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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

United States Bankruptcy Court  
One Bowling Green  
New York, New York

November 10, 2011  
10:12 AM

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

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11-10614-mg Borders Group, Inc. Ch. 11

HEARING re:

Doc# 1898 Disclosure Statement Hearing/Motion for an Order  
Approving Solicitation and Voting Procedures; Scheduling the  
Plan Confirmation Process; and Granting Related Relief (related  
document(s) [1896])

Document #: 1898

Marked Up Documents: 1897, 1897, 1898, 1904, 1926, 2018, 2019,  
2052, 2053, 2056, 2061, 2079, 2087, 2090, 2092, 2093, 2094,  
2096

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: All right. Borders Group, number 11-10614.

(Pause)

MR. GLENN: Good morning, Your Honor.

THE COURT: Good morning.

MR. GLENN: Andrew Glenn, for the record, Kasowitz, Benson, Torres & Friedman, on behalf of the debtors and debtors-in-possession. We are here, Your Honor, for the motion to approve the proposed disclosure statement in this case along with the solicitation and voting procedures motion attendant to that.

A very brief status update before I begin. We received four objections, I believe, three by taxing authorities: State of Michigan, the L.A. County Treasurer, the Travis County Taxing Authority and the State of Michigan.

As I understand it --

THE COURT: You said Michigan first. Is there --

MR. GLENN: Oh, I'm sorry. There's two here from the State of Michigan on the docket.

THE COURT: Two different ones. Okay. All right.

MR. GLENN: I believe they're largely identical.

In any event, just by way of brief status update, the state of Michigan has confirmed to us -- and they're not on the phone today but they are not pressing the objection as a

1 disclosure statement objection. They're going to press that  
2 with respect to confirmation alone. We are talking to them  
3 and, overall, Your Honor, we expect -- these are all taxing  
4 authority claims that are contemplated to be paid in full  
5 pursuant to the plan. And to alleviate any concerns going  
6 forward, our plan is to try to pay those off and moot any  
7 continuing objection.

8 THE COURT: I guess the real issue is the amount of  
9 the allowed --

10 MR. GLENN: Correct.

11 THE COURT: -- priority claims for taxes.

12 MR. GLENN: Correct.

13 THE COURT: I know the plan provides to pay priority  
14 tax claims in full. The issue is default, interest, interest  
15 rates, things like that. It would all be subject to whatever  
16 either you can negotiate out or if there are claim objections,  
17 we'll resolve that.

18 MR. GLENN: That's correct, Your Honor. And the other  
19 thing to note is other than with respect to the property tax  
20 objection, which is Travis County's, the other taxing authority  
21 claims are still subject to some auditing and dispute. So what  
22 the base amount is, I think, is really the subject --

23 THE COURT: Right.

24 MR. GLENN: -- of controversy not the interest at the  
25 end of the day.

1 Travis County, as I understand it, is taking the same  
2 position as the state of Michigan. I'm not sure whether  
3 they're on the phone or not. But I under --

4 THE COURT: Is anyone representing Travis County on  
5 the phone? All right. There was no one appeared on the list.

6 MR. GLENN: Okay. As I understand it, they're taking  
7 the same position. They're pressing that objection with  
8 respect to plan confirmation if we can't come to an appropriate  
9 resolution.

10 The L.A. County Treasurer has filed a form of  
11 withdrawal --

12 THE COURT: I saw that.

13 MR. GLENN: -- of their objection on the docket.

14 So that leaves us, Your Honor, with one informal  
15 objection of a stockholder, Ms. Amanda Trippe, I believe her  
16 name is. I'm not sure if Ms. Trippe is on the phone.

17 THE COURT: Ms. Trippe, are you on the phone?

18 THE OPERATOR: She is not, Your Honor.

19 THE COURT: Okay. Thank you.

20 MR. GLENN: Okay. So with that, with Ms. Trippe being  
21 on the phone -- I'll back up very briefly and give Your Honor a  
22 brief presentation and then deal with Ms. Trippe's objection.

23 Your Honor, this is --

24 THE COURT: Before you go on --

25 MR. GLENN: Yes. Sure.



1 THE COURT: -- with respect to the taxing authorities,  
2 L.A. has withdrawn its objection to the disclosure statement.  
3 With respect to the two Michigan objections, you indicated that  
4 they indicated to you they were preserving it for confirmation.  
5 And Travis County -- the Court would, in any event, overrule  
6 those objections as an objection to the disclosure statement.  
7 Most of those would be properly asserted as objections to  
8 confirmation. And hopefully, you'll be able to satisfactorily  
9 resolve those before we get to a confirmation hearing.

10 MR. GLENN: And Mr. Buechler helpfully just pointed  
11 out that last night, the state of Michigan did file a form of  
12 withdrawal --

13 THE COURT: Okay.

14 MR. GLENN: -- at docket number 2092. Again, they  
15 reserve all rights.

16 THE COURT: Thank you.

17 MR. GLENN: So, Your Honor, this is a joint plan of  
18 liquidation proposed by the debtors in conjunction with the  
19 creditors' committee. It is an absolute priority traditional  
20 liquidating plan. Notwithstanding that, there have been some  
21 negotiations, complexities and issues that have taken a fair  
22 amount of time to negotiate and pin down.

23 We have received a number of informal inquiries from  
24 various parties including two landlords here today. Mr.  
25 Schwartzberg reviewed the plan very thoroughly and we had a

1 series of conversations with him in his office about the  
2 releases and other matters of the trustee, traditionally, is  
3 concerned with. Those were all successfully resolved.

4 THE COURT: I'm going to have -- I'll hear you out. I  
5 have some issues the disclosure about the releases not about  
6 the releases themselves. But --

7 MR. GLENN: Okay.

8 THE COURT: -- go ahead.

9 MR. GLENN: Well, Your Honor, as I said at the last  
10 hearing, we are not going to stand on ceremony. If there's any  
11 further disclosure, we will just automatically incorporate that  
12 into --

13 THE COURT: Well, I'll just tell you -- we'll come to  
14 it but, in the past, Mr. Glenn, I have required, both in  
15 disclosure statement and in a ballot, language in bold that  
16 basically specifically flags the release. And I'll have a  
17 question about the consent, how you've written that provision.  
18 I'll give you an example. I'll raise it now. In the Almatris  
19 case, Almatris was 10-12308 -- and in the disclosure statement  
20 and ballot, I required bold language regarding the release  
21 provisions. There was an opt out provision. I required an opt  
22 out provision. I know you have a provision in your disclosure  
23 statement in the ballot. But I have required and will require  
24 the addition of bold language. And you can see what I had  
25 approved in Almatris. I had done that same thing before.

1 MR. BUECHLER: Your Honor, just one question. On the  
2 ballot, it is in bold-faced.

3 THE COURT: Well --

4 MR. BUECHLER: If you look at the ballot on the bottom  
5 of page 2 of 4 --

6 THE COURT: Hold on. I have the ballot here.

7 MR. BUECHLER: So the bottom of page 2 of the ballot,  
8 the last paragraph.

9 (Pause)

10 THE COURT: Since we're talking about this, when I say  
11 bold, I mean large print --

12 MR. GLENN: That's not a problem.

13 MR. BUECHLER: Okay. I think --

14 MR. GLENN: That's not a problem.

15 THE COURT: -- bold. Okay. But let me ask you this.  
16 I've never quite seen what you've done here where you have the  
17 two boxes, consent to releases, opt out of releases, and then  
18 there's a little footnote, number 2 on page 4. And you have --  
19 which is echoed in the bold on page 2 that Mr. Buechler just  
20 pointed out, if you do not make an election in item 4, you will  
21 be deemed to consent to the releases contained in Article  
22 9(D) (ii) of the plan.

23 MR. BUECHLER: Can I explain, Your Honor?

24 THE COURT: Go ahead, Mr. Buechler.

25 MR. BUECHLER: What we tried to design here, in our

1 own mind, was to deal with conflicting concerns that these  
2 constituencies would contact us as the committee -- for the  
3 record, Bruce Buechler on behalf of the committee -- which was  
4 to permit people to vote to accept or reject the plan but  
5 nonetheless consent to or opt out of the leases.

6 THE COURT: I agree.

7 MR. BUECHLER: And, Your Honor, I see your point. We  
8 could take out the consent and just have the opt out box but,  
9 from our perspective, we thought it was easier to let people  
10 see that there was an actual choice but made clear that if they  
11 signed the ballot but didn't check the box, they're deemed to  
12 accept. And in the plan and the disclosure statement, it made  
13 clear that if someone simply doesn't vote at all, they're not  
14 deemed to consent --

15 THE COURT: Right.

16 MR. BUECHLER: -- to any of the releases.

17 THE COURT: I saw the language that the blacklined --

18 MR. BUECHLER: Clarified it.

19 THE COURT: -- pages that you filed yesterday that  
20 make that clear. And it only -- the releases only apply to  
21 Class -- the only class entitled to those is Class 3 --

22 MR. BUECHLER: Correct.

23 THE COURT: -- and only applies to those who vote. If  
24 they simply don't return a ballot --

25 MR. BUECHLER: They're knocked out --

1 THE COURT: -- they're knocked down by the release.

2 MR. BUECHLER: So just so the order could make it  
3 clear so there was no -- we can clearly -- if Your Honor wants  
4 to take out on the ballot the consent to releases. But we just  
5 thought it would make it very crystal clear to people that they  
6 had a real choice, if you will, on the release language.

7 THE COURT: In Almatris, when we got to the  
8 confirmation hearing and it was confirmed, I asked a question.  
9 Could you tell me what the results on the opt out were. And it  
10 was like only three or four creditors who didn't opt out.  
11 Nobody brought a lawsuit but virtually all creditors opted out.  
12 But I just --

13 And then I have another case and I asked the same  
14 question and only a few people opted out. So I've always about  
15 how that works. But --

16 MR. BUECHLER: That's the sole reason. Again, if Your  
17 Honor wants us to --

18 THE COURT: No.

19 MR. BUECHLER: -- strike the consent --

20 THE COURT: No. It's just I hadn't seen -- it doesn't  
21 say you can't do it this way. It's just -- the question I had  
22 to myself was is this more confusing -- I think at a minimum if  
23 you put the -- what's at the bottom of page 2 in larger type in  
24 bold --

25 MR. BUECHLER: So put that all in capital letters?

1 THE COURT: The problem -- yeah. I'd put it all in  
2 caps. The problem is the top half of page 2 is in bold and the  
3 last paragraph on page 2 is in bold. And then footnote number  
4 2 on page 4 is a footnote not in bold. I'm agreeing with the  
5 result that you're seeking to achieve. Not entirely free from  
6 doubt, I have to tell you. But -- about consent. But I've  
7 approved it before; I'm approving it again. It ought to ease  
8 the mind of the taxing authorities since it won't apply to  
9 them, both the tax -- I don't know whether --

10 MR. BUECHLER: Right.

11 THE COURT: -- whichever taxing authority raised that  
12 issue about the releases is not going to apply here. It only  
13 applies to the Class 3 creditors.

14 MR. BUECHLER: Correct. So, Your Honor, we will  
15 clearly put the last paragraph on page 2 all in bold. And then  
16 the disclosure statement --

17 THE COURT: All caps and bold.

18 MR. BUECHLER: Right, correct, all in capitals. And  
19 then --

20 THE COURT: And then --

21 MR. BUECHLER: -- the disclosure statement --

22 THE COURT: -- bold the footnote on page 4.

23 MR. BUECHLER: Bold the footnote, okay. And, Your  
24 Honor, with regard to the disclosure statement, if you look  
25 down at the bottom of page 3 -- let me get the right page

1 here -- page 37, which is the release provision going on to 38,  
2 you see, although one of the paragraphs there is in all capital  
3 letters. Would you like that all in bold then? Or -- just so  
4 we're clear.

5 THE COURT: Hang on.

6 MR. BUECHLER: The disclosure statement --

7 THE COURT: Let me -- just give me -- let me --

8 MR. BUECHLER: -- doesn't have the choice.

9 MR. GLENN: It's 37 in the prior version and 38 in the  
10 red version. No. It's --

11 THE COURT: I'm not finding it on page 37. I don't  
12 know what version you're looking at.

13 MR. BUECHLER: I'm looking, Your Honor, at the --

14 MR. GLENN: It's on page 38.

15 MR. BUECHLER: -- the third statement to the first  
16 amended plan.

17 THE COURT: Yeah. And I read what's on page 38.

18 MR. BUECHLER: And you say you'd like that boldfaced  
19 in addition --

20 THE COURT: No.

21 MR. BUECHLER: Okay.

22 THE COURT: No. The problem is you really expect  
23 somebody -- you can't read the paragraph on page -- first off,  
24 reading the paragraph on page 38 is a chore for anybody.

25 MR. GLENN: It's too much legalese is what Your Honor

1 is saying.

2 THE COURT: And --

3 MR. GLENN: You'd like us to --

4 THE COURT: Yes. It's all in capitals. And then you  
5 have to look at the definition of released parties which is not  
6 in the disclosure statement itself. It's in --

7 MR. BUECHLER: It is.

8 THE COURT: -- an appendix --

9 MR. BUECHLER: Correct.

10 THE COURT: -- the defined terms. So you can't  
11 read -- tell me if I'm wrong. I mean, you can't read what's on  
12 page 38 and know who's releasing whom from what. You go to go  
13 to the definitions which aren't even -- they're in an appendix  
14 to the disclosure statement. And you filed a blacklined  
15 page -- fine. But I don't think this is a plain English bold  
16 statement to somebody. You know, creditors -- Class 3  
17 creditors ought to understand in plain English language that if  
18 they vote for the plan and -- or if they vote to approve or  
19 reject the plan but don't opt out of the release, they will be  
20 releasing claims against both pre-petition and post petition  
21 claims against a large swath of third parties. I mean, that's  
22 the reality, isn't it? Is that an accurate statement?

23 MR. GLENN: Yes.

24 MR. BUECHLER: As a generalization, yes.

25 THE COURT: Okay. And one -- you couldn't read what's



1 on page 38 and come to that conclusion without then going to  
2 the definitions which are nowhere near in the book. I'm not  
3 faulting including the release language in all caps where it  
4 is. But there needs to be -- you can put the usual statement  
5 that the plan -- any inconsistency, the plan language controls.  
6 But there needs to be a plain English statement in here about  
7 what Class 3 creditors are releasing, who they're releasing.  
8 Am I correct? It's both pre-petition and post-petition claims.  
9 Is that an accurate statement, Mr. Buechler?

10 MR. BUECHLER: Pre-petition, yes; post-petition, yes.

11 THE COURT: Okay. And they need to understand that if  
12 they don't opt out -- if they vote one way or the other and  
13 don't opt out of the release, they're releasing all pre-  
14 petition and post-petition claims against released parties as  
15 defined somewhere or at least say -- I didn't write the  
16 language but capture the language that concisely describes  
17 who's being released. I just want people -- if they're -- I  
18 think the law in this circuit will uphold the third party  
19 nondebtor release given with consent. And I think you put the  
20 consent provision in but they have to -- somebody shouldn't  
21 have to take out -- try and sort out what you have on page 38  
22 and then flip to the back to go to the definitions.

23 MR. BUECHLER: Your Honor, we'll rewrite --

24 THE COURT: Okay.

25 MR. BUECHLER: -- this paragraph in the disclosure

1 statement in plain English.

2 THE COURT: Leave that paragraph but just put a --

3 MR. BUECHLER: We'll put another paragraph in front of

4 it --

5 THE COURT: Yes.

6 MR. BUECHLER: -- that's the plain English one first

7 in all capital letters.

8 THE COURT: Right.

9 MR. BUECHLER: And that's fine.

10 THE COURT: Okay.

11 MR. BUECHLER: Mr. Glenn and I will work that out --

12 MR. GLENN: That won't be a problem.

13 MR. BUECHLER: -- later today or tomorrow morning so

14 it's done.

15 THE COURT: I don't think it's a problem. You got to

16 do that.

17 MR. BUECHLER: So we'll put that in as an extra

18 paragraph.

19 THE COURT: Okay.

20 MR. GLENN: Any other issues that Your Honor would

21 like addressed upfront now?

22 THE COURT: Yes. Hold on.

23 MR. GLENN: Okay.

24 THE COURT: Nothing major.

25 MR. GLENN: Okay.

1 (Pause)

2 THE COURT: You removed from an earlier version of the  
3 disclosure statement Article -- I think it was Article 5(M)  
4 which had illustrated value of the debtors' assets. And you  
5 state in Article 9(C) (i) that because this is a liquidating  
6 plan, there is no reorganization value to be calculated or  
7 distribution scenarios related thereto.

8 Do you have an estimate of the value --

9 MR. GLENN: We do, Your Honor.

10 THE COURT: -- of the debtors' assets?

11 MR. GLENN: We do.

12 THE COURT: Mr. Buech -- I don't -- Mr. Glenn or Mr.  
13 Buechler

14 MR. GLENN: I'll point it out.

15 THE COURT: -- I don't care which --

16 MR. GLENN: Point it out.

17 THE COURT: -- addresses it.

18 MR. GLENN: I'm looking for it.

19 MR. BUECHLER: Your Honor --

20 THE COURT: Is it in there?

21 MR. BUECHLER: -- if you look -- the answer is,  
22 Andrew, we don't actually put in here the value 'cause to date,  
23 where we're at, right now, because of the passage of time, is  
24 in the way of physical assets. Everything's been liquidated  
25 with the exception of three assets. The three open assets are

1 the Singapore license which is close to --

2 THE COURT: Yes. I --

3 MR. BUECHLER: -- vitalization. We've got the sale  
4 that -- we just appointed Bernstein. We have the sale of what  
5 we call the internet addresses which the debtors have an offer  
6 for of 600,000 dollars. It's the -- Streambank is looking to  
7 see if they can push that up a little. If not, then in the  
8 next probably a few weeks, a motion will be filed. And the  
9 last, if you will, substantive asset that we have that the  
10 debtors own is the stock in Kobo which only two days ago from  
11 today, Kobo announced its sale -- so now that's public -- of  
12 its stock. And we have a better estimate of what that will  
13 bring in.

14 THE COURT: Okay.

15 MR. BUECHLER: Unfortunately, while it's hard to  
16 estimate it for the liquidation analysis, it doesn't move the  
17 needle on the percentage distribution very high because of the  
18 large volume of claims.

19 THE COURT: But what's -- okay.

20 MR. BUECHLER: So we have --

21 THE COURT: With a couple of minor things, you know  
22 what the value of the assets are.

23 MR. BUECHLER: We do. It's basically cash in the bank  
24 account.

25 THE COURT: Okay.

1 MR. BUECHLER: So we can add that if Your Honor would  
2 like.

3 THE COURT: Where is it? Is it --

4 MR. GLENN: Page 9, Your Honor, has the recovery  
5 estimates and the estimated allowed claims. It doesn't --

6 MR. BUECHLER: Doesn't say --

7 MR. GLENN: I was wrong. It doesn't give you

8 MR. BUECHLER: Right.

9 MR. GLENN: -- the gross value of the assets. It  
10 gives you recoveries.

11 THE COURT: So I would like -- you had in the prior  
12 version -- I think you refer to it as illustrated value. I'd  
13 like just a -- you know what the number is.

14 MR. BUECHLER: Yes. We'll add it. Yes.

15 MR. GLENN: Yeah. We'll add it, Your Honor.

16 MR. BUECHLER: Your Honor, and today it's basically  
17 cash either that the debtor has or it's monies due back from  
18 the liquidators, Hopewell (ph.) et al., which, again, may have  
19 been received. But last I heard, about a day or two ago, it  
20 hadn't been received but the number was agreed upon. So we can  
21 add that. We'll add that.

22 THE COURT: And what is the amount that you know of  
23 today?

24 MR. BUECHLER: Right now, as I understand it, the  
25 debtor has approximately fifty million in cash on hand. The

1 money due back from Hilco is twenty-four million --

2 THE COURT: Just slow down a little bit.

3 MR. BUECHLER: Fifty million in cash on hand today.

4 And there's an additional twenty-four million and change due

5 back from Hilco. It may have been received -- okay. So

6 roughly about seventy-four, seventy-five million in assets

7 today? Okay. So my number may be down a certain -- fees and

8 expenses will be due out. So we can add that, Your Honor.

9 THE COURT: Okay. I would like one or two sentences

10 added. To the extent there are a few stragglng assets, the

11 Singapore license or what the value of the Kobo shares may be

12 uncertain at this point, you -- there ought to be a sentence or

13 two that says what do you got in the bank or expect to receive

14 shortly and what assets remain to be disposed of that are not

15 included. I think just a short plain statement of that would

16 benefit creditors.

17 MR. GLENN: It's not a problem.

18 THE COURT: Okay?

19 MR. GLENN: No problem.

20 MR. BUECHLER: We'll add that, Your Honor.

21 THE COURT: Let me see if I got -- I may have a few

22 other things. What you just told me, I take it, doesn't alter

23 the range of estimated recovery?

24 MR. BUECHLER: Not really, Your Honor, because based

25 on what we use for the liquidation analysis for the Kobo stock

1 and the fact that given the claim body is going to be between  
2 812 to 850 million dollars, that means one percent is already a  
3 million dollars. It's not going to move it by more than a  
4 percent.

5 THE COURT: It was only a question --

6 MR. BUECHLER: Yeah.

7 THE COURT: -- whether these numbers have changed. If  
8 they're not --

9 MR. BUECHLER: Not materially.

10 THE COURT: -- that's fine. Okay. So I just think  
11 that people will benefit from knowing what the total is.

12 Okay. Hold on. Let me see whether I have anything  
13 else.

14 Okay. The amended plan in Article 4(D) discusses how  
15 the liquidating trustee will be selected and the liquidating  
16 trustee's reporting requirements.

17 MR. BUECHLER: IV(D)?

18 THE COURT: I didn't see anything in the disclosure  
19 statement that addresses that. There ought to be -- I'm not  
20 telling you exactly where to put it. Find the appropriate  
21 place. Just a brief summary of how the liquidating trustee  
22 will be selected and what the liquidating trustee's reporting  
23 requirements will be.

24 MR. BUECHLER: Your Honor, we can deal with that. The  
25 committee has selected a liquidating trustee. The debtors

1 already signed off on that. So we'll just simply add the  
2 person's name. I thought the reporting requirements are set  
3 forth the way we've done --

4 THE COURT: It's in the plan. Is it in the disclosure  
5 statement? I didn't see it in the disclosure statement.

6 MR. BUECHLER: Don't know if it's in the disclosure  
7 statement. The plan is an exhibit along with the trust. We  
8 can add it.

9 THE COURT: I understand.

10 MR. BUECHLER: We'll add it.

11 THE COURT: You know --

12 MR. BUECHLER: We'll add it.

13 THE COURT: -- here, I'm holding up what you don't  
14 even want to mail out for reasons I understand. And it's like  
15 finding the definition of released parties in an appendix  
16 somewhere.

17 MR. GLENN: Your Honor, on --

18 MR. BUECHLER: We'll add it.

19 MR. GLENN: I direct Your Honor to page 32 of the  
20 disclosure statement which -- that's the -- that's just the  
21 reporting requirement. And that's the selection process.

22 THE COURT: Okay. Well, if you selected then you  
23 don't have to put --

24 MR. GLENN: Right. I guess --

25 THE COURT: -- selection process.



1 MR. GLENN: -- we'll just announce that and then --

2 THE COURT: Indicate that --

3 MR. GLENN: -- we can --

4 THE COURT: -- you've selected -- the liquidating  
5 trustee's been selected, who it is. Okay?

6 MR. GLENN: Okay.

7 MR. BUECHLER: We'll add that.

8 THE COURT: All right. Let me --

9 (Pause)

10 THE COURT: I am focusing on 1129(a)(13) which is --  
11 probably doesn't apply here but it -- "The plan provides for  
12 the continuation after its effective date of the payment of all  
13 retiree benefits." We'll leave the rest of the words out. Are  
14 there any benefit plans that are continuing? They've all been  
15 terminated? What --

16 MR. GLENN: There's no pension liabilities at all,  
17 Your Honor. And the 401K plan either has been or will be  
18 terminated shortly.

19 THE COURT: Is there some -- I didn't see anything in  
20 the disclosure statement that indicates what you've just said  
21 because I'm focusing on this confirmation requirement of  
22 1129(a)(13) which isn't going to be an issue. But it seems to  
23 me there ought to be a sentence in the appropriate --

24 MR. GLENN: It's not a problem.

25 THE COURT: -- place in the disclosure statement --

1 MR. GLENN: That's fine.

2 THE COURT: -- that just --

3 MR. BUECHLER: No problem.

4 THE COURT: -- provides the information. Okay?

5 MR. BUECHLER: No problem, Your Honor.

6 MR. GLENN: That's an easy one.

7 (Pause)

8 THE COURT: Okay. So my only other question is how  
9 you propose to distribute the disclosure statement and plan.

10 MR. BUECHLER: Your Honor, can I ask two questions  
11 first, if it's possible?

12 THE COURT: Well, Mr. Glenn is standing there trying  
13 to address me, Mr. Buechler --

14 MR. BUECHLER: Sorry.

15 THE COURT: -- and you keep interrupting him. It's  
16 fine. But, you know --

17 MR. GLENN: It's a partnership. What can I say

18 THE COURT: Okay.

19 MR. GLENN: -- Your Honor?

20 THE COURT: Well, partners sometimes have to

21 MR. GLENN: I know.

22 THE COURT: -- sit down and wait their turn.

23 MR. GLENN: What I propose to do, Your Honor, is deal  
24 with Ms. Trippe's objection. Then we --

25 THE COURT: Go ahead.

1 MR. GLENN: -- talk about the solicitation motion.

2 THE COURT: Okay.

3 MR. GLENN: Your Honor, we're very sympathetic to Ms.  
4 Trippe and we don't take objections of the sort that she's  
5 filing lately. She obviously has an unfortunate circumstance  
6 in her life right now. Ms. Trippe seeks the adjournment of  
7 these proceedings, the plan confirmation process, to seek all  
8 sorts of relief including hiring advisors and the like which  
9 she's unable to do personally.

10 Unfortunately, in the circumstances, Your Honor has a  
11 very full record of the proceedings in this case. We have sold  
12 substantially all of the assets. And, in fact, as Mr. Buechler  
13 identified, there are only two really substantially remaining  
14 assets. And the one Singapore license, we're in a dispute now  
15 whether we take a 100,000 dollar payment or 200,000 dollar  
16 payment for that. The Kobo shares -- the values that we expect  
17 to yield are embedded in the recovery estimate. So  
18 unfortunately, there is no realistic prospect of any recovery  
19 for shareholders in this case. So on that basis we'd ask that  
20 Ms. Trippe's objection and request for a delay to allowing  
21 disclosure statement to be disseminated be overruled.

22 THE COURT: All right. The Court carefully considered  
23 Ms. Trippe's objection. And I, too, am sympathetic to her  
24 circumstances in flight. But as the disclosure statement shows  
25 in the estimated recoveries on page 9, recoveries to general

1 unsecured creditors are estimated in the range of four percent  
2 to ten percent. I'm, obviously, very familiar with all that's  
3 transpired in this case from the start. The liquidation of  
4 assets is essentially complete. And so, the amount of funds  
5 available for distribution to stakeholders, to creditors is  
6 known to a great degree of certainty. There's just a few items  
7 remaining.

8 It is very clear to the Court in this case that equity  
9 holders will not receive a distribution as the plan provides.  
10 It is also very clear that with all the efforts that debtors'  
11 counsel, committee counsel and other stakeholders have put into  
12 this case to get it to where it is today that the case should  
13 proceed without further delay. Consequently, Ms. Trippe's  
14 request for an adjournment of the hearing is denied and her  
15 objection is overruled.

16 Go ahead, Mr. Glenn.

17 MR. GLENN: Thank you, Your Honor. So with respect to  
18 the solicitation process, I have dates listed out here that we  
19 proposed to establish various deadlines for voting and plan,  
20 confirmation objections and the like. I can run through those.

21 But in terms of what we propose to do, we've been  
22 guided by the fact that this is a liquidating case and guided  
23 by the recoveries that Your Honor mentioned. And at various  
24 points in this case, we tried very hard to conserve costs and  
25 particularly with the solicitations that people call us up

1 about asking to be removed from these lists. We've been  
2 mindful of both cost and hassles to creditors for these  
3 multiple mailings which hopefully when we confirm this plan  
4 will end.

5 So the first cost-saving methodology we considered  
6 using was sending out a disk, a hard disk, which did help. It  
7 certainly the more equitable friendly choice from what we  
8 understand between sending out a big package of paper. The  
9 disk saves that. I does save some mailing costs.

10 But then, on further reflection and looking at the  
11 process of using a disk, if you have a disk, you have to have a  
12 computer. If you have a computer, you're likely to have  
13 internet access. And it was our view that establishing a  
14 website, bordersdisclosurestatement.com would be the most  
15 convenient option for most parties in any event and would save  
16 us a tremendous amount of cost.

17 So what we've endeavored to do is to provide parties  
18 with a ballot and a statement that the disclosure statement is  
19 available at bordersdisclosurestatement.com and that any party  
20 who wishes to receive it, we will mail them a paper copy of it  
21 promptly.

22 In addition to bordersdisclosurestatement.com, the  
23 disclosure statement is available at the general website posted  
24 for the docket in this case and, I'm sure, in other locations.

25 So that's what we propose to do. Your Honor, Mr.

1 Buechler has a proposed solicitation letter to the unsecured  
2 creditors, his constituency, that he would like included and, I  
3 believe, he's ready to hand up to Your Honor for consideration.  
4 Parties who are not entitled to vote would receive the same  
5 packet but a statement, a notice of nonvoting status also  
6 directing them back to the website that I just mentioned.  
7 Again, even those folks would be entitled to receive a paper  
8 copy of the plan and disclosure statement if they so notify us.

9 So --

10 THE COURT: What would be -- I'm looking at Rule  
11 2002(b). How was the disclosure statement -- the motion for  
12 the approval of the disclosure statement in terms of service?

13 MR. GLENN: I believe we notified everybody, didn't  
14 we? Let me -- let me -- I want to get this precisely correct,  
15 Your Honor.

16 THE COURT: Because I'm looking at 2002(b), "twenty-  
17 eight days notice to parties in interest requires the clerk" --  
18 and it isn't going to be the clerk -- "or some other person as  
19 the Court may direct shall give" -- and then I'll leave words  
20 out -- "all creditors not less than twenty-eight days notice by  
21 mail of the time fixed" and then subparagraph (ii), "for filing  
22 objections in the hearing to consider confirmation".

23 So can I do what you're asking?

24 MR. GLENN: We believe you can, Your Honor. We filed  
25 the -- we served the full motion papers with the proposed form

1 of disclosure statement to the 2002 service list. We also sent  
2 to all stakeholders, including equity holders, a notice of  
3 hearing to consider approval of the disclosure statement  
4 pursuant to Section 1125 to everyone. It's a short form which  
5 I can hand up to Your Honor if you would like to see it. But  
6 everyone has had notice of this hearing.

7 THE COURT: Do you have other examples that -- can you  
8 find me any cases where a similar procedure has been followed?

9 MR. GLENN: I can point you to several cases where  
10 people have done the disk process. We will be breaking new  
11 ground with this case. We have discussed this with Mr.  
12 Schwartzberg's office. We have looked --

13 THE COURT: That was the next person who I was going  
14 to ask.

15 MR. GLENN: And we would never have done this without  
16 Mr. Schwartzberg's office's approval. So this is a new  
17 procedure. However, we're also in a new world. And we're in a  
18 world where if you're getting a disk, you have a computer, our  
19 view is that if you have a computer, the high likelihood is  
20 that you have internet access and that this would be very easy  
21 to obtain, to plug in the website,  
22 bordersdisclosurestatement.com.

23 THE COURT: There are many parts of this country, Mr.  
24 Glenn, where internet access is not readily available even to  
25 those who want it because there's no cable, there's no DSL.

1 So --

2 MR. GLENN: And for those folks, we're --

3 THE COURT: -- there are a lot of people who have  
4 computers but don't have internet access --

5 MR. GLENN: We will --

6 THE COURT: -- readily available.

7 MR. GLENN: We will FedEx each of those persons who  
8 request a disclosure statement promptly upon that request, Your  
9 Honor. We're not trying to deny --

10 THE COURT: I understand that.

11 MR. GLENN: -- anyone notice.

12 THE COURT: I understand. Mr. Schwartzberg?

13 MR. SCHWARTZBERG: Your Honor --

14 THE COURT: You want to come up so we can get you on  
15 the record here?

16 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg from  
17 the U.S. trustee's office. Actually, Your Honor, just a  
18 personal thought, I'd rather go to a website than stick in a  
19 disk I got in the mail into my computer just in terms of  
20 viruses and what not. So I'm a little more --

21 THE COURT: I take it this is an issue that's been  
22 vetted with your office and your office does not have an  
23 objection with the procedure proposed by the debtor and the  
24 committee?

25 MR. SCHWARTZBERG: Your Honor, he came to me. I



1 didn't vet it all the way up. It didn't seem --

2 THE COURT: I trust your -- you're here speaking for  
3 your office. Was this a procedure that was acceptable to you  
4 in the circumstances of this case?

5 MR. SCHWARTZBERG: As a cost-saving measure and in  
6 today's world, I thought it seemed like a reasonable way to go  
7 forward in the matter.

8 THE COURT: Okay. Thank you. Mr. Buechler?

9 MR. BUECHLER: Just briefly. Just to clarify. The  
10 notice, there will be a notice that's attached --

11 THE COURT: The notice is going to go by mail.

12 MR. BUECHLER: -- it's going to go along with the  
13 ballot and the solicitation. The notice says if you don't have  
14 a computer, here's the 800 number to call to get a copy. So  
15 there is a mailing giving people the notice.

16 THE COURT: Okay.

17 MR. BUECHLER: And we think that goes a long way. We  
18 were very concerned -- the committee -- because at the end of  
19 the day, it's not a -- we have a lot of money at least in the  
20 aggregate when you see it. But when you come to a  
21 distribution --

22 THE COURT: Just copying this package is --

23 MR. BUECHLER: We estimated the cost as hundreds of  
24 thousands of dollars between the copying of it and the postage  
25 and the labor to do a mailing to thousands of people was the

1 huge amount of money that the committee didn't want to spend --  
2 may have misspoken previously in this case to the debtors and  
3 Garden City Group, the noticing agent, about ways to reduce the  
4 mailing costs in this case because of the pure dollar amount  
5 that it's been and especially because this is a liquidation  
6 where there aren't merely what I'll call bells and whistles, as  
7 Mr. Glenn said before. It's really in accordance with the  
8 absolute priority rule. We're looking to put as much out in  
9 monies for a distribution as possible.

10 THE COURT: Okay. Does anybody else wish to be heard  
11 with respect to the solicitation procedures as described by Mr.  
12 Glenn and Mr. Buechler? All right. No objecting having been  
13 filed, no objection being stated on the record now, the  
14 solicitation procedures are approved.

15 MR. GLENN: Thank you, Your Honor.

16 THE COURT: Mr. Buechler?

17 MR. BUECHLER: Did Your Honor wish to see the letter I  
18 wrote? Mr. Glenn's already seen it. The solicitation letter  
19 the committee would send out.

20 THE COURT: Sure. Let me see it.

21 MR. BUECHLER: May I approach?

22 THE COURT: Yes, please. What is the estimate of the  
23 number of Class 3 creditors? Maybe it's not just an estimate.

24 MR. BUECHLER: It's 3,000 something. It's 3,000 and  
25 something, Your Honor. Beyond the 3, none of us remember.

1 THE COURT: Okay.

2 (Pause)

3 THE COURT: The solicitation letter needs to be  
4 revised to add a paragraph that explains how creditors can  
5 obtain a copy of the disclosure statement, plan other than by  
6 the website.

7 MR. BUECHLER: We'll just cut and paste what's in the  
8 disclosure statement to add the 800 number.

9 THE COURT: With that addition, the letter is  
10 certainly acceptable.

11 MR. BUECHLER: Thank you, Judge.

12 THE COURT: I'll return it to you.

13 MR. BUECHLER: We'll add that.

14 THE COURT: And you said there's going to be an 800  
15 number?

16 MR. BUECHLER: Yes. It's in the disclosure statement  
17 in the section -- the notice.

18 THE COURT: Okay. It ought to go in the solicitation  
19 letter as well.

20 MR. BUECHLER: Yeah. We'll just add the number there.

21 THE COURT: That's fine.

22 MR. BUECHLER: One other question. When we submit the  
23 minor amendments to the plan and disclosure statement, does  
24 Your Honor want us to recall it the second amended plan and  
25 disclosure or should we just keep it the first?

1 THE COURT: Just keep it the first.

2 MR. BUECHLER: Thank you. Makes it easier.

3 THE COURT: I consider the changes that are going to  
4 be made, none of them are material in my view. They do not  
5 change the substance or effect. They just clarify, hopefully  
6 in plain English, a couple of the points that the Court raised  
7 today. If you get it in today, it'll get -- the order will get  
8 entered today. If not, you know, the Court's closed tomorrow.  
9 So it would be Monday. I don't know how long it would take you  
10 to make the changes.

11 MR. GLENN: Okay.

12 THE COURT: You should -- with respect to the changes  
13 that you're making, please share them with the U.S. Trustee's  
14 office as well. Again, I don't consider these to be material  
15 changes. I'm just helping clarify what's already in the  
16 disclosure statement and the plan.

17 What is the date we have for the confirmation hearing

18 MR. GLENN: December 20th, Your Honor.

19 THE COURT: Okay. In the dec -- okay. I think this  
20 is clear but my preference and procedure is that I prefer not  
21 to have proffers. And so, what I will require is a declaration  
22 or affidavit in support of confirmation that would address what  
23 some counsel in some cases would do through proffer. I want  
24 all parties in interest to be able to read in advance what it  
25 is that is being tendered as evidence in support of

1 confirmation.

2 With respect to the certification of ballots, because  
3 of the opt-in/opt-out procedure that is being followed, the  
4 certification of ballots should also indicate the number of  
5 ballots submitted, those that checked opt-in, those that  
6 checked opt-out. And therefore, the number that did not --  
7 that submitted a ballot but didn't check one of those boxes.

8 Anybody have anything else they want to raise today?

9 MR. GLENN: Your Honor, just on the issue of Kobo, we  
10 are a approximately ten percent shareholder of Kobo. And as  
11 Mr. Buechler indicated, there has been a public announcement of  
12 a transaction that will cash out our equity along with our  
13 equity partners in Kobo. One of the conditions precedent  
14 obviously is approval by this Court of our interest in that  
15 transaction. So I just wanted to give Your Honor guidance that  
16 in the next week or so we will be submitting a motion seeking  
17 approval of that with a redacted version of the purchase  
18 agreement in all likelihood because we're not seeking approval  
19 of the broader transaction but simply the fairness of the  
20 consideration going to us.

21 THE COURT: Okay.

22 MR. GLENN: That's it.

23 THE COURT: And I'm certainly prepared to shorten time  
24 for that hearing so we can do it expeditiously.

25 MR. GLENN: Thank you.

1 THE COURT: Okay. Anyone else have anything else they  
2 want to raise today? All right. I do consider it a milestone  
3 that you've gotten to this point. So let's see if we can carry  
4 it all the way through to the end. Thank you very much. We're  
5 adjourned.

6 MR. BUECHLER: Thank you, Judge.

7 (Whereupon these proceedings were concluded at 10:59 a.m.)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Lisa Bar-  
Leib**

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Date: November 11, 2011