 MR. GLENN: I believe that it's solely for 2011 and I  
22 believe that it would -- everyone understands that it would  
23 carry on indefinitely thereafter. The diff - and I'll confirm  
24 that with Ms. Etlin in a moment, but it's different for the  
25 rent because the rent reductions are generally negotiated --

1 THE COURT: It's a -- I understand.

2 MR. GLENN: -- in that kind of a time frame so.

3 THE COURT: It's longer term -- yes.

4 MR. GLENN: Okay. So, it's -- the trigger is only for  
5 2011, Your Honor, but the concept is that those savings  
6 wouldn't be ephemeral, you know, for January as far as 2012.  
7 They would be expected to continue but we're not -- the test  
8 doesn't go beyond 2011.

9 THE COURT: Mr. Buechler and Mr. Schwartzberg, is that  
10 consistent with your understanding?

11 MR. BUECHLER: Yes, Your Honor.

12 THE COURT: Mr. Schwartzberg?

13 MR. SCHWARTZBERG: Yes, Your Honor.

14 THE COURT: All right. Can you tell me how does the  
15 maximum KEIP plan cost compare as a percentage to debtors'  
16 projected revenue in the year of emergence from Chapter 11?  
17 Under the old plan it was .56 percent of revenue. Has that  
18 changed?

19 MR. GLENN: The aggregate amount is lower now so it  
20 will be less than that. I can check --

21 THE COURT: It's just -- you understood. So, your  
22 representation is that it's less than .56 percent?

23 MR. GLENN: It's equal to or less than, I believe.

24 THE COURT: Mr. Buechler?

25 MR. BUECHLER: I haven't done the math, I believe, but

1 the math would be the total cost of the program at the max  
2 would be the --

3 THE COURT: That hasn't changed. The total cost --

4 MR. BUECHLER: That would be the 37 -- 38 and the  
5 expected revenue is probably a billion four.

6 THE COURT: Okay.

7 MR. BUECHLER: It's all on what people are looking at  
8 is the possibility. But I've never actually done the math.

9 MR. GLENN: If there's any change either way, it's  
10 likely to be immaterial, Your Honor.

11 THE COURT: All right. And if the KEIP is approved,  
12 how does the executive compensation provided by the debtor  
13 compare to the market medium? You get -- in the original  
14 Dempsey declaration, it dealt with the compensation compared to  
15 market medium. Has that changed?

16 MR. GLENN: It has not changed. Has not changed at  
17 all.

18 THE COURT: All right. Does anybody else wish to be  
19 heard with -- well, first off, Mr. Schwartzberg, in light of  
20 the revised proposed order and the amendments that have been  
21 agreed upon since the last hearing, does the United States  
22 Trustee withdraw its objection?

23 MR. SCHWARTZBERG: Your Honor, the U.S. Trustee's  
24 objection has been resolved by the amendments that were made  
25 since the last hearing which were set forth by Mr. Glenn.

1 THE COURT: Thank you very much. All right.

2 The Court has considered the debtors' motion to  
3 approve the KERP and the KEIP, has considered the evidence in  
4 support in the form of the four declarations which have now  
5 been admitted into evidence. The Court considered the U.S.  
6 Trustee's objection to the original proposed plan and the  
7 stated objection to the modifications of a proposed plan that  
8 Mr. Buechler set out on the record at the last hearing. And at  
9 that time, it appeared to be a contested matter as to which  
10 evidence was required. The four declarations that have been  
11 admitted into evidence no one wishes to cross-examine the  
12 declarants, the objection having been resolved by the further  
13 modification to the KERP and the KEIP -- to the KEIP. With  
14 respect to the KERP, I gather, Mr. Schwartzberg, that the  
15 concerns that the U.S. Trustee had with respect to whether any  
16 insiders recovery have been resolved through the further  
17 declaration has been submitted?

18 MR. SCHWARTZBERG: That's correct, Your Honor.

19 THE COURT: All right. Based on that, Court is going  
20 to go ahead and grant the motion to approve the KERP and the  
21 KEIP as amended and is set forth in the notice of revised  
22 proposed order. As the Court indicated, that order will be  
23 entered today. As the Court indicated at the last hearing,  
24 it's still my intention to go on and file an opinion that  
25 explains the Court's rationale for approving the KERP and the

1 KEIP. I won't go through the -- any lengthy recitation of the  
2 reasons now but the Court is satisfied now that in light of the  
3 most recent modifications to the KEIP that appropriate  
4 financial triggers have been built into the modified plan to  
5 satisfy the requirements of the statute and applicable case  
6 law. I'll set forth those reasons in somewhat greater length  
7 but the Court is satisfied having considered the facts in the  
8 law that the plan is appropriate. And particularly in light of  
9 the circumstances of this debtor, I think with the last hearing  
10 was indicated when this case was originally filed there were  
11 approximately 16,000 full- and part-time employees with store  
12 closures that have taken place so far that the number of  
13 employees have been reduced to approximately 11,000 full- and  
14 part-time employees. Still, a very substantial number of  
15 employees continued employment for this workforce depends upon  
16 either a successful sale on a going concern basis or successful  
17 reorganization whether additional jobs are cut if the scope of  
18 the debtors' business is reduced.

19 What is clear is that the employment of a substantial  
20 number of people depends on a successful outcome in this case.  
21 Court believes that those prospects are enhanced by the  
22 debtors' ability to maintain its experience workforce as the  
23 debtor demonstrated in its -- the declarations they've  
24 already -- since the petition was filed and already suffered a  
25 substantial number of losses of senior personnel. So, the

1 Court is satisfied that this plan is appropriate in the  
2 circumstances of this case. I will go ahead and approve it.

3 All right. Anything else anybody wants to raise  
4 today? Mr. Glenn?

5 MR. GLENN: No, Your Honor. We have an order on a  
6 disk we'll hand to your clerks.

7 THE COURT: Thanks fine. Okay. All right. We're  
8 adjourned. Thank you very much everybody.

9 MR. GLENN: Thank you.

10 THE COURT: I really do appreciate the efforts that  
11 the debtor, the committee, and the U.S. Trustee made to resolve  
12 the issues. These issues with the KEIP plans are complicated.  
13 In light of the changes that were made to the statute in 2005.  
14 I'm very mindful of those changes and the importance of the  
15 Court adhering to the laws as its been written and I think the  
16 plan as modified with the final changes that were agreed to are  
17 consistent with the law so I'm happy to be able to approve it.  
18 Thank you again.

19 MR. GLENN: Thank you.

20 MR. BUECHLER: Thank you.

21 MR. SCHWARTZBERG: Thank you, Judge.

22 MR. GLENN: Have a nice weekend.

23 (Whereupon these proceedings concluded at 10:22 AM)

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I N D E X

RULINGS

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

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Ellen  
Kolman**

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**Date: July 29, 2011**