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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 11-13167 (KG)
) Chapter 11
FRIENDLY ICE CREAM CORPORATION,) (Jointly Administered)
et al.,)
) Courtroom No. 3
Debtors.) 824 Market Street
) Wilmington, Delaware 19801
)
)
) October 24, 2011
) 2:00 P.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: Pachulski Stang Ziehl & Jones LLP
By: LAURA DAVIS JONES, ESQ.
TIMOTHY P. CAIRNS, ESQ.
KATHLEEN P. MAKOWSKI, ESQ.
919 North Market Street, 17th Floor
P. O. Box 8705
Wilmington, DE 19899-8705
(302) 652-4100

ECRO: GINGER MACE

Transcription Service: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
Telephone: (302) 654-8080
E-Mail: gmatthews@reliable-co.com

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1 For the Debtor: Kirkland & Ellis LLP
2 By: JAMES A. STEMPEL, ESQ.
3 ROSS M. KWASTENIET, ESQ.
4 JEFFREY D. PAWLITZ, ESQ.
5 300 North LaSalle
6 Chicago, IL 60654
7 (312) 658-1100

8 For the Committee: Akin Gump Akin Gump Strauss
9 Hauer & Feld LLP
10 BY: DANIEL H. GOLDEN, ESQ.
11 PHILLIP C. DUBLIN, ESQ.
12 One Bryant Park
13 New York, NY 10036-6745
14 (212)872-1000

15 For Sun: Morgan Lewis & Bockius
16 BY: NEIL E. HERMAN, ESQ.
17 101 Park Avenue
18 New York, NY 10178-0060
19 (212) 309-6669

20 For FMWRRIMC, LLC: Richards, Layton & Finger
21 BY: RUSS SILBERGLIED, ESQ.
22 One Rodney Square
23 920 North King Street
24 Wilmington, DE 19801
25 (302) 651-7547

For Coventry Retail LLP: Connolly Bove Lodge & Hutz
BY: CHRISTINA THOMPSON, ESQ.
1007 N. Orange Street
Wilmington, DE 19899
(302) 658-9141

For Benoit Properties: Stevens & Lee
BY: MARIA APRILE SAWCZUK, ESQ.
1105 North Market Street
7th Floor
Wilmington, DE 19801
(302) 654-5180

Various landlords: Ballard Spahr LLP
BY: LESLIE C. HEILMAN, ESQ.
919 N. Market Street
Wilmington, DE
(302) 252-4465

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1 (Court commenced at 2:05 p.m.)

2 MR. KWASTENIET: Your Honor, the Creditors'
3 Committee was appointed in these cases on October 12th.

4 THE COURT: Yes.

5 MR. KWASTENIET: I assume you'll be hearing shortly
6 from the proposed advisors to the Committee.

7 THE COURT: Yes, good to see you both.

8 MR. KWASTENIET: Your Honor, I'm pleased to report
9 that since the formation of the Committee, the Debtors and
10 the advisors to the Committee have already had a fairly
11 extensive dialogue on, you know, issues related to the case,
12 including the proposed first day relief that we're going to
13 be presenting, or second day relief that we will be
14 presenting today, as well as issues related to the DIP
15 financing, the bidding procedures, professional retentions
16 and the like, Your Honor. We did have a meeting this morning
17 in New York with the members of the Committee and the
18 proposed advisors to the Committee. They met with senior
19 management from the Company as well as the Company's proposed
20 advisors. I think that was a pretty productive kick-off
21 meeting where the Company was able to go through the business
22 and, you know, basically help orient the members of the
23 Committee to the company, to its operations and to what we
24 hope to accomplish in chapter 11. And, then following the
25 hearing today, Your Honor, we have another meeting scheduled

1 with counsel to the Committee and counsel to Sun, the
2 proposed, the DIP lender, proposed purchaser to talk through
3 issues related sale timing and the DIP facility, etc. So, we
4 we've had what I would characterize as a good faith and
5 ongoing dialogue at this point. And, Your Honor, I am going
6 to yield the podium in a moment to my colleague, Jeff
7 Pawlitz. Should also note that I'm, that we're here with Tim
8 Cairns from --

9 THE COURT: Absolutely.

10 MR. KWASTENIET: -- Pachulski Your Honor.

11 THE COURT: Good afternoon.

12 MR. KWASTENIET: And my colleague, Mr. Pawlitz, will
13 walk through some modifications that we made to the various
14 second day orders, things like utilities and the like that
15 that do reflect, I believe, were consensual at this point
16 with the with the Committee. I believe we've resolved all
17 the other miscellaneous objections, but my colleague is
18 closer to the details than I am on that.

19 THE COURT: Okay. I wasn't sure if, how contested
20 matters remained and --

21 MR. KWASTENIET: Hopefully, hopefully not.
22 Hopefully we don't have any contested matters, Your Honor, I
23 believe that we've been working with a lot of different
24 parties to resolve language and make additions to the orders
25 so there may be some statements on the record and

1 clarifications and the like, but I think we're largely,
2 largely resolved.

3 THE COURT: All right.

4 MR. KWASTENIET: Your Honor, there's one item on the
5 agenda and I'll address it when we come to it. It's the DIP
6 financing. We have a proposed form of second interim order.
7 The first interim order, Your Honor, had incremental
8 borrowing authorities on an interim basis that was designed
9 to get us through today's hearing. As part of our ongoing
10 discussions with the Committee, in order to hopefully address
11 and reach agreement with the Committee on things like the DIP
12 and the bidding procedures, we've agreed, and Your Honor has
13 accommodated our request to push those off into next week.
14 We have a hearing, I believe, on November 1st so for the DIP,
15 in order to make sure that the Company has enough access to
16 cash to bridge us through the adjourned hearing date, we do
17 have a proposed form of second interim order that's been
18 negotiated and signed off on by the DIP lenders, by the
19 Committee, by the Company and we would hand that up when we
20 get to it.

21 THE COURT: All right. I assumed as such when I
22 heard you were going to be meeting after the hearing to
23 discuss the DIP --

24 MR. KWASTENIET: Yes, we have a short bridging
25 order.

1 THE COURT: -- it wasn't going to be a final version
2 yet -

3 MR. KWASTENIET: Yeah, it'll get us to next week,
4 Your Honor.

5 THE COURT: Good.

6 MR. KWASTENIET: So, that's all I had, Your Honor.
7 At this point, I'd yield the podium to my colleague, Mr.
8 Pawlitz, unless counsel for the Committee has anything they'd
9 like to address before we start to tick through the agenda.

10 THE COURT: Well, counsel to the Committee needs no
11 introduction. It's good to have you here and welcome. Mr.
12 Golden.

13 MR. GOLDEN: Thank you, Your Honor. Always good to
14 be in front of you.

15 THE COURT: It's good to have you here.

16 MR. GOLDEN: Your Honor, I'm just going to just
17 spend a couple of minutes with some observations that the
18 Committee has made given its early involvement or recent
19 involvement, I should say. Your Honor, we have worked hard
20 since the Committee was formed and my firm and FTI was
21 retained as proposed counsel and proposed financial advisor
22 because we are on a fast track here. I think Your Honor --

23 THE COURT: Yes.

24 MR. GOLDEN: -- is clearly aware of that. And, in
25 many respects, Your Honor, this case is just about as much

1 about Sun Capital as it is Friendly's Ice Cream, given Sun
2 Capital's numerous roles and interlocking relationships with
3 the Debtors.

4 And just to review those for a minute, Sun Capital
5 is the guarantor of Wells Fargo's \$21 million pre-petition
6 drawn first revolver obligation. Sun Capital, and when I say
7 Sun Capital, I mean Sun Capital or its affiliates, is also
8 the guarantor of the issued LCs under that pre-petition
9 facility. Sun Capital is the holder of \$267 million
10 subordinated secured note claim subordinated to the
11 indebtedness owed to Wells Fargo. And of that \$260 million,
12 152 million represents actual advances made by Sun Capital
13 and \$116 million represents accrued PIK interest since that
14 note was issued back in January of '08.

15 Sun Capital is also effectively the majority and
16 substantial majority owner of the Debtors. Sun Capital is
17 the proposed DIP lender of the Debtors. And Sun Capital,
18 finally, is the proposed stalking horse under the proposed
19 auction sale, whereby it intends, or it is proposed that they
20 will bid in to a credit bidding mechanism, some portion of
21 their pre-petition secured indebtedness as the initial bidder
22 under the auction sale.

23 Now, Your Honor, the Committee's not asserting that
24 there's anything wrong with all those interlocking roles, but
25 it's something that obviously needs to be investigated and

1 the word that the Committee has brought to bear on this is
2 vigilance. We need to vigilantly review the pre-petition
3 transactions and the prospective post-petition transactions.
4 And that vigilance is heightened where, as here, the Debtors'
5 primary bankruptcy counsel has a substantial ongoing
6 attorney-client role with Sun Capital, fully disclosed.
7 Where the senior management of the Debtors have already
8 negotiated, again fully disclosed, arrangements with Sun
9 Capital should it be the successful bidder for continued
10 employment relationships and severance arrangements.

11 And it is also so, that under the, one of the terms
12 of the proposed DIP, that you'll hear about later and not
13 later today, next week, where the DIP lender, i.e. Sun
14 Capital, has proposed to limit the amount of fees that can be
15 incurred by the Committee during the first thirty days of the
16 case, both attorneys and financial advisors. It was
17 initially 150,000; it's been moved up pursuant to the interim
18 DIP order that will be presented to Your Honor this
19 afternoon, to \$225,000, while at the same time there is
20 absolutely no fee cap for the Debtors' professionals during
21 the same period. So, vigilance is a word that comes to mind.

22 And, Your Honor, again I want to make it clear,
23 crystal clear, we are doing our due diligence. We're not
24 suggesting any wrong play, any untoward conduct. But these,
25 all of these pre-petition and post-petition transactions need

1 to be investigated.

2 Sun Capital, through its counsel, actually has been
3 quite cooperative in the two weeks since the Committee has
4 been formed, in terms of producing information and the like.
5 As Your Honor has now heard, there is an all-hands meeting
6 scheduled for later this afternoon to try to reach consensus
7 on a variety of open and contested issues regarding the DIP
8 and the bidding procedures. We'd like to get there on a
9 fully consensual basis. We think that ultimately will be
10 best for the estate, but time will tell. And, Your Honor is
11 fully familiar with how these negotiations can come
12 sometimes.

13 So, Your Honor, just to, in closing, I want to
14 suggest that we need to view this situation seriously and we
15 will. That having been said, we fully expect that the
16 parties will continue to negotiate in good faith and
17 hopefully, we'll be here all holding hands together on
18 November 1st.

19 THE COURT: All right.

20 MR. GODLEN: Thank you.

21 THE COURT: Thank you, Mr. Golden. I certainly have
22 great confidence in your firm's and your ability to make
23 certain that all of the light necessary is shed upon the
24 process and thank you for that. Mr. Herman.

25 MR. HERMAN: Good morning, Your Honor.

1 THE COURT: How are you?

2 MR. HERMAN: I'm doing very well, thank you. Neil
3 Herman, Morgan Lewis & Bockius for the various Sun entities.
4 Your Honor, I just wanted to respond briefly to the
5 Committee's statement. I agree with most of their comments.
6 I did want to just mention that all of these items that they
7 mentioned were fully disclosed in the first day pleadings.
8 And, more importantly, at the first day hearing I stood up
9 and made a point of going through each and every one of those
10 items to make sure everyone is aware from day one that Sun
11 had all these different hats and all these different roles.
12 So, we may have some dispute on the merits of people's
13 positions or how much money people want to pay, but no one
14 should ever accuse us of lack of transparency here, and I
15 think the Committee was fair on that point.

16 THE COURT: Yes, I certainly heard Mr. Golden to say
17 everything had been fully disclosed. Yes.

18 MR. HERMAN: In addition, Your Honor, I just wanted
19 to pick up on the cooperation point. Neither Friendly's nor
20 Sun are public entities, so the Committee has been asking for
21 documents and information and we are pledging to get them
22 that information. But, since they're not public entities, we
23 need to have a confidentiality stipulation in place. The
24 parties have circulated numerous drafts and are working very
25 closely to get that done, and I thought we were done and we

1 were going to hand it up today, but we probably need another
2 day or two.

3 So, Your Honor, just as a heads up, in the next
4 couple of days we'll be delivering to Chambers a
5 confidentiality agreement that's going to be approved by the
6 Debtor, Sun, the Committee and Wells dealing with -- when
7 Wells, Sun and entities deliver documents and information to
8 the Committee, the Committee will hold it in confidence.

9 THE COURT: Yes.

10 MR. HERMAN: And, just, Your Honor, we just want to
11 give you a heads up that that's coming to Chambers soon. But
12 my last point on the cooperation side is that even though we
13 haven't yet signed the document, we, Sun has already
14 delivered documents to the Committee. We're trying to get
15 them as much information and documents as we can. We pledge
16 our cooperation to them and we look forward to working with
17 them.

18 THE COURT: Thank you, Mr. Herman. I will look for
19 that and certainly, subject to the precise language, I
20 certainly understand the appropriateness of the
21 confidentiality stipulation and order in this case. All
22 right. Good afternoon, Mr. Pawlitz.

23 MR. PAWLITZ: How are you, sir?

24 THE COURT: Very well, sir. How are you?

25 MR. PAWLITZ: Doing well, thank you.

1 THE COURT: Good.

2 MR. PAWLITZ: I can't promise to have the most
3 entertaining presentation for you, but I'll try to keep it
4 uneventful.

5 THE COURT: I won't mind being bored a bit, Mr.
6 Pawlitz.

7 MR. PAWLITZ: Excellent. So we have a number of
8 items to take you through today. I've got a set of clean and
9 a set of blacklined orders.

10 THE COURT: Okay.

11 MR. PAWLITZ: That might be helpful.

12 THE COURT: Yes, why don't you approach with those.
13 That would be helpful. Thank you. Good to see you. All
14 right.

15 MR. PAWLITZ: I'm also going to have to apologize in
16 advance if I'm looking down more than usual, as I'm going
17 through the blackline with you.

18 THE COURT: I understand.

19 MR. PAWLITZ: Okay, so --

20 THE COURT: I won't notice because I think I'll be
21 looking down, too.

22 MR. PAWLITZ: That's right, that's right. In a
23 perfect world, we'll both be looking down.

24 THE COURT: That's right.

25 MR. PAWLITZ: So, there's a number of items on the

1 agenda. I believe 1 through 6 are being kicked to the
2 November 1 hearing.

3 THE COURT: Right.

4 MR. PAWLITZ: So, I won't waste time with those. I
5 will also note, that throughout the presentation, I'll be
6 peppering in a couple of statements on the record, working
7 with the Committee that instead of amending orders previously
8 entered, we are just going to make statements on the record.

9 THE COURT: Okay, that's fine.

10 MR. PAWLITZ: And then I'll have a slew of them at
11 the end as well.

12 THE COURT: Good.

13 MR. PAWLITZ: Okay, so, first item up is agenda item
14 number 7.

15 THE COURT: Number seven is signed, it just hasn't
16 hit the docket yet.

17 MR. PAWLITZ: Perfect. I won't waste time with
18 that.

19 The next item is item number eight which is a motion
20 to establish rejection procedures going forward.

21 THE COURT: Yes.

22 MR. PAWLITZ: There were a number of objections that
23 were filed. We've resolved those objections. For the
24 record, I'd like to note that we will continue to work
25 cooperatively with the Committee to respond to reasonable

1 requests for additional information on the leases to be
2 rejected. In addition, the Debtors will provide the
3 Committee with copies of contracts for any proposed
4 rejections, a statement of business justification for the
5 rejection and a description or list of personal property to
6 be abandoned at each leased premises upon the proposed
7 rejection.

8 And then I can also tick through the blackline here
9 with you. There's a number of changes, most of which are
10 just updating for the status of the case. I'm happy to go
11 through paragraph by paragraph. I see you're kind of
12 perusing it yourself.

13 THE COURT: I am. Yes. I'll let you know if I hit
14 a snag here.

15 MR. PAWLITZ: Sounds good.

16 THE COURT: Paragraph seven. It's hard to do it all
17 at once. Paragraph seven, I see has been removed,

18 MR. PAWLITZ: Oh, okay, paragraph seven, this is an
19 agreement we made with one of the objecting parties.

20 THE COURT: Okay.

21 MR. PAWLITZ: That we would just tackle this later
22 to the extent that it became necessary.

23 THE COURT: Good.

24 MR. HAZELTINE: Excuse me, Your Honor, just for the
25 record, William Hazeltine.

1 THE COURT: That's your objection Mr. Hazeltine?

2 MR. HAZELTINE: That's my objection, National
3 Industrial Portfolio, and that resolved the objection.

4 THE COURT: Wonderful. Thank you. Thank you, for
5 making that statement on the record. Does anyone else wish
6 to be heard with respect to the proposed order? Mr.
7 Silberglid, good afternoon.

8 MR. SILBERGLIED: Good afternoon, Your Honor. For
9 the record, Russ Silberglid, Richards Layton & Finger on
10 behalf of, bear with me a minute, FMWRRIMC LLC. I'll refer
11 to it as a Red Roof entity.

12 THE COURT: Okay.

13 MR. SILBERGLID: A little easier to say it that way.
14 Your Honor, we didn't file an objection. We're really
15 reserving our rights and we had let the Debtors know that. I
16 have not seen this order and I was just handed something
17 that's multiple copies and not collated, so it may take me a
18 little bit to go through this. All we want to do is make
19 sure we're getting the same treatment as any other landlord
20 here.

21 THE COURT: Take your time with that, Mr.
22 Silberglid. I won't, I won't sign it until you've had an
23 opportunity to review it and indicate that you do or do not
24 have an objection.

25 MR. SILBERGLID: Thank you, Your Honor.

1 THE COURT: Sure. We'll put that one to the side
2 then.

3 MR. PAWLITZ: Okay. So unless there any other
4 questions, we can move on.

5 THE COURT: Yes.

6 MR. PAWLITZ: All right. Next item is number 9, the
7 lease rejection motion. We believe that the revised order
8 resolves all objections other than we're not certain about
9 one. There were two pending to walk through. One of them
10 was Coventry Realty LP which was objection Docket No. 147.
11 To paraphrase, there was a concern that perishable foods may
12 be left behind.

13 THE COURT: Right.

14 MR. PAWLITZ: And I can read on the record, to make
15 sure that we are all square here. New paragraph five, the
16 Debtors will use commercially reasonable efforts to remove
17 any remaining food products from the premises prior to
18 relinquishing the premises.

19 THE COURT: All right.

20 MR. PAWLITZ: So --

21 THE COURT: Is anyone -- all right. Ms. Thompson is
22 coming forward. Ms. Thompson, good afternoon.

23 MS. THOMPSON: Good afternoon, Your Honor. For the
24 record Christina Thompson, appearing on behalf of Coventry
25 Retail LP. Your Honor, we did have concerns about the

1 perishable goods.

2 THE COURT: Sure.

3 MS. THOMPSON: With the addition of that language,
4 we think it reasonably resolves our objection.

5 THE COURT: All right.

6 MS. THOMPSON: Thank you.

7 THE COURT: Thank you, Ms. Thompson. Anyone else
8 wished to be heard with respect to the proposed order? Ms.
9 Sawczuk, good afternoon.

10 MS. SAWCZUK: Good afternoon, Your Honor. Maria
11 Sawczuk, on behalf of Benoit Properties.

12 Your Honor, we had an, and I don't know whether
13 counsel wanted to make a presentation on this language as
14 well, but I think I have a prior copy of the order because I
15 didn't have the language he just read into the record. But,
16 the concern we have is at paragraph five with respect to the
17 abandoned property. The version I had says that, the
18 abandoned property may be disposed of by the applicable
19 landlord free and clear of any claims, liens or interests of
20 the Debtors and third parties and that the applicable
21 landlord may thereafter dispose of such abandoned property in
22 its sole discretion without liability to the Debtors or any
23 third party.

24 The concern that we have is that we're not sure
25 that: (a) third parties ever receive notice of this motion;

1 and (b) if that's the case, if they did not, then I don't
2 know if this an effective grant of, respectfully, of your
3 powers. The concern we have is if Friendly's gives us the
4 keys, walks away and then, let's say, there's a certain brand
5 of cola's machine in the property and we then lease out the
6 property as an ongoing restaurant with whatever's left in it,
7 and then that certain brand of cola comes to us and tries to
8 get that machine back, we're just not sure that this, that
9 Your Honor has the ability to protect us with this language,
10 absence that certain brand of cola or any other third party
11 actually getting notice.

12 I requested whether, in a perfect world I believe
13 that the Debtor should not be able to reject the property
14 until it can verify that all the third party property is out
15 of the building or they have some sort of agreement with
16 those third parties that it can be, can be left behind. But
17 my client shouldn't have to bear the responsibility and
18 expense of having to deal with any of those third parties.
19 And that's our issue.

20 THE COURT: Thank you, Ms. Sawczuk.

21 MR. PAWLITZ: If I may.

22 THE COURT: Mr. Pawlitz, yes you may.

23 MR. PAWLITZ: We are cognizant of their concern. It
24 is not our intent to abandon property in the ordinary course
25 when we are going through this. To the extent that it does

1 happen, we've actually incorporated language in our
2 abandonment motion that we will notice any third party with
3 an interest in the property that's to be abandoned. I'd also
4 like to note that this language that we're using is actually
5 at the suggestion of a number of major landlords in this
6 case, some of which sit on the Committee.

7 THE COURT: Okay.

8 MR. PAWLITZ: That this language has been used in
9 other chapter 11 cases as well. So we do appreciate their
10 concern, but we think that the language adequately protects
11 their interests, and it actually goes as far as to the extent
12 that any who assert claims on account of any abandoned
13 property they're completely within their right to do so.

14 THE COURT: Tell me where the language is regarding
15 notice to third parties, Mr. Pawlitz.

16 MR. PAWLITZ: Give me one second, please.

17 THE COURT: Here it is, I think.

18 MR. PAWLITZ: That's correct, yeah, paragraph four;
19 we've got it in there, in that actual order.

20 THE COURT: There it is, yes. Is that helpful to
21 you, Ms. Sawczuk?

22 MS. SAWCZUK: Well yes and no, Your Honor. I think
23 the concern I have is, as soon as reasonably practical on or
24 after the rejection date, so let's say after the rejection,
25 say they reject October 31st, then say, you know, a couple of

1 days later, November 3rd, November 4th they file this notice
2 and say cola company objects, well now, what happens? I mean
3 they are technically still in our property because they
4 haven't created, they haven't really abandoned yet. And so,
5 I think it just, I think that the rejection cannot be
6 effective until that notice goes out and those parties have
7 an opportunity to respond to it. If it's, you know, quick
8 notice, three days, five days, whatever, they still need some
9 sort of opportunity to respond I would think, and the concern
10 I have is just that my client is on the hook for this
11 equipment or this whatever for some period of days after
12 technically a rejection has been granted by this Court.

13 THE COURT: Mr. Hazeltine, do you have a similar
14 objection, or --

15 MR. HAZELTINE: No, Your Honor.

16 THE COURT: Okay. I understand, I do understand Ms.
17 Sawczuk's issue.

18 MS. SAWCZUK: And Your Honor, the Debtor can remedy
19 this by getting that notice out quickly, and, you know, if
20 they reject on the 31st, then get that notice out by the end
21 of the week or whatever is, you know, whatever Your Honor
22 deems is adequate notice. That's, I mean we don't object to
23 them rejecting at the end of October, we just object to them
24 rejecting it sort of at the end of October.

25 MR. PAWLITZ: Well, and we have every intention of

1 behaving in that manner. And the use of reasonable and
2 practical is obviously just to avoid some kind of foot fault.
3 You know, we're going to use our best efforts to move this
4 process along as efficient as possible and in the most
5 orderly manner.

6 THE COURT: There's a sentence in paragraph six, all
7 rights of the landlord to assert claims against the Debtors'
8 estates related to the abandoned property, including without
9 limitation its disposal --

10 MR. DUBLIN: I was going to comment on that
11 paragraph.

12 THE COURT: Mr. Dublin, okay. Let me hear from you
13 then. Thank you. Mr. Dublin, good to see you.

14 MR. DUBLIN: You, too, Your Honor. The Committee,
15 like the Debtor, is concerned that appropriate and fair
16 rejection procedures are implemented.

17 THE COURT: Yes.

18 MR. DUBLIN: And the fact that some of the
19 significant landlords have commented on and have signed off
20 on this language, we think is telling. In addition, the
21 language in paragraph six should provide the comfort
22 necessary for all landlords that to the extent that they
23 incur costs in connection with removing any abandoned
24 property, they have the right --

25 THE COURT: Yes.

1 MR. DUBLIN: -- to come back to this Court and seek
2 appropriate redress.

3 THE COURT: Yes.

4 MR. DUBLIN: And, it's the Committee's view that
5 that should be sufficient under the circumstances.

6 THE COURT: I think so here. Ms. Sawczuk, it's
7 some, it's sometimes hard, you know, early along in a case to
8 anticipate issues that might arise, but I do think that that
9 sentence and now this record reflects that, that you can, can
10 come back if there is an issue and I certainly will address
11 it.

12 MS. SAWCZUK: Thank you, Your Honor.

13 THE COURT: All right. Mr. Hazeltine.

14 MR. HAZELTINE: Your Honor, I only rise. I
15 represent J & T TSAI, Inc. who had filed an objection.

16 THE COURT: Yes.

17 MR. HAZELTINE: And, I just rise to, because I
18 promised somebody that I would say that this resolves our
19 objection.

20 THE COURT: All right. Thank you for doing that,
21 Mr. Hazeltine.

22 Anyone else? Okay. Well I am satisfied then with
23 the language and content with the consensus of the landlords
24 and I know that they are a very knowledgeable group and I
25 will be pleased to sign the order.

1 MR. PAWLITZ: Thank you, Your Honor. Moving on to
2 agenda item number 10, I'm going to call this the severance
3 order. It's really, if you'll recall on the first day wages
4 and compensation was approved on a final basis other than
5 with respect to severance.

6 THE COURT: Yes.

7 MR. PAWLITZ: Okay, so this blackline is pretty
8 messy and I'm happy to sum up exactly what it says.

9 THE COURT: All right.

10 MR. PAWLITZ: In connection with the closing of the
11 stores that we've done since commencing these chapter 11
12 cases, we've had to have some terminations of non-insider
13 employees.

14 THE COURT: Yes.

15 MR. PAWLITZ: And, those employees have severance
16 agreements with us in connection with those terminations and
17 we're looking to, we're working with the Committee to obtain
18 their consent on those programs. In the meantime, what this
19 interim order does, is between now and November 1, it
20 essentially allows, to the extent there's a non-insider
21 payment on account of that severance agreement, for an
22 employee terminated due to a store closure, the Debtors can
23 make that payment as long as it becomes due before November
24 1. And we look to use the next week to, you know, get them
25 comfortable with what our program is and hopefully be back on

1 November 1 for final approval of the severance program.

2 THE COURT: All right. Does anyone wish to be heard
3 with respect to that? I will note that it is only to as non-
4 insiders.

5 MR. DUBLIN: That's correct. Again, Phil Dublin,
6 for the Committee, Your Honor.. We are working
7 constructively with the Debtors to gather the information
8 that we believe is important to analyze this motion for final
9 approval next week. We would like to note that there are
10 certain payments that will be above the statutory cap and
11 that is what we are spending most of our time analyzing --

12 THE COURT: Sure.

13 MR. DUBLIN: -- and making sure these payments are
14 appropriate under the circumstances. But we are okay with
15 the amounts to be paid for people whose payments that would
16 become due prior to the next hearing.

17 THE COURT: Okay, thank you. Anyone else wish to be
18 heard? All right, I agree that this is appropriate language
19 and it does involve non-insiders and it's an interim order
20 and is only meant and designed to address those payments that
21 are coming due in the next week. So with that, I am prepared
22 to sign the order.

23 MR. PAWLITZ: Thank you, Your Honor.

24 MR. DUBLIN: Your Honor, one, one moment please. We
25 had a --

1 THE COURT: Yes.

2 MR. DUBLIN: -- couple of line item edits to the
3 order so we're just going to hand that over to Debtors'
4 counsel in a moment. I think they're non-controversial so
5 that if you can hold off for a couple of minutes, we'd
6 appreciate it.

7 THE COURT: I'll be pleased to.

8 MR. DUBLIN: Thank you.

9 THE COURT: Thank you. We'll try and get a sundae
10 named for you Mr. Dublin.

11 MR. PAWLITZ: Your Honor, the next item on the
12 agenda is the proposed utilities order.

13 THE COURT: Yes.

14 MR. PAWLITZ: We received a handful of objections to
15 the utilities order. We've resolved all of them with the
16 exception of two objections.

17 THE COURT: All right.

18 MR. PAWLITZ: Both of which are represented by the
19 same counsel and our issue there is negotiating additional
20 adequate assurance. Our resolution that we would propose to
21 the Court is to enter the order to the extent that you're
22 otherwise okay with it. The order as you know has procedures
23 in which we would resolve these additional adequate assurance
24 requests. Their objection was filed on October 17th which
25 would give us the next two weeks to continue to negotiate

1 with them. To the extent we're not able to reach a
2 resolution, we would be back in front of you at the November
3 omnibus.

4 THE COURT: All right. Yes. Good afternoon.

5 MR. PLACEY: Good afternoon, Your Honor. Richard
6 Placey on behalf of the City of Westfield and the City of
7 Chicopee, Massachusetts. I think that's who counsel was
8 referring to by the unresolved objections.

9 If I may address them. I don't think counsel's
10 proposal works here and we would ask that the motion simply
11 be denied as to Chicopee. Our objection was to the motion
12 and the interim procedures order under which he's operating.
13 And the statute, and I won't go into it in detail says, that
14 they have to provide us with adequate assurance within twenty
15 days and they have not done so. And, we are prepared, we've
16 made several proposals to them, but they haven't gotten
17 resolved. And for purposes of today, we're simply asking
18 that the motion be denied, at least as to Westfield and
19 Chicopee. And, I don't think that gives them another twenty-
20 one days or whatever it is to negotiate.

21 Now, I'm happy to yield the floor. I will address
22 the whole thing substantively if Your Honor wants, but I
23 don't know that this is the time to start that.

24 THE COURT: All right, thank you Mr. Placey. Do you
25 need it under twenty-one days or do you think this is

1 something, Mr. Pawlitz, that you might resolve by the
2 November 1st hearing?

3 MR. PAWLITZ: I think we can do it by the November
4 1st hearing. The last thing we want, I mean we just don't to
5 kind of go up against that deadline and be forced to take a
6 particular position.

7 THE COURT: Mr. Kwasteniet, yes sir.

8 MR. KWASTENIET: Just briefly, Your Honor. The only
9 thing I'd note is I believe that, Your Honor has a
10 constrained schedule next week and we already have a number
11 of items set for the November 1st hearing, so to the extent
12 that there is a, or I think there is an unlikely event, that
13 we need to have an evidentiary hearing on what constitutes
14 adequate assurance for Chicopee. The November 1st hearing may
15 not be the best date given that we've got DIP and bid
16 procedures and other things scheduled. I think we only have
17 a one hour window of time.

18 THE COURT: That's right.

19 MR. KWASTENIET: Your Honor, I think from our
20 standpoint, we have been working in good faith. We've
21 resolved numerous objections from utility companies. We've
22 been negotiating adequate assurance.

23 THE COURT: A lot of objections.

24 MR. KWASTENIET: The Company has, as I'll describe
25 in a minute, as to more than sufficient DIP financing in this

1 case, new money is being provided to run the business. I
2 think there is sufficient evidentiary record to conclude that
3 all utilities are adequately protected. And again, per our
4 procedures, we're not saying that the two week deposit is all
5 that anybody ever gets, you know, from now until the end of
6 time. There is a --

7 THE COURT: I guess.

8 MR. KWASTENIET: -- mechanism built in so the, these
9 utility providers have made an additional request. We're
10 working through that. We've already had some discussions. I
11 don't know that that - are we setting it for evidentiary
12 hearing, if that was --

13 THE COURT: No, that was not my intention.

14 MR. KWASTENIET: Okay. I just, given everything
15 else that's up for next week, Your Honor, I wanted to make
16 sure that we were on the same page.

17 THE COURT: How much are we talking about with
18 respect to these two sites, Mr. Placey, if you recall?

19 MR. PLACEY: Your Honor, as to Chicopee, what's been
20 requested is an upfront monthly payment in advance which
21 would be in around the \$40 to \$50,000 range. And for -- and
22 that would be a payment up front and then they would work
23 through it and then they would make another monthly upfront
24 payment the next month. And for Westfield, I believe that is
25 less than \$15,000. I'm on a little uncertain ground on

1 Westfield, because they also involve gas and I don't know
2 where gas is going be end of --

3 THE COURT: Okay.

4 MR. PLACEY: -- November or December. And I should
5 be clear that my objection is to continuation of the current
6 order as to these utilities.

7 THE COURT: Right.

8 MR. PLACEY: Such that under the statute, when the
9 period runs, we would have the ability to shut them off if
10 they have not prepaid their bill. So the interim procedures
11 don't solve the problem as to the objection.

12 THE COURT: Well, let me say this. I have never
13 been aware of a single instance in which a utility has
14 suffered as a result of the interim procedures that we
15 employ, the procedures that we employ. It really, in my
16 mind, is an irreparable, an immediate irreparable harm to
17 debtors type of issue, where if utilities are in a position
18 to exact whatever payment they deem appropriate as adequate
19 assurance, debtors who are obviously, who obviously come into
20 this Court, usually come into this Court cash poor, will be
21 in a difficult position, more than difficult position.

22 I think that based upon the record we have in this
23 case, and in particular with respect to the debtor in
24 possession financing, that, that your clients are adequately
25 assured of performance here, and that the Debtor has shown,

1 the Debtors have really shown a great facility for
2 negotiating in good faith as reflected by their agreements
3 reached with all of the other utilities, the numerous other
4 utilities. And accordingly, I am prepared to grant the
5 motion and enter the order here.

6 I understand your concerns. And nothing that I've
7 said should, should give the Debtors, nor do I think they
8 would assume, that it gives them more than fair opportunity
9 to negotiate in good faith. And I know that they'll do that
10 and I'm confident that they will do that. And under the
11 circumstances, I'll deny your objection, Mr. Placey, and
12 enter the order. But I will be very conscious of your
13 concerns and that the negotiations go forward promptly and in
14 good faith.

15 MR. PLACEY: Yes, Your Honor.

16 THE COURT: Thank you, sir. So I will sign the
17 final order on adequate assurance.

18 MR. PAWLITZ: Okay, and with that, I believe we've
19 come up to the DIP financing agenda items, so I will yield
20 the podium to Mr. Kwasteniet.

21 THE COURT: All right, thank you.

22 MR. KWASTENIET: Your Honor, if I may approach, I
23 have a proposed form of second interim DIP order.

24 THE COURT: Please, thank you, Mr. Kwasteniet.
25 Thank you sir.

1 MR. KWASTENIET: Your Honor, we didn't run a
2 blackline on this compared to the first interim order,
3 because this is, as you'll see, it's a lot, it's a lot
4 shorter than the first interim order. It merely provides for
5 the continuation of the interim order that was entered
6 several weeks ago, subject to a couple modifications that
7 I'll briefly highlight, Your Honor.

8 First, in paragraph four, the authorization to
9 borrow under the DIP facility --

10 THE COURT: Yes.

11 MR. KWASTENIET: -- has been increased to an amount
12 not to exceed \$56,378,664.

13 THE COURT: Okay.

14 MR. KWASTENIET: This is an increase of
15 approximately \$6,000,000, I believe over the amount that was
16 authorized in the first interim DIP order, Your Honor.

17 THE COURT: All right.

18 MR. KWASTENIET: Your Honor, as Mr. Golden
19 previously noted, we've increased, for the time being, the
20 cap on the Committee professionals, this in paragraph 6.
21 It's been increased to 225,000 for the first thirty days of
22 the case.

23 Your Honor, we have a slightly amended --

24 THE COURT: Budget?

25 MR. KWASTENIET: -- updated version of the budget

1 which is attached as an exhibit, Your Honor. I believe the
2 only change, and I don't even think it's a material change,
3 is we increased slightly the amount for providing adequate
4 assurance to utility providers. And that's again just based
5 on the resolutions that we've negotiated with various utility
6 providers over the last few weeks.

7 And then finally, we've set the final hearing.
8 We've entered a reservation of rights for the Committee.
9 Your Honor, they requested it and we think that that's
10 appropriate in paragraph 8 that the entry of this second
11 interim order doesn't prejudice the rights with respect to
12 the final order. Of course, from our standpoint, it does
13 not. And then in paragraph 9, setting the final hearing for
14 November 1st.

15 THE COURT: All right. Does anyone else wish to be
16 heard? Mr. Dublin.

17 MR. DUBLIN: Thank you, Your Honor. Your Honor, a
18 couple of things. One, with respect to the increased
19 availability under the facility, we had our proposed
20 financial advisor, FTI, work with Suffolk Cooper (phonetic)
21 for the Company to ensure that the availability would be
22 sufficient. We did sign off on the proposed budget increase
23 for the available advances. With respect to the increase in
24 the limitation on the amount of fees and expenses that the
25 Committee's professionals can incur as Mr. Golden mentioned,

1 we weren't going to, when they wanted an increase, we weren't
2 going to say no, but you can expect that if there is any
3 issue that is in dispute, among others, next week, will be
4 any limitation to be placed on the ability of the Committee's
5 professionals to do the work that's necessary in connection
6 with these cases, especially as Mr. Golden mentioned how
7 vigilant we need to be in the first 30 days of the case. So
8 we don't believe any, in connection with the final hearing
9 that any limitation on that will be appropriate. And of
10 course we include a reservation of rights on every single
11 issue including that one in the proposed order.

12 THE COURT: Understood.

13 MR. DUBLIN: Thank you, Your Honor.

14 THE COURT: I certainly do, I certainly understood
15 that to be the case. Thank you though, Mr. Dublin. Good
16 afternoon Mr. Sullivan.

17 MR. SULLIVAN: Good afternoon, Your Honor, Bill
18 Sullivan on behalf of Huntington National Bank.

19 THE COURT: Yes, thank you.

20 MR. SULLIVAN: We are a smaller secured creditor.
21 We are secured with respect to five locations in the Dayton,
22 Ohio area. We have filed an objection to the DIP financing
23 motion. We understand that that objection is being continued
24 in its entirety until next week.

25 THE COURT: All right.

1 MR. SULLIVAN: I'll plan to have discussions with
2 counsel this week, and we just want to make sure that all of
3 our rights are preserved.

4 THE COURT: Understood. And I certainly understood
5 your objection Mr. Sullivan. And hopefully you'll be able to
6 address it and have it resolved.

7 MR. SULLIVAN: We hope so too, Your Honor.

8 THE COURT: Thank you sir. Anyone else? Well I
9 think that for the same reasons I had expressed for the entry
10 of the original interim order, necessity of the funding for
11 the Debtors, and that the terms are fair and reasonable on an
12 interim basis, and recognizing various parties reservations
13 of rights, I will grant the, I will sign the order here. All
14 right. You're back Mr. Pawlitz.

15 MR. PAWLITZ: I'm back. Next item on the agenda is
16 item number 13, an order for retention of professionals
17 utilized in the ordinary course.

18 THE COURT: Yes.

19 MR. PAWLITZ: No objections were filed to this
20 motion. We did make some revisions based on conversations
21 with the Committee. The highlights are that the Committee is
22 going to be receiving invoices, they're going to be receiving
23 notice and they want us the cap reduced from 75 to 50,000.

24 THE COURT: Right. Okay.

25 MR. PAWLITZ: Other than that, not too much to

1 report.

2 THE COURT: All right. Anyone else? I am pleased
3 to grant the motion.

4 MR. PAWLITZ: Excellent. And that brings us to the
5 last item on the agenda which is the motion to establish de
6 minimis sale procedures.

7 THE COURT: Yes.

8 MR. PAWLITZ: We did have one limited objection, and
9 I don't want to put words into Mr. Sullivan's mouth, but I'll
10 try to summarize what I think the issue was. There are five
11 franchise stores in the Dayton area. Huntington Bank, we
12 understand, may have a lien on the assets of those stores.

13 THE COURT: Yes.

14 MR. PAWLITZ: Those franchisees we understand are no
15 longer operating those stores. The Debtors have stepped in
16 to continue operating them. I think there's a concern that
17 in these procedures we may sell assets upon which they have a
18 lien to the extent it's under 50,000.

19 THE COURT: Right.

20 MR. PAWLITZ: So I want to note first for the record
21 that we do not intend at this time to do anything with these
22 stores. To the extent we do, we will give Huntington notice
23 before we sell any of the assets at that store. I'm not sure
24 if that resolves their concern, but I'm happy to yield the
25 podium.

1 THE COURT: All right. Nobody puts words into Mr.
2 Sullivan's mouth except his beautiful daughter. All right
3 Mr. Sullivan.

4 MR. SULLIVAN: How true, Your Honor, more words
5 every day too.

6 THE COURT: Yes.

7 MR. SULLIVAN: Thank you, Your Honor, Bill Sullivan
8 on behalf of Huntington. I did have a discussion with
9 Debtors' counsel on Friday about resolving this with a
10 statement on the record. I tried to get ahold of my client
11 today. My contact is traveling. Because we're a secured
12 creditor, I really think we need a sentence in the order, not
13 just a representation on the record. But, you know, fairly
14 straightforward that we would get notice with seven days to
15 object of any sale of any asset in one of the five Dayton
16 area stores. I can read a sentence in the record or I can
17 work with counsel.

18 THE COURT: Would you like to talk about it first
19 Mr. Pawlitz, or would you just assume have Mr. Sullivan read
20 it and then you can decide whether you agree or not?

21 MR. PAWLITZ: I think I'd like to hear it, but I'll
22 say ahead of time I think we're amendable to putting it into
23 the order.

24 THE COURT: Okay. All right.

25 MR. SULLIVAN: All right. It just says that the

1 Debtors, I would suggest that it be added at 7(b) roman
2 numeral 7, or romanette vii. The Debtors will provide
3 Huntington National Bank and Fourth Day Hospitality LLC prior
4 notice of any sale or transfer of any of the assets located
5 at the five Dayton area Friendly's locations, defined as
6 Miamisburg, Troy, Vandalia, Kettering, and Beaver Creek, and
7 Huntington shall have seven business days from receipt of
8 such notice to object to any such sale, transfer or
9 abandonment.

10 THE COURT: Is that acceptable to the Debtors and
11 the Committee?

12 MR. PAWLITZ: No issue from our perspective.

13 MR. DUBLIN: We're fine, Your Honor.

14 THE COURT: All right, Mr. Dublin. Do you want to
15 have that handwritten in or do you want me just to so order
16 it on the record, Mr. Sullivan?

17 MR. SULLIVAN: I think we need it handwritten in,
18 Your Honor.

19 THE COURT: All right. If you would like to take
20 back the original order.

21 MR. SULLIVAN: I'll be happy to do it.

22 THE COURT: Okay. And as we're continuing, and I
23 know there were a couple of matters that still parties were
24 addressing, I will sign the order as revised. Thank you.

25 MR. SULLIVAN: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. PAWLITZ: So unless you have any questions, that
3 gets us through the agenda items.

4 THE COURT: We did have a couple of orders I think
5 that parties were reviewing. Mr. Silberglied was -- and if
6 you haven't had time to complete your review, Mr.
7 Silberglied, I'll give you time. And here comes Ms. Heilman.
8 And I thought Ms. Heilman was being so quiet today. All
9 right.

10 MR. SILBERGLIED: I did, Your honor, thank you very
11 much for the time. And subject to the comment you'll hear
12 afterwards, we're okay with this form of order, if I could
13 just get one clarification.

14 THE COURT: All right.

15 MR. SILBERGLIED: Which I think, I think is right.
16 The order provides at paragraph 2 that this order is
17 applicable to the rejection of any Contract, capital C, not
18 defined in the orders. So I think what you're supposed to do
19 is take it back to the motion, and it means any contract at
20 all which means it's not just the objectors, but that it
21 would apply to us as well. But if I can just get
22 confirmation of that, then subject to what you're going to
23 hear next, we have no objection.

24 THE COURT: All right, Mr. Silberglied. Let's hear
25 from -- oh, do you want to address Mr. Silberglied's concerns

1 first? Sure.

2 MR. PAWLITZ: We're happy to confirm that on the
3 record.

4 THE COURT: All right. Thank you. Thank you, Mr.
5 Silberglied. Ms. Heilman.

6 MS. HEILMAN: Good afternoon, Your Honor, Leslie
7 Hellman from Ballard Spahr on behalf of various landlords
8 today.

9 THE COURT: Yes.

10 MS. HEILMAN: Your Honor, I don't know if you
11 noticed I was walking through the courtroom earlier, but we
12 did notice what I thought was an oversight in the rejection
13 procedures order with respect to the objection service
14 parties as opposed to the noticed parties. They are
15 identical to the noticed parties of the Debtor with respect
16 to a rejection notice. Upon conferring with Debtors'
17 counsel, I understand that is not an oversight, they do
18 expect that all objection parties to serve notice on
19 effectively the world. So everybody that the Debtors aren't
20 serving, they would like all the objection parties to serve
21 as well. And I understand that they want that globally so
22 that everybody gets notice, especially if there's an
23 abandonment issue as we've heard earlier today.

24 To rectify that, the Debtors have indicated that
25 they are willing to allow their claims agent to serve at

1 least with respect to the noticed parties the third party
2 equipment lessees, their personal property lien holders, and
3 the 2002 parties. That is acceptable to us. I just don't
4 know how that gets notices out to everyone that the claims
5 agent is available for that service unless something is put
6 in the order.

7 THE COURT: That was a good catch Ms. Heilman.

8 MS. HEILMAN: Thank you, Your Honor.

9 THE COURT: And I think, I think it would be
10 appropriate to put some language in the order to that affect,
11 Mr. Pawlitz.

12 MR. PAWLITZ: Happy to do that.

13 THE COURT: You can handwrite it in or have it
14 retyped and resubmitted, whichever you prefer.

15 MR. PAWLITZ: Okay. Yeah, we're happy to do that.

16 THE COURT: Okay. Thank you. Thank you, Ms.
17 Heilman, I think that will be helpful obviously to numerous
18 parties.

19 MR. PAWLITZ: And one cleanup matter. We have the
20 Committee's comments to the severance --

21 THE COURT: Good.

22 MR. PAWLITZ: -- order. So that's something we'll
23 be able to handwrite in.

24 THE COURT: And what was the issue again with
25 respect to the severance, Mr. Dublin? I'm sorry.

1 MR. DUBLIN: That's okay, Your Honor. They were
2 just a couple of line item clarification, nothing of
3 substance, just making clear that it's on an interim basis,
4 and that no additional payment is to made past November 1st,
5 without further order of the Court.

6 THE COURT: Okay. Thank you. That's great. Let me
7 leave the order up here so that I don't inadvertently sign
8 it. And I think -- thank you, Mr. Pawlitz.

9 MR. PAWLITZ: My pleasure.

10 THE COURT: I think --

11 MR. PAWLITZ: With that I have one thing left.

12 THE COURT: Yes.

13 MR. PAWLITZ: Some statements for the record.

14 THE COURT: Okay.

15 MR. PAWLITZ: All right. Here we go. So I
16 previously mentioned we agreed to make statements on the
17 record in lieu of revising the orders already entered. We
18 want to state for the record that the Committee maintains the
19 right to dispute any payment made under the following orders
20 on any grounds. The insurance order, Docket number 51; the
21 lien claimant, 503(b)(9) order, Docket Number 57; the
22 franchisee media order, Docket Number 54; the taxes order,
23 Docket Number 53; and the customer programs order, Docket
24 Number 49.

25 For that same set of orders, the Debtors will

1 provide a schedule of payments made pursuant to each order
2 within 30 days of each month end.

3 Additionally, with respect to the insurance order,
4 the Committee retains the right to dispute any revision,
5 extension, supplement or change to existing insurance
6 policies or entry into new insurance policies.

7 And with respect to D&O insurance, the Debtors will
8 consult with the Committee before amending any exiting D&O
9 policies or entering into new D&O policies.

10 THE COURT: All right.

11 MR. PAWLITZ: With respect to 503(b)(9) claims,
12 Suffolk Cooper will notify FTI of any new 503(b)(9) claims,
13 the existing schedule they already have, to the extent those
14 claims are in excess of 100,000.

15 THE COURT: Okay.

16 MR. PAWLITZ: And finally, the Debtors have agreed
17 to provide the Committee with a schedule of tax payments to
18 be made. I'm not certain whether this has happened yet. If
19 it hasn't we will provide it for them.

20 THE COURT: Okay. All right. Those were all
21 certainly appropriate and uncontroversial.

22 MR. PAWLITZ: And with that, we have nothing more on
23 our end.

24 THE COURT: All right. Thank you. And I know we
25 have just the one order that Mr. Sullivan was revising for me

1 to sign. Do you need to take a look at the language for a
2 minute?

3 MR. PAWLITZ: Yeah, I'm going to want to take a look
4 at that.

5 THE COURT: Of course.

6 MR. PAWLITZ: What's the best way to get you the
7 orders?

8 THE COURT: I would say just give it to Ms. Mace,
9 and she will bring it back into chambers.

10 MR. PAWLITZ: Sounds great.

11 THE COURT: All right every one. I thank you. This
12 was amazingly shorter than I thought it would be. And -- but
13 I appreciate counsel's hard work and everyone's cooperation.
14 And we will stand in recess until next week. Thank you all.
15 Have a good day.

16 (Court was adjourned at 2:55 p.m.)

17

18 CERTIFICATE

19 I certify that the foregoing is a correct transcript from the
20 electronic sound recording of the proceedings in the above-
21 entitled matter.

22

23 /s/Mary Zajaczkowski
Mary Zajaczkowski, CET**D-531

October 25, 2011
Date

24

25