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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 21, 2011
11:36 AM

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

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MOTION to Approve/Debtor's Motion for Order Pursuant to Section 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto, (II) Approving Sale Procedures and Break-Up Fee and (III) Granting Related Relief (Doc. #1130)

Marked Up Documents: 1130, 1135, 1139, 1140, 1141, 1163, 1165, 1166, 1167, 1169, 1170, 1171, 1172, 1173, 1177, 1178, 1179, 1180, 1182, 1184, 1186, 1187, 1188, 1189, 1191, 1194, 1195, 1198, 1201, 1204, 1207, 1209, 1210, 1216, 1217, 1218, 1219, 1222, 1224, 1225, 1227, 1229, 1230, 1231, 1234, 1235, 1236, 1238, 1239, 1240, 1241, 1243, 1245, 1246, 1249, 1250, 1252, 1253, 1255, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1272, 1276, 1279, 1280, 1281, 1282, 1283, 1284, 1287, 1294, 1295, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1308, 1311, 1313, 1315, 1316, 1317, 1319, 1320, 1321, 1322, 1323, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1333, 1334, 1335, 1337, 1339, 1340, 1352, 1356, 1374

Transcribed by: Sara Davis

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P R O C E E D I N G S

THE COURT: Please be seated. Mr. Glenn?

MR. GLENN: Good morning, Your Honor. Kasowitz, Benson, Torres & Friedman on behalf of the debtors and debtors-in-possession. Your Honor, the only matter on today's calendar is docket number 1130 which we've entitled as the sale hearing motion. All the other matters were either adjourned until the next omnibus hearing in August or in the case of the source influent (sic) motion that has been withdrawn by the debtors.

Your Honor, this is a very bittersweet day in the history of this company. While we are here as fiduciaries of this estate, with what we believe to be a transaction that maximizes value under the circumstances, we obviously didn't get to where we wanted to be, which was a full going concern transaction along the lines of what we had proposed with Najafi. There are a lot of sad people around the country, a lot of sadness at the corporate office and a lot of people are very scared about the prospect of losing a major bookseller. Let's just hope that people keep reading books even if this company is not surviving.

There has been one late breaking development that I'm going to get to in a moment. But just for the record, July 17th was the deadline for submission of qualified bids. The debtors received no such qualified bids and accordingly, we filed a notice of cancellation of the auction in this case,

1 scheduled for July 19th. However, in the notice of
2 cancellation of the auction, we included a paragraph that we
3 reserved the right to seek approval of approximately thirty of
4 our stores to a potential bidder that emerged late over the
5 weekend and that is Books-A-Million. Books-A-Million has
6 provided us with a series of letters of intent and the
7 negotiations with respect to those letters of intent continued
8 up into just a few minutes ago and as I will indicate, those
9 negotiations will continue.

10 The predicate of today's hearing is a motion to allow
11 the debtor to enter into an agency agreement, very similar to
12 the one that it entered into along the lines of the first round
13 of store closings in this case. The general concept that
14 Books-A-Million approached us with was that they would take
15 thirty of those stores and only those thirty stores -- they
16 would not be taking corporate overhead like you would in a
17 normal going concern-type transaction. They've identified
18 those stores; I have a list of those thirty stores which I can
19 read into the record or provide to any interested party.

20 The offer is a -- is one that the debtors would like
21 to pursue. It would allow the company to continue
22 approximately 1,000 to as much as 1,500 jobs and we believe
23 that if it does ultimately close, it would provide the estates
24 with incremental value above what the liquidators are offering.
25 The proposition is still evolving but the state of play, as it

1 now exists -- and Books-A-Million's counsel is here, Mr.
2 Smolinsky is here on behalf of the consortium of liquidators,
3 but the proposition would be that Books-A-Million would
4 purchase thru the liquidators, thru the agency agreement for
5 which we seek approval today, on a book sale basis, the
6 inventory and furniture, fixtures and equipment at each of the
7 thirty store locations.

8 Now, under the agency agreement, any such book sale is
9 subject to the approval, obviously, of the debtor and the
10 creditors' committee. As we stand here today, we do not have
11 the creditors' committee's consent and, frankly, because the
12 transaction is still evolving, we wouldn't expect to have that
13 consent as of now. We withdrew the Najafi APA in approval of
14 the stalking horse protections because we are working with the
15 creditors' committee on a collaborative basis on this
16 transaction and we fully expect that the transaction will not
17 go forward if the creditors' committee does not approve it.

18 The amounts that would be paid by Books-A-Million are
19 similar in structure to what the liquidators propose. That is,
20 Books-A-Million would pay a percentage of cost value of
21 inventory at the stores and I should add that they're also
22 going to be buying some inventory at our distribution centers.
23 While I'm not 100 percent sure about this, I think what is now
24 being discussed is that we would not seek separate approval for
25 the sale of that inventory, furniture, fixtures and equipment

1 through a separate motion and order. What we would use is the
2 agency agreement mechanic which contemplates a book sale
3 transaction and proceed that way.

4 The second piece of that transaction puzzle would be
5 the assumption and assignment of the thirty leases relating to
6 those stores. Just so the record is absolutely clear, while we
7 might have given one or two landlords notice which stores might
8 be assumed and assigned, that was done on an informal basis and
9 notice has not been given of potential assumptions and
10 assignments.

11 What we're discussing as of now is, with Your Honor's
12 consent, would be to include a mechanic in the order before
13 Your Honor that would allow us to assume and assign any of
14 those thirty store leases on the consent of each landlord
15 effective, on the consent of the creditors' committee and
16 certainly on the consent of the debtors. If that did not
17 happen, we would not pursue it pursuant to this motion.
18 Perhaps we would seek separate authority from Your Honor via a
19 separate motion. But the way this is evolving is that Books-A-
20 Million really wants to do this on a consensual basis for all
21 affected parties and we don't contemplate a bunch of litigation
22 about potential assumptions and assignments. So, ultimately,
23 what we're seeking is the flexibility that's necessary to get
24 this transaction done. There's no certainty that it will be
25 done, but we'd like to preserve the opportunity to maximize

1 value by pursuing the Books-A-Million transaction and saving
2 the jobs that I described earlier.

3 With Your Honor's indulgence, the way I think we could
4 best approach this hearing to get it as streamlined as possible
5 is to deal with the objections that have not resolved first on,
6 perhaps, a landlord-by-landlord --

7 THE COURT: Well --

8 MR. GLENN: -- or issue --

9 THE COURT: -- let me just, before you do that --

10 MR. GLENN: Yes.

11 THE COURT: -- the structure you contemplate with
12 Books-A-Million, since you indicated that it would -- you
13 propose doing it through the agency agreement, the mechanic of
14 the agency agreement, how does the compensation flow through to
15 the debtor and how is that, in effect, divided between the
16 agent and the consortium and the debtor?

17 MR. GLENN: It's split up, as I understand it, exactly
18 how it would be split up, if people walked into a store and
19 bought a book off the shelf, it's a guarantee of seventy-two
20 percent for the store inventory and fifty percent of the
21 proceeds above that -- what we believe though, is that
22 ultimately, what Books-A-Million is going to offer us is
23 significantly -- at least in the context of a thirty-store
24 transaction, what we would get at the end of a store closing
25 process.

1 THE COURT: Okay. Go ahead.

2 MR. GLENN: So, we can go through the objections
3 topic-by-topic or landlord-by-landlord and then what I'd ask
4 Your Honor to do, if Your Honor will allow this, is to do a --
5 have a brief recess after that to see if we can pin down the
6 lingering issues on the Books-A-Million transaction and then
7 hopefully, report those as being resolved.

8 Your Honor, we filed late last night a blackline of
9 the proposed sale order. The order was changed primarily to
10 accommodate the fact that Najafi transaction is no longer
11 operative, number one. And there was a concern articulated by
12 the DIP lenders that the consortium of liquidators could claw
13 back funds from the DIP lenders and that that left the DIP
14 lender exposed, because they want to have a final order entered
15 that pays them off and not have to worry about having to dis-
16 award funds down the road. The order was changed to remove the
17 clawback provision and to provide the consortium with a lien on
18 all remaining assets to secure payment of what would have been
19 their rights of clawback against the DIP lenders. That lien
20 would attach to the intellectual property of the company, the
21 KOBO shares -- what's been called the Sutro notes. We think
22 that's a very low probability event, but granting those liens
23 to Hilco has allowed us to pay off the DIP lenders and reduce
24 administrative costs. It has also allowed us to free up 1.6
25 million dollars from an indemnity account that the DIP lenders

1 had in place and would not have released, but for this
2 resolution.

3 The agency agreement, I do not believe, has changed
4 since we filed it originally with the Court. There are folks
5 here, obviously, from Hilco. I have much smarter people than
6 me who can answer any detailed questions you have about the
7 terms of the agency agreement. We have worked literally around
8 the clock since Monday to resolve as many of these objections
9 as we can. Many of the issues were ones where multiple people
10 identified them by filing joinders. We settled with the main
11 party but we did not necessarily hear from each of the joinder
12 parties on each of these issues. I'm sure there are some open
13 objections; we can't identify every single one of them with
14 precision, so we can proceed any way Your Honor wants at this
15 point. We can go through what we believe are the open items or
16 we can invite landlord to take the podium and voice what they
17 believe is open.

18 THE COURT: Well, I think your grouping of the
19 objections in the reply you filed is useful. You indicated in
20 the chart you first characterized -- described the issue. You
21 then indicated who the objecting parties were and the response.
22 I think that's a useful way to go through the objections.

23 MR. GLENN: Okay.

24 THE COURT: Before we do that, I had a limited
25 opportunity to go through the blackline of the proposed order

1 that you've provided and I do want to raise one question now --

2 MR. GLENN: Okay.

3 THE COURT: -- that related to paragraph 38 of the
4 proposed order. With respect to the exchange of mutual release
5 between the debtor, the committee and the DIP lenders, and
6 specifically there's no carveout for gross negligence or
7 willful misconduct in the releases and I'd like you to address
8 that issue precisely.

9 MR. GLENN: One moment, Your Honor.

10 Your Honor, everyone seems to be okay with adding that
11 carveout --

12 THE COURT: Okay.

13 MR. GLENN: -- in the -- thanks.

14 THE COURT: I won't approve the release within it.

15 MR. GLENN: Okay, well --

16 THE COURT: -- so --

17 MR. GLENN: -- it's academic then.

18 THE COURT: -- it makes it easier if everybody agrees,
19 so --

20 MR. GLENN: Yes, it does.

21 THE COURT: Okay. So it's the usual language --

22 MR. GLENN: Correct.

23 THE COURT: -- on the carveout, so if you want now,
24 you can move -- well, let me ask first. Does anybody else want
25 to speak in support of the sale motion? Anybody from the

1 committee? Mr. Buechler or --

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 supports the proposed sale
5 to the consortium of liquidators pursuant to the revised order
6 which we've provided comments on which have been incorporated.
7 there's one open issue with regard to the payoff letter with
8 the DIP lenders that is still -- needs to be worked out,
9 hopefully during the break, on some language primarily dealing
10 with whether the payment is made before or after a particular
11 time tomorrow and how do you deal with interest over the
12 weekend, depending on the timing. Which, I think, the parties
13 are close to reaching resolution on; it needs to be cleaned up
14 on that.

15 With regard to the Books-A-Million carveout, that is
16 in a complete state of flux. it is hard for me to fully narrow
17 down where the exact terms are, so while the committee is not,
18 at least in principle, opposed to the concept, we need to
19 better understand that. We understand very much so on the
20 inventory and the fixtures, furniture and equipment side, how
21 it would be working. But on the real estate leases, it's
22 coming together very qui -- very -- coming together very
23 quickly and as long as everybody has absolute veto power
24 rights, meaning the committee, the debtor and the landlords as
25 to the short term, the truncated notice process that may be

1 acceptable, one of the things we're looking at very quickly
2 this morning -- and I have people doing this offsite, is
3 whether the economic value being proposed by Books-A-Million
4 for that thirty leases is adequate consideration.

5 From what we've been told, Books-A-Million will be
6 paying above the seventy-two percent floor to redeem for the
7 inventory they would buy through the liquidators. So
8 therefore, there is some incremental value to the estate, but
9 it's not as if it's, you know, tens and twenties of billions of
10 dollars will be flowing in from doing this deal. But if we can
11 seem -- we can potentially preserve thirty stores that would
12 then be Books-A-Million stores, we're going to look at that,
13 but whether that can all be accomplished today remains to be
14 seen. And therefore, the committee at this point in time does
15 not approve of any Books-A-Million transaction because we
16 haven't seen what it is. All we saw was the original letter of
17 intent submitted this past Sunday which caused us very serious
18 concerns, some of those have been modified based upon
19 conversations we've had, but we haven't seen any revised term
20 sheet or anything else, so we do feel the need to go a little
21 slowly before the committee locks into something. And as I
22 said a moment ago, we have the issue, just on checking the
23 economics to make sure the price to be received by the estate
24 for the assumption and assignment of these leases is adequate
25 because in essence, the debtor therefore would be foregoing its

1 right to chop those leases during the pendency of the store
2 closing sale process it will go through the end of September
3 for some stores into October. So that's where the committee's
4 position is as of the current time, unless Your Honor has any
5 questions?

6 THE COURT: I don't.

7 MR. BUECHLER: Thank you.

8 THE COURT: Does anybody else want to speak in support
9 of the debtor's motion?

10 Mr. Glenn? Here's what I would propose you do. I
11 think, as I say, I think your Exhibit B to the debtor's omnibus
12 response is a useful way to go through the objections. I'll
13 let you address it first and then any of the -- any counsel for
14 any of the objectors who wants to be heard, I'll hear them as
15 well, hopefully, briefly. Go ahead, Mr. Glenn.

16 MR. GLENN: Okay. The first issue or objections
17 related to the adequate protection of tax liens and the
18 objections requested language in the final DIP order setting
19 aside proceeds of GOB sales. The modified sale order has been
20 revised to include a segregated account to which those tax
21 liens would attach. We have discussed the amounts, I believe,
22 primarily with the Texas taxing authority and with that, we
23 believe the objections have been resolved.

24 THE COURT: All right. Does anybody wish to be heard
25 with respect to the first category, the tax liens? And I

1 believe we did hear from counsel for -- from Texas. Is that
2 right?

3 MR. CLARK: Yes, Your Honor. This is Robert Clark,
4 assistant Douglas County attorney. We don't have a large
5 claim, it's a 60,000 dollars claim. I have not seen any facts
6 yet that will give me satisfaction -- not that I won't be able
7 to see them, that indeed enough money will be set aside to pay
8 all of the taxing authorities and we don't all have to take a
9 haircut. So I would like to see some evidence and, you know,
10 perhaps I can talk with debtor's counsel at the end of this
11 hearing and he can give me the assurance that indeed there will
12 be enough money in there to take care of us.

13 THE COURT: Anybody el -- any of the other taxing
14 authorities wish to be heard?

15 Any response to that, Mr. Glenn?

16 MR. GLENN: I -- to not waste time --

17 THE COURT: Just pull the microphone a little closer.

18 MR. GLENN: I'm sorry. We will speak with the
19 gentleman on the phone at the next break to see if we can --

20 THE COURT: Okay.

21 MR. GLENN: -- resolve that.

22 MR. CLARK: That would work for me, Your Honor. Thank
23 you.

24 MR. GLENN: The next issue is there can be no bar on
25 actions to collect taxes from the agent and the debtors cannot

1 legally indemnify the agent for sales tax liability. We
2 believe that objection has been resolved. The agency agreement
3 protects the estates by providing procedures for the collection
4 of sales taxes and the remission of taxes by the debtors,
5 essentially the agent steps into the debtor's shoes to perform
6 that role.

7 THE COURT: Does anybody wish to be heard in support
8 of the objection?

9 MR. FRAZELL: Yes, Your Honor. This is William
10 Frazell with the Texas Attorney General appearing for the Texas
11 Comptroller. As counsel stated, we have worked out acceptable
12 language in the revised blackline order that reserves out
13 rights under state law and so we -- it's copacetic as far as
14 we're concerned regarding our state taxes issues.

15 THE COURT: All right, thank you very much.

16 Mr. Smolinsky?

17 MR. SMOLINSKY: Yes, Your Honor. Good morning. Joe
18 Smolinsky; Weil, Gotshal & Manges for the liquidating agent.
19 Just a clarification.

20 Under the procedures for -- in the agency agreement,
21 we are actually collecting the taxes, remitting them to the
22 debtor and the debtor is going to pay all the sales tax, as
23 opposed to us paying directly.

24 THE COURT: All right. Thank you, Mr. Smolinsky.

25 Mr. Glenn?

1 MR. GLENN: Objection issue number 3, this is a series
2 of objections about the sales guidelines including limitations
3 on and requirements regarding banners, signage, toppers, sign
4 walkers, hand bills, augmentation of inventory, removal of FF&E
5 and hours of operation. I think that the response we have to
6 this one is that we worked in the first sale to resolve these
7 issues. I think we've resolved many of these issues and we're
8 prepared to, if there are any lingering objections, to deal
9 with those. I would probably cede the podium to Mr. Smolinsky
10 to deal with any individualized concerns that remain.

11 THE COURT: All right. I just -- I think I commented
12 at the last hearing that these are -- come on up, Mr.
13 Smolinsky. These are issues that usually get worked out
14 between the liquidator and, whether it's local government
15 authorities or the lessors and at the initial round of store
16 closings, there was one issue that arose. It got worked out
17 before the Court actually had to hear it, so -- but, go ahead,
18 Mr. Smolinsky.

19 MR. SMOLINSKY: That's exactly right, Your Honor. And
20 in this case, we've had less time to deal with the issues
21 because of the Najafi transaction. But we've been burning up
22 the phone lines. If you look at the landlords and there were
23 numerous objections as you sa -- as you've seen, approximately
24 half of the landlords didn't have any objections or didn't
25 respond to us reaching out to them. As of last night, we

1 reached side letters or agreements in principle with landlords
2 representing about 148 stores; we're very close on 57 others.
3 We've been speaking to landlords here in court this morning.
4 We don't anticipate there to be any lingering issues that you
5 would have to get involved in. Any remaining objections are
6 probably outliers that have asked for -- made requests that are
7 not in conformity with the norm and if there are any landlords
8 here, we'll address it either at the hearing or in a sidebar.

9 THE COURT: All right. Thank you, Mr. Smolinsky.

10 Do any of the landlords wish to be heard with respect
11 to this category of objections?

12 All right, hearing none, with respect to this category
13 of objections, I'm going to overrule them without prejudice.
14 If this is an issue, take it up with Mr. Smolinsky. In all
15 likelihood, you're going to work these out and if you can't,
16 the Court will be available on short notice to try and resolve
17 them. But, I have every expectation that this is not going to
18 be a problem.

19 MR. GLENN: Number 4, Your Honor, is the objection
20 that landlords must be able to enter into side letters with the
21 agent and in the event of a conflict, the side letters should
22 govern. We have addressed that in the proposed sale order
23 which indicates that the agent and the landlords are authorized
24 to enter into side agreements without further order of the
25 Court and that the side order -- side letters are binding

1 between the agent and the landlords.

2 We think that moots that objection and that's our
3 response.

4 THE COURT: Does anybody wish to be heard with respect
5 to the side letter issue?

6 All right. I think you've resolved that objection
7 satisfactorily. Go ahead.

8 MR. GLENN: Number 5, Your Honor, is a request for
9 shortened notice in the event of any alleged breach of the sale
10 guidelines. I think Your Honor just mentioned that you'd be
11 willing to accommodate legitimate requests that are urgent in
12 nature on an expedited basis. We believe that if people have
13 cause for an expedited hearing, they can bring that to Your
14 Honor's attention. There's no reason to just grant that
15 wholesale at the front of the process. If Your Honor does wish
16 to include that, we would certainly live with that.

17 THE COURT: Let me -- does anybody wish to be heard
18 with respect to this issue of shortened notice?

19 I'm going to overrule the objection if -- the Court
20 is, as I indicated, available on reasonable short notice to
21 resolve issues that arise.

22 MR. GLENN: Okay. Number 6 is sort of a similar kind
23 of response. The sale guidelines ask for wholesale indemnity
24 of landlords from citations from local authorities as a result
25 of the conduct of the GOB sales and injuries suffered on the

1 premises. We don't believe the order should address that;
2 people have whatever rights that they have and if they have a
3 right to indemnification, then they can bring that matter to
4 the Court, but we don't think that's an appropriate objection.

5 THE COURT: All right. Does anybody wish to be heard
6 with respect to this issue?

7 MR. KUNZ: Your Honor, Carl Kunz on behalf of DCT who
8 is the landlord for the La Vergne, Tennessee distribution
9 center. We're item 24, I believe, on page 9 of the agenda.

10 We've -- we're comfortable with the debtor's
11 representation in their response to the objections. We've also
12 had some substantive conversations with counsel for the -- for
13 Hilco, I guess, the agent and we're comfortable with the
14 agreement that's been reached there.

15 THE COURT: All right, thank you. Anybody else wish
16 to be heard?

17 All right, to the extent -- because there are other
18 written objections that -- they're overruled. I think you've
19 adequately dealt with the issue.

20 MR. GLENN: The next is an objection to augmentation
21 of inventory. We believe that this is appropriate as a
22 fiduciary; it maximizes the value of this transaction and is a
23 critical bargain for element of the deal. It's been done in
24 many other cases that we've cited and I'm not sure whether that
25 objection still stands. But we would reserve the right to

1 reply to any continuing objections on that.

2 THE COURT: All right. Centro Properties group
3 objected, it's docket number 1295. Does anybody wish to be
4 heard on behalf of Centro Properties?

5 MR. GLENN: I report from Mr. Pollack that that has
6 been resolved.

7 THE COURT: All right. All right, so, fine.
8 Augmentation of inventory is resolved. Go ahead.

9 MR. GLENN: Okay. The next issue, number 8, is that
10 nothing should invalidate leases, holiday, store lock-in
11 periods.

12 Has that been -- that's also been resolved; that was
13 another Centro --

14 THE COURT: Thank you.

15 MR. GLENN: -- matter. The next is number 9, that the
16 sale order cannot invalidate all restrictions in leases
17 regarding store closings. And our response is relatively
18 short: We're not seeking to invalidate all such restrictions;
19 we're doing the sale solely pursuant --

20 Oh, this is off. Thank you. Thank you, okay.

21 Number 10 is also --

22 THE COURT: Just let me make sure. Is -- matter 8 is
23 resolved -- to this objection --

24 UNIDENTIFIED SPEAKER: Yes, it is.

25 THE COURT: Okay. Thank you very much.

1 MR. GLENN: As is the next one, Your Honor. Thank
2 you.

3 THE COURT: Okay. The next one is -- why don't you
4 describe it and we'll --

5 MR. GLENN: Okay. The next one is SR Weiner; the
6 agent must provide the landlord with seven days --

7 THE COURT: All right. You -- 10 is resolved as well?

8 MR. GLENN: Correct.

9 THE COURT: Sounds like. All right. Nine and ten are
10 resolved. All right, go ahead doing number 11.

11 MR. GLENN: All right. The -- number 11 is that the
12 landlords must provide -- the agent must provide the landlords
13 with seven days of written notice of any conclusion of store
14 closing sales and the guidelines provide for notice of the
15 conclusion within three business days of a vacate notice from
16 the agent. And that we will provide the agent -- that the
17 agent will provide the debtors a vacate notice at least seven
18 days prior to the remaining -- to terminating the sale at a
19 store.

20 We believe that relief already existed and resolved
21 this objection.

22 THE COURT: All right. Does anybody from SR Weiner
23 want to be heard?

24 MS. PECK: This is Vanessa Peck on the phone for SR
25 Weiner. We're satisfied.

1 THE COURT: All right. So that objection is resolved.

2 Mr. Smolinsky?

3 MR. SMOLINSKY: Yes, Your Honor. Just for the record,
4 there are two stores in that group, store 773 and 774 which are
5 closing immediately and are not subject to the seven-day notice
6 period. I think the landlord is aware of that -- whose
7 carveouts.

8 THE COURT: Same landlord, Weiner?

9 MS. PECK: No, it's not Weiner.

10 MR. SMOLINSKY: Which -- it's -- is it Macerich?

11 THE COURT: Counsel for Macerich is here?

12 MR. BRANCH: Yes, sir.

13 THE COURT: And are you aware of what Mr. Smolinsky is
14 talking about?

15 MR. BRANCH: No, I'm not.

16 THE COURT: Why don't you talk about it during the
17 break?

18 MR. SMOLINSKY: We will, Your Honor.

19 THE COURT: Okay, and see if you can --

20 MR. SMOLINSKY: Fair enough.

21 THE COURT: -- resolve it.

22 Go ahead, Mr. Glenn. We're up to 12?

23 MR. GLENN: Correct. Twelve is a generic objection
24 that we will timely pay all lease objections and the answer is
25 that we have and we will in the order makes that absolutely

1 clear. Again, at the beginning of the case, there was a lot of
2 confusion about landlord obligations and a lot of transitional
3 issues. I invite any landlord to contact me directly or any of
4 the members of our team --

5 THE COURT: Careful what you ask for.

6 MR. GLENN: I have and I will. It's an important
7 thing and the people at Borders who manage the real estate
8 portfolio are really great in getting this stuff resolved
9 quickly, so --

10 THE COURT: Okay. Does anybody wish to be heard with
11 respect to timely payment of lease obligations?

12 All right. There were a group of landlords who
13 objected. Hearing no one and listening to Mr. Glenn's
14 description, I believe it's resolved.

15 MR. GLENN: The next objection is that the agent must
16 be required to file fee applications and comply with Section
17 330 and 331 --

18 THE COURT: Let me hear from the Texas comptroller
19 with respect to this.

20 MR. GLENN: Oh, I'm sorry; that's been resolved.

21 THE COURT: It's been resolved.

22 MR. GLENN: Thank you.

23 THE COURT: Is that -- anyone wish to be heard with
24 respect to that?

25 MR. FRAZELL: Your Honor, Bill -- William Frazell for

1 the Texas comptroller. I do believe that has been resolved.

2 THE COURT: Thank you very much.

3 All right, Mr. Glenn, go ahead.

4 MR. GLENN: Number 14, I believe, has also been
5 resolved, which is the sale order either should not provide for
6 the transfer of the Schuler payable or should make the transfer
7 subject to Schuler's right of recruitment. I believe that's
8 been resolved.

9 THE COURT: Anybody wish to be heard for Schuler
10 Books?

11 All right. I accept your representation as resolved.

12 MR. GLENN: Okay. Number 15, Your Honor, store
13 closing sales should be limited in duration and landlords have
14 attempted to limit the period from thirty days to eight weeks.
15 Our answer is, is that the agency agreement provides for up to
16 sixteen weeks which is what is necessary to maximize value.
17 We're doing this in a way that some stores will have a faster
18 sale velocity because we have assumption/rejection deadlines
19 that are sooner than others. But the period for conducting
20 these store closing sales is consistent with the period that we
21 had in the first agency agreement and we believe it's the
22 market standard for a transaction like this.

23 THE COURT: All right. Anybody wish to be heard with
24 respect to the duration of the store closing sales or a group
25 of landlords who objected?

1 I wanted to ask you, Mr. Glenn, let's see if I can
2 find -- I saw in the blackline of the proposed order, page --
3 paragraph 15?

4 MR. GLENN: Fifteen?

5 THE COURT: Or page -- paragraph 15.

6 MR. GLENN: Which provision? Paragraph 17, the
7 governmental --

8 THE COURT: No, paragraph 15 --

9 MR. GLENN: Oh, 15, I'm sorry.

10 THE COURT: -- "the debtors and the agent shall not
11 extend the sale termination date beyond November 13, 2011
12 without notice and further order of the Court, provided,
13 however, that no notice or further order of the Court shall be
14 required for an extension that does not exceed ten days."

15 And my question is, is that a onetime ten-day
16 extension or successive ten-day extensions? It wasn't clear to
17 me from reading this.

18 MR. GLENN: It -- I've just been advised it will be a
19 onetime event.

20 THE COURT: Okay.

21 MR. GLENN: We can make the order --

22 THE COURT: That clarifies it --

23 MR. GLENN: -- clear on that point.

24 THE COURT: -- for me, then. Okay. In light of that
25 clarification, let's list it as issue number 15, the objections

1 as to the duration of the store closing is overruled.

2 MR. GLENN: Thank you, Your Honor. Number 16 also has
3 been resolved. Seattle's Best requested some protective
4 language which we've included in the proposed order.

5 THE COURT: All right. Anybody wish to be heard from
6 Seattle Best?

7 MR. MCCULLOUGH: Your Honor, this is Hugh McCullough
8 with Davis, Wright, Tremaine appearing on behalf of Seattle's
9 Best Coffee.

10 I sent Mr. Glenn an e-mail a few minutes ago. That's
11 not quite correct. With the contemplation that there's now
12 going to be some kind of a bulk sale or going concern sale of
13 at least thirty stores, I think Seattle's Best Coffee has
14 proposed some additional protective language that would cover
15 that circumstance. That language is included on page 10 of the
16 objection that we filed and simply says what ought to be stated
17 in the order anyway, which is that nothing in the order should
18 be construed to give Borders the power to convey to the
19 purchaser, in this case Books-A-Million, the right to use any
20 of Seattle's Best intellectual property.

21 THE COURT: Well, I'll let Mr. Glenn and his
22 colleagues look at the language when we take a break and we'll
23 see if we can hopefully resolve this consensually.

24 MR. GLENN: We will --

25 THE COURT: All right?

1 MR. GLENN: -- do that, Your Honor. Thank you.

2 THE COURT: All right. And you'll --

3 MR. MCCULLOUGH: Thank you, Your Honor.

4 THE COURT: -- communicate with counsel --

5 MR. GLENN: Absolutely.

6 THE COURT: -- correct?

7 MR. GLENN: That's a late-breaking development.

8 That's a fair point that changed discussions that we had.

9 THE COURT: All right. Seventeen.

10 MR. GLENN: Seventeen. There's no provision --
11 actually, I believe it's resolved. But, there's no provision
12 of the sale guidelines covering the FF&E at the debtor's
13 distribution centers and sales should not be conducted at the
14 distribution centers.

15 I believe that's been resolved.

16 THE COURT: This was an objected --

17 MR. KUNZ: Your Honor --

18 THE COURT: -- go ahead.

19 MR. KUNZ: -- Carl Kunz for DCT. I think we're 99.9
20 percent of the way there with the agent. I think we'll
21 finalize it up and then we'll have procedures that are going to
22 govern the distribution centers.

23 THE COURT: Well --

24 MR. KUNZ: Or at least my distribution center.

25 THE COURT: You know, the problem for me is when it's

1 ninety-nine percent resolved, it isn't resolved. And so, if
2 you're satisfied you're going to resolve it, tell me that and
3 I'll consider this issue resolved and you'll work it out with
4 Mr. Smolinsky.

5 MR. KUNZ: Your Honor, I think Mr. Malfitano's in the
6 courtroom. He's -- we have everything in writing. We tried to
7 condense all our writings down into a single letter this
8 morning. I think he's still looking at that letter, but the
9 understanding of that is if it reflects what we agreed to and
10 all the other writing, then we're done.

11 THE COURT: Mr. Smolinsky?

12 MR. SMOLINSKY: Your Honor, the agreement has been
13 reduced to writing. It's just a matter of the client reviewing
14 it. We'll do it during a break.

15 THE COURT: All right. Tell me after the break. So
16 this is -- remains open. All right.

17 Go ahead, Mr. Glenn.

18 MR. GLENN: The final objection, I believe, in our
19 chart Exhibit B is a request for an order compelling the
20 debtors to reject leases after the store closing process is
21 completed and we're not going to agree to that.

22 THE COURT: Let me hear from the objectors. Anybody
23 from Glimcher or Macy's Retail?

24 Not hearing anyone, I've reviewed the objection. The
25 objections are overruled.

1 MR. GLENN: So I believe that concludes our chart.
2 There were some late-filed objections and I don't entirely
3 discount the possibility that we missed an argument or two in
4 the onslaught of objections. But I believe that covers
5 everything.

6 THE COURT: All right. Before -- I'll ask whether
7 anybody else wants to be heard. My -- by my reckoning, after
8 the break, you're going -- you're -- during the break, you're
9 going to try and finally resolve the tax lien issue, number
10 one.

11 MR. GLENN: Actually, I'm -- could the person who
12 identified themselves on that issue give me their phone number
13 so we can call him?

14 MR. CLARK: Yes, this is Robert Clark, assistant
15 county attorney for Douglas County, Colorado. We have a 60,000
16 dollars claim and my direct line is 303-660-7392.

17 MR. GLENN: Okay. Someone will call you momentarily.

18 THE COURT: Thank you. All right.

19 MR. CLARK: Now in doing so, I will end up breaking
20 the CourtCall connection. I'll have to figure out with
21 CourtCall whether I can get back on after you and I talk.

22 THE COURT: You can. I'll tell what my plan is. It's
23 12:15. At 12:30 or as soon as we finish going through this,
24 we're going to take a recess until 1:30. Hopefully, that will
25 provide you sufficient time and if --

1 MR. GLENN: Sure.

2 THE COURT: -- need be, we can extend it beyond the
3 1:30. I want to see if you can come to an agreement or at
4 least a firmer agreement in principle with Books-A-Million and
5 see if you can resolve these other issues. But I think that's
6 how we'll proceed. I want to give you enough time to see
7 whether you can work out --

8 MR. GLENN: Thank you.

9 THE COURT: -- those issues. Okay, so we're going to
10 deal with the tax issue --

11 MR. GLENN: And Seattle's Best, I think we have to
12 look at some --

13 THE COURT: -- and Seattle's Best. Was there anything
14 else?

15 UNIDENTIFIED SPEAKER: On the distribution center.

16 THE COURT: The distribution --

17 MR. TEPPER: Your Honor --

18 THE COURT: -- center. Yeah?

19 MR. TEPPER: -- if I may? This is Robert D. Tepper on
20 behalf of Mid-America Assistant Management for the landlords at
21 Rice Lake and State/Randolph in Chicago.

22 THE COURT: Go ahead.

23 MR. TEPPER: Your Honor, I would just ask for the
24 Books-A-Million issues, if Mr. Glenn or one of his colleagues
25 can e-mail to the landlords a copy of the list of stores that

1 they propose to purchase, if they could send that out during
2 the break.

3 THE COURT: Mr. Glenn, you had offered to --

4 MR. GLENN: I think I should read it. I think that --

5 THE COURT: I think you should, too. Let's just
6 finish this.

7 Before we break --

8 MR. GLENN: Okay.

9 THE COURT: -- I'm going to have you read the list and
10 everyone can pay attention to that and have -- and therefore,
11 everybody will have the list.

12 MR. GLENN: Correct.

13 THE COURT: Do you want to do that now?

14 MR. GLENN: If it's okay with Your Honor.

15 THE COURT: Sure.

16 MR. GLENN: Okay.

17 THE COURT: Okay. So this is the list of the thirty
18 stores --

19 MR. GLENN: It is.

20 THE COURT: -- that are under discussions with Books-
21 A-Million. Go ahead.

22 MR. GLENN: Okay. The first batch of stores are the
23 superstores. First is store 89, which is in Columbia, South
24 Carolina, I believe. Just -- Columbia. I believe it's South
25 Carolina.

1 UNIDENTIFIED SPEAKER: It's actually Columbia,
2 Maryland.

3 MR. GLENN: Columbia, Maryland; I'm sorry. Two is
4 Bangor, Maine, store number 125; next is store number 133 --
5 oh, in South Portland, Maine; 136, Canton, Ohio; store number
6 138, O'Claire, Wisconsin; 177, York, Pennsylvania; 185,
7 Monterey, Sand City, California; 188, Salem, Oregon; 193,
8 Atlantic City, New Jersey; 218, Waldorf, Maryland; 225, San
9 Diego, California, Mission Valley; 262, Woodbridge, Virginia;
10 287, Eugene, Oregon; 340, Concord, New Hampshire; 369, Rapid
11 City, South Dakota; 372, Hagerstown, Maryland; 394, West
12 Lebanon, New Hampshire; 436, Gresham, Oregon; 442, Scranton-
13 Dickson City, Pennsylvania; 524, Waterford, Connecticut; and
14 694, Pennsdale, Pennsylvania.

15 The small format stores are store number 649, Monaca,
16 Pennsylvania; 806, Hanover, Pennsylvania; 842, Susquehanna
17 Valley Mall, Selinsgrove, Pennsylvania; 844, Clearview Mall in
18 Butler, Pennsylvania; 927, Pinecrest Plaza, Southern Pines,
19 North Carolina; 858, Dover mall in Dover, Delaware; 939, Exton,
20 Pennsylvania; and the last one is 954, the Shops at Charleston
21 Place in Charleston, South Carolina.

22 Should Books-A-Million people here believe I got that
23 wrong, let me know.

24 MR. BACON: I'd like to do a little double-checking
25 with that --

1 UNIDENTIFIED SPEAKER: Just 139 (sic).

2 MR. GLENN: Okay, let me just double-check that.

3 Okay. There are additional stores that -- for which
4 BAM has also requested an option to purchase, so the total
5 might be as many as thirty-five.

6 Number 434, Sandusky, Ohio; 625 in Debuque, Iowa, 370,
7 Barboursville, West Virginia; 742, St. Clairsville, Ohio; and
8 store number 931 in Monroe, Michigan.

9 UNIDENTIFIED SPEAKER: There's another one.

10 THE COURT: All right. Thank you, Mr. Glenn.

11 MR. GLENN: Okay.

12 THE COURT: Are there any other objections that have
13 not been addressed at the hearing so far? If so, can counsel
14 come up to the podium?

15 No one in the courtroom. Anyone on the phone that has
16 another objection that hasn't been addressed so far in the
17 hearing?

18 MR. KUNZ: Your Honor, this is Carl Kunz again for
19 DCT. May I speak?

20 THE COURT: Yes, go ahead.

21 MR. KUNZ: Thank you. What I wanted to do is just let
22 the Court know that I've gotten e-mail confirmation from the
23 agent that we're signed off. So I don't think we have any
24 remaining issue with respect to objection number 17.

25 THE COURT: All right.

1 MR. KUNZ: And it --

2 THE COURT: Thank --

3 MR. KUNZ: -- would not -- with Your Honor's
4 permission, it would not be my intention to hop back on the
5 phone at 1:30.

6 THE COURT: All right. Thank you very much, I
7 appreciate that.

8 MR. KUNZ: Thank you.

9 THE COURT: Thank you, Mr. Smolinsky.

10 All right. Are there any other issues we ought to
11 take up before we take a recess, Mr. Glenn?

12 MR. GLENN: I don't believe so, Your Honor.

13 THE COURT: Now, let me -- I said we'd resume at 1:30.
14 Is that enough time for you? Do you want 2 o'clock? What do
15 you --

16 MR. GLENN: I safe it's safer to assume 2 o'clock--

17 THE COURT: All right.

18 MR. GLENN: -- and perhaps people can get a little
19 food in between now and --

20 THE COURT: We will --

21 MR. GLENN: -- then as well.

22 THE COURT: -- resume at 2 o'clock. I have a
23 confirmation hearing at 4 o'clock, but I think we should be --
24 hopefully --

25 MR. GLENN: It should not be a problem.

1 THE COURT: All right. We're in recess until 2
2 o'clock. Thank you very much.

3 MR. GLENN: thank you.

4 (Recess from 12:22 p.m. until 2:34 p.m.)

5 THE COURT: Please be seated.

6 All right, Mr. Glenn.

7 MR. GLENN: Thank you, Your Honor. We've used the
8 time that you've given us profitably.

9 The SBC objection has now been resolved. We had an e-
10 mail exchange with SBC confirming language to be inserted in
11 the order which will make clear that we're not going to be
12 selling any of SBC's intellectual property and the like.

13 With respect to the objection from Texas, that
14 objection has been resolved in principle, but since it involves
15 the DIP lenders' liens, there is going to be some time needed
16 after we're done today to just finalize that language. But, I
17 believe the concept is that the order will provide something
18 like that the -- nothing in the order will release any taxing
19 authorities ad valorem claims against the debtors or related
20 liens, something along those lines which shouldn't have any
21 substantive effect given the numbers at issue here.

22 Finally, that brings us to Books-A-Million. And we
23 have language; it's three or four ordered paragraphs which I
24 can summarize for Your Honor and parties listening. First of
25 all, someone alerted me to the fact that I may not have

1 mentioned the San Antonio store location as being on the Books-
2 A-Million list. That is store number 186, in case I missed it.

3 I think the agreement is relatively straightforward.
4 As I indicated earlier, the first prong in the agreement is
5 that the order will provide, if Your Honor approves it, that we
6 can sell the inventory and the FF&E through Hilco to Books-A-
7 Million. The agency agreement contemplates that. It would
8 just be a bulk sale, but we can't do that unless we agree, the
9 creditors' committee agrees and the consortium agrees. Those
10 conversations are ongoing; they will continue for the remainder
11 of the day.

12 Second is assumption and assignment. The DIP order
13 would have -- I'm sorry; the sale order would have a schedule
14 of leases that would be subject to potential assumption and
15 assignment. We would ask that the order allow us to do that on
16 consent of the debtors, the creditors' committee and the
17 affected landlords, each which could be withheld for any or no
18 reason. If there's a dispute about assumption and assignment,
19 we would have to come back to court. We would probably seek to
20 do that on some sort of expedited basis, if Your Honor would
21 permit that.

22 The next paragraph deals with some conforming changes
23 to relieve the agent of responsibilities once it's clear that
24 the leases are assumed and assigned. That takes them out of
25 the Hilco umbrella and puts them into Books-A-Million. It's

1 just to make clear that that is what's being effectuated and,
2 finally, that Your Honor would have jurisdiction to consider
3 matters relating to that portion of the sale order as well as
4 the others.

5 One other clarifying change is that for the stores
6 that Mr. Smolinsky identified as ones that are not going to be
7 subject to the sale process, we're going to be seeking to
8 reject those pursuant to the lease assumption and rejection
9 procedures that Your Honor approved at the beginning of the
10 case, which -- earlier in the case, I should say. So, I think
11 the outcome is we're not going to be giving notice as Mr.
12 Smolinsky described. We're just going to give notice of
13 rejection, probably today or tomorrow.

14 And I think that's where we are. If anyone --

15 MR. SMOLINSKY: Your Honor, Joe Smolinsky. With
16 respect to those three stores, they're apparently news stands
17 in airports; Macerich is not the landlord. But given the fact
18 that there is a business deal between the liquidators and the
19 debtors, that the seven-day notice is not required because
20 they're going to be immediately rejected, I don't think any
21 changes need to be made to the order.

22 THE COURT: Okay.

23 MR. SMOLINSKY: With respect to the Books-A-Million
24 deal, the liquidators are very supportive of a transaction.
25 We've offered a free option, effectively, with respect to the

1 inventory and the FF&E. It's going to be part of a global deal
2 with the leases. This is obviously subject to, as Mr. Glenn
3 indicated, approval of the liquidators, the debtors, the
4 committee and the landlords. So, if that deal happens, that's
5 great, and that offer is out there.

6 THE COURT: Okay. Thank you, Mr. Smolinsky.

7 Mr. Buechler?

8 MR. BUECHLER: Thank you. Your Honor, on behalf of
9 the creditors' committee, we still have to get a firm handle as
10 to exactly what are the details of the Books-A-Million deal.
11 We have the committee call later today and hope to have that
12 before that committee call to fully understand it. And then be
13 able to respond to parties as to whether the committee will be
14 or will not be supportive of the Books-A-Million transaction.

15 We also want to get a good handle on whether there are
16 the -- just the original thirty stores or the -- what I'll call
17 the five optional stores and what that means in the way of any
18 incremental value to the estate, if any is being offered for
19 those additional five stores to see if the transaction,
20 economically, makes sense. And the committee will decide. And
21 therefore, we've agreed to the provision in the order because
22 it gives the committee the right to withhold its consent for
23 any reason.

24 Thank you.

25 THE COURT: All right. I just want to make sure I

1 understand. Is it -- is this -- if the Books-A-Million
2 transaction goes forward, is there separate compensation to the
3 debtors for the assumption and assignment of the leases?

4 MR. BUECHLER: As we have been told, yes. The Books-
5 A-Million will pay the --

6 THE COURT: That doesn't flow through the liquidators?

7 MR. BUECHLER: No --

8 THE COURT: That flows directly --

9 MR. BUECHLER: -- that would be direct payment --

10 THE COURT: -- to the estate?

11 MR. BUECHLER: -- to the debtor's estates for the
12 leases. The order also makes clear that if that does occur,
13 they pay all cure costs which includes rent, common area
14 maintenance, any taxes, et cetera, and the debtor, likewise,
15 would be relieved of any of its obligations and it gets the
16 protection of Section 365(k) of the Bankruptcy Code. So
17 there's a separate number if we need clarification and whether
18 that number changes if there are the additional five stores.
19 And the thing we're trying to get a handle on is just whether
20 the estate may be better off looking to market those leases
21 during the store closing sales and whether we think we can do
22 better shopping those as opposed to selling them in bulk for
23 the money proffered. And that's really the economic issue that
24 we're grappling is as to what economically, brings the highest
25 return, because from our perspective, given our understanding

1 of the Books-A-Million deal, it doesn't augment a tremendous
2 amount of dollars to the estate at the end of the deal.
3 There's an incremental value, but it's not huge in relationship
4 to what we're talking about. And that's what we're trying to
5 carefully vet and evaluate before rendering the committee's
6 decision.

7 THE COURT: All right. And I'm sure you will remain
8 mindful of the fact that somewhere between 1,000 and 1,500
9 employees may wind up with jobs if the Books-A-Million portion
10 of the deal is done.

11 MR. BUECHLER: Full aware of -- the committee members
12 understand that, as well. And we also are cognizant of the
13 fact that if there's thirty book stores open, that's thirty
14 more book stores that can sell books. So --

15 THE COURT: Right.

16 MR. BUECHLER: -- the publisher community's aware of
17 that, but we also have concerns just -- I'm on the real estate,
18 Your Honor's aware, but also we have also concerns vis-a-vis
19 the amount of inventory in the issue in this industry on
20 returns, which we're also vetting with the publisher side,
21 because returns in the book industry are a little different
22 than other vis-a-vis how they're put back and the full cost
23 value credit given by the publishers.

24 THE COURT: Okay. Thank you.

25 MR. BUECHLER: Thank you.

1 THE COURT: Mr. Glenn, let me ask. Did the debtor's
2 real estate advisors, prior to this, render any opinions on the
3 value of the leaseholds which, if this transaction were to go
4 forward, would be assumed and assigned? I mean --

5 MR. GLENN: yes, Your Honor. And the values were
6 negotiated based on their analytics of what those leases were
7 worth. They shared those analytics with the creditors'
8 committee's professionals who are still looking at them, but I
9 don't think they differed significantly based on the
10 preliminary view. So, the value is a seven-figure value to the
11 estate and it's our view that you have to look at this as a
12 package. Books-A-Million isn't going to be purchasing the
13 inventory at the enhanced values that they're going to purchase
14 them unless they get the leases. So they're paying a premium
15 on the inventory which will flow through to us and they're
16 going to pay a lease cost, you know, purchase price which will
17 also -- and there's also no rejection claims from those leases;
18 we're not paying the cure costs. So, it's not going to move
19 the needle dramatically in terms of the ultimate recoveries in
20 this case, but we think it's a -- it's meaningful and it's
21 significant enough.

22 THE COURT: Okay. What I'm trying to understand --
23 because what -- as I understand what you described the deal and
24 it is subject to approval of the debtor, the committee and
25 what -- Hilco as well?

1 MR. GLENN: On the lease side, no; on the inventory
2 side, yes.

3 THE COURT: Okay. You know, there is no separate
4 evidence before the Court with respect to exercise of the
5 business judgment with respect to doing this deal. Hence my
6 questions about whether you've gotten -- whether the debtor has
7 gotten opinions from its real estate advisors with respect to
8 the value of those specific leaseholds that would be covered by
9 this. But if I understand correctly, you wouldn't be coming
10 back to the Court. You're seeking authority to go forward with
11 it assuming that the various constituencies that you've
12 indicated are in agreement.

13 MR. GLENN: That's correct.

14 THE COURT: Anybody else wish to be heard with respect
15 to -- well, let's just focus on the Books-A-Million portion of
16 it. Mr. Buechler?

17 MR. BUECHLER: One caveat to what Mr. Glenn said; I'm
18 not looking to pick a fight. One of the things the committee's
19 real estate advisors are looking at is the issue as to whether
20 we do or do not concur on the valuation vis -- is there an
21 issue there. So, Mr. Glenn thought that he said that there was
22 some concurrence. I'm saying simply I'm not sure at this point
23 in time and yes, we fully understand that one of the issues
24 that Mr. Glenn and Your Honor just raised is what we're looking
25 at as part of the business decision the committee will make.

1 THE COURT: Okay. And I'm -- well, does anybody else
2 wish to be heard with respect to the Books-A-Million portion of
3 this, where it stands now? I know we don't have a signed deal
4 done at this -- yet, but as described?

5 Yes, sir?

6 MR. BACON: Good afternoon, Judge. Doug Bacon with
7 Latham & Watkins. I represent Books-A-Million. Just real
8 briefly, the sort of unusual approach here is because this came
9 together at the last minute --

10 THE COURT: I would say that, yes.

11 MR. BACON: -- and my clients' goal is to be able to
12 get the stores intact before GOB sales start for sort of
13 obvious reasons. So, the reason we structured it so that it
14 would be subject to consent of all the economic parties in
15 interest that would be affected, most notably the committee,
16 was to hope -- was to sort of grease the skids or anybody's
17 concern that their economic rights are going to be economically
18 impacted.

19 THE COURT: Well, the committee has been a pretty
20 tough policeman of whatever deal is going to be done; we've
21 already seen that. So --

22 MR. BACON: And I've learned that in the last ninety
23 minutes, Your Honor. So I can get that. Thank you.

24 THE COURT: Okay. Thank you. Mr. Glenn?

25 MR. GLENN: So --

1 THE COURT: I think there's someone else who wants to
2 be heard --

3 MR. GLENN: Oh, I'm --

4 THE COURT: Let me --

5 MR. GLENN: -- sorry.

6 THE COURT: I'll give you a chance, Mr. Glenn.

7 Anybody else who wants to be heard, come on up. Yes,
8 sir.

9 MR. SAYDAH: briefly, Your Honor. Gilbert Saydah of
10 Kelley, Drye & Warren. Your Honor, I represent Developers
11 Diversified, Weingarten Realty and National Retail Properties,
12 which appear to be three of the locations on the Books-A-
13 Million deal. I'm just rising to reserve our rights. We've
14 not -- we don't know anything about it --

15 THE COURT: The way it's been described to me, is it
16 requires the landlords' approval, so I don't know what rights
17 you're reserving. It's been expressly stated it will be
18 subject to the landlords' --

19 MR. SAYDAH: That's correct --

20 THE COURT: -- approval.

21 MR. SAYDAH: -- Your Honor. It's our understanding,
22 though, that they've gone directly to our clients before we've
23 even been made aware of the deal. So, we will be in touch with
24 them, we will be working with them. I was hoping to get a
25 little more clarity from the debtors with respect to what the

1 timing would be to the extent that there's going to be an
2 assumption and assignment process. We've heard GOB sales are
3 going to start at these locations. We've heard they're not.
4 To the extent they're going to start and stop, that may impact
5 our locations and I'm just trying to get an idea of timing.

6 THE COURT: Mr. Smolinsky?

7 MR. SMOLINSKY: Thank you, Your Honor. Just for the
8 record, from our perspective, the sales are starting tomorrow.
9 The goal of today is to come out of court with an order and to
10 start the sales. The opti -- the free option that we're giving
11 will be valid tomorrow, it will be valid the next day or the
12 next day after that. So, it's certainly possible that these --

13 THE COURT: They better strike fast.

14 MR. SMOLINSKY: It's certainly possible that they can
15 close tomorrow on their transaction and then the GOB sales
16 would never start. But, if that does not happen, then we
17 intend to start the GOBs on Friday.

18 THE COURT: Thank you. Mr. Glenn.

19 MR. GLENN: I think the answer to Mr. Saydah's comm --
20 concern is that first and foremost, we're going to try to
21 negotiate this. Books-A-Million is a publicly traded company,
22 so to the extent that landlords have adequate assurance issues,
23 they can -- at least as a starting point, look at the EDGAR
24 filings for Books-A-Million and I'm sure at least some of the
25 landlords are familiar with Books-A-Million through other

1 locations.

2 Subject to that, if we can't sort out a consensual
3 agreement on a very tight time frame and it sounds, from what
4 Mr. Smolinsky's saying, we're talking about tomorrow, we would
5 seek to come back, if Your Honor would indulge us, next week on
6 assumption and assignment issues which, from what I understand,
7 we have all the cure numbers. That's not going to be an issue.
8 It's just going to be adequate assurance.

9 THE COURT: Let me ask one other question. Is this an
10 all or nothing deal? Is it all thirty or -- what happens if
11 five landlords don't consent?

12 MR. GLENN: Mr. Bacon?

13 MR. SMOLINSKY: Maybe I should answer the question.

14 MR. GLENN: Mr. Smolinsky?

15 I'm just a go-between.

16 THE COURT: Mr. Smolinsky.

17 MR. SMOLINSKY: Your Honor, the way that our offer is
18 structured, the thirty leases are an all or nothing deal. The
19 five optional stores can be one of them, two of them, three of
20 them or five of them. To the extent that they get twenty-eight
21 landlords and not the last two and they come back to us, I
22 think the language in the order would allow that transaction to
23 go forward, if we and everybody else are on board with that,
24 but that's a decision that we would make based on the facts as
25 we have them in front of us.

1 THE COURT: Okay.

2 MR. BACON: Your Honor, Doug Bacon for Books-A-Million
3 again. I would just add, people have been very industrious and
4 very creative over the last twenty-four hours and I think we
5 will --

6 THE COURT: I've been reading about Books-A-Million
7 for the last week, it seems like.

8 MR. BACON: Well --

9 THE COURT: I don't know why this had to come down
10 until today.

11 MR. BACON: No -- I can't comment on that, Your Honor,
12 but I think there'll be a lot of creativity that will solve to
13 any landlord concerns we have and any concerns Mr. Smolinsky's
14 client has about the aggregate number of stores. If it can all
15 come together in a way that's acceptable to all the economic
16 parties and Mr. Smolinsky -- it may be less than all the
17 stores. But, again, it's subject to everybody's veto.

18 THE COURT: Okay.

19 MR. BACON: I think we'll be able to solve to it.

20 THE COURT: All right.

21 Anybody else wish to be heard?

22 Mr. Glenn, when do you -- I don't have the concrete
23 language in front of me with respect to Books-A-Million. I
24 guess as to everything else, the language is pretty final.

25 MR. GLENN: It is. Other than -- I misspoke. I said

1 the Texas taxing authorities. It's actually the County of
2 Douglas in --

3 THE COURT: Colorado --

4 MR. GLENN: -- Colorado. That's still an open issue.
5 All the other language is ready for Your Honor's review. We
6 have it, I believe, on disk now and you can take a look at the
7 blackline right away.

8 THE COURT: All right. So -- when am I going to
9 see -- I understand you've been working hard to -- I'm not
10 criticizing or faulting anybody about it. But you want to have
11 GOB sales starting tomorrow and I don't have an order that I
12 can look at in its entirety. I certainly had reviewed what was
13 provided this morning or overnight. There's some more
14 tinkering with it that's occurred. I don't know when you
15 estimate that you'll have actual language with respect to the
16 Books-A-Million --

17 MR. GLENN: We have it.

18 THE COURT: You have it?

19 MR. GLENN: We have it. Yes, it's everything --
20 everything is ready for your review, Your Honor --

21 THE COURT: Okay.

22 MR. GLENN: -- other than this Douglaston (sic) County
23 issue.

24 THE COURT: Oh, okay. I misunderstood.

25 MR. GLENN: Now I'm told the Douglaston language is

1 done, so the entire thing is ready for your review --

2 THE COURT: Okay.

3 MR. GLENN: -- unfortunately, and I hesitate to
4 mention this, there is actually a running -- dispute is
5 probably a strong word, but a running controversy about the
6 contents of the payoff letter. Getting agreement, as
7 astounding as it may sound, about how much we have to pay to
8 the DIP lenders, has taken on a life of its own. So the sale
9 order has a payoff letter --

10 THE COURT: As an --

11 MR. GLENN: -- attached --

12 THE COURT: -- exhibit.

13 MR. GLENN: -- to it. Attached to it --

14 THE COURT: And that's not done?

15 MR. GLENN: It's not done. I'm told it should be done
16 in -- very -- any minute now. So, I -- Your Honor is free to
17 look at it --

18 THE COURT: It's only five of 3, so it's okay, you
19 know.

20 MR. GLENN: You're free to look at it. It's mind-
21 numbing, but that will be provided to you shortly. Otherwise,
22 the order -- the order now, in its entirety, should be ready
23 for Your Honor's review.

24 UNIDENTIFIED SPEAKER: Andrew, is Exhibit -- the new
25 Exhibit D, the list of the leases, done?

1 MR. GLENN: I have the list of leases --

2 UNIDENTIFIED SPEAKER: -- with the five optional?

3 MR. GLENN: We can just --

4 UNIDENTIFIED SPEAKER: I don't know --

5 MR. GLENN: -- write those in or something.

6 We have the list of leases that we have to attach to
7 the order. I have versions of that we can provide to the
8 Court. I don't have those in data format right this moment.

9 THE COURT: All right. Anybody in court on or the
10 phone wish to be heard on any issue relating to the motion
11 presently pending before the Court?

12 All right. As I indicated, the Court reviewed
13 certainly the most recent draft that was provided to the Court
14 of the order approving the agency agreement, store closing
15 sales and related relief. The objections -- the Court's
16 already ruled on the objections. The remaining two issues that
17 we carried over to this afternoon had been resolved and
18 therefore the Court deems those objections withdrawn with
19 whatever language changes were agreed upon to resolve them.

20 The Court concludes, based on the record before the
21 Court, it concludes the declarations that the debtor submitted
22 in support of the bidding procedures and of the sale, based on
23 the hearing that the Court's held, both on the bidding
24 procedures and today with respect to the sale and all of the
25 prior proceedings in this matter to date, that the order --

1 that the Court grants the motion to approve the agency
2 agreement, store closing sales and related relief.

3 As Mr. Glenn indicated at the outset today, it's, of
4 course, unfortunate that the case is in the posture it is
5 today. it certainly -- I think all of the constituencies have
6 made their best efforts to perhaps have the case wind up more
7 successful than it has at this point. But it is where it is.
8 Hopefully, the Books-A-Million transaction will at least help
9 in maintaining some employees with continuing jobs.

10 So I will go ahead and grant the motion. I conclude
11 it's in the best interest of the debtors and the estate and
12 certainly all of the creditor constituencies. So I will go
13 ahead and approve it. I do obviously need to see the final
14 changes to the agreement, but subject to doing that, I will
15 enter the order.

16 With respect to -- if it becomes necessary for the
17 Court to hear any further issues regarding the Books-A-Million
18 deal or the assumption and assignment -- the leases, the Court
19 is certainly available next week. I assume that you've got to
20 get this done sooner rather than later. The Court -- the only
21 hearings I have right now are 2 o'clock on Monday, so the day
22 is wide open. And the 2 o'clock hearing is relatively short.
23 So, if necessary, I can hear the parties at any time, really,
24 on Monday. And I assume you want to get this all done.
25 Tuesday is fairly open; there are some things on the calendar,

1 but fairly open. But if you need court time on Monday, you'll
2 certificate -- or Tuesday, you'll get it.

3 Anything else for today?

4 MR. GLENN: Yes, Your Honor. I just wanted to express
5 the debtor's appreciation to Your Honor and your staff. We
6 undertook this process on an extremely aggressive time frame.
7 We were forced to do so and we appreciate the consideration and
8 the time you've given the matter.

9 THE COURT: Okay.

10 MR. GLENN: So, on behalf of the company and --

11 THE COURT: All right.

12 MR. GLENN: -- the professionals, thank you very much.

13 THE COURT: Okay. All right. We're adjourned.

14 (Whereupon these proceedings were concluded at 2:57 PM)

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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, Sara Davis, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sara Davis

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Date: July 25, 2011