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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

July 14, 2011  
10:03 a.m.

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

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Motion for Payment of Administrative Expenses/Administrative  
Claim and Request for Payment of Administrative Expense Made by  
Acorn Media Group, Inc.

Motion for Payment of Administrative Expenses/Administrative  
Claim and Request for Payment of Administrative Expense Made by  
Broad One L.P., filed by Broad One, L.P.

Sale Procedures Hearing RE: Bidding Procedures Motion.

Transcribed by: Gershom Benayahu

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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 Borders Group, Inc., #11-10614. I have a list of appearances in front of me. Mr. Glenn.

MR. GLENN: Thank you, Your Honor, Andrew Glenn, Kasowitz, Benson, Torres & Friedman on behalf of the debtors and debtors-in-possession. Your Honor, we have three matters on the agenda today. Two were for stipulated orders allowing administrative claims for a couple of claimants. I don't know if you wanted any presentation on those.

THE COURT: No. Does anybody want to be heard with respect to either of these stipulations that are on presentment? All right. They're both approved.

MR. GLENN: Thank you. So that brings us to today's main event, which is the motion to approve the bidding procedures in this case, docket number 1130. Your Honor, this has been a case with many twists and turns and the events over the last 24 hours are no exception. The Creditors' Committee in this case filed an objection to the payment of a break-up fee yesterday to BB Brands, LLC, our stalking horse bidder, on the basis that BB had an option to liquidate the company or to maintain the company as a going concern at its discretion. That was in the APA. That was set forth in our motion. The Committee was concerned that if BB actually chose the liquidation option it would not maximize the value of the



1 estate.

2 The debtors have worked diligently to persuade BB to  
3 eliminate the liquidation option in its asset purchase  
4 agreement. The debtors and their professionals worked around  
5 the clock to facilitate ongoing negotiations between Mr.  
6 Najafi, who is the ultimate principal of BB Brands, the  
7 committee trade vendors and landlords in this case. Ultimately  
8 and unfortunately these efforts did not succeed.

9 When the Committee formally objected to the  
10 liquidation option in the APA the debtor's board of directors  
11 determined that they would not proceed with BB as the stalking  
12 horse bidder unless BB actually committed to a going concern  
13 transaction. Unfortunately BB would not commit in time for  
14 this hearing.

15 So, as we sit here today, we are no longer seeking  
16 approval of the break-up fee and we have modified the proposed  
17 bidding procedures to reflect the fact that BB will not be the  
18 stalking horse bidder and we're moving forward as required with  
19 our DIP financing facility with the backup bid from a  
20 consortium of nationally recognized liquidation firms led by  
21 Hilco. The backup bid which is now the stalking horse bid does  
22 not require payment of any breakup fee. We filed the motion  
23 with the bidding procedures with the agency agreement with that  
24 backup bid attached and we filed an update to that agency  
25 agreement late last night. Also, we filed late last night

1 revised bidding procedures reflecting the fact that Najafi and  
2 BB Brands are no longer participating.

3 The bidding procedures that we proposed to the Court  
4 reflect that bids are now due on July 17th which is Sunday. We  
5 remain hopeful that we will actually get a going concern bid  
6 for the company. We've actually received an indication that BB  
7 might be interested in even participating in the auction but as  
8 of now the only bid we actually have is the consortium bid. As  
9 Your Honor undoubtedly recognized, we have received an  
10 onslaught of objections to the motion from our landlord  
11 community. We filed an omnibus reply to those objections and  
12 we believe and we continue to believe that most of those  
13 objections are directed to the actual sale as opposed to the  
14 bidding procedures before the Court today.

15 I'd like to make this very clear. We understand the  
16 landlord's concerns about the process.

17 THE COURT: Just hold on a second.

18 Counsel, you have to go to the back of the courtroom.  
19 Go ahead.

20 UNKNOWN SPEAKER: All right.

21 THE COURT: Go ahead, Mr. Glenn.

22 MR. GLENN: All right. We clearly understand the  
23 landlords' concerns about the process and we're sympathetic to  
24 that. The landlord community has been extremely cooperative  
25 with this debtor but as of now if the consortium bid prevails

1 most of these objections will be moot. If the consortium bid  
2 prevails and leases are actually assumed and assigned that will  
3 happen at the conclusion --

4 THE COURT: You mean, if a going concern bid is  
5 successful. The consortium bid is a liquidation bid.

6 MR. GLENN: Correct. I was saying if the consortium  
7 bid is successful those concerns will be moot.

8 THE COURT: Yeah.

9 MR. GLENN: Because assumptions and assignments will  
10 occur at the end of the process. If we are, in fact, fortunate  
11 enough to get a going concern bid we understand and fully  
12 recognize that we will provide adequate assurance information  
13 to all applicable landlords as soon as we have it. We will  
14 explore at that time with the Court the going concern bidder,  
15 the Committee, DIP lenders and landlords whether we can  
16 bifurcate the sale hearing of the two pieces, one as scheduled  
17 on the 21st, perhaps one a few days later to deal with adequate  
18 assurance issues. But as of now, we're sort of shooting in the  
19 dark because we don't have a going concern bid. We don't have  
20 a going concern bidder to negotiate those schedules with. We  
21 are here where we are and, you know, our belief is that the  
22 stark reality is that the landlords would be significantly  
23 better if we do obtain a going concern buyer and if the  
24 consortium does prevail and the company liquidates future rent  
25 payments obviously will be capped. If we can't assume and

1 assign the third parties and paid out in fractions on the  
2 dollar.

3 BB was prepared to inject 15 million dollars of cash  
4 equity into the transaction below trade creditors and landlord  
5 claims if it indeed elected to proceed as a going concern. It  
6 offered significant synergies and cost savings that in the  
7 debtor's view would have made BB a financially strong and  
8 viable company for the benefit of all constituents. If BB  
9 returns or another going concern bidder re-emerges, we will  
10 ensure that the buyer produces strong evidence of future  
11 liability. The debtors have been and will remain vigilant  
12 about this issue because we want to protect all stakeholder  
13 interests in this transaction.

14 That being said, by way of background we're here for,  
15 I believe, only one two forms of relief today: approval of the  
16 bidding procedures as modified and overnight, I should reflect  
17 for the record, we posted those on the docket late last night.  
18 We shared those with the Creditors' Committee and the DIP  
19 lenders. We received a number of comments, some of which are  
20 reflected on those filed bidding procedures, some of which we  
21 have this morning. Most of those are not substantive. They're  
22 clean-up and clarification-type comments. We're open right now  
23 if anyone has any other comments to those bidding procedures if  
24 we can get those and incorporate those, but no other parties  
25 have approached us with any other comments.

1 I should note for the record that the most  
2 substantive comment we received was from the Creditors'  
3 Committee and it's certainly worth mentioning. If the company  
4 is going to liquidate at this time we do not intend to sell  
5 intellectual property --

6 THE COURT: I saw the change --

7 MR. GLENN: -- at the auction.

8 THE COURT: -- where you carved out the intellectual  
9 property.

10 MR. GLENN: Instead, we'll consult with the  
11 Creditors' Committee on an appropriate marketing strategy for  
12 the IP assets. We agreed with the comment. The IP assets are  
13 highly specialized and should be marketed using a more targeted  
14 process to maximize value. There were other changes which we  
15 can share with Your Honor in the form of a black line later  
16 today. One is a change to the minimum cash that has to be  
17 provided by a participating bidder. The bidding procedures  
18 consistent with the BB bid reflected that a bidder had to put  
19 in 215.1 million dollars of cash in addition to other  
20 consideration that it might propose.

21 We have clarified that to reflect that it has to be  
22 215.1 million dollars plus an additional 15 million dollars of  
23 equivalent consideration which could be assumption of  
24 liabilities, I guess marketable securities and the like, and  
25 that's to address concerns that we have enough money to pay off

1 all administrative obligations at an absolute minimum in this  
2 case.

3 The other item that we've asked for approval today is  
4 the notice of assumption of executor contracts and unexpired  
5 leases. At the time we filed the sale motion we did not know  
6 what executor contracts BB wanted to assume, if any, or what  
7 unexpired leases BB wanted to assume, if any. To give the  
8 estate maximum flexibility we notified all landlords and all  
9 counter parties to executory contracts that their contract may  
10 be assumed in connection with this process. We identified our  
11 understanding of the cure amount and we invited parties to  
12 object to that amount so that, number one, we could get  
13 clarification for our buyers what obligations actually existed  
14 should they choose to assume those obligations. And, number  
15 two, we wanted to make sure that if the buyer so elected that  
16 all those contracts would, in fact, be available for assumption  
17 and assignment in connection with the sale process.

18 We have worked very diligently with every party who  
19 has contacted us to identify notice issues differences in cure  
20 amounts, concerns about the process. Most of those efforts  
21 have been successful. Unfortunately, many landlords have  
22 objected to the process but I think properly characterized  
23 those objections are geared specifically to the time of the  
24 process, not the content of the notice itself.

25 THE COURT: Well, there were objections from the

1 landlords at least in the form of the order that I have  
2 reviewed, not the black line that I got this morning. I didn't  
3 check that. You required that the landlords provide detail  
4 backup if they disagreed with respect to the cure amount and  
5 there were objections about what had to be provided.

6 MR. GLENN: We have worked with folks to resolve  
7 that, but in the case of landlords it's very simple. The rent  
8 is easily ascertainable by the debtor.

9 THE COURT: Well, you say that, but my experience has  
10 been that where there's additional rent and prorated taxes and  
11 things like that it is not a simple matter --

12 MR. GLENN: Well, that's correct. And maybe I  
13 spoke too simply about what rent entails. CAM, taxes, all  
14 those ancillary things where the landlord typically has the  
15 information bills us and we don't have that information, that's  
16 the kind of stuff we're looking for. There's not rocket  
17 science to that process and we will endeavor and we have  
18 endeavored to be completely reasonable about that. I -- at  
19 this point I don't want to devote too much brain damage to that  
20 part of the process if it's going to prove to be moot, but I  
21 think that in any claims process if you file a proof of claim  
22 you're generally required to include backup documentation to  
23 support that claim and we've viewed this as akin to a claims  
24 allowance process. And we don't mean to impose undue burdens  
25 on folks or if there are any issues with providing bulky backup

1 information and the like. We will obviously work with  
2 landlords to get that --

3 THE COURT: Look, in most of the 363 sales that I've  
4 approved in large cases the issues about assumption and  
5 assignment and cure amounts have usually been resolved deferred  
6 and you in part were going to do that where there were disputes  
7 about cure amounts what amounts would be held. And so some of  
8 the objections really didn't get a lot of traction with me  
9 because you can't -- there's no way you're going to in a big  
10 case with the number of creditors as here that you're going to  
11 resolve all of those issues before a sale is approved. The  
12 adequate assurance issues I think the landlords had some --  
13 much weightier arguments there. If anything it becomes more  
14 complicated now because you won't know whether you have a going  
15 concern bidder until the auction. And I know you said in your  
16 reply -- in the omnibus reply that you were working -- you had  
17 hoped to provide landlords with information this week with  
18 respect to BB. Well, that may be a moot issue for the moment.

19 I think that the suggestion about a bifurcated  
20 hearing if, in fact, you have a going concern bidder who is  
21 successful at the auction, the suggestion about a bifurcated  
22 hearing is a good one. I think that you may -- you and your  
23 colleagues may be working very hard as well as any successful  
24 bidders counsel working very hard to provide expedited  
25 discovery or expedited information that would relevant to the



1 adequate assurance issue if there is a going concern successful  
2 bidder. I will certainly work with all of you in scheduling if  
3 we have a bifurcated hearing in making sure that there's  
4 sufficient time for if there main dispute about adequate  
5 assurance that everybody will get their day in court or night  
6 in court because we'll do everything that's necessary to make  
7 sure that there's a timely hearing and you may be running  
8 multiple tracks of discovery if that becomes necessary to do  
9 that.

10 Particularly in the shopping center context I  
11 understand the changes to the statute may create a heavier  
12 burden for the debtor and any successful bidder with respect to  
13 adequate assurance issues, but just in any other expedited  
14 hearing there's no reason that can't be done very expeditiously  
15 and the Court will insist that that happen. So I don't see  
16 that as an insurmountable obstacle. I don't know I'm going to  
17 need to hear whether -- I've read all the objections that have  
18 been filed. Many of them are just adopting objections of other  
19 parties. And I don't know what is going to remain on the table  
20 for today in light of the changes that took place overnight  
21 about what it is you're asking for today.

22 MR. GLENN: Well, that sums up where the debtors are.  
23 I don't know if Your Honor wants to turn this over to the  
24 objectors or the Committee or other folks.

25 THE COURT: Well, let me hear from the Committee

1 next. Mr. Buechler.

2 MR. BUECHLER: Thank you, Your Honor. Bruce Buechler  
3 from Lowenstein Sandler on behalf of the Official Committee of  
4 Unsecured Creditors. The Committee has been working for weeks  
5 and weeks with BB Brands and its principal to express our  
6 concerns with regard to having a definitive going concern offer  
7 that would -- certain core number of stores, equity infusion,  
8 amounts or assets to be left over from unsecured creditors so  
9 that an asset purchase agreement would have a definitiveness as  
10 to what that going concern sale would look like as opposed to  
11 what was filed. And what we were repeatedly told through the  
12 course yesterday was their desire for complete optionality that  
13 would permit them to flip this business to a complete  
14 liquidation after the Court may have approved the sale at a  
15 future date currently scheduled for July 21, which is why the  
16 Committee put forth its objection. The Committee would  
17 encourage Mr. Najafi and BB Brands to come forward with a bid  
18 that met our concerns vis-à-vis what assurance of what a chain  
19 would look like, what its capitalization would look like, et  
20 cetera, so that we can see if that can still be put on the  
21 table for sale. If not, then unfortunately we are faced with  
22 the stark reality that there is nobody else currently waiting  
23 in the wings to step up with a going concern bid and,  
24 therefore, when we weighed the two as we set forth in our  
25 written composition yesterday -- and we thank the Court for

1 giving us more time to file that so we had more time to  
2 continue to talk with the various parties and constituencies --  
3 we understand that it would be a liquidation. But if there's  
4 going to be a liquidation, one controlled by the state along  
5 with the liquidators who would liquidate the inventory in the  
6 approximate 400 stores remaining in the chain, plus the  
7 furniture, fixtures and equipment therein would be beneficial  
8 and the right way to go, but there are other valuable assets  
9 and that's why we've expressed to the debtors and we've agreed  
10 that the amended bid procedures that any assets that are not  
11 included in the agency agreement whether they be intellectual  
12 property, real estate leases which we could look to assume and  
13 assign certain notes that the debtor owns, et cetera, can be  
14 shopped separately because while the Committee and the DIP  
15 lenders prior to the debtor sending out the notice of the sale  
16 that was sent out on June 30, 2011, and asked the debtors to  
17 include in that notice specifically inviting parties to make  
18 bids for those discrete assets the debtors opted not to.  
19 Therefore, we want to make clear in the bidding procedures,  
20 given that today is July 14th and there's a bid deadline of  
21 Sunday, July 17th, that those assets would be set up for a  
22 separate process absent someone coming in and making a going  
23 concern offer so that other parties who are interested in  
24 whether it's intellectual property, real estate leases or other  
25 assets here that are not covered by the agency agreement as

1 amended with the liquidator will know that there'll be a  
2 process set up in the next week or two to tee up a separate  
3 sale process for those assets for the benefit of the estate.  
4 But as I said, the Committee would encourage BB Brands and its  
5 principal to consider coming forward by Sunday's bid deadline  
6 with a proposal that would meet the concerns of the Creditors'  
7 Committee.

8 With that, Your Honor, we had a few minor tweaks that  
9 we spoke to debtor's counsel with earlier right before the  
10 hearing on the amended bid procedures and orders. We did  
11 receive that late last night. We were on the phone with  
12 debtor's counsel until, I don't know, about 10:30 last night  
13 going over certain changes and with just some minor tweaks so  
14 otherwise the Committee is in accord with the bid procedures  
15 and would ask the Court to approve of the alternative bid by  
16 the group of liquidators led by Hilco as a stalking horse bid  
17 without any breakup fee. And the BB Brands offer is currently  
18 withdrawn, not on the table. As I said and we said in our  
19 response if they can deal with the issues that we have so we  
20 know exactly what Borders might look like the day after a sale  
21 were consummated by this Court maybe this is a deal that can be  
22 worked out. If not, we understand the stark reality of the  
23 situation. Unless Your Honor has any questions --

24 THE COURT: Let me make sure --

25 MR. BUECHLER: -- that's the Committee's position in

1 that regard.

2 THE COURT: -- I understand that subject to the  
3 tweaks that you've referred to, the black lines, the latest  
4 change that I haven't seen, I take it then that the Committee  
5 withdraws the objection that it filed yesterday and supports  
6 the debtor's motion for approval of bid procedures and  
7 designation of Hilco and the others as the stalking horse bid.  
8 Am I correct?

9 MR. BUECHLER: I'm not sure I'd use the word  
10 "withdrawn." I'd say it's probably a moot objection because of  
11 the change in circumstances but it gets us to the same place.  
12 We support the modified bid procedures with the liquidating  
13 bids --

14 THE COURT: Well, I don't have to rule on your  
15 objection.

16 MR. BUECHLER: No, Your Honor. We're not asking you  
17 to rule because effectively to a certain degree we got what we  
18 wanted. Maybe people will disagree if that was the right  
19 thing. We understand that, but the Committee spent a lot of  
20 time among itself discussing this issue and the agreement with  
21 complete opt -- I'll just say this. No, Your Honor, you do not  
22 need to rule on our objection.

23 THE COURT: Okay. Let me -- and I don't know whether  
24 Mr. Glenn or Mr. Buechler. I just want to understand. One of  
25 the things, Mr. Buechler, in your objection was that you

1 wanted -- that bids could be made on different parts of the  
2 country, some mix and match. How is this auction going to go  
3 forward as -- assuming I approve the bid procedures and the new  
4 proposal for the stalking horse, how do you all envision the  
5 auction going forward?

6 MR. BUECHLER: With the amendment as -- excuse me.  
7 With the modifications as set forth in the black lines that  
8 were submitted late last night subject to the tweaks the  
9 auction would go forward as follows, I think. First, let's see  
10 if somebody puts in a bid that would top the existing bid of  
11 the amended agency agreement with the liquidators. If there is  
12 and it was a going concern bid then we would look at what the  
13 terms and conditions are. Then the Committee and the debtors  
14 [unintelligible] would have to determine what is the highest  
15 and best for that.

16 If there is no going concern bid put in then is there  
17 another liquidation bid and, again, on that basis the  
18 liquidation bid would only be looking at the assets subject to  
19 the agency agreement which are essentially inventory which are  
20 the books in the approximately 400, 500 -- five, six stores,  
21 furniture, fixtures and equipment and certain inventory that  
22 would get moved from the distribution centers to the stores for  
23 sale and the amendment would -- makes clear in the bid  
24 procedures that all other assets of the debtors, intellectual  
25 property, real estate leases, those would be dealt with in a

1 separate sale process that the debtor would separately file a  
2 motion for. We haven't discussed timing -- probably in the  
3 next several weeks -- to tee up a separate sale process with  
4 separate notice for those assets so that people could  
5 individually bid on whether you want two leases, ten leases,  
6 you want to buy the customer list, you want to buy the name  
7 board, et cetera. That's how we'll proceed.

8 Those other assets, intellectual property,  
9 receivables, the ability to assume and assign leases could only  
10 be sold at the auction scheduled for next Tuesday if there was  
11 a true going concern -- sale concern offer on the table by the bid  
12 deadline. I hope that clarifies the Court's question.

13 THE COURT: All right. Mr. Glenn, do you have a  
14 different take on that?

15 MR. GLENN: Mr. Buechler is correct, Your Honor. And  
16 I'd like to put this into some perspective. While we don't  
17 have any bids in hand, we have received some other inquiries  
18 and the way the Najafi bid was set up given its toggle feature  
19 it seemed to create a dynamic in the market for folks who are  
20 interested in limited groups of assets to team up with the  
21 liquidators and we expect that there's a good possibility that  
22 that will happen. So Barnes and Noble gave us an offer for  
23 certain assets. They could come in and team up with a  
24 liquidator and potentially acquire those assets, so we expect  
25 those strategic partnerships potentially to develop as

1 competing bidders, but barring a going concern bid Mr. Buechler  
2 is correct. Those assets will be carved out and not sold. I  
3 would say so it's absolutely clear that other than that anyone  
4 is welcome to come forward and put in a bid for any of our  
5 assets, all of our assets, whatever they want to put forward.  
6 The debtors will consider anything.

7 THE COURT: In light of the change that have taken  
8 place, and I raised this at a prior hearing, assuming you get  
9 other bidders for various parts of the company it may be more  
10 complicated in evaluating what are the highest and best offers.  
11 You seem to have envisioned that the auction would all take  
12 place within one day. And I'm not sure that that's realistic  
13 at this point. I guess you'll just have to wait and see.

14 MR. GLENN: I think that's correct.

15 THE COURT: So assuming that I go ahead and approve  
16 these revised bid procedures please keep the Court informed  
17 if -- and I know you're under a time constraint because of the  
18 DIP but I guess you -- I'm sure you're in touch with the DIP  
19 lenders as well -- if there are adjustments to the schedule  
20 that need to be made, I've already commented that if necessary  
21 I'm certainly open to considering a bifurcated hearing and  
22 still get things done within the time frame that you're  
23 operating under for trying to close a transaction. The --  
24 well, I think we'll just wait a see what happens with the  
25 auction.



1           Let me go through the list of objections, Mr.  
2 Buechler.

3           MR. BUECHLER: Well, Your Honor, the debtor has also  
4 filed last night the agency agreement that's amended. Just for  
5 the record, we do have as the Committee the few tweaks that we  
6 spoke to debtor's counsel about so there'll be a few minor  
7 tweaks to the amended agency agreement.

8           THE COURT: Okay.

9           MR. BUECHLER: Just to comply with everything so I  
10 just wanted to put that on the record so Your Honor was aware.

11          THE COURT: Okay.

12          MR. BUECHLER: Thank you.

13          THE COURT: Let me go through -- there are this very  
14 long list of objections and I want to give -- I want to know  
15 what the status of those objections are today so I'm just going  
16 to go through the list. I'm going off the agenda that's been  
17 provided for the hearing today. The first objection is the  
18 response and limited objection to creditor Collin (ph.) County  
19 Tax Assessor. Is anyone here representing the Collin County  
20 Tax Assessor in court or on the phone.

21          MR. CLARK: Your Honor, this is Robert Clark,  
22 Assistant Douglas County Attorney. That's Douglas County,  
23 Colorado. Our objections are the same as Collins County. We  
24 piggybacked on that and the debtor's response was that that's  
25 something that maybe should be heard at the next hearing. As

1 long as we get heard at one of the hearings, I'd certainly  
2 leave it up to the Court as to when they want to hear me.

3 THE COURT: Okay. Tell me again. You represent who?

4 MR. CLARK: Douglas County, Colorado.

5 THE COURT: Okay.

6 MR. CLARK: But we did a -- our objections are  
7 identical except for the names of the parties to the ones  
8 represented by the Texas County.

9 THE COURT: I know, but I want to make sure that I've  
10 given each objector an opportunity.

11 Mr. Glenn, which letter item on the agenda is Collin  
12 County? Is -- no, Collin County is a -- is Colorado. Well,  
13 let me see. Is there anyone on the phone --

14 MR. GLENN: It's letter M?

15 THE COURT: Letter M. Okay.

16 MR. GLENN: Docket 110 (ph.), Your Honor.

17 THE COURT: Okay. All right. Douglas County is  
18 letter M. Okay. And as the debtor suggested that would be  
19 reserved for a sale hearing. But is there anyone on the  
20 telephone or in the courtroom for Collin Camp (ph.)? All  
21 right. No one present.

22 Masteridge (ph.), which is on page 4 of the agenda B.  
23 Is there anyone present for Masteridge and a list of others,  
24 but Masteridge is the lead party.

25 MR. POLLACK: Good morning, Your Honor. Dustin

1 Branch is here for Masteridge from Katten Muchin. I am under  
2 C, David Pollack for Centro and others, but we had the same  
3 position on an issue and we thought we would bring it up at  
4 this point.

5 THE COURT: Okay.

6 MR. POLLACK: And that is we have not yet seen the  
7 procedures. We know as of the revised procedures from last  
8 night. We know of the changes. Those were communicated to us  
9 by Mr. Glenn and Mr. Gleit yesterday early evening. We still  
10 have a couple of concerns but rather than try to negotiate here  
11 and using Your Honor as an intermediary, we thought it might be  
12 best if the very few objections that are left to timing and  
13 what needs to be filed if we took a short break, took a look at  
14 those, discussed them with Mr. Glenn and hopefully in a very  
15 short period of time would not need to go through any of these  
16 objections with Your Honor. I am on objection C. That is  
17 Centro and the others and Mr. Branch is here on objection B.

18 THE COURT: Remind me. I read all these objections,  
19 but what's the gist of your objection?

20 MR. POLLACK: Well, with the changes right now our  
21 objections go to timing of filing of the objections and really  
22 what has to be filed immediately. We don't have a going  
23 concern bid, so the whole issue of cure amounts, what has to be  
24 shown and when probably is moot, doesn't need to be filed this  
25 afternoon at 4:00 with the changes here with the liquidators in

1 the courtroom. We have all sorts of objections to the GOB  
2 sales, but Mr. Malfatanno (ph.) is here from Hilco and we have  
3 all done agreements with him in the past. We don't think we're  
4 going to have any problems. We can really cut this down to  
5 really what needs to be filed and when if we can have a short  
6 discussion with Mr. Glenn. That's really where we are. Right  
7 now we've got a 4:00 deadline today. Most of us have prepared  
8 things in anticipation but at least half of our objections no  
9 longer are relevant to what appears to be going forward at the  
10 moment. And perhaps a discussion with Mr. Glenn and others  
11 would resolve that.

12 THE COURT: Well, other than being required to  
13 indicate what you believe the cure amount is and providing some  
14 support for it the thrust of the objections was over adequate  
15 assurance which is perhaps a moot issue at the moment.

16 MR. POLLACK: Not so much adequate assurance, Your  
17 Honor, as a blind filing of an objection to --

18 THE COURT: Well, come on. You know, I mean, I  
19 conduct -- 363 sales happen a lot. I've done other retailers.  
20 You've got to put it -- you know, it's not a lot of work to put  
21 in this objection. You can reserve -- you can put in your form  
22 objection and reserve issues. You've complied. I don't  
23 understand what the burden is for you.

24 MR. POLLACK: But those done. But, again --

25 THE COURT: So what's the burden?

1 MR. POLLACK: The burden is why are we filing all  
2 this information when it doesn't matter right now --

3 THE COURT: We're going forward with the sale process  
4 and hopefully there's going to be an auction with a going  
5 concern bidder and there are going to be open issues about  
6 adequate assurance. I understand that but I don't understand  
7 what the problem is for the landlords to say what you believe  
8 the cure amounts are, provide some support for it, and get your  
9 objection in. I mean, it's not -- you've essentially stated  
10 your objection already.

11 MR. POLLACK: Well, we haven't stated our objection  
12 to the sale. Ours are just procedural. We have a separate  
13 objection. It's ready to be filed, Your Honor.

14 THE COURT: So what's the problem?

15 MR. POLLACK: The problem is we're filing something  
16 we're just going to have to file it again once they -- if they  
17 identify a bidder someplace down the line.

18 THE COURT: Why are you going to have to file it  
19 again?

20 MR. POLLACK: Because everything can change. We  
21 don't know who the bidder is. The circumstances will change.  
22 The leases that are going to be included are going to change.  
23 The cure numbers change almost daily because things accrue,  
24 things are billed. We're filing cure objections today. I have  
25 numbers in a chart. They're all set forth and I told Mr. Glenn

1 before I'm happy to provide them so they know if there's some  
2 large delta that they've got to investigate.

3 THE COURT: Well, I'm going to let you -- I will at  
4 some point take a recess and let you go talk to Mr. Glenn, see  
5 if you can work these issues out. I'm very unsympathetic to a  
6 lot of the arguments you made in your objections -- that the  
7 landlords have made in their objections. It is not a big deal  
8 to have to indicate what you believe the cure amount are -- the  
9 cure amounts are and indicate some support for it. And with  
10 respect to the adequate assurance I've already indicated I'm  
11 prepared to do a bifurcated hearing if you have a going concern  
12 bidder that, yes, I understand. You're going to be entitled to  
13 get and the debtor has essentially acknowledged you're entitled  
14 to get information to determine the adequate assurance issues.  
15 Okay. That's one category.

16 You had -- I don't know whether it were yours --  
17 there were a lot of objections about the notice and the debtor  
18 responded how they've tried to give everybody notice. Your  
19 clients, you're here. Your --

20 MR. POLLACK: We have no issue there.

21 THE COURT: -- clients are being represented. But  
22 I'm making it very clear, I don't have a lot of sympathy  
23 about -- I mean, we're not going to put all of this off. Okay.  
24 This sale process is moving forward and, yes, facts may change  
25 over the weekend as to who the bidders are, but, you know, in a

1 bidder determining whether there -- whether they really are  
2 prepared to do a going concern bid it may well hinge on what  
3 the cure amounts are and are there disputes between the debtor  
4 and the landlords as to what the cure amounts are. And, yes,  
5 they change over time but you said you've got your schedule  
6 prepared already. If anything, it enhances the likelihood of a  
7 going concern bid if the potential bidders know that if they  
8 want to keep the store open in your client's shopping centers  
9 here's what they say the cure amounts are. So I don't have a  
10 lot of sympathy for a lot of the arguments you're making. Just  
11 buy your objections. Reserve on those things that, you know,  
12 where the facts may change because you don't know who the  
13 potential bidder is.

14 MR. POLLACK: Understood. Thank you, Your Honor.

15 THE COURT: Okay. Anybody from Maystrich (ph.) want  
16 to be heard?

17 MR. BRANCH: Good morning, Your Honor. Dustin  
18 Branch, Katten, Muchin Rosenman LLP on behalf of Maystrich and  
19 numerous other landlords. Same points. We think a short  
20 recess to discuss kind of the going forward schedule. We think  
21 a bifurcated hearing makes sense. You know, to the extent we  
22 had a liquidation bid obviously the timing issue is moot. To  
23 the extent we have landlord's consent to an assignment to  
24 whoever that party may be, again, it's moot. But to the extent  
25 that there are contested issues, you know, there has to be at

1 least some expedited time for him to take care of that. And if  
2 we can work that out with Mr. Glenn we're happy to do that  
3 during a recess. And same position as Mr. Pollack. I can get  
4 a cure objection on file today. I have the numbers. I -- you  
5 know, I can itemize them out and as I have mentioned to them  
6 previously we're happy to exchange information to the extent we  
7 have it. You know, a lot of the rent, additional rent issues  
8 aren't billed monthly. It's just part of the rent they pay  
9 under the lease. There's really nothing to provide. But  
10 certainly to the extent those documents exists, you know,  
11 informally we can exchange those in advance of any hearing but  
12 we can get them the numbers. With respect to filing a sales  
13 objection today, you know, again, it's just going to be  
14 reservation of rights but if that's what has to be done, we'll  
15 do that as well.

16 THE COURT: Okay.

17 MR. BRANCH: Thank you, Your Honor.

18 THE COURT: Mr. Buechler, you want to be heard.

19 MR. BUECHLER: Just one comment. My discussions with  
20 Mr. Glenn when we discussed -- and I believe the debtors agreed  
21 in order to avoid some of the ambiguity that the objection  
22 deadline is this afternoon -- rolling the objection deadline  
23 until Monday afternoon at 4:00 so that they'll have a little  
24 more time to see what happens as well as to hear what happened  
25 after this hearing to avoid the conundrum that we may only walk



1 out of here in another hour or whatever time it is and be left  
2 to rush to get it done.

3 So to the extent that the Court and some of the  
4 landlords' representatives a little opportunity I believe that  
5 we have agreed to all the objection deadline till Monday of  
6 course subject to Your Honor's [unintelligible].

7 THE COURT: All right. Let me ask. Are there any  
8 landlords' counsel present in court or on the phone who have  
9 different issues than the ones that have been raised so far  
10 about having to provide cure amounts? Whether the deadline is  
11 today or Monday, I'll let you try and work that out. Obviously  
12 if the parties agree to move that date until Monday that's fine  
13 with the Court. Are there other issues that anybody wants to  
14 ra -- landlords want to raise?

15 MR. TEPPER: Your Honor, this is Robert D. Tepper on  
16 behalf of Rifflike Square (ph.), Andstate (ph.) and Randolph,  
17 two of the landlords in the Chicago area.

18 THE COURT: Hang on.

19 MR. TEPPER: We join in the --

20 THE COURT: Just a second. Mr. Tepper, tell me which  
21 agenda item it is.

22 MR. TEPPER: Your Honor, it's agenda item R as in  
23 Romeo.

24 THE COURT: Okay. Just give me a second and I'll --  
25 all right. Tell me your name again.

1 MR. TEPPER: Robert D. Tepper, T-E-P-P-E-R, Your  
2 Honor.

3 THE COURT: Okay. Go ahead, Mr. Tepper.

4 MR. TEPPER: Thank you very much, Judge. We join in  
5 the concerns and the objections of the other landlords. We  
6 have the same objections. The only thing I would request and  
7 sign -- participating by telephone if there is going to be a  
8 discussion if there's some way to be included we too have a  
9 concern with going-out-of-business sale procedures and if  
10 there's going to be some side agreement to work through that  
11 we'd like to participate.

12 THE COURT: Well, I would just say in other cases  
13 where I've approved going out of business sales I understand  
14 that there are issues under lease provisions or under local  
15 laws and I have to say that whenever this has come up I've  
16 always seen it worked out. I don't think at the end of the day  
17 I've had to rule on -- I think maybe the City of New York at  
18 one point had some issues in one of my cases that it got worked  
19 out as well ultimately. So those issues about if I approve --  
20 if the successful bidder is a liquidation I don't think those  
21 issues about going out of business sales and restrictions on  
22 signage and the usual kinds of issues that come up I don't  
23 believe -- those I think can all be reserved. Do you agree,  
24 Mr. Glenn?

25 MR. GLENN: That's correct, Your Honor.

1 THE COURT: Okay.

2 MR. GLENN: I should say that's a sale hearing.

3 THE COURT: That's a sale hearing issue and I assume  
4 that each of you that have those kinds of objections will in  
5 all likelihood work those issues out with the debtor and if not  
6 the Court will hear it by telephone or in person to resolve  
7 those remaining disputes. Does that satisfy you, Mr. Tepper?

8 MR. TEPPER: It does. Thank you very much, Your  
9 Honor.

10 THE COURT: Okay.

11 MR. SAYDAH: Your Honor, for the record, Gilbert  
12 Saydah of Kelly Drye & Warren on behalf of a variety of  
13 landlords, Your Honor: Developers Diversified, Regency,  
14 National Retail Properties, Jones Langley Lasalle (ph.),  
15 Gregory Greenfield, Equity One, Garden Homes, Weingarten,  
16 Shottenstein (ph.) Property Group, and Don E. Schriber (ph.).

17 THE COURT: Okay. Do you know which agenda item?

18 MR. SAYDAH: I do, Your Honor. We are item L.

19 THE COURT: Okay.

20 MR. SAYDAH: It says Developers Diversified, et al.

21 THE COURT: Yep.

22 MR. SAYDAH: Your Honor, also we are co-counsel with  
23 Nancy Hodgkiss (ph.) who filed a joinder last night at the  
24 docket item 1, 2, 3, 4 which also joins in the objection with  
25 respect to Don E. Schriber. I'd just note that on the record.

1           Your Honor, with respect to the issues that have been  
2 previously discussed by Mr. Branch and Mr. Pollack, I'm not  
3 going to reiterate those. We agree with those. The issue that  
4 I stand to address is Your Honor's point that you're open to  
5 the possibility of a bifurcated hearing. I think that at  
6 today's hearing there needs to be much more clarity with  
7 respect to that issue and if there is a going concern bid there  
8 has to be a bifurcated hearing. It just -- it can't be an  
9 option. It has to -- going concern bidders have to understand  
10 that they're not going to be getting leases. We understand the  
11 adequate assurance issues can be handled on an expedited basis.  
12 Your Honor had reached out to counsel for Najafi who we've  
13 worked with in the past, a week ago, to try and address the  
14 issues and give him some idea of what we were looking for to  
15 expedite this process. We're not looking to hold it up, but I  
16 think in order to resolve a lot of these issues there has to be  
17 clarity on the record and in the order that to the extent  
18 there's --

19           THE COURT: Well, let me be clear, okay? I'm not  
20 scheduling another hearing today, but what I'm saying is the  
21 landlords are entitled to sufficient information to be able to  
22 press their objections if they're going to -- or resolve their  
23 objections about adequate assurance. And if there's an auction  
24 this weekend and there's a sale hearing next week, it's clear  
25 that's all not going to get resolved by the date of the sale

1 hearing. And as I've indicated I'm open to doing another  
2 hearing. I'm not scheduling it now. It's going to depend on  
3 what the facts and circumstances are when you see what happens  
4 at the auction, but you'll get your chance. You'll all be  
5 working hard to get whatever information you need and we'll  
6 take it from there.

7 MR. SAYDAH: Very good, Your Honor.

8 THE COURT: So I don't know. Is there some other  
9 issue that you -- I don't know how if I can make it any clearer  
10 than that.

11 MR. SAYDAH: Your Honor, I'm just curious why there's  
12 a hesitation to schedule a placeholder hearing so we have --

13 THE COURT: Well, I've got a busy calendar, okay? I  
14 will deal with it when it arises, okay?

15 MR. SAYDAH: Understood, Your Honor.

16 THE COURT: Right now all we have is one bid and it's  
17 a liquidation bid and this is not an issue for today.

18 MR. SAYDAH: Understood then, Your Honor.

19 THE COURT: Okay. Anybody else who wants to be  
20 heard?

21 MR. SCHWED: Good morning, Your Honor. Greg Schwed  
22 of Loeb & Loeb representing a number of landlords and lenders  
23 with leases as collateral.

24 THE COURT: Do you know where you are on the agenda?

25 MR. SCHWED: Well, we're not on the agenda because we

1 followed the procedure of filing before --

2 THE COURT: Okay. Right.

3 MR. SCHWED: -- today. The only new issue and I  
4 think it's really just a wordsmithing one and Your Honor  
5 averted to it is that if you look through the welter of  
6 documents and the asset purchase agreements and the various  
7 orders it's not entirely clear that those items that are  
8 typically billed in arrears, taxes, that sort of stuff, will be  
9 picked up by the ultimate assignee. I think that it's easily  
10 solvable just with a paragraph in the order that Your  
11 Honor will be presented on approving the bid procedures. We're  
12 certainly happy to work with Mr. Glenn and anyone else to just  
13 write out that to make it clear that to the extent there are  
14 deferred amounts, reconciliations, the kinds of things that one  
15 typically finds in a sophisticated commercial lease that it  
16 doesn't fall between the cracks. That's where that --

17 THE COURT: Why isn't that a sale hearing issue that  
18 when I'm presented with a proposed asset purchase agreement for  
19 approval that would typically be dealt with in language in an  
20 APA where if it's the buyer who's assuming the obligation for  
21 all deferred tax liabilities it would be dealt with there, so  
22 the clarity would come when the Court is presented with an APA  
23 and if it's not in there then in the sale order itself that  
24 you'd get the clarity about whose obligated to make those  
25 payments?

1 MR. SCHWED: That's fine, Your Honor, as a  
2 resolution. I mean, we formulated our objection.

3 THE COURT: We don't have an APA with a going concern  
4 bidder and that, it seems to me, is where it comes in. I'm not  
5 going to rule about what should or shouldn't be in an asset  
6 purchase agreement. Bidders may treat it differently. It's a  
7 fair point you raise and it will undoubtedly be a sale issue,  
8 you know -- an issue for the sale hearing.

9 MR. SCHWED: That certainly sounds like a perfectly  
10 fine resolution. We just wanted to make it clear that we have  
11 an opportunity to object as we did with --

12 THE COURT: I thought the debtor really dealt with  
13 this in its omnibus reply. It indicated that when they thought  
14 BB was going to be the stalking horse bidder that it dealt with  
15 the issue -- it addressed the issue of assumption of  
16 liabilities but, you know, it's a sale issue. It will get  
17 heard. You'll raise it, I'm sure, and others will.

18 MR. SCHWED: That's right, so it's probably moot. We  
19 didn't think of that.

20 THE COURT: Do you agree, Mr. Glenn, it's a sale  
21 issue?

22 MR. GLENN: Yes, I do, Your Honor.

23 THE COURT: Okay. All right. Anybody else want to  
24 be heard?

25 MR. SCHWED: Thank you, Your Honor.

1 THE COURT: Anybody on the telephone want to be heard  
2 for the landlord? All right. Let's take a 15-minute recess,  
3 see, Mr. Glenn, where you can work out some of these other  
4 additional scheduling issues, okay?

5 MR. GLENN: Thank you, Your Honor.

6 THE COURT: If you need more time than that, come  
7 knock on chambers door before I come back.

8 [Off the record.]

9 THE COURT: Mr. Glenn?

10 MR. GLENN: Yes, Your Honor. We used the time given  
11 to us profitably. All the parties that approached me have --  
12 we've reached accommodations to deal with those objections. If  
13 any other party who's on the phone has any issue about the sale  
14 process, any of the deadlines, providing information I invite  
15 them to call me personally, but as we sit here today I believe  
16 that the bidding procedures and the bidding procedures order  
17 have been substantially agreed to by all parties in interest  
18 that have contacted us, primarily the Creditors' Committee, the  
19 DIP lenders, and the landlords in attendance now. So I'm not  
20 sure --

21 THE COURT: What did you do with the objection  
22 deadline?

23 MR. GLENN: I'm happy to move that to Monday for all  
24 parties, Your Honor. And if we get into a situation where we  
25 are clear Sunday night/Monday morning that there are no going



1 concern bidders and that the assumption and assignment issues  
2 we've been talking about appear to be moot, we will put a  
3 notice on the docket so that everyone can go pencils down on  
4 those issues.

5 THE COURT: Mr. Buechler?

6 MR. BUECHLER: Bid procedures as revised we require  
7 the debtors by July 18th to file such notice of [inaudible] at  
8 the auction so that therefore public notice system is  
9 available.

10 THE COURT: Okay. Go ahead, Mr. Glenn. Excuse me.  
11 Go ahead.

12 MR. GLENN: So with that, I think that all the  
13 objections have now been resolved is either sale objections  
14 that are preserved and the bidding procedures objections, I  
15 believe, other than any concerns Your Honor might have, have  
16 also been resolved.

17 THE COURT: Well, let me ask anyone on the phone or  
18 present in court whether you -- if you disagree with the  
19 statement that Mr. Glenn just made because I had a very long  
20 list of objections and I want to make sure that they've either  
21 been resolved consensually or if necessary the Court rules on  
22 them. Is there anybody representing any of the objectors who  
23 wishes to be heard? All right.

24 MR. WELLS: Your Honor?

25 THE COURT: Yes.

1 MR. WELLS: This is Joseph Wells with Frost Brown  
2 Todd on behalf of Glensure Properties Limited Partnership and  
3 Macy's Retail Holdings which are landlords of the debtors. As  
4 previously discussed it appears that many of the issues that we  
5 raised in the limited objection may no longer be applicable.  
6 Our only concern, I believe that other parties raised this  
7 earlier before the recess, is that we would be afforded similar  
8 treatment to those other landlords and parties that were able  
9 to discuss the [unintelligible] resolution of the issue with  
10 the debtors during the recess and that we would be privy to  
11 what was discussed as a resolution.

12 THE COURT: I don't understand where -- I -- okay.  
13 What's your objection? If you have an objection that's not  
14 resolved I'm going to go ahead and rule on it.

15 MR. WELLS: Your Honor, many of our objections have  
16 been met. Main one which may not be --

17 THE COURT: Mr. Wells, just tell me what objections  
18 remain. I don't want to know what's already been resolved. I  
19 want to know if there are objections that remain and I need to  
20 rule, I'll do that. If you have an objection that remains tell  
21 me what that is.

22 MR. WELLS: Your Honor, some of the objections that  
23 we have would be applicable with the sale hearing with  
24 potential store closing sales and it would all depend on  
25 whether or not there was a going concern. If there is a going

1 concern sale, Your Honor, and that's why I hate to get into  
2 this and take up your time on this, if there is a going concern  
3 sale we still have some concern regarding notice and advance  
4 objection deadlines with respect to that but that may be a moot  
5 point and may --

6 THE COURT: Mr. Wells, maybe you're not hearing me.  
7 I have before me a motion to approve bid procedures and agency  
8 agreement I'm being asked to approve. There are -- and this  
9 provides for a liquidation, not a going concern sale. Okay.  
10 There is a sale hearing on the Court's calendar now. I don't  
11 want to know what objections you may have; I want to know what  
12 objections do you have to the motion presently pending before  
13 the Court. Can I be any clearer about that?

14 MR. WELLS: Your Honor, then as presently -- what's  
15 presently before the Court -- as I understand what's presently  
16 before the Court I do not believe we have any further  
17 objections, Your Honor.

18 THE COURT: Thank you, Mr. Wells.

19 Anybody else wish to be heard?

20 MR. MCCULLOUGH: Your Honor, this is Hugh McCullough  
21 with Davis Wright Tremaine appearing on behalf of Seattle's  
22 Best Coffee. I wanted to clarify a statement that Mr. Glenn  
23 made. He stated that the objection deadline would be moved to  
24 Monday for all parties. I wanted to make sure that that meant  
25 that all potential objections to the sale would move to Monday

1 and that a notice would be going out today so that Seattle's  
2 Best would not need to file its objection today to the extent  
3 that it objects to the sale.

4 MR. GLENN: The answer to that is everyone's  
5 objection to the sale hearing formerly that objection was for  
6 today has now been moved to Monday at 4:00 p.m.

7 THE COURT: Are you satisfied with that answer?

8 MR. MCCULLOUGH: Yes. Thank you, Your Honor.

9 THE COURT: Okay. Anybody else wish to be heard?  
10 All right. Pending before the Court is the motion of the  
11 debtors to approve bid procedures and the agency agreement.  
12 All of the objections that have been asserted to the motion as  
13 filed, which obviously contemplated stalking horse bid, have  
14 either been resolved consensually and some have been deferred  
15 as sale hearing issues. Consequently, the Court approves the  
16 debtor's motion to approve the bid procedures. I understand  
17 there will be some tweaking going on and a corrected copy will  
18 be provided to the Court I assume today at some point, tomorrow  
19 morning at the latest, and that will be entered.

20 Okay. Anything else for today, Mr. Glenn?

21 MR. GLENN: That's it, Your Honor.

22 THE COURT: Okay. I would just ask that -- well, I  
23 guess, Mr. Buechler, you indicated under the revised bid  
24 procedures they'll have to file a notice to indicate whether --  
25 if there is a going concern bidder. Do I have that correct?

1 MR. BUECHLER: The revised bid procedures require  
2 that if there is no other bids the debtor will file on Monday a  
3 notice there's no other bids. If there is a bid then the  
4 debtor files a notice there's an auction scheduled for Tuesday.  
5 I believe Mr. Glenn's office is where it's scheduled for.

6 THE COURT: Okay.

7 MR. BUECHLER: We'll proceed on Tuesday and then  
8 we'll have to advise the Court as to the --

9 THE COURT: All right. Just keep the Court advised  
10 of what happens with the outcome.

11 MR. BUECHLER: Certainly.

12 THE COURT: And I will be here all next week so if we  
13 have to have any emergency hearings that will happen in court  
14 or by telephone as necessary.

15 MR. BUECHLER: And the revised agency agreement will  
16 be cleaned up and also filed --

17 THE COURT: Okay.

18 MR. BUECHLER: -- [inaudible] shortly.

19 THE COURT: Yeah. I understand that. Okay. Thank  
20 you, everybody.

21 MR. BUECHLER: Thank you, Judge.

22 THE COURT: We're adjourned.

23 (Whereupon these proceedings were concluded at 11:26 AM)

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

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

**Gershom  
Benayahu**

Digitally signed by Gershom Benayahu  
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**Date: July 15, 2011**