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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

August 10, 2011
10:10 AM

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

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HEARING re Motion for Payment of Administrative Expenses.
Filed by 2121 Borders, LLC.

HEARING re Motion for Payment of Administrative Expenses.
Filed by 49 Waukegan Road Limited Partnership.

HEARING re First Application for Interim Professional
Compensation of Deloitte Tax LLP for Compensation for Services
Rendered and Reimbursement of Expenses as Tax Advisors to the
Debtors for the Period from February 16, 2011 Through April 30,
2011 for Jeffrey R. Gleit, Debtors' Attorney.

HEARING re First Interim Fee Application of The Garden City
Group, Inc., as Administrative Agent for the Debtors, for
Allowance of Compensation and Reimbursement of Expenses
Incurred for the Period of 2/16/11 through 4/30/11 for The
Garden City Group Inc., Other Professional.

HEARING re Application to Employ and Retain Streambank, LLC as
Intellectual Property Disposition Consultant to the Debtors,
Nunc Pro Tunc to July 20, 2011 Filed by Andrew K. Glenn on
Behalf of Borders Group, Inc.

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HEARING re Application for Authorization to Employ and Retain Mortgage Corporation of America as Debtors' Mortgage Broker, Nunc Pro Tunc to the Commencement Date. Filed by Andrew K. Glenn on Behalf of Borders Group, Inc.

HEARING re First Application for Interim Professional Compensation of Deloitte & Touche LLP for Compensation for Services Rendered and Reimbursement of Expenses as Accounting Related Consulting Services Provider to the Debtors for the Period from February 16, 2011 through April 30, 2011 for Jeffrey R. Gleit, Debtors' Attorney.

HEARING re Fourth Notice of Objection to Claims Omnibus Objection to the Allowance of Certain Claims: (I) Amended Claims, and (II) Wrong Case Claims Filed by Andrew K. Glenn on Behalf of Borders Group, Inc.

HEARING re First Interim Fee and Expense Application of Ernst & Young LLP, as Accounting, Tax and Audit Services Provider to the Debtors and Debtors in Possession for the Period From February 16, 2011 Through April 30, 2011 for Jeffrey R. Gleit, Debtors' Attorney.

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HEARING re First Application for Interim Professional Compensation of Baker & McKenzie LLP for Compensation of Services Rendered and Reimbursement of Expenses as Special Corporate Counsel to Debtors and Debtors in Possession.

HEARING re Interim Application for Interim Professional Compensation (Dickinson Wright PLLC) for Michael C. Hammer, Special Counsel.

HEARING re First Application for Interim Professional Compensation of Deloitte Consulting LLP for Compensations for Services Rendered and Reimbursement of Expenses as Consulting Services Provider to the Debtors for the Period from March 7, 2011 through April 30, 2011 for Jeffrey R. Gleit.

HEARING re First Application for Interim Professional Compensation of DJM Realty Services, LLC as Real Estate Consultant to the Debtors and Debtors in Possession for Interim Allowance of Compensation for Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from February 16, 2011 through April 30, 2011 for Jeffrey R. Gleit, Debtors' Attorney.

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HEARING re First Application for Interim Professional Compensation for Mercer (US) Inc., Consultant.

HEARING re Application for Interim Professional Compensation for Lowenstein Sandler PC, Creditors' Committee Attorney.

HEARING re Application for Interim Professional Compensation for DBO USA, LLP, Accountant.

HEARING re First Application for Interim Professional Compensation of Kasowitz, Benson, Torres & Friedman LLP as General Counsel to the Debtors and Debtors in Possession for Interim Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from February 16, 2011 Through April 30, 2011 for Andrew K. Glenn, Debtors' Attorney.

HEARING re Third Notice of Objection to Claims Omnibus Objection to the Allowance of Certain Claims: Wrong Case Claims.

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HEARING re Motion to Approve Debtors' Motion for Entry of an Order Pursuant to Section 363(b)(1) and 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving Termination Agreement Between Borders, Inc. and HarrisPort Associates Regarding Harrisburg Lease and Settlement of Related Loan.

HEARING re Motion to Approve Debtors' Motion for Entry of an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Approving Sale of Mortgage Note Related to Debtors Torrance, California Store Free and Clear of Liens, Claims and Encumbrances and Related Transactions.

HEARING re First Notice of Objection to Claims Omnibus Objection to the Allowance of Certain Claims: Duplicate Claims.

HEARING re Second Notice of Objection to Claims Omnibus Objection to the Allowance of Certain Claims: Duplicate Claims.

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HEARING re Motion to Approve Debtors' Motion for Entry of an Order Pursuant to Sections 105(a) and 363(b)(1) of the Bankruptcy Code Approving Lease Termination Agreements Between: (A) The Debtors and A/R Retail, LLC, Store 592 (Columbus Circle); and (B) The Debtors and the Port of Seattle Store 756 (Seattle-Tacoma Intl Airport).

HEARING re Motion to Approve Debtors' Motion Pursuant to 11 U.S.C. 105(a) and Rules 1009(a), 3007 and 9019(b) of the Federal Rules of Bankruptcy Procedure Requesting Approval of Procedures for (I) Filing Claim Objections, (II) Settling Claims, and (III) Amending the Debtors' Schedules.

HEARING re Motion to Approve Debtors' Motion for Order Pursuant to Sections 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 Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases, (II) Setting Lease Sale Hearing Dates and (III) Authorizing and Approving (A) Sale of Certain Unexpired Nonresidential Real Property Leases Free and Clear of All Interests, and (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases.

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HEARING re Motion to Approve Debtors' Motion for Orders Pursuant to Sections 332, 363, 365 and 105 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure: (I) Approving Bidding Procedures with Respect to Sale of Certain IP Assets, Including Expense Reimbursement for a Stalking Horse Bidder, Setting the Sale Hearing Date, and Appointing a Consumer Privacy Ombudsman; and (II) Approving and Authorizing the Sale of IP Assets to the Highest and Best Bidder Free and Clear of All Liens, Interests, Claims and Encumbrances and the Assumption and Assignment of Certain Related Executory Contracts and Waiving the Requirements of Bankruptcy Rules 6004(H) and 6006(D).

HEARING re First Application for Interim Professional Compensation of Jefferies & Company, Inc., Investment Banker and Financial Advisor to the Debtor for Interim Allowance of Compensation and for the Reimbursement of Expenses for Services Rendered During the Period from February 16, 2011 Through April 30, 2011 for Jeffrey R. Gleit.

Transcribed by: Pnina Eilberg

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BY: CHRISTINA M. THOMPSON, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

CRAIG E. JOHNSON, GCC
HOLLY ETLIN, AlixPartners, LLC
DAVID HEAD, AlixPartners, LLC

ALSO PRESENT TELEPHONICALLY:

ERIN ELIASON, Stoel Rive
DAVID PERESS, Strenn Bank
COURTNEY ROGERS, Royal Bank of Scotland
JUDITH ROSEN, Publishers Weekly

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P R O C E E D I N G S

THE COURT: Please be seated. All right. We're here in Borders Group, number 11-10614. Mr. Glenn?

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

Your Honor, we have a full agenda today and with Your Honor's indulgence I believe we'll just go right down the agenda in order, with a couple exceptions that I'll note when we get to them, if that's okay.

THE COURT: Go ahead.

MR. GLENN: Thank you.

First item on the agenda, Your Honor, is the Harrisburg DC motion, docket number 1113. This motion was originally scheduled for the last omnibus hearing. The motion contemplated a buyout by the landlord and mortgagor, I believe is the proper terminology, of 350,000 dollars. This was a distribution center that the debtors have not used for quite some time. The debtors had negotiated a buyout price of 350,000 dollars. The factual background was recited in the motion.

The creditors' committee objected to that motion. At that time there were a lot of other more pressing matters that were operative. So we decided, in consultation with the committee, to adjourn that for today.

1 Part of the reason for the adjournment was to allow
2 the creditors' committee an opportunity to see if they could
3 strike a better deal than what the debtors had negotiated and
4 lo and behold, that's exactly what's happened. We filed a
5 blackline or a revised settlement agreement, I should say,
6 contemplating an increased payment from 350,000 to 482,000
7 dollars which resulted in the resolution of the creditors'
8 committee's objection.

9 So unless Your Honor has any question about that
10 transaction, we would ask that it be approved.

11 THE COURT: All right. Let me hear, does anybody else
12 wish to be heard?

13 (No response)

14 THE COURT: All right. Hearing none, pending before
15 the Court is a motion under Sections 363(b)(1), 105(a) and Rule
16 9019 to approve an agreement terminating the lease agreement
17 between Borders and HarrisPort Associates.

18 The Court has reviewed the motion and applying --
19 essentially it's a business judgment standard that applies,
20 both under 363(b) and essentially under Rule 9019 as well, the
21 Court concludes that this resolution is fair and equitable and
22 in the best interest of the debtors' estate and therefore the
23 agreement is approved.

24 MR. GLENN: Thank you, Your Honor.

25 The next item on the agenda is 1114. That is a

1 similar transaction where there's a combined leasehold interest
2 by the debtors and a belated mortgage. The debtors negotiated
3 a transaction with Kin (ph.) and based on the creditors'
4 committee's views we adjourned that transaction for approval
5 today.

6 The negotiations are ongoing and the creditors'
7 committee is spearheading those discussions as we speak and
8 there are some late-breaking developments. So what I'd propose
9 to do -- it is not going forward today, I propose that Mr.
10 Kizel give the Court a brief update on where things stand with
11 that matter.

12 THE COURT: All right. Mr. Kizel.

13 MR. KIZEL: Good morning. Paul Kizel, Lowenstein
14 Sandler on behalf of the committee.

15 Your Honor, as Mr. Glenn said, we did raise an
16 objection to their original motion, we have engaged in
17 discussions with various parties, in consultation with the
18 committee's professionals as well as the debtors' real estate
19 professional advisors.

20 The latest development is that the committee, the
21 debtors and KIN, which was the proposed purchaser of the note,
22 had reached a tentative, revised agreement pursuant to which,
23 rather than paying approximately 2.9 million dollars in cash to
24 the debtors' estate and giving the debtors' estate an interest
25 in a participation agreement, the value of which is unknown and

1 at best sketchy, the committee's view and ultimately the
2 debtors' view is to try to monetize that note as best as
3 possible, as quickly as possible. And KIN had agreed -- has
4 agreed to pay 3.3 million dollars for the note and the debtors'
5 estate would not have a participation agreement --
6 participation interest going forward. So it would just be 3.3
7 million dollars and in terms of timing hopefully that deal --
8 if that deal goes through it would probably come in in early to
9 mid-September.

10 However, very recently, in fact late last night, the
11 landlord of the Torrance facility contacted professionals of
12 the debtors and the committee and expressed an interest in
13 paying an amount greater than 3.3 million dollars.

14 We have to -- we feel we have an obligation to
15 continue to explore that interest but if that interest does not
16 materialize, for one reason or another, what our intention is
17 is to move forward, to document the proposed transaction with
18 KIN and we're hoping to get that done by this Monday. And if
19 acceptable to the Court, do it by way of notice of presentment
20 and then carry this hearing on the motion to September 8th, in
21 the event things fall apart.

22 But if things do not fall apart, we would ask the
23 Court if it would be acceptable to do it by way of notice of
24 presentment, either with KIN or with the proposed landlord.
25 And again, things are in the --

1 THE COURT: Why don't we just set it for September
2 8th? My concern is if you've got two interested parties in
3 purchasing the note -- let's schedule it for September 8th.

4 MR. KIZEL: Your Honor, just by way -- what we were
5 planning on doing, and I understand Your Honor's instruction
6 but just so the Court understands what we were planning to do
7 is to have conference calls with both parties and then try to
8 set up, sort of, a mini-auction.

9 THE COURT: Yeah, you want to have a mini-auction. I
10 understand. I understand that.

11 MR. KIZEL: Yeah. So I guess the idea is to do that
12 between now and September 8th. If the Court's wish is to
13 schedule the hearing for September 8th and present whatever --

14 THE COURT: That's my wish. So go ahead with your
15 effort to get the highest and best offer presented on September
16 8th.

17 MR. KIZEL: Your Honor, should we --

18 THE COURT: And notice the hearing for September 8th.

19 MR. KIZEL: We'll notice it and notice whatever the
20 outcome is --

21 THE COURT: Yes.

22 MR. KIZEL: Of the, sort of, mini-auction.

23 THE COURT: Correct.

24 MR. KIZEL: Your Honor, that's the presentation on
25 this motion.

1 THE COURT: Okay. Thank you. Thank you, Mr. Kizel.

2 MR. GLENN: The next item on the agenda, Your Honor,
3 is docket number 1115. That's the professional retention of
4 Mortgage Corporation of America who is acting as broker in
5 connection with the Torrance's sale transaction.

6 Given that Your Honor is pushing or were pushing the
7 hearing to the September 8th omnibus hearing on the Torrance's
8 note, the Mortgage Corporation of America retention is directly
9 related to that. So I think we have an agreement in principle
10 on that, that if there is a closing that's acceptable to the
11 committee on the Torrance's lease, that they would also agree
12 to the Mortgage Corporation of America retention and resolve
13 any issues with that.

14 So with Your Honor's consent, we would just push that,
15 also, to the September 8th hearing.

16 THE COURT: Okay.

17 MR. GLENN: Okay. The next item on the docket, Your
18 Honor, is 1157, which is the first claims objection and I'm
19 going to cede the podium to my colleague, Michele Angell, who's
20 been handling all the claims matters in the case.

21 THE COURT: Thank you.

22 MR. GLENN: Thank you.

23 MS. ANGELL: Good morning, Your Honor. Michele Angell
24 from Kasowitz, Benson, Torres & Friedman on behalf of the
25 debtors.

1 The debtors filed four omnibus objections to the
2 allowance of certain claims on July 8th and these first four
3 omnibus objections were filed purely to expunge on
4 administrative, nonsubstantive basis the first few hundred,
5 duplicate, wrong case and amended superseded claims we've
6 identified.

7 THE COURT: Just give me one second.

8 MS. ANGELL: Sure.

9 THE COURT: I want to make sure I have my notes in
10 front of me. Okay. Go ahead.

11 MS. ANGELL: We served the claim objections on all
12 claimants affected by each one and, if known, their counsel as
13 well.

14 Additionally, on July 8th we filed the declaration of
15 David Head of AlixPartners in support of all four. Mr. Head
16 coordinates the claims reconciliation process and he's dialed
17 into the hearing on the phone today.

18 The debtors received approximately fifteen informal
19 inquiries and responses regarding the omnibus claim objections
20 we filed and we and AlixPartners have worked methodically, with
21 inquiring claimants, throughout the past month to resolve all
22 of their issues, which I believe has contributed to the small
23 amount of formal responses that were actually filed.

24 In connection with both the formal objections that
25 were filed and the informal inquiries we filed, revised

1 proposed orders with respect to all four omnibus objections
2 yesterday, we added language in the orders per claimant request
3 to make clear that the remaining claims are not affected by the
4 relief granted in the orders. And we, additionally, added
5 language to the fourth omnibus objection order per claimant
6 request, to clarify that if an amended superseded claim which
7 was timely filed is expunged, the corresponding remaining claim
8 cannot later be objected to on the basis that it was not
9 timely.

10 The exhibits were also revised to reflect all
11 agreements we entered into with claimants that inquired
12 informally or with respect to the formal objections. And the
13 second omnibus exhibit remained the same because there were no
14 changes, as did the amended superseded portion of the fourth
15 omnibus exhibit.

16 The debtors believe that if the claims set forth as
17 claims to be disallowed are not disallowed and expunged, these
18 claimants will receive duplicate extraneous recoveries to the
19 detriment of other creditors. Claimants were served with the
20 objections, as were their counsel, and they had almost a month
21 to object.

22 All objections, responses and inquiries have been
23 addressed to the claimants' satisfaction and those that were
24 not were pulled. And I'll just go through what each of the
25 four --

1 THE COURT: Okay. Let me ask you --

2 MS. ANGELL: Sure.

3 THE COURT: -- in omnibus objection number 1, Exhibit
4 A dealing with claims 785 and 1030, Exhibit A -- I think this
5 is a typo, states the total claim is \$3,242.47, has that been
6 changed because --

7 MR. BUECHLER: What page on the exhibit? There are
8 multiple pages, as you know.

9 THE COURT: Well, I'm going from my notes, Mr.
10 Buechler.

11 MR. BUECHLER: Because they're not noted by claim
12 number.

13 MS. ANGELL: They're in A, B, C order.

14 MR. BUECHLER: Do you know the name of the creditor?

15 THE COURT: Let me find it.

16 MR. BUECHLER: I don't mean to be difficult, Your
17 Honor.

18 THE COURT: This is claim -- you don't have them by
19 claim number?

20 MR. BUECHLER: They're in alphabetical order by name.

21 THE COURT: Okay. Hold on.

22 (Pause)

23 THE COURT: Well, I don't have them by -- I don't have
24 those specific ones tabbed, Mr. Buechler. So you're going to
25 have to search through --

1 MR. BUECHLER: I'm doing it.

2 THE COURT: -- the schedule to find 785 and 1030.
3 Because what I think what you've done is -- they've been lumped
4 together.

5 UNIDENTIFIED SPEAKER: Your Honor, it's page 34 of the
6 exhibit.

7 MR. BUECHLER: Page 34.

8 THE COURT: Okay. Just give me a second.

9 MR. BUECHLER: Correct.

10 THE COURT: It is. Wilson -- and I think you list
11 the -- in the last column you list the total amount as
12 \$3,242.47. The claim is actually -- you've added the two
13 together as if they were separate claims, but they're -- your
14 whole point is that they're not.

15 MS. ANGELL: Okay.

16 THE COURT: The proof of claim clearly states it's for
17 \$1,625.71. I mean, you just have to correct the exhibit -- the
18 schedule.

19 MS. ANGELL: Okay. We can certainly file a revised
20 exhibit.

21 THE COURT: Okay. Yeah, it's just --

22 MS. ANGELL: Okay.

23 THE COURT: -- it's a minor point. Your objection is
24 sustained. I mean, you corrected it.

25 MS. ANGELL: Okay.

1 THE COURT: It just -- when we looked through the
2 exhibit you had lumped the two together, rather than treating
3 them as separately, okay.

4 MS. ANGELL: Okay. Well, we can certainly file a
5 revised proposed order with a revised exhibit for --

6 THE COURT: That's fine.

7 MS. ANGELL: Okay.

8 THE COURT: So that objection is sustained. And then
9 in omnibus objection number 2 --

10 MS. ANGELL: Uh-huh.

11 THE COURT: -- proof of claim 2825, you have listed as
12 Buckhead Triangle, LP and I think it should be Selig
13 Enterprises, Inc.

14 MS. ANGELL: Okay. We can check on that and of course
15 file a revised --

16 THE COURT: Okay. So -- okay. It's proof of claim
17 2825, an omnibus objection and as I said I believe it should be
18 Selig Enterprises, Inc. and not Buckhead Triangle LP.

19 MS. ANGELL: Okay. We can certainly submit a revised
20 proposed --

21 THE COURT: Okay. That's fine.

22 MS. ANGELL: Okay.

23 THE COURT: That's fine. So that omnibus objection,
24 number 1 and 2, are sustained.

25 MS. ANGELL: Okay.

1 THE COURT: Okay.

2 MS. ANGELL: Thank you, Your Honor.

3 THE COURT: Okay.

4 MS. ANGELL: Should I proceed to the third?

5 THE COURT: Yeah. Absolutely.

6 MS. ANGELL: We did receive two formal responses to
7 the third omnibus objection, one from Trends and one from State
8 -- okay, well actually first I should say the third omnibus
9 objection were not duplicate claims, that objection sought to
10 expunge claims that we believe were filed in the wrong debtor's
11 case.

12 THE COURT: Right.

13 MS. ANGELL: Which are redundant of at least one other
14 proof of claim filed against a different debtor or debtors by
15 the same claimant and which we believe to relate to the same
16 subject matter.

17 THE COURT: Uh-huh.

18 MS. ANGELL: And, again, we received two formal
19 responses to the third omnibus objection, one from Trends and
20 one from Safeco. We have removed Safeco claims from the
21 revised third omnibus objection order we filed with the Court
22 yesterday, so their claims will not be expunged for the time
23 being and we're going to continue to work with their counsel
24 toward resolving our issues on the claims reconciliation and
25 with them.

1 That did resolve Trend's concern set forth in their
2 filed, limited objection and accordingly their claims are still
3 included in the revised third omnibus objection order. And
4 Trends filed a notice of withdrawal of their limited objection
5 yesterday at docket number 1493.

6 Unless Your Honor has any questions, we would ask that
7 the Court sustain the third omnibus objection.

8 THE COURT: I should ask, does anybody wish to be
9 heard with respect to the third omnibus objection?

10 (No response)

11 THE COURT: All right. Hearing none, the objection is
12 sustained with the changes that you've made. Okay.

13 MS. ANGELL: Thank you.

14 Finally, the fourth omnibus objection, in addition to
15 seeking to expunge additional claims filed in the wrong place
16 sought to expunge amended superseded claims which were amended
17 and superseded by a later filed proof of claim or claims by the
18 same claimant and are believed, by the debtors, to relate to
19 the same subject matter.

20 We received one formal response to the fourth omnibus
21 objection, which was Fort Lee Plaza -- no, it was actually to
22 the first and fourth omnibus objections. We resolved the issue
23 with them and they filed a notice of withdrawal on the docket
24 yesterday, as well.

25 And in resolution of the Fort Lee Plaza objection, we

1 left their claims in the first omnibus objection and we removed
2 them, for the time being, from the fourth.

3 THE COURT: Okay. Does anybody wish to be heard with
4 respect to the debtors' fourth omnibus objection?

5 (No response)

6 THE COURT: All right. The objection is sustained
7 with the changes you've made.

8 MS. ANGELL: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MS. ANGELL: We'll hand up orders at the end for the
11 third and fourth and if it's okay we'll just file revised
12 exhibits for the first and third.

13 THE COURT: Absolutely. Thank you very much.

14 MS. ANGELL: Thank you, Your Honor.

15 MR. GLENN: Your Honor, docket number 1347, an
16 application for payment of administrative expense by 2120
17 Borders LLC has been adjourned, as the agenda letter suggest.
18 So we're going to go to claims procedures with Ms. Angell.

19 THE COURT: Okay.

20 MS. ANGELL: Your Honor, the debtors filed this
21 procedural motion seeking three forms of procedural relief with
22 respect to the claims reconciliation process; procedures for
23 objecting to claims, for settling claims and for amending our
24 schedules by omnibus motion.

25 We worked with the committee on preparing and filing

1 this motion and we are in agreement with the committee on all
2 aspects of the motion. The procedures are set forth in detail
3 in the motion. Would Your Honor like me to run through them
4 briefly?

5 THE COURT: Just give me a second, okay?

6 MS. ANGELL: Sure.

7 (Pause)

8 THE COURT: I have two specific questions.

9 MS. ANGELL: Okay.

10 THE COURT: One is with respect to the proposed
11 treatment of any settlements for claims of insiders and
12 affiliates, how those are going to be treated.

13 MS. ANGELL: Well, pursuant to the procedures that
14 committee requests, no matter how small the amounts are we have
15 to have committee approval to settle.

16 THE COURT: Okay. Mr. Buechler?

17 MR. BUECHLER: Your Honor, that's correct.

18 THE COURT: Okay. I'm going to require any
19 settlements with insiders or affiliates to be presented to the
20 Court, okay. I don't -- I just want those treated differently.

21 I'm generally in agreement with your proposed
22 procedures for settling claims. There are a lot of claims and
23 I've approved procedures in other cases, as you pointed out,
24 but I just treat claims by insiders or affiliates different.

25 So you're going to have to modify the procedures to

1 deal with that aspect. So I agree, you should first find out
2 the committee's position on it, but it can be done
3 expeditiously. I don't know, are there a lot of insider
4 claims? I wouldn't expect there are. Are these loans to
5 executives?

6 MR. GLENN: There are no loans of that nature. I
7 think the only insider claims, Your Honor, are going to be
8 wrapping up any employment agreements, potentially -- you know,
9 I don't believe there's anything --

10 THE COURT: Okay. I don't think there'll be very much
11 of it so I don't think it's going to create much of a burden.
12 I just -- I just treat insider issues differently than others.
13 So those I want carved out from the procedures, okay.

14 MS. ANGELL: Okay. Understood, Your Honor. We can
15 file a revised proposal.

16 THE COURT: The other question I had is, what's the
17 procedure if the settlement amount or claim amount difference
18 exceeds two million dollars?

19 MS. ANGELL: That was --

20 THE COURT: I understood what you were saying if it's
21 between 25,000 and two million.

22 MS. ANGELL: Right.

23 THE COURT: But what happens for -- where the
24 settlement amount of claim amount difference exceeds two
25 million?

1 MS. ANGELL: Well, are you talking about general
2 unsecured claims, because the amount was five million. It was
3 between 250,000 in one set and five million, the committee
4 approval procedures would apply.

5 If it was greater than five million, that was one
6 change we submitted with the revised proposed order, which I
7 would highlight for Your Honor.

8 THE COURT: Right. If it's above -- if it's over five
9 million you'll file a motion, a 9019 motion as I understand.

10 MS. ANGELL: Yes. Or the change we had agreed to with
11 the committee, that we had filed on Monday the 8th by revised
12 proposed order, proffered that if the settlement amount of
13 claim difference was over five million, we would either file a
14 motion on 9019 or with committee affirmative approval, pursuant
15 to the committee approval procedures, we would do so on notice
16 of presentment for the Court's approval.

17 THE COURT: Okay. Mr. Buechler?

18 MR. BUECHLER: The two million, I think, Your Honor,
19 is referring to secured claims, administrative or priority
20 claims.

21 THE COURT: Right.

22 MS. ANGELL: Oh. That would have to be on motion to
23 the Court.

24 THE COURT: Okay. All right. That was unclear to me.

25 MS. ANGELL: Yes.

1 THE COURT: Does anybody else wish to be heard with
2 respect to the motion to approve procedures for claim
3 objections, settling the claims and amending the debtors'
4 schedules?

5 (No response)

6 THE COURT: Okay. With the one exception of the
7 insider claims, the motion's approved -- granted.

8 MS. ANGELL: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. ANGELL: I'll turn the podium back to Mr. Glenn.

11 THE COURT: Thank you very much. Thank you.

12 MR. GLENN: Your Honor, I would propose to skip the
13 lease disposition auction procedures for the moment, which have
14 several objections, and skip to the Streambank application,
15 docket number 1400. Dan Zinman, of my office, will be handling
16 that.

17 THE COURT: Thank you very much. Which binder is this
18 in?

19 MR. GLENN: Your Honor, I have a spare if it'll help.

20 THE COURT: No, no. I've got the binders are all
21 here.

22 MR. ZINMAN: Since we've skipped, Your Honor, I'm told
23 it's the one that we sent down yesterday.

24 THE COURT: Okay. All right. Go ahead.

25 MR. ZINMAN: Good morning, Your Honor. For the

1 record, Daniel Zinman, Kasowitz, Benson, Torres & Friedman for
2 the debtors.

3 With Your Honor's permission I'll take the IP sale
4 motion first, since Streambank is being hired to run that
5 process.

6 Your Honor, the debtors, as you might recall from the
7 substantially all the assets sale that occurred last month,
8 that we carved out the intellection property assets that
9 constitutes, generically, you know, the web site, domain names,
10 trademarks, other related assets, the full list is described in
11 the motion. We've now brought a motion to sell those assets
12 and set up a procedure for doing so. The debtors do believe
13 that these are valuable assets and are hopeful that we will
14 receive a very good recovery on them.

15 In terms of the general structure of the sale, we're
16 soliciting bids on portions or all of those assets. We're also
17 requesting authority to designate a stalking horse bidder; I'll
18 get to that a bit more in a minute. And we're seeking approval
19 today of bidding procedures and entering -- entry of the
20 bidding procedures order.

21 The bids would be due on September 8th at 5 p.m. The
22 auction, if it's decided that it's needed, would occur on
23 September 14th.

24 In terms of notices, if there's no auction we'll send
25 out a notice to that effect, as soon as practical, following

1 the decision not to conduct an auction. If there is an auction
2 we'll send out a notice of the winning bidder as soon as
3 practical after the notice -- after the auction is concluded,
4 identifying the winning bidder or bidders. And also if
5 contracts are to be assumed and assigned, there'll be a list of
6 those contracts and adequate assurance information. The sale
7 hearing we'd like to schedule for September 20th at 11 a.m.

8 In terms of the contracts, it is possible that we
9 will -- certain contracts related to those IP assets might need
10 to be assigned. It's also very possible that none will need to
11 be assigned. We won't know that until we know who the winning
12 bidder is and what they're looking for.

13 So our proposal is to send out, tomorrow, the notices
14 of assumption and assignment following the entry of your order
15 for those contracts that might be impacted by the -- by a sale.

16 THE COURT: Can you give me some indication of what
17 are the kinds of contracts that may be assumed and assigned?

18 MR. ZINMAN: There's services agreements, for example,
19 Your Honor, with the company that actually boxes and ships the
20 books that are ordered through the online company. There are,
21 potentially, you know, computer contracts and stuff, depending
22 upon whether someone wants to take on the -- take on the
23 computer systems that run the website, those kinds of things.
24 There aren't -- my understanding is there aren't very many of
25 them, under fifty.

1 THE COURT: Okay.

2 MR. ZINMAN: So what we would propose is September
3 6th, objection due on assumption and assignment, other than
4 with respect to adequate assurance. And then September 16th at
5 4 p.m. for objections on adequate assurance. That'll leave us
6 a few days for discovery if anyone needs it. And again, there
7 may not be any contracts, at the end of the day, that get
8 assigned.

9 And so with respect to the stalking horse, we seek
10 authority -- the debtors seek authority, in consultation with
11 the committee, to select a stalking horse. The debtors, in
12 consultation with their professionals believe that the stalking
13 horse protections we're requesting will help generate a high
14 opening bid and then a higher result at the end of the day.

15 It's basically only fees, reasonable, documented fees
16 up to a 250,000 dollars cap on consent of the debtors and the
17 committee and otherwise we'd have to come back to Your Honor.
18 So we'd ask for that.

19 On Tuesday, this week, yesterday, we filed a notice of
20 filing of the modified bid procedures but have a few minor
21 changes, mostly giving additional consultation rights to the
22 committee. There has been one additional change since then to
23 the bidding procedures, specifically on page 8 of the clean
24 version which we filed yesterday, which -- it's the last
25 paragraph of the section J, Evaluation of Bids.

1 THE COURT: Hold on.

2 (Pause)

3 THE COURT: Go ahead.

4 MR. ZINMAN: In the second sentence of that paragraph
5 we clarified that the 250,000 dollars can only be paid out on
6 consent of the committee. That tracks what was already in the
7 order, apparently when we made a change to the order we
8 neglected to do the bidding procedures.

9 THE COURT: Okay. Could you address, for me, the
10 consumer privacy ombudsman and whether you've had discussions
11 with the U.S. Trustee about it?

12 MR. ZINMAN: Yes. That's the next thing on my list.

13 THE COURT: Okay.

14 MR. ZINMAN: We've requested appointment of a consumer
15 privacy ombudsman. We have been in contact with the United
16 States Trustee on that and I have no reason to believe,
17 obviously they can address it, that that would be a concern.
18 Our concern is that we may be -- this sale may be in violation
19 of the policy that was in place on the petition date and so
20 therefore we would need a consumer privacy ombudsman. There
21 have been no objections.

22 THE COURT: All right. Is there anybody from the U.S.
23 Trustee's office?

24 MR. SCHWARTZBERG: Your Honor --

25 THE COURT: Mr. Schwartzberg?

1 MR. SCHWARTZBERG: Yeah, Your Honor. Paul
2 Schwartzberg. The U.S. Trustee has reached out to several
3 candidates, was waiting for the order to be entered and
4 hopefully, while obviously I don't control the U.S. Trustee,
5 hopefully we'll have one -- a notice of appointment of an
6 ombudsman sooner rather than later.

7 THE COURT: Thank you very much, Mr. Schwartzberg.
8 Mr. Zinman, anything else?

9 MR. ZINMAN: No, Your Honor.

10 THE COURT: All right. Does anybody else wish to be
11 heard with respect to the proposed bidding procedures for the
12 IP assets?

13 (No response)

14 THE COURT: All right. The Court has reviewed the
15 motion for approval of bidding procedures with respect to the
16 IP assets. No objections have been filed. The Court believes
17 that the bidding procedures are fair and reasonable and in the
18 best interest of the debtors' estate and they're approved.

19 MR. ZINMAN: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 MR. ZINMAN: Now the next item -- actually the prior
22 item on the agenda was the Streambank retention.

23 Streambank has been hired, essentially, to assist in
24 the marketing and selling of the IP assets. They have a lot of
25 experience in this regard. Among other things they've

1 represented -- they've marketed and sold for Anchor Blue
2 Holding Corp., their intellectual property assets, Robb &
3 Stucky, that was in May of this year -- March of this year. In
4 May of this year they did Robb & Stucky. They've also done the
5 Wiz, which is a consumer -- was a consumer electronics chain
6 and they're currently representing Berkline BenchCraft, which
7 is a furniture retailer, in their sale. They've also
8 represented the creditors' committee on valuation and sale
9 issues of intellectual property in the Levitt's bankruptcy. So
10 they have extensive experience.

11 We are asking for nunc pro tunc approval in terms of
12 their --

13 THE COURT: When did they start work?

14 MR. ZINMAN: July 20, a couple weeks ago, of this
15 year.

16 In terms of their fees, these were highly negotiated
17 with both the debtors and the committee. There would be a
18 management fee of 100,000 dollars, which would be credited
19 against their commissions fee. The commissions fee is laid out
20 in various percentages based on different amounts. I could set
21 it in the record but it is in the motion.

22 THE COURT: That's okay.

23 MR. ZINMAN: We also request that there be no
24 requirement for an interim fee application, that we be allowed
25 to pay this amount on an interim basis upon the conclusion of

1 the sale. It would require a declaration of the commissions
2 and the application of the credit be filed and subject to the
3 United States Trustee section 330 review. And then there would
4 be a final fee application on that. There have been no
5 objections to this motion.

6 THE COURT: All right. Does anybody wish to be heard
7 with respect to the retention of Streambank? Mr. Buechler?

8 MR. BUECHLER: Your Honor, Bruce Buechler from
9 Lowenstein Sandler on behalf of the committee.

10 The committee was actively involved in the negotiation
11 and the selection of Streambank on the fees and we have no
12 objection to the proposed retention.

13 THE COURT: All right. Mr. Schwartzberg?

14 MR. SCHWARTZBERG: No objection, Your Honor. We had
15 some comments that were adopted and we have no objection to the
16 final.

17 THE COURT: All right. The retention of Streambank is
18 approved. Thank you, Mr. Zinman.

19 MR. ZINMAN: Thank you.

20 MR. GLENN: The next items on the agenda will be also
21 with Mr. Zinman. They are docket numbers 1483 and 1481,
22 relating to certain lease terminations.

23 THE COURT: All right.

24 MR. ZINMAN: Your Honor --

25 THE COURT: It wasn't my intention to create extra

1 work for you on this, but --

2 MR. ZINMAN: That's all right, Your Honor. The --

3 THE COURT: It just doesn't fit within our rules on
4 presentment.

5 MR. ZINMAN: That was certainly our concern and why we
6 filed the motion, Your Honor.

7 THE COURT: Okay. All right.

8 MR. ZINMAN: Since the filing of the lease motion,
9 which you'll hear in a few minutes, we were contacted by
10 landlords, specifically, among others, two of them, the Port of
11 Seattle, which I understand it's similar -- there's a municipal
12 authority similar to the Port Authority of New York and New
13 Jersey, and AR Retail. Those relate to the Seattle, Tacoma
14 International Airport, store 756. And the AR Retail is the
15 landlord for Columbus Circle, store 592. And basically the
16 offered to pay us some money in exchange for a lease
17 termination, which would include immediate termination of the
18 lease and mutual releases.

19 The store 756, the Seattle Tacoma International
20 Airport, is about 3,400 square foot. It's a fairly small
21 store. They've offered to pay 70,000 dollars with a mutual
22 release. Importantly, the store closing sales there are
23 complete. And I believe, if we haven't turned over the keys,
24 that will be done shortly.

25 The Columbus Circle store is obviously larger. It's

1 about 2,600 square feet. They've offered to pay a million and
2 a quarter dollars, 1.25 million, and there are mutual releases.
3 And importantly, there is an agreement for additional time to
4 conduct the store closing sales. Mr. Branch is, I believe, in
5 the courtroom and will provide more details in a moment on that
6 agreement.

7 We certainly believe the debtors that this is well
8 within the business judgment of the debtors and provides
9 certainty of outcome with respect to these two leases. And we
10 believe that the amounts received are in line with or above
11 what we would receive through the lease sale process. It also
12 involves a waiver of prepetition claims and in short represents
13 a good deal.

14 We've asked for a shortened notice on this for several
15 reasons, most notably that the landlords requested an order
16 either today or tomorrow, today with respect to Columbus Circle
17 and tomorrow with respect to the Seattle Tacoma International
18 Airport. Also, you know, the rent continues and the faster we
19 get orders the more value is provided to the debtors.

20 We provided notice of the Columbus Circle by way of
21 notice of presentment on Friday, with presentment today at the
22 hearing. And then, as Your Honor knows, we filed the motion to
23 approve both lease termination agreements and the motion to
24 shorten on Monday. In short, if there's no orders entered the
25 landlords might walk from the deals, which we believe would

1 harm the interests of the debtors.

2 Yesterday there was a declaration filed by Diana
3 Zackerson (ph.), who is the manager of the concessions business
4 group for the Seattle Tacoma International Airport, in support
5 of their request for a finding of good faith and protections
6 under 363(m) and (n).

7 Going through the declaration, briefly, it provides --
8 it states that back when the lease was signed the airport was
9 anxious to create a pacific marketplace in there, that they
10 sought a local book store but couldn't get one because of the
11 uncertainties. Borders came in and was fairly profitable.

12 The gross sales -- it's a fairly high rent, twelve
13 percent gross sales and now that Border's is successful they
14 feel they can bring in a local book store, which they would
15 prefer. It also state that there's independent and no
16 connection with the other bidders and we would ask for 363(m)
17 and (n) protections in the order for them.

18 THE COURT: All right. Anybody wish to be heard with
19 respect to either the motion to shorten time or the lease
20 terminations of the AR Retail LLC store at Columbus Circle or
21 the Port of Seattle store? Mr. Buechler?

22 MR. BUECHLER: Your Honor, on behalf of the committee
23 we have no objection to either. We do understand, with regard
24 to the Columbus Circle lease there is an agreement in place to
25 permit the debtor to remain in that location, on Columbus

1 Circle, until October 14th, to conclude the going-out-of-
2 business sale. That'll be done by a separate stipulation that
3 we saw an initial draft of very, very late last night. I
4 looked at it on my BlackBerry this morning on my way in. So
5 that's an add on to this, to give the debtor the additional
6 time to complete the transaction, meaning the GOB sale, but the
7 committee supports shortening time because we'd like to get the
8 economic advantage of these two lease termination agreements.

9 Thank you.

10 THE COURT: Thank you, Mr. Buechler. Anybody else
11 wish to be heard?

12 MR. BRANCH: Dustin Branch, Katten Muchin Rosenman LLP
13 on behalf of AR Retail LLC, the landlord or the owner of the
14 center at Time Warner.

15 Basically, our client is paying a lot of money to get
16 the certainty so that they can move forward with reletting for
17 the holiday period and going forward with the particular space.

18 We have one of the locations that did not grant an
19 extension beyond September 14th. But to get this deal done and
20 to make sure that the liquidator has time to complete the GOB
21 sale, we are going to enter into a license to allow them to run
22 their sale for an extra thirty days, through not later than
23 October 14th. We've seen a draft of that deal and it'll get
24 finalized, probably, today.

25 Basically the terms of that deal are, once the Court

1 order's approved we'll enter into a license agreement, the
2 liquidator can continue to operate through October 14th. That
3 won't change the termination date under the lease; it's just
4 the license agreement for the limited use of the property. The
5 debtors will comply with all occupancy and lease terms for that
6 period. They will pay the rent for September through October
7 15th, on or before September 1st. And the sales will comply
8 with the side letter agreement that was entered into with
9 respect to the store closing sales and the merchandise in
10 there, if any, that doesn't comply with the side letter would
11 be removed. And I think those are all of the general terms.
12 Again, that's being papered right now and should be entered
13 into probably today or tomorrow.

14 THE COURT: Thank you very much, Mr. Branch.

15 MR. BRANCH: Thank you.

16 THE COURT: Anybody else wish to be heard?

17 MR. LEVANT: Your Honor, David Levant on behalf of the
18 Port of Seattle.

19 I would echo Mr. Zinman's comments regarding the
20 Port's interest in acquiring the lease so it could be
21 terminated. And I would simply add that for the Port the
22 principle value in the transaction is being able to fill the
23 space a month sooner, as Mr. Zinman indicated the GOB sale has
24 been completed, it's vacant and the Port is very anxious to
25 move forward. So any delay to the September 8 hearing date

1 would significantly decrease the value of the transaction to
2 the Port.

3 THE COURT: Thank you very much, Mr. Levant. Counsel?

4 MS. COELHO: Good morning, Your Honor. Sara Coelho
5 from Weil, Gotshal & Manges. We are counsel for the agent
6 conducting the liquidation sales at the Columbus Circle
7 location.

8 I just wanted to register on the record that the agent
9 does have a consent right to the disposition of that lease.
10 And while the agent has given its consent, that consent has
11 been given on reliance on the promise of the landlord to enter
12 into a license agreement allowing the closing sales to continue
13 through October 15th.

14 THE COURT: Thank you very much.

15 MS. COELHO: Thank you.

16 THE COURT: Anybody else wish to be heard?

17 (No response)

18 THE COURT: All right. The motion to shorten time is
19 granted. The motion to approve the lease terminations for the
20 Columbus Circle space and the Port of Seattle -- Seattle Tacoma
21 International Airport space are granted. With respect to the
22 Port of Seattle, store 756, evidence in the form of the
23 declaration of Diana Sackrison (ph.) having been submitted, the
24 Court finds that the transaction satisfies Sections 363(m) and
25 (n).

1 MR. GLENN: Thank you, Your Honor.

2 So now we would propose to address the lease auction
3 procedures motion, docket number --

4 THE COURT: 1399.

5 MR. GLENN: I'm sorry; just to get some more matters
6 that are on consent or adjourned out of the way for the record.

7 THE COURT: Okay.

8 MR. GLENN: We're going to switch to page 12 of the
9 agenda, which is styled as other parties' motion. The Eliason
10 Combination Fund LLC, admin expense application, docket 1066,
11 has been adjourned.

12 Books & Music LLC, the same kind of application,
13 docket number 1067, that's been adjourned.

14 Docket number 1068, 49 Waukegan Road Limited
15 Partnership application, that matter has been resolved. The
16 debtors will submit a final form of order to the Court after
17 the hearing. And I believe that unless Your Honor has any
18 questions about that, we're ready to go back to the --

19 THE COURT: I don't.

20 MR. GLENN: Okay.

21 THE COURT: Going back to the lease auction
22 procedures.

23 MR. GLENN: Lease auction procedures, docket number
24 1399.

25 Your Honor, as Mr. Zinman indicated, the leases are

1 one of the vestigial assets remaining after the company's
2 liquidation. And what we propose to do is set up a two-part
3 auction process to maximize the value of these leases through a
4 process developed through extensive discussions and
5 negotiations with the creditors' committee and professionals on
6 all sides.

7 We have revised the bidding procedures, and I will get
8 to that in a moment, but just by way of background we filed the
9 revised bidding procedures on August 8 with our reply, in
10 response to comments from several parties. The bidding
11 procedures establish deadlines for bids and requirements that
12 must be met by the bidders. We're asking bidders, in
13 connection with this process, to execute an assignment and
14 assumption agreement or, if the landlord buys out the lease, a
15 termination agreement substantially in the forms attached to
16 the bidding procedures.

17 Those documents are not -- we're not seeking approval
18 of those forms today, Your Honor. We do envision making
19 certain revisions to those agreements, such as retention of
20 jurisdiction, waiver of jury trial and choice of law and other
21 items to address parochial issues with the winning bidder.

22 What we're here today to do is to approve objection
23 deadlines, the date of the auction hearing, the provision of
24 adequate information and all the other things that are
25 necessary to consummate dispositions of these assets.

1 I mentioned earlier we're going to do this in two
2 rounds. The first round consists of any lease that has an
3 assumption/rejection deadline that is on or before September
4 30th of 2011. Two, leases that have later assume/reject dates
5 but have what we call holiday protections that are triggered on
6 or before September 30th. Finally, the airport and small
7 format stores which are going to be liquidated much quicker
8 than the large format stores, so they're going to be sitting
9 there empty with us paying rent doesn't make sense to prolong
10 that process.

11 The second round consists of all of the remaining
12 leases. Now, one of the caveats to the first round and second
13 round distinction we're making is we are seeking to preserve
14 the possibility that a landlord or some other bidder seeks to
15 buy substantially all of the leases in the portfolio or some
16 significant block. We have received some inquiries. We
17 believe it's unlikely that that will produce more value but we
18 don't want to lose that opportunity just because of the way
19 we've structured this.

20 We've also reserved the right, in conjunction with the
21 committee and the exercise of our business judgment, to remove
22 any lease from the auction process and sale, to trigger a
23 private sale or to reject a lease. As Your Honor's seen with
24 the Columbus Circle lease and the Port of Seattle lease, there
25 are times and circumstances where the debtor has an

1 opportunistic sale that has to be done on an expedited basis
2 and we're reserving the right to do that.

3 Now the dates are listed in the revised bidding
4 procedures. The --

5 THE COURT: Let me just pull that out.

6 MR. GLENN: Okay.

7 (Pause)

8 MR. GLENN: Does Your Honor have the revised
9 blackline?

10 THE COURT: Do you have an extra copy?

11 MR. GLENN: Yeah.

12 (Pause)

13 THE COURT: Okay. Thank you. It turns out I had it
14 right in front of me. Thank you

15 MR. GLENN: That happens. For all the leases the cure
16 objection deadline we propose is August 24th at 4 p.m. The
17 first round lease sale deadlines, we have a bid deadline of
18 August 26th at 3 p.m., a proposed auction on August 31st at 10
19 a.m., an objection deadline of September 6th, that was
20 originally proposed at September 2nd but we extended after
21 receiving and negotiating with some of the landlords. And the
22 lease sale hearing we propose to be on the next omnibus hearing
23 date which is September 8th.

24 The second round lease has a bid deadline of September
25 7th at 3 p.m., an auction on September 13th at 10 a.m., an

1 objection deadline of September 16th at 4 p.m., that was
2 originally September 15th but we moved that by a day, and a
3 lease sale hearing on September 20th.

4 THE COURT: So let me ask you this, let's assume that
5 on the objection deadline I get a boilerplate objection that we
6 haven't had enough time to gather information -- to obtain
7 information with respect to adequate assurance, what am I
8 supposed to do?

9 MR. GLENN: Well I think, Your Honor --

10 THE COURT: So they've complied with the -- I mean,
11 the shorter -- I understand you lengthened the time, okay, and
12 I think that helps, the shorter the time for a landlord to
13 obtain the information that they reasonably request, evaluate
14 it and do whatever independent investigation they want, the
15 more likely that I'm going to get something that would approach
16 a boilerplate objection and say time -- I mean, they're
17 complaining about not enough time now so I'm assuming I may get
18 a few of them, right? Most of the landlords may be satisfied
19 but what then?

20 MR. GLENN: Well, what I would say, Your Honor, is
21 that number one, from the debtors' perspective, we don't see
22 the need for landlords to file the objection that Your Honor is
23 referring to. That issue has been teed up, as of now, with
24 people who are going to submit that boilerplate. It's not
25 going to contribute anything.

1 THE COURT: No, they're just going to file a timely
2 objection, is what they're going to do.

3 MR. GLENN: Right. So if people want that issue
4 preserved I'm happy to save them the trouble of preserving it.
5 The issue really is the practical problem of what we can do
6 given the time parameters that we're subject to.

7 THE COURT: Well, you were -- you know, when I had to
8 approve bidding procedures for the sale of the company it
9 turned out not to be a real issue at the end of the day. But I
10 assured people that they would have speedy hearings,
11 evidentiary hearings on adequate assurance if that turned out
12 to be the issue.

13 You were under the gun of a DIP agreement that
14 basically was about to run out. You're no longer under that
15 time pressure.

16 MR. GLENN: We're under a different kind.

17 THE COURT: Well, tell me what the time pressure is
18 today, because I don't see it.

19 MR. GLENN: The -- for the first round of auctions,
20 Your Honor, we're doing that because we're subject to a
21 landlord and a statutory imposed deadline, which is the
22 deadline to assume or reject the leases, so we have to do it by
23 that date. If -- we're happy --

24 THE COURT: So all the landlords have to do is agree
25 to extend your time to assume or reject and then you're no

1 longer going to be insisting on such a short timeframe.

2 MR. GLENN: That's generally correct, Your Honor.

3 THE COURT: Okay.

4 MR. GLENN: That's what happened with the Goletta
5 (ph.) lease that Your Honor dealt with earlier in the case,
6 unless there's a scenario where the bidder imposes an expedited
7 deadline, like we've seen today.

8 THE COURT: So your position is, the landlords are the
9 ones who are imposing a very tight time schedule. If they want
10 more time they just need to agree to extend the time to assume
11 or reject.

12 MR. GLENN: That's our general position and we've had
13 a very good -- notwithstanding the plethora of objections we've
14 received on some of these matters --

15 THE COURT: Mr. Buechler, why don't you have a seat?
16 You'll get your chance.

17 MR. GLENN: We have had constructive discussions with
18 the landlords and we understand the need for landlords to
19 reserve their rights. But what we found is that when there's
20 something concrete to actually fight over, things have a way of
21 either resolving themselves or being narrowed substantially.

22 There are many landlords, and I can't give you an
23 exact percentage, who are very supportive of what we're doing.
24 They are happy that there's --

25 THE COURT: They'd probably like to fill their space

1 with a tenant.

2 MR. GLENN: Exactly. Exactly. And then there are
3 landlords who, and I don't blame them for this, see this as an
4 opportunity to make more money by going a different route. And
5 I think the latter category, when all is said and done, is
6 going to be a very narrow universe of landlords.

7 Our -- boiling down the objections, this is deja vu
8 over again, from the last --

9 THE COURT: And let me say, you know, you've done it
10 this way before. The exhibit that you attached to the omnibus
11 response is very helpful because you've really gotten the
12 essence of the objections and who the objecting parties are.
13 The Court appreciates that.

14 MR. GLENN: Thank you.

15 But adequate assurance is the big issue and we're
16 under some competing concerns with adequate assurance. Number
17 one, we've talked about the schedule. Number two is, landlords
18 in this process are going to be competing bidders, potentially,
19 in locations and they can do that in two ways. They can
20 actually bid at the auction, relative to, you know, a third
21 party bidder.

22 THE COURT: Cash bid.

23 MR. GLENN: A cash bid. A termination agreement. And
24 we're reluctant to share information, in advance of getting a
25 binding bid, with the landlords on adequate assurance

1 information. So there's been a request that we share that
2 information at or even before the auction and given that
3 landlords are competing bidders, we're not willing to do that
4 at this point.

5 Two is that if we identify people too early the
6 landlord, particularly those with the September 14th deadline,
7 can have a negotiation with our bidders to just say walk away,
8 do a separate deal with me and that would, obviously, be very
9 harmful to the estate.

10 So what we intend to do is give people, as soon as we
11 possibly can, consistent with our goal of maximizing value for
12 these assets for adequate assurance purposes and hopefully
13 resolve those issues immediately with a tenant that's
14 acceptable to the landlord.

15 Number two, if the landlord needs more time and will
16 give us more time we are open to adjusting the schedule
17 accordingly on a case-by-case basis. Number three, if the
18 landlord won't extend, or a bidder insists on an expedited
19 adequate assurance finding the we're going to have to go
20 forward with Your Honor's indulgence on an expedited basis.

21 But I just want to be very clear. We're not proposing
22 these deadlines because we want to jam landlords or prejudice
23 them in any way. We have deadlines to comply with, we have our
24 fiduciary duties to adhere to and we're trying to balance this
25 as best we can.

1 I don't know how Your Honor wants to proceed. We can
2 go through the chart like we did last time --

3 THE COURT: Let me ask you this. Have you been able
4 to resolve any of the additional objections since I got the
5 omnibus response?

6 MR. GLENN: Unfortunately no.

7 THE COURT: All right. Let's go through them in the
8 order in which you have them in Exhibit A to the omnibus
9 response. And what we'll do is I'll let Mr. Glenn address the
10 issue. I'll allow any parties -- hopefully they've all been
11 identified in the chart. If there are any others who are
12 raising the same issue who want to be heard, I'm going to give
13 everybody a chance to be heard if they wish. I would request
14 that people not just get up and say me too. I have your
15 written objections, so if you have something substantively you
16 wish to add on the objection, I'll obviously allow you to speak
17 on that. Go ahead, Mr. Glenn.

18 MR. GLENN: Issue number one, Your Honor, is a
19 purported ambiguity on who will pay for undetermined lease
20 obligations that are part of year-end reconciliations. We
21 believe we resolved that entirely by clarifying that all
22 bidders must agree that any such undetermined obligations as of
23 the effective date from or in connection with year-end or other
24 adjustments of rent or other charges are assumed in the sole
25 responsibility of the bidder.

1 THE COURT: All right. Let me hear from anybody
2 pressing that objection. And who wants to be heard?

3 (No response.)

4 THE COURT: All right. Hearing no one, the list of
5 objecting parties is included in this Exhibit A. The Court is
6 satisfied that the debtors' response to the objection
7 adequately addresses the issue, so that objection, to the
8 extent it's pressed to the papers is overruled.

9 MR. GLENN: Number two, any proposed assignee of a
10 lease must assume all obligations, including indemnity.

11 As we said, we believe this is a sale objection,
12 however the form of assumption and assignment we believe
13 clearly obligates -- because it says -- clearly obligates the
14 assignee because it says that "the assignee hereby assumes all
15 of the terms, covenants and conditions of the lease".

16 THE COURT: All right. Does anybody wish to be heard
17 in support of the objection?

18 (No response.)

19 THE COURT: All right. Hearing no one, again, this
20 Exhibit A lists who the objecting parties were. I find the
21 debtors' response satisfactory and that objection is overruled
22 as well. Obviously there may be issues that remain for sale
23 hearing, but at this stage on bidding procedures the
24 objection's overruled.

25 MR. GLENN: Number three we've already touched on,

1 which is a concern that there's insufficient time for the sale
2 objections deadline to review and consider adequate assurance
3 information.

4 I've offered to save people time and money that that
5 issue -- the lack of time they have if we proceed on the
6 schedule is preserved and can be brought up at the hearing --

7 THE COURT: At the sale hearing?

8 MR. GLENN: At the sale hearing. We have revised the
9 bidding procedures as set forth in the chart, and I believe
10 I've covered all of this. So I think at this point the ball is
11 in the landlord's court on what arguments they want to make.

12 THE COURT: All right. Let me hear from any objectors
13 on this time issue. Identify yourself and your clients.

14 MR. LEHANE: Good morning, Your Honor. Robert LeHane
15 from Kelley Drye & Warren. Your Honor, I represent nine
16 landlords, Developers Diversified being the largest of those
17 nine landlords with a total of twenty-four locations.

18 THE COURT: Okay.

19 MR. LEHANE: Certainly, Your Honor, we appreciate the
20 significant modification --

21 THE COURT: Do you have the September 14th deadline
22 for your --

23 MR. LEHANE: I don't believe any of my landlords to
24 have that September 14th deadline, although some of the, maybe
25 the small format stores, which may be subject to the first

1 round bidding procedures.

2 THE COURT: All right.

3 MR. LEHANE: -- and certainly appreciate, first of
4 all, landlords as a group may be one of the largest if not the
5 largest unsecured creditors of this estate, so certainly
6 welcome and want to see fulsome auction and want to see bidding
7 that would result in increased proceeds to the estate, and want
8 to see an auction process that would encourage landlords and
9 all other parties to participate.

10 With respect to the timing issue specifically, there
11 are any number of ways to resolve the issues. And the proposal
12 that counsel for the debtor just made, and that I believe was
13 carried out in earlier contested lease assignments, if that is
14 embedded into the procedures --

15 THE COURT: Just tell me, so I'm on the same page as
16 you, what procedure?

17 MR. LEHANE: Sure that in the event the landlord --
18 either there is not a 365(d)(4) deadline that would terminate
19 the lease, and/or they would agree to extend that deadline. So
20 that if there is a real contested assignment issue there will
21 be a further opportunity for the parties to engage in discovery
22 if necessary, fully brief it and present the issues to Your
23 Honor as quickly as possible. But --

24 THE COURT: All right. So let me just -- you're not
25 objecting -- you're not raising a question about the objection

1 deadline, but if you raise the objection and there is no time
2 constraint by the deadline for assumption or rejection, you
3 want, if necessary, discovery and a hearing?

4 MR. LEHANE: Well --

5 THE COURT: I want to make sure I understand what it
6 is you're asking for.

7 MR. LEHANE: And I appreciate that, Your Honor. There
8 were two different reasons why there could be time
9 constraints -- at least mentioned. One was that the landlord
10 or the statutory time within which the debtor must make a
11 decision to assume or reject the lease. If that is the
12 determinate factor in why we're short on time and would need to
13 have a hearing immediately, I believe that the landlords
14 should -- if they want to have more time for a hearing and
15 discovery, they must agree to extend the time to assume or
16 reject, or that the hearing has to be on or before that
17 September 14th deadline that I think is in place for certain of
18 these leases.

19 If however, the question is that the buyer has come in
20 and said we want to close or we want a hearing on September
21 14th, I would argue that that in and of itself should not be
22 the basis for saying we have to have a contested hearing, for
23 instance, on September 8th. And the problem, again, is even
24 with the procedures as they're established, if we walk through
25 the first round dates, Your Honor, we have a bid deadline of

1 August 26th. On August 26th the estate then will have notice
2 of who all the bidders are, and presumably their adequate
3 assurance information. The auction isn't for five days later.

4 THE COURT: Well, I don't know whether they'll have
5 all the adequate assurance information then or not, but.

6 MR. LEHANE: Right. Well, I don't want to get into
7 details that are other issues, and obviously the way that these
8 bid procedures are constructed certainly is a function of the
9 debtors' business judgment, but we do have some suggestions.

10 THE COURT: Yes, but until there's a winning bidder I
11 don't think you're entitled to know who all the bidders are and
12 when -- you know, there's an auction and there's a winning
13 bidder, and when there's a winning bidder you'll be provided
14 with adequate assurance information. And if you don't believe
15 you have enough information or for whatever reason, I'll hear
16 about it. And if there's not deadline for assumption or
17 rejection I'll certainly take that into consideration in
18 scheduling a hearing or whatever discovery. If a prospective
19 buyer at the auction is imposing what I consider to be an
20 unreasonable deadline for closing, you know, I'll consider it,
21 but that's different than the Code limitation on a time to
22 assume or reject.

23 But I'm not -- if what you're asking for is as soon as
24 they receive the bids, that they disclose to the landlord who
25 all the bidders are and provide whatever information they have

1 about all the bidders, why are you entitled to that?

2 MR. LEHANE: Well, Your Honor, that would in fact be
3 consistent with the majority of the lease auction procedures
4 that have been entered under similar circumstances, either in
5 the southern district -- for example, A&P, Judge Drain,
6 Metropark, Judge Drain, Borders, Judge Lifland, or another
7 jurisdiction --

8 THE COURT: Borders was not Judge Lifland.

9 MR. LEHANE: I apologize.

10 THE COURT: Blockbuster.

11 MR. LEHANE: Blockbuster, Judge Lifland. In many of
12 those instances, where you have just leases being disposed of
13 and not the rest of the assets the procedures provide that when
14 the bid deadline comes and the bids are submitted, that at the
15 same time that information, including the exact identity of the
16 bidder and their adequate assurance information is presented to
17 landlords and --

18 THE COURT: Let me ask you this. If it were, does the
19 landlord have the right to go off and negotiate with some of
20 the bidders because they like one even though it's a lower bid?
21 Can the landlord say I'd rather have XYZ than the top bidder
22 now, and so I want to go off and negotiate and see if I can
23 negotiate a deal that's more satisfactory?

24 That's my concern, that if you're a bidder --

25 MR. LEHANE: And I appreciate that.

1 THE COURT: -- if the landlord is going to bid, they
2 bid. If they're not going to bid, they don't bid. But it
3 seems to me just as 363(m) and (n) are intended to assure the
4 purity of the auction, and (n) prevents collusive bidding, that
5 if the landlord is free to go to find out here are the bidders,
6 here's my favored, I'm going to go negotiate with them now.
7 That strikes me as collusive.

8 MR. LEHANE: And if it's collusive it's inappropriate
9 and that we'd say no, Your Honor. They're not entitled to do
10 anything that would inappropriately deprive the estate of the
11 value of these assets. And as I had said, as holders of very
12 large unsecured claims we want to see, you know, the estate get
13 the value of those assets. So --

14 THE COURT: But I suspect your landlords also would
15 have pretty strong preferences about who they want to see as
16 their tenant.

17 MR. LEHANE: That's true, Your Honor. And they --

18 THE COURT: A bigger interest may be them collecting
19 their unsecured claim.

20 MR. LEHANE: And they -- and it may be. And they
21 certainly have -- on the same note, they have rights under
22 365(b) (3) with respect to, you know, the assignment of these
23 leases.

24 THE COURT: Yes.

25 MR. LEHANE: And the Court can fashion -- and

1 certainly there have been fashioned -- many forms of bid
2 procedures orders which have required information to remain
3 confidential, including if it's adequate assurance
4 information -- the procedures in A&P for instance, required
5 landlords to keep that information confidential, not to
6 communicate it to anyone else -- so that would include any
7 other bidders. And that those bid procedures actually not only
8 kept that information confidential, but authorized the
9 landlords to the extent any information had been deemed
10 confidential, to file that information if they needed to under
11 seal in connection with any objection.

12 The idea was to make the process as seamless as
13 possible so that the information flows quickly to the landlords
14 and avoids any unnecessary objections and allows the Court to
15 only hear those objections that it needs to. And we believe
16 that giving the landlords that information at the soonest
17 possible time avoids unnecessary objections, and --

18 THE COURT: And if those also includes the restriction
19 the landlord may not contact any of the bidders prior to the
20 auction, what's your position about that?

21 MR. LEHANE: I don't believe that that -- that may not
22 be -- that may be a perfectly valid prescription. If Your
23 Honor feels so then that may make perfect sense to -- if the
24 landlord is bidding -- intends to bids on any of this and/or
25 has any objection to the assignment, it should be forbidden

1 from contacting the bidders beforehand. But those are separate
2 issues from when they --

3 THE COURT: But whether it's bidding or not it ought
4 to be prohibited from contacting any of the bidders.

5 MR. LEHANE: Well, there's often -- it's interesting,
6 Your Honor, because we're talking about the relationship
7 between markets. I've heard the exact opposite said many times
8 from professionals involved when they want to make sure that
9 the transaction happens, that the -- they've said please go out
10 and contact the landlords, get them your adequate assurance
11 information --

12 THE COURT: So if the restriction was you can't
13 contact any bidders without the debtor and committee's
14 consent --

15 MR. LEHANE: That perhaps make sense.

16 THE COURT: -- you've got to go up and negotiate with
17 the debtor and the committee as to who you -- because they may
18 have a different view about it. I mean, I'm very concerned
19 about anything -- even if it doesn't fit within 363(n)
20 precisely, anything that strikes of collusion, and I don't want
21 to have hearings and have to wind up with a sideshow about how
22 is it that someone who was not the high bidder in the first
23 round winds up somehow as the favorite selection. But I have
24 your point, I'm not ruling yet, but I just -- any other points
25 you want to raise?

1 MR. LEHANE: Well, I guess just to finish that up.
2 Since the issue here was the timing, and I just would like to
3 close out that issue if I could -- at least our position with
4 respect to that. If the only issue was that the landlord had
5 to extend the time to assume or reject and then subject to the
6 Court's calendar and a reasonable timeframe, if to a certain
7 extent that was embedded in the procedures that would make a
8 big difference. The problem from the landlord's perspective is
9 that even with an auction, for instance, on August 31st, these
10 auctions may go quickly, but they may not. It would not be
11 unheard of for that auction to carry over into September 1st.

12 And then it's not clear from the procedures, the
13 debtor and the committee have to then consult with one another
14 and make decisions as to who the successful bidder is. It's
15 not clear, and there's not deadline for them to announce who
16 that bidder is, but there is a sale hearing -- there is an
17 objection deadline on September 6th that comes up very shortly,
18 and a sale hearing on the following Tuesday, following a
19 holiday weekend.

20 And I guess, from the landlords' point of view,
21 certainly as to whether or not that's an evidentiary hearing if
22 there is no extension of time or somebody is demanding a
23 hearing on that date, because the choreography involved,
24 obviously, in a contested evidentiary hearing assignment
25 typically involves witnesses, et cetera. So just to try to

1 make sure the procedures -- and we're happy to work with
2 them --

3 THE COURT: If the landlords don't want to extend the
4 deadline, they'll get their prompt hearing.

5 MR. LEHANE: Um-hum.

6 THE COURT: They may not get discovery.

7 MR. LEHANE: Well, or request would be that somehow
8 that's articulated in the approved procedures.

9 THE COURT: Well, I'm just making it pretty clear. If
10 I have to give a prompt hearing they'll get a prompt hearing
11 and they'll get all the process that's due, and it may refuse
12 to extend a deadline. That will be taken into account in all
13 the process that's due under the circumstances.

14 MR. LEHANE: Understood, Your Honor.

15 THE COURT: Is that clear?

16 All right. Anything else?

17 MR. LEHANE: Not with respect to that specific issue
18 that was addressed.

19 THE COURT: All right.

20 MR. LEHANE: There may be with respect to the other
21 points.

22 THE COURT: Let me hear who wants to be heard with
23 respect to what was listed as issue number three.

24 MR. BUECHLER: Your Honor, on behalf of the creditors'
25 committee, just on this particular issue what I wanted to ask

1 before is just September 14th is a real deadline because of the
2 Code and the extension. But just so the Court is clear and
3 everybody's clear with regard to extensions, the leases in the
4 round one are primarily the small-format stores where the GOB
5 sales were done, so while the committee wouldn't mind an
6 extension --

7 THE COURT: You want to unload -- yes.

8 MR. BUECHLER: -- it really can't go beyond this end
9 of September, because then the estate is forced to pay another
10 month's worth of rent on -- I don't know if it's one lease or
11 fifty leases, which again, is cash out the door that we don't
12 recoup. So that's just important for everybody to weigh in
13 mind for the timing.

14 Just so Your Honor is also aware, in the debtors' --
15 in the revised bid deadlines do propose that they will provide
16 notice of adequate assurance immediately upon the conclusion of
17 the auction sale by e-mail to those landlords and their
18 accounts or where they have that, which we think goes a long
19 way toward that issue, from the issue raised by Mr. LeHane with
20 regard to when the committee and the debtors decide who's the
21 successful bidder on a particular lease.

22 Realistically, we'll probably be doing that as the
23 auction progresses and making that decision as we conclude with
24 a particular lease or group of leases, who's the highest and
25 best. So we don't think that's going through a process that

1 realistically is going to slip for a day or two, so
2 hypothetically, if it's lease or store number 321, whatever the
3 store number may be, if the auction closes we're going to come
4 to that conclusion or we're going to continue the auction. And
5 I think it's going to be a process that occurs there where
6 people will know it's not the goal of elongating it.

7 And last, August 26th is the bid deadline, is a
8 Friday, so the auction is proposed to be the following
9 Wednesday morning to give the debtors and the committee and
10 their professionals time to review the bids Monday and Tuesday
11 to coordinate before the auction starts. So it's not -- while
12 there may be five days caught in between, the bid deadline is a
13 Friday afternoon the auction starts first thing Wednesday
14 morning at 10 o'clock, so it's not, in our view, a very long
15 period of time. Thank you.

16 THE COURT: Thank you. All right. Let me hear from
17 landlords' counsel. Hold on, Mr. -- let me hear from the
18 landlords' counsel and then I'll give you a chance.

19 MR. POLLACK: Good morning, Your Honor. David Pollack
20 on behalf of -- and there ten of them, Aronov Realty, BIT 27
21 Centro Properties Group, CPBP -7 Associates, Federal Realty
22 Investment Trust, HRI, Lutherville Marketplace, Philadelphia
23 Marketplace, LaGuardia, PES Partners, Trademark Realty and UBS
24 Realty.

25 Your Honor, with regard to this particular issue,

1 first of all, I don't think we have -- and we have leases on
2 both the first round and the second round -- we have nineteen
3 leases altogether, and I believe with the addition of the
4 small-format and airport we probably have seven or eight in the
5 first round and the other eleven or so in the second round. We
6 don't really have a problem with the first round because
7 they've moved the timing back. It's the second round -- and
8 Your Honor raised a question where I think that there is room
9 because we're not facing this September 14th deadline to move
10 the time and give the spread. And I think either we need to
11 get the adequate assurance information early or we need to have
12 the additional time at least in the second round.

13 With regard to the adequate assurance information,
14 Your Honor, there have been lots of things put forth by Your
15 Honor and counsel for the creditors' committee and counsel for
16 the debtors about who's going to do what with what information,
17 et cetera. This is not the first lease auction ever in a
18 retail case, these auctions are not conducted in a vacuum --
19 people know, and in fact, we as landlords know today who some
20 of the bidders are for some of our properties. I do not think
21 that a landlord can go as was suggested by Mr. Glenn to a
22 tenant and say don't bid, let it be rejected and we'll talk
23 outside of that. Frankly, I think that's a bankruptcy crime
24 and I think that that matter would be before Your Honor very,
25 very quickly. I don't think the landlord is entitled to do

1 that.

2 I do think a landlord is entitled, however, to talk to
3 tenant when a tenant comes and says I am bidding on your
4 property if I can get XY and Z from you, will you do that. And
5 that goes a long way toward final decisions. People have
6 posited that you want to get the highest offer for property;
7 that's not always the case. Whereas --

8 THE COURT: I think, Mr. Aronov (sic), I see a
9 difference between a prospective bidder coming to a landlord
10 and saying I think I'm interested in bidding on your space, I
11 have these issues I want to talk to you about. I see a
12 difference between that and a difference between requiring the
13 debtor to provide a landlord with the list of bidders and
14 amounts.

15 MR. POLLACK: Let me address that, Your Honor.

16 THE COURT: Go ahead.

17 MR. POLLACK: Time and again, we have been in auctions
18 where either for a whole company or for individual properties,
19 the landlord finds out that company A and company B are both
20 interested in the property. The landlord looks at them and
21 they're two very different possible tenants, and the landlord
22 says I would take tenant A; I'm going to fight tenant B.

23 When the committee and the debtors have that
24 information, time and again there is a decision made that we
25 don't want to buy a fight, we want -- even though it's 10,000

1 dollars less, we're assured that this transaction is going to
2 close now and we'll go forward with the deal. I have done that
3 both as a landlord and as a prospective buyer, where I have
4 bought properties -- in one case for a million dollars less
5 because my client could close immediately and then make its
6 deals with the landlords.

7 So it's not always that you don't want that
8 information. In many cases where there is more than one bidder
9 you do want that information, and it's the same thing with the
10 landlord bid. Some landlords, including my landlords, will sit
11 on the sidelines unless they know there is a bidder. And if
12 they know there is a bidder, and particularly a bidder they
13 don't like, all of a sudden they become very active rather than
14 deciding to simply challenge the matter in court, and it turns
15 out to be a lot better for the estate.

16 So there are two sides to each of those arguments, and
17 in many cases -- and many of these people in this courtroom
18 were in the -- I can't remember the name of the bankruptcy down
19 in Texas where there were 600 and some leases being sold and
20 the landlord supported the lower bid and the court went along
21 with the lower bid because the transaction was going to close.

22 So giving the landlords that information with Your
23 Honor's caveat that you as a landlord can't go to the tenant,
24 and you can't do those things which you shouldn't be able to do
25 anyway, I don't have any problem with that. I think, actually

1 helps the process, does not hurt the process -- getting that
2 information early. If we don't get that information early,
3 then with regard to the second round, we need that spread of
4 time.

5 With regard to Mr. Buechler's issue about well, we've
6 got the time till the 14th, then the extra rent, I've seen time
7 and again where if the landlord wants a continuance past X date
8 the landlord eats the rent, so either you get the hearing or
9 you eat the rent. So there are ways to solve those problems;
10 it's not something that has to be done right then and there.
11 And each one is on an individual basis, and frankly -- I wish
12 it weren't the case -- we're not going to see that many bids in
13 this case -- we're not going to see 400 bids for leases, Your
14 Honor.

15 THE COURT: Well, look, I mean, if on a case-by-case
16 basis it came before me in the -- and I have a feeling you're
17 not going to have an argument with the committee or the debtor
18 if the landlord says I need more time I'm willing to eat that
19 extra month's rent, I can't imagine that you're going to have
20 an objection about it.

21 MR. POLLACK: I would hope not.

22 THE COURT: But I don't know that that needs to be
23 built in to a schedule, per se.

24 MR. POLLACK: I don't think it does, Your Honor.

25 THE COURT: I'm obviously going to be reasonable as

1 well about it. I just -- the issue is if the landlord -- I
2 understand Mr. Buechler's point about the debtor having to pay
3 an additional month's rent, so if the September 14th deadline
4 doesn't apply and if a landlord says I need more time and I'm
5 going to eat the rent for that month, fine.

6 MR. POLLACK: All right.

7 THE COURT: I don't think you're going to have an
8 argument with the committee or the debtor about it.

9 MR. POLLACK: My point then, Your Honor, is simply
10 that there is a reason to give the adequate assurance
11 information as soon as received, and you can protect the
12 process at the same time.

13 THE COURT: Thank you, Mr. Aronov (sic).

14 MR. POLLACK: Thank you.

15 MR. BRANCH: Good morning, Your Honor. Dustin Branch,
16 Katten Muchin Rosenman LLP on behalf of ten landlords, The
17 Macerich Company being the largest.

18 I won't repeat what --

19 THE COURT: That's okay.

20 MR. BRANCH: -- Mr. Pollack and Mr. LaHane said.
21 Basically, we have almost all of our leases -- nineteen of them
22 -- in the first round; none of those are subject to the
23 September 14th deadline, so I think there's some time built in
24 there. I agree with the second round, since all those leases
25 by definition apparently do not have a deadline before

1 September 14th then there is certainly some time in there, and
2 if it's going to spill into the next month I don't think my
3 client would have any objection to eating the rent to the
4 extent there needed to be a contested hearing.

5 THE COURT: Well, you'll need to talk with the
6 committee and the debtor specifically about that.

7 MR. BRANCH: I agree. But just to say, since there
8 isn't a statutory deadline, I think that as long as there is
9 time or the opportunity to discuss that and build in that time
10 if needed -- and it may not be needed. To the extent that my
11 clients consent, it can be the next day. But just where we
12 haven't had --

13 THE COURT: It may not be the same for all of your
14 clients -- for all of the leases.

15 MR. BRANCH: Right, but to the extent there isn't,
16 where there isn't that statutory deadline I think the ability
17 to have some flexibility to move that date out, and if it's
18 going to go into the next month to decide whether you need to
19 eat the rent, I think that makes sense to keep the process
20 moving.

21 THE COURT: All right. Thank you, Mr. Branch.

22 Anyone else want to be heard?

23 Mr. Glenn.

24 MR. GLENN: A couple points, Your Honor -- and some of
25 this is obviously subject to your schedule. We have in the

1 first round, a little less than a week before the September
2 14th hearing -- subject to Your Honor's schedule -- to deal
3 with any true objections to adequate assurance that require
4 more time than the others.

5 I think the schedule, in large part, contemplates that
6 we're going to have a consensual process or a bidder or
7 circumstances that require expediency, but Your Honor's heard
8 that we're willing to work with the landlords so we don't
9 prejudice their rights, but get this done as quickly as
10 possible.

11 The same thing goes for round two; we have September
12 20th. We're okay with -- subject to Your Honor's schedule --
13 the --

14 THE COURT: Just tell me, the round one sale hearing
15 is what date?

16 MR. GLENN:

17 MR. POLLACK: September 8th.

18 THE COURT: Yes.

19 MR. GLENN: September 20th on round two, we have Rosh
20 Hashana on the 29th and 30th, other than that we're willing to
21 go on a landlord-by-landlord basis -- schedule, contested
22 hearings if necessary between the 20th and the 29th. And if we
23 get the concessions that the landlord's counsel are
24 articulating for rent, then it's no harm, no foul and there's
25 not going to have a problem at all.

1 THE COURT: Let me -- let me come back and ask on the
2 timing of disclosure of the bidders. I mean, I thought Mr.
3 Aronov (sic) in particular raised some reasonable arguments why
4 it's in the debtors' interest, the committee's interest to get
5 the information to the landlord as soon as possible. And your
6 response to that?

7 MR. GLENN: My response to that is what the landlords
8 are asking for is an obligation by us to blast that information
9 out. I respect Mr. Pollack, I respect Mr. LeHane and Mr.
10 Branch, they've all been, for the record, very constructive to
11 the process as we've moved forward, but I don't know every
12 landlord, I don't know every landlord's lawyer. If my real
13 estate advisor, DJM, tells me that it makes sense to share the
14 information with the landlord sooner rather than later so we
15 can vet the issues that Mr. Pollack has articulated, we will
16 certainly do that, we're not going to stand on ceremony. But
17 our concern is that we have discretion to make those
18 disclosures when we believe it's appropriate and value
19 maximizing, and it could be earlier than we --

20 THE COURT: All I'm going to hear is screams bloody
21 murder if you selectively favor some landlords over others; I
22 can see it now. Well, I heard that you gave that information
23 to this landlord's counsel and you won't give it to me.

24 MR. GLENN: I don't know any other way to skin the cat
25 here. I --

1 THE COURT: What's your concern about -- you say
2 blasting it out? There's a bid deadline; there are going to
3 bidders or not. What is the -- I expressed my concern about
4 collusion, and there may be something short of a prohibition on
5 disclosing that either restricts -- I mean, there's nothing
6 that would stop a prospective bidder to going to the
7 landlord -- it may well happen -- say look, I'm probably going
8 to bid on your space but I got these issues. You know, it may
9 be there's only -- there's X period of time on the lease, I
10 want to negotiate a longer lease so let's talk about it now
11 before the auction. I mean, there's all -- I suspect a lot of
12 that does go on.

13 MR. GLENN: I think that, primarily -- and I will
14 check with DJM if Your Honor give me a moment -- I think it's
15 primarily the situation where the landlord is going to be a
16 competing bidder. We would -- in other auction circumstances
17 we wouldn't provide competing bidders with the competing bids
18 until the auction.

19 THE COURT: Yes.

20 MR. GLENN: That's just how the process generally
21 works. If the landlord is not going to be a bidder I can talk
22 to DJM and ask if the execution of a confidentiality agreement
23 would resolve concerns about some of the other issues that I
24 articulated earlier. Excuse me for one moment.

25 THE COURT: Go ahead.

1 (Pause)

2 MR. GLENN: Your Honor, Mr. Buechler, I think, has
3 some points on this, if you want.

4 THE COURT: Mr. Buechler?

5 MR. BUECHLER: When I was just with Mr. Glenn off the
6 record was just a concern I have. One of the arguments
7 articulated by the landlords as I understood it was, if they
8 knew who might be out there, they may be willing to step up and
9 bid. But what they're really asking for is to get this
10 adequate assurance information after the bid deadline --
11 whether it's round one or round two -- at which point in time
12 they would not, as a landlord, have already put a bid in.

13 If we give them that adequate assurance information
14 after the bid deadline with some form of confidentiality
15 agreement which of course we assume everybody would honor,
16 would that then preclude the landlord from bidding? Because
17 realistically, if it came to the auction and one of the
18 landlords decided to come up and bid --

19 THE COURT: You want that.

20 MR. BUECHLER: -- I'd love it.

21 THE COURT: Yes, I know.

22 MR. BUECHLER: But if I'm going to give them --
23 meaning, when I say I, the estate is going to provide the
24 landlord with the adequate assurance information beforehand so
25 they can vet out who their potential tenant that they may have

1 is in advance, yet the bid deadline has already come, would
2 they possibly then be precluded from coming to the auction?

3 So I'm concerned -- you know, and it is a practical
4 issue and a theoretical issue -- how that works itself out in
5 this process. And that's why from -- when the committee
6 originally saw this we were not disagreeing with what DJM, the
7 debtors' real estate advisor, said, which is that the adequate
8 assurance information would only go to the landlord community
9 as a whole after the auction sale was conducted and we knew who
10 the successful bidders were. And then realistically we don't
11 have to do a mass blast of that information to every landlord,
12 because at that point we know that hypothetically there's only
13 bids for fifty of the remaining approximate 400 leases, and
14 therefore you only have to provide that information to those
15 fifty landlords, not everybody.

16 And again, some of the bidders may have concern if
17 their adequate assurance information -- which is private
18 financial data -- is going to every landlord, when there might
19 be a bid on that. And so, you know, that is somewhat --

20 THE COURT: All right. Okay. Okay. Here's what
21 I'm -- right now. With respect to the schedule, our proving
22 schedule and overruling the objections with respect to the
23 schedule with this caveat. That I want to make it clear, that
24 to the extent that landlords in consultation with the debtor
25 and committee work out an agreement to adjourn the hearing with

1 respect to sale of a particular lease because there's not
2 September 4th deadline -- I'm not requiring the landlord to
3 agree they're going to eat the month's rent if it gets kicked
4 over, but I suspect that in terms of the committee and the
5 debtors' willingness to adjourn the hearing is going to be
6 largely an economic factor. And I'm sure -- I'm just saying, I
7 will move this process along. Hopefully you won't need more
8 time, you'll have the adequate assurance information you need,
9 you'll know who the winning bidder is and something about them
10 and that yes you want them as a tenant, and this will become a
11 nonissue. Or you'll quickly resolve the adequate assurance
12 issue with a couple of phone calls or some additional
13 information.

14 So I would anticipate the schedule only becomes an
15 issue for some subset of the leases. And that you'll be able
16 to work out an agreement with the debtor and committee about
17 moving the hearing, and if you can't you'll arrange a telephone
18 conference with the Court and I'll listen to you about why you
19 believe you need more time and if appropriate, I'll grant more
20 time, okay. But in the first instance I'm going to approve the
21 proposed deadlines, both for the first round and second round.
22 I appreciate that for the second round in particular the time
23 is very short, and if there were no September 4th deadlines the
24 issue there was, I think, the extra month's rent that might be
25 due. Again, I think you may well be able to work out an

1 agreement to adjourn that hearing.

2 With respect to when information is going to be
3 disclosed to the bidders, we'll take a recess -- not right at
4 this minute, in a few minutes, I think, and I'm going give the
5 debtors an opportunity to talk to their advisors at DJM. I see
6 merit in arguments on both sides of this issue, and I think I
7 want to assure as robust an auction as possible. And when we
8 take a recess I'll let the debtors talk with their professional
9 advisors on it and were whether there's some further
10 accommodation they're willing to make. It may not be just a
11 blanket rule every landlord gets the information at such and
12 such time, it may be -- I know, Mr. Buechler, you don't want to
13 discourage the landlord from showing up at the auction because
14 it doesn't like the winning bidder and it would rather deal
15 with the property themselves.

16 So I'm not ruling, I'm going to reserve on that piece
17 of it. I think on everything else, the objections are
18 overruled.

19 Okay. Let's see if we can move on a little faster
20 here. Let's go on to the fourth category.

21 MR. GLENN: Number four is a objection to some of the
22 bidding requirements applicable to landlords. One, that
23 landlords should be automatically qualified as qualified
24 bidders, that landlords shouldn't be required to pay the cash
25 consideration of 10,000 dollars above the cure amount, they

1 should have the right to credit bid only a portion of their
2 claims, they should not be required to provide a deposit and
3 five, that they should not be required to provide adequate
4 assurance of future performance.

5 On items one, two and three, as we've stated, those
6 are economic terms that the debtors in their business judgment
7 are going to insist on because they set the thresholds for
8 bids. Number four, we have clarified that a landlord is not
9 required to provide a deposit. And number five, we've
10 clarified that landlords do not have to provide adequate
11 assurance information a priori. So --

12 THE COURT: All right. Let me hear from any landlords
13 who want to be heard on this issue.

14 MR. LEHANE: Good morning, Your Honor. Robert LeHane
15 again.

16 My only comment on the that the landlord should have
17 to provide a 10,000 dollar cash consideration bid, there are a
18 large number of locations where there are significant taxes
19 that are paid in arrears that are now due, have accrued as
20 administrative expenses and have not yet been paid. And so
21 there may be landlords with in excess of 50,000 dollar
22 administrative claims for taxes.

23 And it would seem to be that they should be able to
24 credit bid some or all -- and it may be minimum of 10,000
25 dollars, that's certainly understandable, but that is 10,000

1 dollars in real value on dollar for dollar basis to the estate.
2 And again, by allowing landlords to credit bid those
3 administrative claims, it's a much simpler process for a
4 landlord to do that than to actually cut a check back to its
5 tenant. And this is a typical method that's used in auction
6 procedures, is to allow the landlords to at least credit bid
7 valid administrative claims.

8 With respect to rejection claims or a portion of
9 those, you know, that's certainly a question of the estate,
10 whether or not they believe there's any value to those and
11 accept those as a cash bid. But to the real administrative
12 claims that may have accrued and not been paid, I think the
13 landlords should be able to credit bid those without adding a
14 cash component.

15 MR. GLENN: That's acceptable to the company. Will
16 the landlords revise the order accordingly.

17 THE COURT: Let me make sure you're revising the order
18 on -- because Mr. LeHane raised, I think, a couple of separate
19 items.

20 MR. GLENN: Okay. On the issue of whether you can
21 contribute a credit bid in lieu of cash for an administrative
22 claim --

23 THE COURT: You' landlord permit him --okay.

24 MR. GLENN: That's -- we believe that's tantamount to
25 cash currency these days.

1 THE COURT: Okay.

2 MR. GLENN: So that's fine.

3 THE COURT: On that point. All right.

4 Mr. LeHane, does that satisfy you?

5 MR. LEHANE: Yes, it does, Your Honor.

6 THE COURT: Okay.

7 MR. GLENN: And as Mr. Buechler indicates, this is --
8 the debtors and the committee have to make a judgment, but it's
9 truly a valid administrative claim.

10 THE COURT: Okay. I think there's -- you want to be
11 heard?

12 MR. POLLACK: Yes, Your Honor.

13 THE COURT: Come on up.

14 MR. POLLACK: Your Honor, David Pollack again for the
15 landlords noted of record.

16 Perhaps before I start, Your Honor, if I might clarify
17 with Mr. Glenn, that last point raised by Mr. LeHane is the
18 issue that the landlord may bid -- or may the landlord bid only
19 a portion of its admin claim if that portion is at least 10,000
20 dollars?

21 THE COURT: Go consult.

22 MR. GLENN: Okay. So I will try to be more clear.

23 THE COURT: Why don't you just step back, talk to Mr.
24 Pollack for a minute and then see -- the three of you talk and
25 see if you could resolve this.

1 MR. POLLACK: Understood.

2 THE COURT: Do you have an agreement?

3 MR. POLLACK: No.

4 THE COURT: No.

5 MR. POLLACK: But at least I understand his position.

6 THE COURT: Okay.

7 MR. GLENN: OKAY.

8 MR. POLLACK: Your Honor, we raised, as did many other
9 landlords, our belief that the landlords should be able to bid
10 something less than their full cure amount. We ask that the
11 landlords automatically be qualified bidders. I know in many
12 instances that is the case; in many instances it is not the
13 case. And obviously the debt --

14 THE COURT: What is and what is not the case?

15 MR. POLLACK: That a landlord is automatically a
16 qualified bidder and does not have to bid, he can show up the
17 auction. And many courts and debtors follow what we call the
18 Bill Gates rule, you show up with money you get to bid. The --
19 you know, and we would ask that that in fact be the case, that
20 the landlord can show up and bid. And it was intimated by Mr.
21 Buechler that if that happened they might want to accept that,
22 although that's not the procedures and you're at risk if you
23 try to do that.

24 We understand the debtors would want to force people
25 to have minimum bids, and they'd like landlords to bid in the

1 dark not knowing who the other bidders is so you come up with
2 some cash for the estate. And I guess it's a risk that the
3 landlord has to take, but we would ask that landlords be
4 automatically qualified perhaps subject to some smaller minimum
5 bid of 10,000 dollars. The estate can certainly figure out
6 whether or not a landlord bidding either part or all of its
7 cure or bidding its rejection damage claim is worth anything to
8 the estate.

9 THE COURT: Well, a rejection damage claim, forget
10 about it.

11 MR. POLLACK: Well, I mean, I know we stood here when
12 we defeated the Najafi deal thinking that maybe there'd be some
13 money for unsecured creditors. And that was one of the
14 reasons, I guess that's gone by the wayside at this point. But
15 that's simply our point; I won't belabor it.

16 THE COURT: Your argument about being the cure amount
17 is if somebody -- if there's an assumption and assignment you
18 get paid the cure amount.

19 MR. POLLACK: Correct. Or you may be bidding a
20 portion of the cure amount. If there's no other bidders and
21 you've got -- for example, I've got a lease with the 78,000
22 dollar cure amount on our schedule, 39,000 on the debtors'
23 schedule. We may want to bid 10,000 dollars. The debtor can
24 say fine, 10,000 dollars and we'll terminate your lease and
25 nothing else. I can't do that under the current procedures.

1 THE COURT: Okay. So Mr. Glenn, why shouldn't they be
2 able to bid a portion of their admin claim? The unsecured
3 claim is a nonstarter for me.

4 MR. GLENN: Here's how we see it, and I just want to
5 be precise about this, because I might have been somewhat
6 imprecise before. When we say cure I think we're referring to
7 solely pre-petition arrears and defaults, okay. We view that
8 as trading basically a pre-petition claim as part of the
9 process. It doesn't really -- by paying part of the cure,
10 okay, are we going to be left with paying the rest of the cure
11 ourselves? Or something like that. I mean --

12 THE COURT: Well, I thought you were -- isn't the
13 assignee -- if you sell the lease aren't they to pay the cure?

14 MR. GLENN: Well, this is on a landlord deal, Your
15 Honor, so there's not going to be --

16 THE COURT: Okay.

17 MR. GLENN: -- it's going to be a termination.

18 THE COURT: All right. Okay.

19 MR. GLENN: I think there's a minimum that we believe
20 on an administrative basis to make this process actually
21 worthwhile, and we're trying to make it economically efficient
22 so --

23 THE COURT: So let me make sure I understand. With
24 the change that you agreed to, what is it that you're willing
25 to agree to?

1 MR. GLENN: Post-petition dollars that are owed or we
2 would owe in any circumstance, that amount as an administrative
3 expense claim, if the landlord excuses us from that, that's a
4 cash-on-cash --

5 THE COURT: Right.

6 MR. GLENN: -- dollar-for-dollar exchange; it's the
7 same thing as cash. The pre-petition --

8 THE COURT: And you're setting a minimum?

9 MR. GLENN: Of 10,000 dollars.

10 THE COURT: That's some combination of cash and
11 administrative claim.

12 MR. GLENN: Exactly. Exactly.

13 THE COURT: Okay. And what is your position with
14 respect to credit bidding a cure amount?

15 MR. GLENN: We in consultation with the committee are
16 going to insist that they have to at least bid the cure amount
17 plus 10,000 dollars of administrative expense claim or 10,000
18 dollars in cash.

19 THE COURT: Okay. So essentially, 10,000 in cash and
20 a waiver of any cure claim.

21 (No response.)

22 Hold on, Mr. LeHane.

23 Mr. Glenn?

24 You know, rather than doing this, going back and
25 forth, when we take a break see if you can -- you may not be

1 able to resolve this issue --

2 MR. GLENN: That's fine.

3 THE COURT: -- but at least I want it clearly before
4 me what it is the debtor and committee are proposing and what
5 the objection is to it at that point. It's a moving target for
6 me right now. I'll give you a chance to

7 MR. GLENN: Fair enough.

8 THE COURT: -- better articulate it, okay?

9 MR. GLENN: Number six, hopefully this one we're done
10 with. I spoke earlier of the scenario where a round two bid
11 would be considered in round one as part of a bulk bid, and
12 that that deprived the landlords of an opportunity to object
13 based on the procedures then in place.

14 THE COURT: You changed the order. Can I hear
15 whether -- are there any continuity objections? This is number
16 six on the list.

17 (No response.)

18 THE COURT: All right. Hearing no further objections,
19 the Court concludes that the proposed change to the bidding
20 procedure is satisfactorily addresses --

21 Mr. Pollack, are you coming up to address this or not?

22 MR. POLLACK: No, I'm just asking if you skipped over
23 number five --

24 MR. GLENN: We didn't skip over number five, so we'll
25 go back.

1 THE COURT: We'll come back to it. But let's deal --
2 we're almost done with six. Anybody else want to be heard on
3 six?

4 (No response.)

5 THE COURT: All right. Court concludes the proposed
6 change to the bidding procedures adequately deals with the
7 objections that have been asserted to this category number six,
8 so to the extent any objections remain, that's overruled.

9 All right. Let's go back to five.

10 MR. GLENN: Number five, we have asked for new cure
11 objections and any new cure objection deadline. I believe I
12 discussed that earlier. There were concerns in these
13 objections along the lines of what we dealt with with respect
14 to the Najafi bid. We understand that we're asking landlords
15 to do this again, but in our judgment it's critical to the
16 process that we have a common understanding with the landlord
17 and our bidder about what the cures are at that time.

18 THE COURT: Okay. Who wants to be heard with respect
19 to that?

20 Mr. Pollack, you wanted to be heard?

21 MR. POLLACK: David Pollack for landlords noted, Your
22 Honor.

23 Your Honor, less than four months ago we presented the
24 debtors with cure information. That was in the middle of July.
25 The only changes since that date are the possible nonpayment of

1 August rent by the debtors, which they certainly would know
2 about.

3 THE COURT: So it's easy for you then, because you're
4 only talking about what you gave them then plus whatever else
5 may be due now.

6 MR. POLLACK: It's not easy, Your Honor, because we
7 still have to go to each one of the clients, they still have to
8 do various checks, and it's a useless exercise. The debtors
9 say themselves with regard to one of their other objections,
10 and I'm quoting, they say "the issue now is premature and
11 potentially moot because any lease one, may never be assumed
12 and assigned, and two, the landlord could be the successful
13 bidder". That's true with these leases too and with the cures.

14 They don't need anymore cure information, they've got
15 it. We filed nineteen numbers last time, they say when we
16 looked at them and where we agreed we changed the numbers.
17 They changed a total of three for a total of less than 1,000
18 dollars. Anything with a significant difference they didn't
19 bother to change, they didn't bother to call, and yet we've got
20 to go through the exercise all over again.

21 I got a call last week that said well, we'll accept
22 what you submitted last time if you submitted all the
23 information. And yet they still want us to submit all of this
24 again; it's ridiculous, Your Honor. There aren't going to be
25 more than fifty or seventy-five leases. When they decide what

1 they want they can get the newer and up-to-date cure
2 information at that time. They have what they need now.
3 They've got their numbers, they've got our numbers, they don't
4 need forty, fifty, sixty landlords filing pleadings with the
5 Court showing new cure amounts. There is no reason for it.

6 THE COURT: Okay. Anybody else want to be heard?

7 (No response.)

8 THE COURT: Mr. Glenn, do you want to be heard?

9 MR. GLENN: Your Honor, if any landlord wants to just
10 stand by what they filed before I'm not asking them to refile
11 it. If it's changed, our advisors are telling us that
12 potential bidders want the certainty of knowing that amount,
13 and it's helpful to the process.

14 THE COURT: All right. So here --

15 MR. GLENN: I understand the concerns, but --

16 THE COURT: Here's the court -- the court's ruling on
17 it is revise the procedures to indicate that landlord only has
18 to file a schedule and a new cure amount if it differs from the
19 amount that they previously submitted, okay. If they want to
20 stand by what they gave, fine. And if they don't, okay. So
21 the objection is overruled. The objection is sustained to a
22 limited extent, I just want to see the procedures revised so
23 that if a landlord just wants to stick with what they
24 previously gave you, go live with it. Okay?

25 MR. GLENN: The last objection, Your Honor, number

1 seven, has been rendered moot.

2 THE COURT: Yes.

3 MR. GLENN: That was articulated by the Port of
4 Seattle, who we've sold the lease to pursuant to the motion
5 heard earlier today.

6 THE COURT: Okay.

7 MR. GLENN: And I believe -- I don't discount the
8 possibility, given the number of objections, that we might have
9 missed something; we reserve all of our rights. But --

10 THE COURT: I'm going to ask that. Are there any
11 landlords who want to be heard on any objection that has not
12 been addressed by the Court so far or the two issues that I've
13 asked counsel consult during the break? Anybody else with to
14 be heard either in court or on the telephone?

15 (No response.)

16 THE COURT: Okay. So you're going to consult -- let's
17 just talk about what do we have left to do today? I know I
18 have all the fee applications.

19 MR. GLENN: That's it.

20 THE COURT: I'm sorry?

21 MR. GLENN: That's it.

22 THE COURT: Okay. So it's noon now. Let's break
23 until 1:30. Use, hopefully, not all of your lunch break to try
24 and resolve the last few issues, or at least get those last few
25 issues very specifically focused for the Court about what's the

1 difference that remains. And hopefully that won't take more
2 than a few minutes when we come back, and then we'll hopefully
3 quickly get through the fee applications. I'm not going to --
4 I think I do have some questions on some issues on the fee
5 applications, but in large measure I think they were well-done.
6 So I don't think we're going to be spending hours and hours
7 dealing with the fee applications. Okay?

8 MR. GLENN: Okay.

9 THE COURT: All right. So I'll see you all at 1:30.
10 Thank you very much.

11 (Recess from 11:58 a.m. until 1:30 p.m.)

12 THE COURT: Please be seated.

13 All right. We're back on the record in Borders Group,
14 number 11-10614. Mr. Glenn?

15 MR. GLENN: Your Honor, we used the time to speak with
16 Mr. LeHane, Mr. Branch and Mr. Pollack. I think the net effect
17 of those discussions is that the debtors are going to stand as
18 the procedure is currently restructured and that the objections
19 are going to be withdrawn. There are --

20 THE COURT: Let me just make sure I -- I was unclear
21 about the change you agreed to with respect to credit bidding.

22 MR. GLENN: Okay.

23 THE COURT: So I just want to make sure we have a
24 clear record of what that is.

25 MR. GLENN: Sure. Fair enough.

1 The landlords to bid are going to be required to first
2 give us the benefit of the cure amount, in other words walk
3 away from the entire pre-petition cure amount, all pre-petition
4 arrears, stuff that would otherwise be general unsecured claims
5 if we were to reject the leases.

6 Second, the landlords can credit bid 10,000 dollars,
7 or more --

8 THE COURT: In cash.

9 MR. GLENN: -- in cash -- no, the credit bid would
10 be --

11 THE COURT: I'm sorry. Go ahead. I shouldn't have
12 interrupted you.

13 MR. GLENN: -- an allowed administrative claim that we
14 and the creditors' committee agree to. So that admin expense,
15 we believe, would be tantamount to cash so that's fine with us.

16 THE COURT: Yes.

17 MR. GLENN: But we're standing on the proposition that
18 we're not going to be orchestrating cure claims and general
19 unsecured claims.

20 THE COURT: Okay. But let me understand, do they have
21 to bid all of their administrative claim or they can bid a part
22 of their administrative claim.

23 MR. GLENN: As long as it's 10,000 dollars that's
24 fine.

25 THE COURT: Ten thousand or more of an administrative

1 claim?

2 MR. GLENN: Correct.

3 THE COURT: Okay. And Mr. Pollack, Mr. Branch and
4 LeHane, are you withdrawing your objections?

5 MR. POLLACK: Your Honor, David Pollack for the
6 record.

7 We have reached a taunt with the committee and the
8 debtors and therefore to the extent that they have not
9 otherwise been addressed, they're withdrawn.

10 THE COURT: Okay. Mr. LeHane?

11 MR. LEHANE: That's correct, Your Honor, and mindful,
12 also, of Your Honor's comments with respect to the extent
13 parties need more time, we were going to be -- if necessary
14 we'll work with Your Honor to try and accommodate your schedule
15 and the debtor and the committee.

16 THE COURT: Okay.

17 MR. LEHANE: Thank you.

18 THE COURT: Mr. Branch?

19 MR. GLENN: I think Mr. Branch left for his vacation.

20 THE COURT: Will he be back before the auction, that's
21 the only question

22 MR. GLENN: He was ably represented by Mr. LeHane and
23 Mr. Pollack.

24 THE COURT: All right. So -- does anybody else wish
25 to be heard with respect to any other issue regarding the

1 bidding procedures?

2 (No response)

3 THE COURT: All right. I think with those -- do you
4 want to be heard? No? Yes? No? Mr. Buechler, are you rising
5 to speak on this?

6 MR. BUECHLER: One minor issue. One of the exhibits
7 to the motion was the proposed lease and assumption agreement.
8 The committee had certain additional comments which the debtor
9 agreed to make, we're simply just putting on the record that
10 the debtor will make those comments and when they send them out
11 to parties who are interested in seeing that agreement, it will
12 include those additional items that we had discussed with
13 debtors' counsel offline. We decided there was no reason to
14 burden the record by simply filing a form agreement that simply
15 had some additional boilerplate language that was required.

16 THE COURT: All right. Thank you. All right.
17 Hearing no one else -- I think the only issues, I had already
18 ruled on all of the other objections, we reserved, as to those
19 remaining issues, those objections having been withdrawn, then
20 with the few changes that have been agreed to in court the
21 bidding procedures, with respect to the leases, are approved.

22 MR. GLENN: Thank you, Your Honor.

23 THE COURT: Okay. So we go to fee applications.

24 MR. GLENN: Before we do that, Your Honor, Ms. Angell
25 needs to address the Court on one clarification issue for the

1 claims resolution procedures.

2 THE COURT: Fine.

3 MS. ANGELL: Thank you. I'm Michele Angell, for the
4 record, for the debtors.

5 When Your Honor said that we needed court approval for
6 settlements of insiders --

7 THE COURT: Yes.

8 MS. ANGELL: -- we just wanted to clarify if that
9 court approval could be on notice of presentment or it had to
10 be a full-blown 9019, assuming committee support, of course,
11 but that was already in the motion. Assuming committee support
12 for the notice of presentment.

13 THE COURT: Well, I'll let you do that but I'll put
14 you on fair notice, I may just let you know I want to have a
15 hearing when I see it. Okay. Well, is there anybody who wants
16 to be heard -- there were no objections as to this part; this
17 was an issue that the Court had raised.

18 I'll permit you to do it by notice of presentment and
19 if I have a question or any other party in interest after they
20 see it, all I have to do is assert an objection and we'll set a
21 hearing, okay?

22 MS. ANGELL: Understood. Thank you, Your Honor.

23 THE COURT: All right.

24 MS. ANGELL: And I just have the same question with
25 respect to admin secured priority claims that are two million

1 and one cent over, can that be on notice of presentment with
2 committee approval?

3 THE COURT: Now claims two million and over I want a
4 hearing, a notice motion, okay.

5 MS. ANGELL: Okay.

6 THE COURT: You'll get a hearing date. It's real
7 money.

8 MS. ANGELL: Okay. Thank you, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. GLENN: That does leave us, Your Honor, with the
11 fee applications --

12 THE COURT: Okay.

13 MR. GLENN: -- that are listed under the general
14 umbrella of the interim compensation notice, docket number
15 1050.

16 THE COURT: All right. Just give me a second to
17 switch papers.

18 (Pause)

19 THE COURT: Okay.

20 MR. GLENN: Your Honor, the professionals listed on
21 our agenda have all filed fee applications and I believe many,
22 if not all cases have filed the monthly fee statements required
23 by the fee procedures order issued at the beginning of this
24 case.

25 The U.S. Trustee has articulated objections to us on a

1 monthly basis, those have all been resolved. They were
2 resolved and fee resolution statements, I believe, were filed
3 in each case on a monthly basis.

4 The U.S. Trustee articulated objections to the amount
5 of the proposed holdback or lack thereof. We had sought, I
6 believe, a complete payment of the twenty percent holdback. We
7 negotiated with the U.S. Trustee and agreed, subject of course
8 to Your Honor's approval, to a ten percent holdback. With
9 that, I believe that there's only one contested matter from the
10 U.S. Trustee's perspective and that's for the Mercer retention
11 application and Mercer's request for reimbursement of certain
12 attorneys' fees that the U.S. Trustee is objecting to.

13 THE COURT: All right. Let me see if I can just clear
14 the field on the holdback. Mr. Schwartzberg, is the U.S.
15 Trustee's office satisfied with a ten percent holdback? So it
16 would, assuming the Court approves it, all of the counsel who
17 have received interim fees with a twenty percent holdback would
18 receive a catch up and then it would be a ten percent holdback
19 going forward?

20 MR. SCHWARTZBERG: I think, and correct me, there's a
21 twenty percent holdback -- ten percent -- fifty percent of that
22 twenty percent would be paid --

23 THE COURT: Yes.

24 MR. SCHWARTZBERG: with the remaining ten percent held
25 back.

1 THE COURT: Yes.

2 MR. SCHWARTZBERG: If that's what Your Honor said, we
3 may be saying the same thing.

4 THE COURT: It was what I intended to say, if I didn't
5 say it that way.

6 MR. SCHWARTZBERG: Just one thing for the record, and
7 I could be absolutely wrong in this because sometimes I get my
8 cases mixed up, I have communicated on a monthly basis some
9 informal objections to certain fee statements.

10 THE COURT: Right.

11 MR. SCHWARTZBERG: I think, at least with the Kasowitz
12 firm, although we've reached agreement and there are no
13 outstanding objections, they have actually not put those
14 objections on the record -- on the docket. So there are
15 outstanding objections to fee statements beyond what's
16 concerned in these and we've resolved them. But they decided
17 that we're going to wait till the next fee application to put
18 those resolutions on rather than just rely on -- rather than
19 put something on the docket at this point.

20 THE COURT: I guess I'm not understanding. Mr. Glenn,
21 maybe --

22 MR. GLENN: I think --

23 THE COURT: Just get me on the same page with
24 everybody here, okay?

25 MR. GLENN: Yes. When the U.S. Trustee's office filed

1 a formal objection --

2 THE COURT: Right.

3 MR. GLENN: -- at that point the resolution was put on
4 the docket but we were contacted informally by Mr. Schwartzberg
5 in various cases and we just reached an agreement before he
6 filed an objection and therefore in that circumstance nothing
7 was filed with the court.

8 THE COURT: So what -- my understanding, and we can go
9 through the specific amounts, you got an informal objection and
10 some of what I have today are agreed reductions --

11 MR. GLENN: Yes.

12 THE COURT: -- in fees that reflect your agreement
13 with the U.S. Trustee's office.

14 MR. GLENN: That is correct.

15 THE COURT: Go ahead, Mr. Schwartzberg.

16 MR. SCHWARTZBERG: Your Honor, everything that's
17 before you today has been filed and put on the docket.

18 THE COURT: Okay.

19 MR. SCHWARTZBERG: These reflect -- what's currently
20 before you is, I think, the first and second monthly
21 statements. Since then there have been the third, fourth and
22 fifth. I have not filed formal objections, though.

23 THE COURT: You've addressed them with Kasowitz?

24 MR. SCHWARTZBERG: Correct. Correct.

25 THE COURT: And you've resolved the issues --

1 MR. SCHWARTZBERG: Correct.

2 THE COURT: -- even though they haven't been put on
3 the docket.

4 MR. SCHWARTZBERG: Correct. I was just correcting a
5 misstatement from before that everything's been resolved, put
6 on the record, in terms of all the monthly fee statements.

7 THE COURT: Okay. All right.

8 MR. GLENN: Now in our firm's case, Your Honor, I
9 believe we have --

10 THE COURT: You want to deal with yourself first, huh?

11 MR. GLENN: Well --

12 THE COURT: Go ahead. Go ahead.

13 MR. GLENN: Actually, Your Honor, there are a lot of
14 matters -- a lot of fee applications before Your Honor so --

15 THE COURT: Well, we can deal with your --

16 MR. GLENN: -- I propose we can deal with them however
17 you want to deal with them.

18 THE COURT: -- we can deal with yours first, you're
19 standing. You're standing.

20 MR. GLENN: Okay. We have requested \$1,996,776.50.
21 We've agreed to reduce that to \$1,911,021.04. Those reductions
22 consist of --

23 THE COURT: And \$46,516.40 in expenses.

24 MR. GLENN: Correct.

25 THE COURT: Okay.

1 MR. GLENN: The fee reductions include a complete
2 write off of all matters relating to the utilities motion and
3 other amounts that were agreed to with the U.S. Trustee.

4 We -- you know, in general we believe that although
5 this case has not been successful in terms of being able to
6 reorganize on a going concern basis, we believe we have worked
7 very constructively to manage this case as efficiently as
8 possible. We've minimized litigation as often as we can and
9 there have been very few contested matters in this case.

10 THE COURT: All right. So just tell me the agreed
11 reduction with the U.S. Trustee's office. I understand the
12 write offs that you made but there was an agreed reduction with
13 the U.S. Trustee's office, what and how much? Was it 10,000
14 dollars?

15 MR. GLENN: Okay. So Ms. Angell tells me that the
16 best way to do this is to look at the charts with the monthly
17 fee statements on page 2 of the summary. We reduced 74,000
18 dollars and change in fees on the April fee statement covering
19 February and March and 7,090 of expenses for May, which covered
20 the April period 11,000 in fees and 522 dollars in expenses.

21 THE COURT: Here's the -- let me first say that I
22 think your firm did a very good job in the fee application.
23 There were a limited number of -- there are a number of items
24 where lumping or block billing occurred. What -- maybe it's
25 the nature of the beast but let me give you -- you're standing

1 there so I'll give you an example involving you. February
2 22nd, 2011 prepare for and attend client strategy meeting in
3 Ann Arbor, eight and a half hours. I'm sure a lot happened in
4 eight and a half hours.

5 Mr. Schwartzberg, maybe you can tell me, because I
6 know your office is usually quite diligent about this, the one
7 thing I don't want to do, I try to avoid doing is where an
8 agreed reduction has been made, I don't expect to go line by
9 line and tell me what it's for, but I just would like a sense,
10 Mr. Schwartzberg, whether you think you have looked at things
11 that might constitute lumping or block billing and you've
12 satisfied yourself or your office is satisfied itself that the
13 billing is appropriate, because I don't want to double ding
14 anybody.

15 MR. SCHWARTZBERG: That's right. Your Honor, we
16 actually or I actually, at least I thought I looked at each of
17 the fee applications --

18 THE COURT: Okay.

19 MR. SCHWARTZBERG: -- hopefully line by line. And in
20 fact my monthly statement objection, annexed to it what we
21 believed were the lumping or block billing that we found.

22 THE COURT: Okay.

23 MR. SCHWARTZBERG: And the resolution was for that --
24 for those particular ones that we found. If I didn't mark it
25 on the exhibit I didn't find it.

1 THE COURT: Okay. All right. Okay. Again, I think
2 your firm did a very good job in the fee application and I know
3 early in a case, sometimes, when you have an eight and a half
4 hour meeting it seems to go on forever, there are some other
5 examples as well. But I also -- we always look carefully, my
6 clerks, interns and I always look carefully at lumping and
7 block billing. I also try to be realistic about when I
8 understand that, particularly early in the case, there may be
9 an all day meeting and you can't separate out every issue that
10 was discussed.

11 I'm satisfied that the U.S. Trustee's office has
12 looked at and taken account of either lumping or vagueness
13 concerns that might arise and that those were satisfactorily
14 resolved. And so the Kasowitz, Benson, Torres & Friedman fee
15 application, for fees and expenses, is approved in the adjusted
16 amount sought.

17 MR. GLENN: Thank you, Your Honor. There are
18 representatives of each of the applicants, I believe, in person
19 here. I don't know how you want to address the rest of the
20 agenda.

21 THE COURT: Well, Mr. Buechler, you're sitting right
22 there. You're a large amount. Why don't you come on up and
23 let's deal with the Lowenstein Sandler counsel, the Official
24 Committee of Unsecured Creditors.

25 MR. BUECHLER: Your Honor, this is our request for our

1 first interim fee application covering the period February 24th
2 through April 30, 2011. We did receive some minor comments
3 from the U.S. Trustee for the time period of through March 31.
4 We did file on the docket, at docket number 740, specific
5 response to those items and agreed to a reduction of 1,263
6 dollars and change, which is reflected in the footnote on the
7 second page of our fee application. We received no other
8 responses from the U.S. Trustee to our April monthly fee
9 request, nor have we received any other objections from any
10 other party, formal or informal, to any of the time entries
11 covered by our first interim fee application and therefore
12 Lowenstein would request, as allowance as an interim fee
13 application, the 838,348 dollars in fees and \$14,734.78 in
14 expenses.

15 THE COURT: Can you tell me, the adjustment that you
16 agreed to with the U.S. Trustee, was that a specific item that
17 resulted in that amount?

18 MR. BUECHLER: Yes, Your Honor. Well, no, it wasn't
19 one specific item. The items that it's comprised of were
20 solely with regard to expenses specifically for certain meals
21 that we had. There were certain reduction of meals, for hourly
22 meals, those were reduced down to, and I forget the numbers
23 Your Honor, I don't recall -- I can look.

24 THE COURT: No, that's okay.

25 MR. BUECHLER: There were certain dinner meetings and

1 then there were certain lunch meetings where there were full-
2 day meetings of the full committee and the debtors where we
3 ordered food from an outside caterer. Those exceeded the --

4 THE COURT: The twenty dollar --

5 MR. BUECHLER: -- court approved twenty or --

6 THE COURT: Right.

7 MR. BUECHLER: - twenty-five dollars by a couple
8 bucks --

9 THE COURT: It's twenty.

10 MR. BUECHLER: -- and our position was that when we
11 have to order in advance we don't know exactly how many people
12 are showing up, it came out to be --

13 THE COURT: That's okay; I don't need to know that.

14 MR. BUECHLER: -- something like twenty-three, twenty-
15 four dollars a person, all in for those larger several meetings
16 where we had the full debtors' team, both business and
17 professionals, as well as the entire committee and
18 professionals. So we had, you know, thirty-five, forty people
19 and we just can't wait till everyone shows up to find out the
20 exact count.

21 THE COURT: Right. Okay. Again, I think on the whole
22 the fee application was well done. There were some block
23 billed or lumped entries as well. There are also some
24 inconsistent time entries. You know, one of the things we look
25 at is when there's an event, a meeting, and multiple people

1 attend.

2 So, for example, on February 24th, 2011 there was a
3 dinner meeting with members of the creditors' committee and
4 whoever BB is --

5 MR. BUECHLER: That's me, Your Honor. No, I can
6 answer the question because I left early.

7 THE COURT: Oh, okay. Because you billed 1.2 hours
8 and BSN --

9 MR. BUECHLER: That's Mr. Nathan; he stayed for the
10 entire --

11 THE COURT: He stayed for three and a half hours.

12 MR. BUECHLER: Because there was a hearing, I believe,
13 the next day.

14 THE COURT: Okay.

15 MR. BUECHLER: Or something going on so I needed to
16 leave early, so I know I did not stay the entirety of the
17 dinner.

18 THE COURT: Okay.

19 MR. BUECHLER: I know there's certain other times
20 where there's been group phone calls where -- we've looked at
21 this ourselves and we know that certain parties have either
22 joined or left early --

23 THE COURT: You've answered the question.

24 MR. BUECHLER: -- because of other reasons.

25 THE COURT: You've answered the question. Okay. All

1 right. The Lowenstein Sandler fee application is approved as
2 well.

3 MR. BUECHLER: Thank you, Your Honor.

4 MR. GLENN: So the next item, if we just go down in
5 the order from the list, unless Your Honor wants to do it --

6 THE COURT: No, that's fine.

7 MR. GLENN: -- is the Ernst & Yong application, docket
8 number 971.

9 THE COURT: Right.

10 MR. WEISS: Good afternoon, Your Honor. John Weiss of
11 Alston & Byrd LLP on behalf of Ernst & Yong LLP.

12 Your Honor, Ernst & Young was retained as an
13 accounting, tax and audit professionals in the case. Their
14 first interim fee application covers the period from February
15 16, 2011 to April 30, 2011 and seeks fees in the amount of
16 \$424,464.10 and expenses of \$8,569.16 for a total of
17 \$433,033.26. You know, absent any questions from Your Honor,
18 the U.S. Trustee -- you know, we addressed the hold back issue,
19 the U.S. Trustee did not raise any particular issues with
20 respect to Ernst & Young's related monthly applications, so
21 there were no voluntary reductions --

22 THE COURT: Right.

23 MR. WEISS: -- included therein.

24 THE COURT: And there were block billing entries and
25 since there is no voluntary reduction the Court is going to

1 impose a 600 -- I'm going to approve the application for fees
2 and expenses, less 600 dollars. And that is about -- the Court
3 identified the block billed entries and reduced it by,
4 depending because this is going to apply on some others as
5 well, between ten and fifteen percent just on those block
6 billed entries. So it's a negative adjustment of 600 dollars
7 on the total amount of the fees.

8 MR. WEISS: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. WEISS: I know that my client does endeavor to
11 avoid that and the early ones are always tougher than the
12 later. So we will continue to work hard on that.

13 THE COURT: Yes. And that's -- I mean, I think the
14 fee application -- it's a lot of money, the fee application was
15 pretty good. I mean the only adjustment we're making is the
16 600 dollars. But I do take the requirement of the guidelines
17 provide how you're supposed to bill entries where there are
18 multiple activities that go on.

19 MR. WEISS: Certainly. As do we and my clients.

20 THE COURT: Yes. That's fine.

21 MR. WEISS: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. GLENN: Next on the agenda is docket number 1025,
24 which is Baker & McKenzie.

25 THE COURT: Right.

1 MR. VENCKX: Good afternoon, Your Honor. Lawrence
2 Venckx on behalf of Baker & McKenzie. We are retained as
3 special corporate counsel for the debtor. This is our interim
4 fee application for the period of February 16th through April
5 30th.

6 The United States Trustee had certain objections to
7 our first monthly statement, due to certain entries. We've
8 refiled addressing those concerns at docket number 744. Per
9 the settlement with the U.S. Trustee, we did not bill any time
10 to fixing the entries and refileing.

11 We request payment of --

12 THE COURT: It's \$226,495.44 in fees and \$3,602.99 in
13 expenses.

14 MR. VENCKX: That is correct, Your Honor.

15 THE COURT: Okay. Again, there is some block billing
16 and I also had a question about a limited amount of daytime
17 meal expenses and late night work expenses that exceeded the
18 twenty dollar cap. So I'm going to approve the Baker &
19 McKenzie fee application, with a reduction in the fees of
20 \$3,291.30 and a reduction in the expenses of \$68.35. So
21 just -- you just need to -- whenever an order gets submitted,
22 should make those reductions again in the fees, \$3,291.30 and
23 the expenses \$68.35.

24 MR. VENCKX: Thank you, Your Honor.

25 THE COURT: All right.

1 MR. GLENN: Next on the docket, Your Honor, id
2 Dickenson Wright, docket number 1027.

3 MS. COPLEY: Good afternoon, Your Honor. Dawn Copley
4 of Dickinson Wright. We're special counsel to the debtors and
5 we represent the debtors in various matters relating to
6 suppliers, lessors and vendors to protect the continuity of the
7 debtors' supply chain and also some IP matters relating,
8 mostly, to trademark.

9 THE COURT: Yes.

10 MS. COPLEY: We are requesting, for the period from
11 February 16th, 2011 to April 30th, 2011, \$265,917.75. And that
12 amount reflects a reduction that we agreed to with the U.S.T.
13 of \$1,791.75 based upon the U.S.T.'s objection concerning some
14 lumping on some entries that were very early in the case and we
15 have some real estate people working who weren't used to doing
16 fees for bankruptcy cases.

17 THE COURT: Right.

18 MS. COPLEY: So I think we've corrected that
19 situation.

20 THE COURT: I think you have too. So with the agreed
21 reduction that was made, the Dickinson Wright PLLC application
22 for fees and expenses is approved.

23 Thank you very much.

24 MS. COPLEY: Thank you, Your Honor.

25 MR. GLENN: Next, Your Honor, docket number 1030, BDO

1 USA LLP.

2 MR. BUECHLER: Your Honor, Bruce Buechler on behalf of
3 the committee. Kevin Kaden, a partner from BDO is here this
4 afternoon with me.

5 BDO seeks allowance of fees from the period of
6 February 25 to April 30, 2011 in the amount of \$1,197,903.75
7 plus out-of-pocket expenses in the amount of \$32,267.69. No
8 objections, formal or informal, have been lodged to any part of
9 the BDO fee requests. Unless you have any questions, which Mr.
10 Kaden would answer, we'd ask that the Court allow this is a
11 first interim fee application.

12 THE COURT: All right. Just give me a moment here.

13 MR. BUECHLER: Sure.

14 (Pause)

15 THE COURT: Okay. The Court is going to approve the
16 BDO USA LLP fee application, with a reduction of 1,000 dollars
17 in fees and it's based on block billing.

18 You know, I'm not going to take the time to go through
19 every line item on it and what I've done, just so everyone is
20 aware, as I said earlier, when we identify items that we think
21 are improperly lumped or block billed, unless it's really a
22 blatant instance, I generally make, in looking at, somewhere
23 between a ten and fifteen percent reduction just in that item.
24 So the 1,000 dollars reflects a specific look at those items
25 that -- where the Court had questions and didn't believe --

1 should have -- believed that they should have been delumped, if
2 you will. And so that's the Court's ruling with respect to
3 BDO.

4 MR. BUECHLER: Thank you, Judge.

5 THE COURT: Okay. Thank you.

6 MR. GLENN: Next on the docket is 1033, DJM Realty
7 Services, Real Estate Consultants.

8 THE COURT: Okay.

9 MR. ZIMMER: Good afternoon, Your Honor. I am Edward
10 Zimmer, senior managing director of DJM Realty.

11 THE COURT: Give me a second to find my notes for DJM,
12 okay?

13 MR. ZIMMER: Sure.

14 (Pause)

15 THE COURT: Go ahead.

16 MR. ZIMMER: Yes, Your Honor. We're retained as real
17 estate advisors and consultants to the debtors and our interim
18 fee application is for the period February 16 to April 30. We
19 have received one objection or had received one objection from
20 the U.S. Trustee for our first monthly fee statement. Not as
21 to the amount of any item but as to the classification of --

22 THE COURT: Let me ask you, I had one specific
23 question --

24 MR. ZIMMER: Yes, Your Honor.

25 THE COURT: -- or questions and that is, you're

1 seeking \$13,397.61 in expenses and your application is
2 inconsistent with respect to the amount charged pertaining to
3 "web site development" and "press release".

4 On the third page of the application summary you
5 indicated that you spent \$9,562.50 on web site development and
6 \$2,067.25 on a press release. However, Exhibit C to the
7 application reflects that DJM spent \$1,687.50 on web site
8 development and there's no amount listed for press release. So
9 it's just a question of reconciling what on, at least first
10 review by us, seem to be inconsistent charges for what appeared
11 to be the same items.

12 MR. ZIMMER: Your Honor, I think the first monthly fee
13 statement had expenses for web site development of 7,875 and a
14 press release -- actually, I see, I think, a twenty-some dollar
15 mistake here but a press release of \$2,067.25.

16 The second monthly fee statement showed the web site
17 development of \$1,687.50 and I don't know if I've
18 mischaracterized it in the first interim summary. But I can go
19 back and look at that and adjust that if necessary.

20 THE COURT: Well, I just -- I want to -- you know,
21 when we see numbers that don't correspond, and it may be
22 because I'm misreading them, okay -- here's what I would ask
23 you to do; first off with respect to the fees, the fees are
24 approved.

25 MR. ZIMMER: Thank you.

1 THE COURT: With respect to the expenses, in
2 consultation with committee's counsel and the debtors' counsel
3 agree on what that -- the proper figure should be for the web
4 site development and press release. When you submit the
5 order -- if you can't agree -- I'm sure you're going to agree
6 and you've got to show it to Mr. Schwartzberg too, for the U.S.
7 Trustee. If you all agree on what the proper amount is,
8 include it in the order and it will be entered. If you can't
9 agree, arrange a call -- somebody will arrange a call with the
10 Court and I'll resolve it, okay.

11 MR. ZIMMER: I'm sure it will be resolved.

12 THE COURT: I'm sure it will too, but -- it's just --
13 that was a -- it may be that it's a question that we're
14 misreading what was submitted and I just want you to confer
15 with the other counsel and make sure there's agreement about
16 what the proper figure should be for it.

17 MR. ZIMMER: We'll do that.

18 THE COURT: Okay. Thank you very much.

19 MR. ZIMMER: Thank you.

20 MR. GLENN: Next on the docket, Your Honor, is, I
21 believe the same counsel, maybe I'm wrong, 1036 and 1038 for
22 two Deloitte fee applications.

23 THE COURT: Okay.

24 MS. FREJKA: Good afternoon, Your Honor. Elise
25 Frejka, Kramer Levin, appearing on behalf of actually three

1 Deloitte --

2 THE COURT: Three, yeah. I've got Deloitte & Touche
3 LLP, Deloitte Tax LLP and Deloitte Consulting LLP.

4 MS. FREJKA: That is correct. If you like we can take
5 these in the numerical order. Deloitte & Touche LLP filed it
6 first interim application for covering the period February
7 16th, 2011 through April 30th, 2011. The application was
8 docketed at number 1036. Deloitte & Touche seeks an interim
9 award of fees in the amount of 316,685 dollars and a request
10 for reimbursement of expenses in the amount of \$46,424.35.

11 I'd like to point out that the expenses include a
12 reduction, a further reduction, from what was sought in the
13 monthlies to comply with general order M --

14 THE COURT: 386?

15 MS. FREJKA: -- yes, for daytime meals and those
16 adjustments have been made in this application.

17 THE COURT: Okay.

18 MS. FREJKA: In addition, there were adjustments of
19 12,370 to the April fee statement that were included from --
20 that's the differential between the monthly to the interim
21 application and those related to fee application preparation
22 issues.

23 THE COURT: Okay. Mr. Schwartzberg, are you satisfied
24 with respect to the -- it was the meals on the expense side,
25 are you satisfied with the adjustments that were made?

1 MR. SCHWARTZBERG: Yes, Your Honor. The big
2 adjustment, of course, came from reducing the amount of time --
3 the fees sought for the preparation of the application, to come
4 into line with your recent decision.

5 THE COURT: Okay.

6 MS. FREJKA: Of which we are well aware.

7 THE COURT: Okay. The Deloitte & Touch LLP
8 application for fees and expenses is approved.

9 MS. FREJKA: Thank you, Your Honor. I'd like to next
10 move on to, I guess next numerically is Deloitte Tax LLP.
11 Deloitte Tax is tax advisors to the debtors. We seek an
12 interim allowance of fees for the period February 16th, 2011
13 through April 30th, 2011. The fee application is docketed as
14 number 1038.

15 The interim fees requested in the application are
16 \$305,527.75 and the interim expenses sought are reduced from
17 what is in the application, and I'll explain that in a moment,
18 it's \$5,163.64.

19 The application sought \$5,185.52; upon further review
20 of the meal expenses we've made an additional adjustment of
21 \$21.88 --

22 THE COURT: How much did it cost to make that
23 adjustment?

24 MS. FREJKA: I got a phone call. So they -- what that
25 should demonstrate to Your Honor is that they do take the

1 general order and Your Honor's ruling seriously.

2 THE COURT: Okay.

3 MS. FREJKA: And we've re-reviewed all of the entries
4 and the expenses to make sure that we were in compliance.

5 THE COURT: Okay. It's approved.

6 MS. FREJKA: Terrific. Moving on to Deloitte
7 Consulting LLP. Deloitte consulting provided consulting
8 services to the debtor for the period March 17, 2011 through
9 April 30th, 2011. The fee application was docketed as number
10 1040.

11 The fees requested in the interim application were
12 \$621,586.25.

13 THE COURT: Was it 586 or 621,856.25?

14 MS. FREJKA: I apologize, 856.25.

15 THE COURT: Just so we're clear --

16 MS. FREJKA: Yes. However --

17 THE COURT: -- it seeks \$621,856.25 in fees?

18 MS. FREJKA: That is --

19 THE COURT: Okay.

20 MS. FREJKA: Yes. That is correct. However, we --
21 Mr. Schwartzberg had made an informal objection to the April
22 fees and we neglected to include that agreement. So those fees
23 should come down by \$2,642.30 for an aggregate request of
24 \$619,213.95.

25 THE COURT: All right. And the expenses?

1 MS. FREJKA: The expenses, again, there's a
2 modification from the monthlies to the final to take into
3 account a reduction for daytime meals and the request is for
4 \$21,694.18.

5 THE COURT: Okay.

6 MS. FREJKA: These reductions do take into account a
7 formal U.S. Trustee objection that was filed regarding meeting
8 attendance. Deloitte Consulting filed a supplement, which was
9 attached as Exhibit A to the fee application, explaining the
10 justification for multiple attendants and explaining the
11 efficiencies given the nature of the assignment and the
12 appropriateness of staffing it as such and that objection was
13 resolved by virtue of that filing.

14 THE COURT: Okay. Anybody else want to be heard with
15 respect to this?

16 (No response)

17 THE COURT: All right. It's approved.

18 MS. FREJKA: Thank you, Your Honor.

19 THE COURT: Thank you, Ms. Frejka.

20 MR. GLENN: Next on the agenda, Your Honor, going back
21 up is Garden City Group, docket number 1039.

22 THE COURT: Okay. It's approved.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Well done.

25 MR. GLENN: There are two left, Your Honor. One is

1 Jefferies, which is --

2 THE COURT: Yes.

3 MR. GLENN: -- uncontested, subject to Your Honor's
4 review.

5 THE COURT: Let me just flip to Jefferies in my --

6 MR. GLENN: Jefferies is a 328(a) retention and --

7 THE COURT: So, you know, I should have -- let me just
8 back up for a second, okay.

9 MR. GLENN: Yes.

10 THE COURT: Make sure we've got it right. Garden
11 City, which I just said approved, they seek \$89,245.49 in fees
12 and \$2,246.69 as expenses. Did I get that right?

13 MR. JOHNSON: Correct, Your Honor.

14 THE COURT: Okay. And that is approved. Okay. And
15 Jefferies is seeking \$441,889.88 in fees and \$17,615.94 in
16 expenses.

17 MR. GLENN: Correct. The fees are established in the
18 engagement letter on a monthly basis. The expenses include a
19 credit, if you see footnote 2 of 990 dollars for legal fees and
20 \$212.38 for voluntary meal reductions, after a request made by
21 the U.S. Trustee.

22 THE COURT: All right. It's approved.

23 MR. GLENN: Thank you. That leaves us, I believe,
24 only with the Mercer application which is contested on the
25 discrete issue we talked about before.

1 THE COURT: Right.

2 MR. GLENN: That's docket number 1043. For the
3 record, the debtor supports Mercer's side of this debate but I
4 will turn this over to Mercer's counsel.

5 THE COURT: All right. I will hear you in a second
6 but, Mr. Buechler; do you have a position on this issue of the
7 reimbursement for the legal expenses?

8 MR. BUECHLER: The committee decided, given the U.S.
9 Trustee's position, that we didn't need to weigh in. It was
10 not a large dollar issue. To a certain degree, we think it is
11 somewhat covered by what's in the retention application is what
12 they could seek but decided that it wasn't cost effective as to
13 take a position.

14 THE COURT: Okay. So you don't have an objection to
15 it?

16 MR. BUECHLER: We are not objecting to Mercer's
17 request.

18 THE COURT: Okay. All right. Let me hear from
19 Mercer's counsel.

20 MR. HAMMER: Thank you, Your Honor. Aaron Hammer from
21 the law firm of Freeborn & Peters in Chicago, representing
22 Mercer (US). I'm joined with Mr. John Dempsey, the partner
23 from Mercer (US) responsible for --

24 THE COURT: Okay.

25 MR. HAMMER: -- this particular engagement. Mercer

1 (US), Your Honor might remember, was engaged as compensation
2 consultants for the debtor.

3 Mercer is seeking \$97,226.58 in fees and \$17,402.02 in
4 expenses. There was an informal objection by the U.S. Trustee
5 to one of the monthly statements for certain vague entries,
6 that's been addressed and resolved, leaving us with the
7 penultimate issue, of course Your Honor, and that's
8 reimbursement of Mercer's outside counsel costs of -- a 16,000
9 dollar issue we wouldn't ordinarily bring before Your Honor.
10 There seems to be a philosophical difference where Detante
11 (ph.) is difficult to reach and that brings us here today.

12 The 16,000 dollars is material to Mercer in this case
13 given the size, the relatively modest size of the engagement.
14 And it's important for Mercer as well, as a matter of policy
15 going forward, how reimbursement of its outside counsel
16 expenses will be addressed before the Southern District of New
17 York.

18 THE COURT: Let me reverse the usual order and Mr.
19 Schwartzberg let me hear you on the issue, because this is the
20 objection of the U.S. Trustee and, you know, I gather Judge
21 Chapman recently had this issue before her in Sbarros.

22 MR. SCHWARTZBERG: Correct, Your Honor. There's
23 actually a split in authority in the Southern District and
24 Judge Chapman overruled the U.S. Trustee's objection regarding
25 this issue in Sbarro's and in Blockbuster Judge Lifland

1 sustained our objection regarding the payment of legal fees.
2 Neither have written decisions on it, which is why it wasn't
3 cited in our --

4 THE COURT: So one way or the other somebody's about
5 to get a written opinion.

6 MR. SCHWARTZBERG: So, Your Honor, we do concede that
7 obviously that there's a split in the Southern District.

8 THE COURT: In Blockbuster did the retention -- did
9 the retention agreement include a provision for reimbursement
10 of legal fees?

11 MR. SCHWARTZBERG: Your Honor, in Blockbuster it was,
12 if I recall, an objection to the retention.

13 THE COURT: Okay.

14 MR. SCHWARTZBERG: And then --

15 THE COURT: Which it did seem to me -- I mean, the
16 first question is if you had an objection why didn't
17 somebody -- why didn't your office raise it at the stage of the
18 retention agreement?

19 MR. SCHWARTZBERG: Simply stated, Your Honor, it was
20 resolved, I thought, before it was even raised. The proposed
21 order said the United States Trustee and the committee shall
22 retain all rights to object to Mercer's fees and expenses. So
23 I looked at all meaning any issue, we've resolved this at the
24 retention level before with this sort of statement.

25 THE COURT: I'm not arguing that there's somehow a

1 legal waiver, but the -- what you're saying is there's a
2 specific provision in the retention agreement that authorized
3 reimbursement of legal expenses. Do you agree with that?

4 MR. SCHWARTZBERG: Correct. As I was saying, Your
5 Honor --

6 THE COURT: And you're relying on this, sort of,
7 general reservation of right. And I'm not saying that I'm
8 going to decide this on the ground that you've waived your
9 right to object. It just, frankly, would have been -- if that
10 was your objection -- I mean, my sense is this is -- I don't --
11 I won't say I've canvassed all of my colleagues but to the
12 extent I've spoken with them, there's some sense that this is a
13 recent objection by your office. Is this a change in policy?

14 MR. SCHWARTZBERG: You know, I would say, Your Honor,
15 in the last -- I've been in the office for over a decade and it
16 wasn't something we raised when I started here but it is
17 something we've raised, I would say, over the last two or three
18 years. So when you say recent, I would say not recent in the
19 sense that this past month, it was prior to this case that
20 we've started raising this issue.

21 THE COURT: Okay.

22 MR. SCHWARTZBERG: Whether it's been there for, you
23 know, a decade, I don't think so.

24 THE COURT: Okay. So deal with the -- let me say, I
25 know what Judge Chapman did in Sbarro and I know that she

1 wouldn't approve the specific amount without the billing
2 statements being provided. She, as I understand it, concluded
3 that, you know, she had to make a reasonableness inquiry.

4 The fact that the retention agreement included
5 reimbursement of counsel wasn't a blank check, that the court
6 still had to make a reasonableness inquiry. I don't have fee
7 statements from Mercer's counsel. So if I were to side with
8 them on it, I still need to see the fee statements to be able
9 to make a reasonableness inquiry. I'm not deciding that yet
10 but --

11 So, you know, to me the issue is what -- articulate
12 for me your argument about why they shouldn't be permitted to
13 recover fees in any amount.

14 MR. SCHWARTZBERG: The basic argument, Your Honor, is
15 the U.S. Trustee reads the Code as saying only professionals
16 retained under 327 can be reimbursed from the estate. To try
17 to do it through the back door by having it as an expense
18 wouldn't be appropriate and it's not -- the U.S. Trustee
19 doesn't believe it's what the Code allows.

20 The attorneys that are retained, pursuant to court
21 order, have gone through a disinterestedness test, for lack of
22 a better way of explaining it, and you know there is no
23 conflict there. Also, similarly or in addition, those
24 attorneys have a fiduciary obligation towards the debtor.
25 They're retained with the thought of that in mind whereas, for

1 instance in this case, Mercer's attorneys have an obligation to
2 Mercer and put the estate at second over their client, as
3 probably they should. And for that reason we believe it was
4 only retained -- the U.S. Trustee believes it's only retained
5 attorneys that should get reimbursed through the estate and
6 that the other expense that Mercer seeks is basically overhead,
7 for their retention.

8 THE COURT: So let me ask you, you know, the issue
9 came up this morning for a stalking horse bidder on IP where I
10 approved a cap of 250,000 dollars for expense reimbursement
11 and, I mean, typically those expenses would include the
12 stalking horse bidder's legal counsel. They're going to
13 negotiate the form of asset purchase agreement and they're
14 going to seek, if they're the unsuccessful bidder they're going
15 to seek expense reimbursement. Is it your position that a
16 stalking horse bidder who's unsuccessful and has an expense
17 reimbursement provision can't recover the expenses of their
18 legal counsel in negotiating an APA?

19 MR. SCHWARTZBERG: Well that, Your Honor, is being
20 done on a 363 as opposed to the 327, 330 situation we're
21 dealing with here.

22 THE COURT: Well, but --

23 MR. SCHWARTZBERG: And --

24 THE COURT: Go ahead.

25 MR. SCHWARTZBERG: And also, Your Honor, when you're

1 dealing with a stalking horse you're clearly up front and
2 realize you're dealing with an entity that has, in a sense, an
3 adverse interest against the estate. Whereas here they're
4 trying to, obviously, get the lowest price they can for the
5 value of whatever they're purchasing, which here you're hiring
6 an attorney or a professional that is ostensibly working on
7 behalf of the estate.

8 THE COURT: And that's your position. So when the
9 debtor retains -- when the debtor or the committee retains a
10 financial advisor and they negotiate the financial advisory
11 agreement or the investment banking agreement, those can't have
12 expense reimbursement provisions for their counsel either?

13 MR. SCHWARTZBERG: We generally, and that's where the
14 context of this expense -- this context usually comes up, and
15 that's the position we've taken -- we took it, I think, in
16 Sbarro, we took in Blockbuster and we've taken in other
17 matters. As in this case it generally -- or the resolution
18 that I see is generally where a lot of times we'll just resolve
19 it, we'll put that issue off on the end and the U.S. Trustee
20 reserves her right to object to that issue in the fee
21 application.

22 So rather than making a retention issue and getting
23 into a fight at the beginning of the case, we throw it off to
24 the end and sometimes it matters and sometimes it doesn't
25 matter, in the sense that it gets broad or it doesn't get

1 broad, depending upon what happens in the case.

2 THE COURT: So did Judge Lifland state on the record
3 why -- you're saying he went the other way. That he refused to
4 approve, at the retention stage, an expense reimbursement
5 provision for legal counsel?

6 MR. SCHWARTZBERG: Actually, in that case as in
7 Sbarro, the response is actually -- they may have been from the
8 same law firm because as I recall off the top of my head,
9 they're actually the exact same response. He denied the
10 request and entered an order striking that provision, requiring
11 them to strike that provision. I was not in chambers -- I'm
12 sorry, in the courtroom so I don't know what specific --

13 THE COURT: Was it also Mercer?

14 MR. SCHWARTZBERG: No, no, no, that was a financial
15 advisor, although -- I mean, we're talking cases where there's
16 no written decision I remember as far back as Calpine, which is
17 a 2005 case, I think it was Lazard came in and before they even
18 filed anything he just told them to strike that.

19 So that's clearly one of the benches in this district,
20 the position on -- it's obviously not binding on Your Honor,
21 but they had cited the Sbarro matter. So there are decisions
22 going the other way within this district.

23 THE COURT: Okay. Are there decisions elsewhere on
24 this issue?

25 MR. SCHWARTZBERG: Other than the things that we

1 cited, I know Judge Drain in Sen Argo (ph.), in that case
2 debtor's counsel had used, I think, a barrister in England,
3 that's probably the only place where there's going to be a
4 barrister, and filed an application for fees and that was cited
5 as an expense and I objected to that and that was stricken.
6 Not exactly the same scenario but the concept behind there is
7 it's an unretained professional that needs to come before the
8 Court to get fees.

9 Things on all squares, perhaps not except the Sbarro
10 and the Blockbuster matter.

11 THE COURT: All right. Let me hear from Mercer's
12 counsel.

13 MR. HAMMER: Thank you, Judge. A few points. I think
14 our brief, addresses virtually all of the issues that the U.S.
15 Trustee just went through with yourself, that there are a
16 couple of points I'd like to make.

17 First, and that's with respect to Blockbuster.
18 Blockbuster is a very different case than this, Your Honor.
19 Blockbuster, the professional -- the 327(a) professional was an
20 investment bank that stood to earn a very lucrative fee,
21 millions and millions of dollars. The expense was -- the legal
22 expense would be di minimis in relation to the overall fee.
23 Here it's a dramatically different situation.

24 The reservation of rights --

25 THE COURT: That's hardly a reason -- I mean, with all

1 due respect that's hardly a reasoned distinction between the
2 cases. It may be, in the practical realities of it it may be
3 very different but from a legal, analytical standpoint, I don't
4 see why that -- you don't carve out one rule for -- because
5 it's an investment banker who stands to make a lot of money
6 versus --

7 MR. HAMMER: No. I agree, Your Honor. And there are
8 just some practical realities that I believe you'll have to
9 take into consideration when deciding this issue and that
10 includes the reservation of rights. There was never an issue
11 raised in negotiating the retention with the creditors'
12 committee, the debtor or the U.S. Trustee's office with respect
13 to the expense reimbursement. If it was, my client might have
14 decided to handle the matter differently and that's why
15 Blockbuster, again, is a different case. Because before the
16 cost is incurred everyone has full knowledge of the situation.
17 Here the U.S. Trustee's office is asking you to interpret a
18 reservation of rights so broadly that it effectively renders
19 the retention order itself meaningless and that can't be the
20 right interpretation.

21 In addition, the practical reality of the way Mercer
22 handled this particular matter resulted in a net savings to the
23 estate of about six or eight thousand dollars. You'll see in
24 our brief the --

25 THE COURT: Oh, I saw it. I saw it.

1 MR. HAMMER: -- sort of, forecast that we put
2 together.

3 THE COURT: It said Kasowitz would have been more
4 expensive.

5 MR. HAMMER: Well, with all due respect to the
6 Kasowitz firm, the reality is that as national bankruptcy
7 counsel to Mercer, we can offer them volume discounts and being
8 a Chicago-based law firm we operate at a much lower --

9 THE COURT: Mr. Schwartzberg's going to take notes on
10 that.

11 MR. HAMMER: -- cost point. And Mr. Dempsey actually
12 stayed at his brother's house tonight in Brooklyn -- last night
13 in Brooklyn is another savings --

14 THE COURT: He may be in family trouble if he didn't.
15 All right. Here's what I'm going to -- unless -- do you have
16 any case authority you want to --

17 MR. HAMMER: Well, it's all cited in the brief, Your
18 Honor. The case law doesn't generally doesn't strictly read
19 327(a) as the U.S. Trustee purports. The magic words are
20 second-tier professional. We're not working on behalf of the
21 estate; we're providing a service to Mercer, which is serving
22 the estate. If we were asked -- if Freeborn & Peters was asked
23 to proffer an affidavit of disinterestedness, we would
24 certainly have done that earlier on, it's something that can be
25 done if required. I don't believe that that's the correct

1 reading of 327(a), but if it was it could have been addressed
2 at the retention stage and it still could be addressed now.

3 THE COURT: Okay.

4 MR. HAMMER: Thank you, Judge.

5 THE COURT: Before you sit down, with the fee
6 statement itself there was some block billing, you know. For
7 example, Mr. Dempsey on April 14th, 2011 prepare for and attend
8 hearing regarding motion for approval of executive and key
9 employee compensation program, eight hours. I don't know how
10 much preparation he did for it, the hearing -- you know, I
11 wound up taking it under submission and I wrote a -- well,
12 actually the first hearing -- there were two hearings. The
13 first hearing I made some comments and it was -- the program
14 was altered, let's put it that way, and I approved it.

15 But I don't understand how Mr. Dempsey spent eight
16 hours on April 14, it's lumped.

17 MR. HAMMER: We have Mr. Dempsey here right now --

18 THE COURT: I mean, I don't know how long --

19 MR. HAMMER: -- he can answer.

20 THE COURT: Mr. Glenn, how long did the hearing last?

21 MR. GLENN: If -- my recollection is we had Mr.
22 Dempsey in our office preparing for the eventuality that he
23 would take the stand that day. The hearing, clearly, was not
24 eight hours.

25 THE COURT: No.

1 MR. GLENN: He was in our office that morning; I
2 believe it was an afternoon hearing. But that's the best that
3 I can recall right now. But he was in our office to prepare,
4 on one of those days.

5 (Pause)

6 THE COURT: The hearing was at 3 o'clock.

7 MR. DEMPSEY: Your Honor, I prepared on my own, as I
8 traveled to New York. I then worked at Kasowitz and we had
9 discussions about the hearing and about the plan design. If I
10 recall correctly there were conference calls with the creditors
11 during that time.

12 THE COURT: Let me just stop you there.

13 MR. DEMPSEY: Okay.

14 THE COURT: But this is what highlights the thing
15 about lumping or block billing. So what you're -- you know,
16 when I see an entry eight hours, prepare for and attend
17 hearing, there are many things that are probably lumped into
18 that entry. There may have been a conference call with the
19 committee for an hour or a half hour or whatever. There may
20 have been -- you know, there are many tasks and I'm not talking
21 about every little thing along the way needs to be separately
22 identified but this is clearly a lumped entry. Because I look
23 at it and I say, oh come on, you know, somebody could do better
24 than eight hours for prepare for and attend the hearing.

25 It's an important issue, I don't dispute that. There

1 were some other entries as well, that are not consistent with
2 the U.S. Trustee guidelines for billing. That's the kind of
3 thing that I'm talking about on lumping or block billing.

4 Thank you very much.

5 Here is what I'm going to do --

6 MR. HAMMER: Judge, can I make one more point?

7 THE COURT: Yes, you can.

8 MR. HAMMER: I was just handed a note about
9 Blockbuster. In Blockbuster Judge Lifland said that the
10 attorney fees that were incurred by the investment bank would
11 be covered by the significant retention fee that was being paid
12 upon the retention. So there was a four or 500,000 dollar
13 initial down stroke retention fee that was being paid, so Judge
14 Lifland said that'll cover legal. That's a different case than
15 this case. I wanted to just draw that distinction before you
16 ruled.

17 THE COURT: All right. The Mercer application for
18 fees seeks \$97,226.58 in fees. The Court's independent review
19 of the application showed block billed entries that totaled
20 \$21,364.30. Applying a fifteen percent reduction to those
21 block billed entries, results in a reduction of \$3,204.64. So
22 that should come off the \$97,226.58.

23 With respect to the expense reimbursement, and the
24 total sought is \$17,402.02, from that or of that \$16,496.35 is
25 sought for reimbursement of legal fees to Freeborn & Peters.

1 I'm approving the small portion of the expenses that don't
2 relate to the reimbursement of the legal expenses.

3 With respect to the legal expenses, I'm taking that
4 matter under submission and plan to write an opinion. So
5 you'll just have to wait and see, because I'm not sure how I'm
6 going to come out on it yet. But it's enough of a recurring
7 issue in this district without any opinions on it, so for
8 better or worse there will be one.

9 MR. HAMMER: Thank you, Judge.

10 THE COURT: Okay. Let me -- you know, if anyone wants
11 to provide me with a transcript from Judge Lifland, if there is
12 one, since Mr. Schwartzberg has referred to the Blockbuster
13 case, I'll give you a week -- give somebody a week to figure
14 out if there's a transcript.

15 MR. HAMMER: I believe we have it and we can get it to
16 you.

17 THE COURT: Okay.

18 MR. HAMMER: And Sbarro, I think, was attached to our
19 brief.

20 THE COURT: Yes. So if you have the transcript from
21 Blockbuster get it to me in the next few days, okay?

22 MR. HAMMER: Will do.

23 THE COURT: Thank you.

24 MR. HAMMER: Sure.

25 MR. GLENN: I believe, Your Honor, unless Your Honor

1 has any other questions, that concludes today's hearing.

2 THE COURT: I don't have any questions. Anybody else
3 have anything they want to raise?

4 (No response)

5 THE COURT: All right. We're adjourned. Thank you
6 very much, counsel, I appreciate it. And again, you know, fee
7 applications are the things that I'm sure both professionals
8 and the Court least enjoy doing and I must say I think all the
9 professionals did a really fine job on the fee applications and
10 it made life a lot easier for us.

11 (Whereupon these proceedings were concluded at 2:33 PM)

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

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

**Pnina
Eilberg**

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