

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

IN RE:

PROPEX, INC., et al.,

Debtors.

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* CASE NO. 08-10249, et al

* Chapter 11

*

* Jointly Administered

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JANUARY 22, 2008

BEFORE: THE HONORABLE JOHN C. COOK
UNITED STATES BANKRUPTCY JUDGE

BE IT REMEMBERED, that the above-styled
cause came on to be heard on the 22nd day of January, 2008,
before the Honorable John C. Cook, Judge of said Court, when
all parties announced ready to proceed, and the following
proceedings were had, to wit:)

* * * * *

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(Note: Unless provided by counsel to the court reporter, some names may be rendered as the best phonetic approximation.)

1 THE COURTROOM DEPUTY: Be seated please.

2 Clerk, call the case.

3 THE COURTROOM DEPUTY: The chapter 11 case
4 of Propex, Inc.; debtors emergency motion for interim and
5 final orders, authorizing debtors to obtain postpetition
6 financing, authorizing debtors to use cash collateral,
7 granting adequate protection to prepetition lender,
8 modifying the automatic stay, and scheduling a final
9 hearing.

10 There's been an objection filed to that by
11 Nomura Corporation Research and Asset Management,
12 Regiment Capital Advisors LP, and SMH Capital Advisors, Inc.

13 Motion by debtors for joint administration;
14 motion by debtors for order authorizing prepetition wages,
15 payroll taxes, certain employee benefits and related
16 expenses; motion by debtor authorizing maintenance of
17 prepetition bank accounts and cash management system and
18 continued use of existing business forms, books and records
19 and, approving investment guidelines.

20 Motions by debtors for order authorizing
21 debtors to pay prepetition sales, use, trust fund and other
22 taxes related obligations; motion by debtors for order
23 approving and authorizing debtors' employment of
24 Epiq Bankruptcy Solutions, LLC, as claims, noticing and
25 balloting agent and administrative procedures.

1 THE COURT: All right. Before we start,
2 let us have an announcement of appearances. I noticed we
3 have quite a number of Counsel in the courtroom.

4 MS. RUCKER: Yes, Your Honor. I am
5 Shelley Rucker here for the debtors. I have with me here
6 today Mr. Henry Kaim.

7 MR. KAIM: Good afternoon, Your Honor.

8 MS. RUCKER: Mr. Mark Wege.

9 MR. WEGE: Good afternoon.

10 MS. RUCKER: And Mr. Ed Ripley from the
11 offices of King & Spalding in Houston. I also have
12 Ms. Sarah Borders from the King & Spalding office in
13 Atlanta. Mr. Lee McCarter who is the chief financial
14 officer of the company is here with us today.

15 THE COURT: All right. Over here to this
16 side.

17 MR. GOSSETT: Your Honor, I'm
18 Richard Gossett here for objecting parties. I have with me
19 today Mr. Steve Pohl and Mr. Tony Gray who are with
20 Brownrudnick Firm of Boston, and we'll pro hac them at the
21 appropriate time. And we're here for the objecting parties.

22 THE COURT: All right.

23 MS. SWAFFORD: Kim Swafford for the
24 Office of the United States Trustee.

25 THE COURT: All right.

1 MS. COMBS: Your Honor, Tammy Combs here
2 for the United States IRS.

3 MR. HUMPHREYS: Your Honor, Gene Humphreys
4 with Bass, Berry & Sims on behalf of the prepetition and
5 postpetition agent for the postpetition lenders PNP Paribas.
6 I have with me today Mr. Patrick Nash and Mr. Peter Krebs,
7 both from Skadden Firm in Chicago. We had filed a motion to
8 submit as pro hac vice, and we request that if it be
9 necessary for someone to speak on behalf of Paribas that
10 Mr. Nash be permitted?

11 THE COURT: All right. You have already
12 filed those motions?

13 HUMPHREYS: We filed those motions late
14 Friday night. Yes, sir.

15 THE COURT: All right. Those motions will
16 be granted then based upon your motion.

17 HUMPHREYS: Thank you, Your Honor.

18 THE COURT: All right. Any other counsel
19 wish to make an appearance?

20 MR. BROWN: Your Honor, Scott Brown here
21 for the Hamilton County Trustee.

22 THE COURT: All right. Any other notices
23 of appearances?

24 MCCLARTY: Your Honor, John McClarty here
25 on behalf of the Electric Power Bower Board of Chattanooga.

1 THE COURT: All right. Ms. Rucker?

2 MS. RUCKER: Thank you, Your Honor. I
3 would also like to move for the admissions of Mr. Kaim and
4 Mr. Wege and Mr. Ripley and Ms. Border who is here for this
5 matter today. Those motions have been filed.

6 THE COURT: All right. Those motions will
7 be granted.

8 MS. RUCKER: Thank you.

9 Your Honor, we would like to thank the
10 Court for accommodating us today on such short notice.
11 These are important expedited motions for this debtor, and
12 we appreciate the Court accommodating us today. With that I
13 would like to turn the proceeding over to Mr. Kaim to deal
14 with the substitute aspects of the interim.

15 THE COURT: All right.

16 MS. RUCKER: Thank you.

17 MR. KAIM: Your Honor, Henry Kaim from
18 King & Spalding on behalf of the debtors. I want to thank
19 the Court for prompt settings on these preliminary hearings.
20 We tried to limit what we are hearing today to the six
21 motions that really do need a hearing, and we appreciate
22 that.

23 We met with Ms. Swafford in the
24 U.S. Trustee's office prior to today to go over the motions,
25 and they were very corporative with us. So we will tell

1 you, all in all, we are extremely impressed with the
2 efficiency of the faculty and the Court's process here in
3 Chattanooga.

4 What I intend to do, Your Honor, is make a
5 very brief opening statement, five to seven minutes at the
6 most, and then I have a witness Mr. Lee McCarter, the chief
7 financial officer, who will give testimony that generally is
8 applicable to all six of the motions that are here today.

9 THE COURT: All right.

10 MR. KAIM: Thank you, Your Honor.

11 Your Honor, we're here today with respect
12 to five debtors that have filed for chapter 11 relief.
13 Those five corporations are all incorporated in the
14 State of Delaware. Their principal, if you take a majority
15 of the assets, the majority of them lie in the State of
16 Georgia. However, the headquarter, the principal place of
17 business of Propex, is right here in Chattanooga in our
18 corporate headquarters on Lee Highway over by the airport.

19 And 800 of 2,000 employees are within a
20 10-mile radius of the City of Chattanooga. And 1,000 of
21 1,100 vendors are within 50 miles of Chattanooga in the
22 Chattanooga and North Georgia quarter. The company was
23 founded back 1884 under the name American Lace Company.
24 Today it's got a varied product line. But, essentially, the
25 product lines fall into the categories of carpet backing,

1 geosynthetics, and concrete.

2 Today Propex is the world's leading
3 independent carpet backing manufacturer. Most of it,
4 virtuously all of it is done domestically right here in the
5 Chattanooga and North Georgia quarter. We do have foreign
6 operations, Your Honor, but none of those foreign debtors
7 are chapter 11 debtors. Those companies have not filed
8 chapter 11. We operate the United States, Mexico, the UK,
9 Germany, Hungary, and Brazil. We market our products to
10 over 40 countries throughout the world.

11 I want to discuss the debt structure of the
12 company. And it's not complex but there are six layers of
13 debt within the companies, the five debtor companies.
14 Prepetition we have a revolving credit facility. As of the
15 petition date there was 20 million outstanding on the
16 revolver, plus 6 million of letters of credit that were
17 outstanding. Those LOCs have not been drawn, but they are
18 part of the revolving credit facility. So, together, we've
19 got \$26 million outstanding on the revolver.

20 We also have a large term facility, term
21 debt with a lending group made up of 20 to 30 institutions.
22 That term debt is right at \$200 million. The revolver and
23 the term debt are secured by significantly all of the assets
24 of the estate with the one exception of one-third of the
25 stock of foreign subsidiaries, which is not uncommon.

1 I want to move away from the term,
2 revolver, and secured debt and talk about our unsecured
3 debt, Your Honor. At the operating level, we have the
4 noteholder debt, which is unsecured public debt,
5 approximately \$150 million. Our trade debt is, by
6 comparison, relatively minuscule compared to these bigger
7 numbers. As best we can tell, as of the date of the filing,
8 we had approximately \$15, one five, million in trade debt.
9 As you can see, this case is not going to be about the trade
10 debt.

11 We do have pension liabilities. In the
12 aggregate, we have them on our books at 50 million, five
13 zero. Twenty-five of that deals with foreign subsidiaries.
14 Twenty-five, approximately half, deals with our domestic
15 operations.

16 And then to round out the layers of trade
17 debt, we have one lawyer that is not at the operating level
18 of Propex Inc., but at the Holdings company,
19 Propex Holdings. And we'll show you a schematic shortly,
20 Your Honor. That's an additional \$30 million owed to one
21 creditor at the Holdings Company. If you aggregate all of
22 those, it comes to just over \$460 million of indebtedness.

23 I can tell the Court that going into
24 chapter 11, these Propex companies were current on all of
25 these layers of debt, which is unusual. We chose to pay the

1 interest and the principle on the revolver. We chose to pay
2 the interest and principle on the term, as it came due. We
3 made the interest payments on bonds as they came due. And
4 our trade debt, as a general matter, all the trade debt,
5 generally, we're current as we move into chapter 11. So we
6 were not in payment default with respect to any of these
7 layers of debt.

8 So why are we here? While we were in
9 payment compliance with all levels of debt, in October of
10 2007, we did trip a financial common default with respect to
11 our credit facility. And the lenders on the credit facility
12 cut off our revolving line of credit as of that time. Since
13 October we continue to operate in the normal course. We
14 continue to pay all of our debts. We even made the interest
15 payments and principle payments to the credit facility
16 lenders. We made the interest payments to the bond holders.
17 Frankly, we expected to obtain a waiver of that company
18 default and get that revolver opened up, but that didn't
19 happen.

20 So as January came upon us, we, frankly,
21 ran out of time and ran out of money. We were attempting to
22 refinance the entire indebtedness, but we couldn't get there
23 in time so we had to file for chapter 11 relief on
24 January 18th. During this time, we have been negotiating
25 with our existing lenders, and we have sought and made

1 inquiries with other lenders as the potential DIP financing
2 and, fortunately, for the company, we've obtained a
3 significant debtor-in-possession financing facility, which
4 we are here today on an interim basis for actual and
5 necessary expenses.

6 The bottom line, that is, we've been
7 current on all of our debt, but we did trip a default and
8 the lenders cut off our revolver, and we just couldn't live
9 on the receipts without the facility going forward.

10 Unlike many chapter 11 debtors, this
11 company has a solid business. As I indicated, it is the
12 world's largest independent carpet backing manufacturer.
13 Last year, to give the Court some idea of the type of
14 companies that we're dealing with, the total revenue for
15 2007 was approximately 600 and 70 million, six seven zero.
16 The 2007 operating profit -- and many chapter 11 debtors
17 I've represented have no operating profit going into
18 chapter 11. These companies had \$21 million in operating
19 profit in 2007. These companies had a positive EBDA of
20 \$45 million for 2007.

21 So aside from a need to establish a
22 revolving facility, the business itself is in pretty good
23 shape. We have suffered, revenues have suffered, however,
24 due to the housing-market decline in the United States.
25 We're heavily dependant on that. And there has been a

1 decline in the housing market and it has caused a decline in
2 our total revenues.

3 This is the same time that the entire
4 country, and today is no different, is suffering from a
5 tightening of the credit market. That impeded our efforts
6 at the very end to refinance this outside of bankruptcy
7 court. Our goal in chapter 11 then is to negotiate a
8 consensual plan amongst the financial players in the case.
9 This case is not going to be about the trade. It's not
10 going to be about our customers. And it's certainly not
11 going to be about the number of employees that we have.
12 It's going to involve, what we hope, is a consensual
13 negotiation amongst the financial players.

14 As I indicated, Your Honor, and to wrap up
15 my opening statement, we have negotiated the
16 debtor-in-possession facility. It is absolutely necessary.
17 We've come into bankruptcy with no more chest. We chose to
18 pay our creditors, including the revolving credit facility,
19 the term debt and the bond debt. We chose to pay them
20 current. We chose to pay the trade current. But because
21 our revolver was cut off, we have limped into bankruptcy
22 court with very little cash.

23 Fortunately, for the company, we have
24 negotiated an ample debtor-in-possession financing facility
25 that will get us through the case. Some of the highlights

1 of that facility, Your Honor, it is a \$60 million facility,
2 six zero, which is higher than the \$50 million revolver we
3 had prepetition. The \$60 million DIP financing has less
4 covenants and less restrictive covenants than we had at the
5 \$50 million facility prepetition. The \$60 million DIP
6 financing will allow us to operate for a year in the normal
7 course of business without any disruptions to our
8 operations, without any disruptions to our customer, and
9 without any disruptions to our employees.

10 There's enough money built into the
11 \$60 million budget to pay the vendors we've got to pay, and
12 there will be some we'll have to pay immediately. There is
13 enough in the budget to pay utility deposits that are
14 required now under the Bankruptcy Code. There is enough
15 money to pay employees what we need to pay them. There's
16 enough money in the facility to pay interest, not only on
17 the debtor-in-possession facility but on the term debt as
18 well, the \$200 million term debt. And there's enough money
19 to assure the company that it can pay some reorganization
20 cost for the year that is included in that DIP facility.

21 The facility does have a one-year maturity
22 date; however, we negotiated a clause in the facility that
23 if we have commenced a confirmation hearing on the matter of
24 reorganization, within the year, we automatically get a
25 three-month extension. So it can be automatically extended

1 to 15 months. All of this is built into this DIP financing.

2 Today we are going to ask the Court for
3 approval, on an interim basis, to approve \$20 million, a
4 borrowing of up to \$20 million on an interim basis. This is
5 necessary in order to make our payroll just coming up, to
6 make our vendor payments that we have to make every day.
7 And this is largely due to the fact that we, as far as cash,
8 have limped into bankruptcy court with very little cash,
9 several hundred thousand dollars because we have chosen to
10 pay our creditors as opposed to building up an award chest.
11 So we are going to be asking for immediate approval on an
12 interim basis.

13 Your Honor, that concludes my opening
14 statement. What we intend to do, at this point, if it
15 please the Court, is to ask Mr. McCarter to take the stand.
16 After his general testimony on all of these motion, we'll
17 then address the various motions and leaving the DIP for
18 last, as far as procedure in bankruptcy court.

19 THE COURT: All right. Mr. Gossett, we
20 will just wait to hear from you later then on the objections
21 to the DIP financing?

22 MR. POHL: Good afternoon, Your Honor.
23 Steve Pohl from Brownrudnick. That all sounds fine as long
24 as when the various motions come up, in particular the DIP
25 motion, Mr. McCarter is available for cross-examination at

1 that time?

2 MR. KAIM: He's here, Your Honor, he's not
3 going anywhere.

4 MR. POHL: I was just going to say, so I
5 can do cross after his general introduction of all types,
6 I'll focus my cross on the motions.

7 THE COURT: That will be fine.

8 MR. KAIM: We have no objection to that,
9 Your Honor. I think if they will listen to the testimony
10 and whatever motion they want -- the way we're going to
11 approach it, we're going to argue the points to the Court,
12 Counsel can argue, and, certainly, if you would like to
13 cross-examine, Mr. McCarter will be here.

14 THE COURT: All right. I neglected to
15 point out. I believe we have one attorney on the phone; is
16 that correct?

17 THE COURTROOM DEPUTY: Yes, sir.

18 THE COURT: Would Counsel identify himself
19 please?

20 MR. AMAMOO: Yes. This is Nii-Amar Amamoo
21 of the law firm Kelley, Drye & Warren in New York, and we
22 represent BP Amoco.

23 THE COURT: Okay. Are you able to hear
24 okay?

25 MR. AMAMOO: I am. Yes, sir, I am.

1 THE COURT: All right.

2 MR. AMAMOO: Thank you.

3 MR. KAIM: Your Honor, I'll call
4 Mr. Lee McCarter to the stand.

5 THE COURT: All right. Come around,
6 please, and raise your right hand.

7 LEE MCCARTER,
8 called as a witness, at the instance of the Debtors, having
9 been first duly sworn, was examined and testified
10 as follows:

11 THE COURT: All right. You may proceed.

12 MR. KAIM: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. KAIM:

15 Q. Would state your name, please?

16 A. It's Lee McCarter.

17 Q. And what is your position with Propex?

18 A. I'm the vice president and chief financial
19 officer.

20 Q. Mr. McCarter, would you, please, explain to
21 the Court what the Propex companies do?

22 A. Sure.

23 THE WITNESS: Your Honor, I have a series
24 of slides to go over with you today to discuss the business
25 of Propex.

1 THE COURT: All right.

2 THE WITNESS: I would first like to --

3 MR. KAIM: May I interrupt for a moment,
4 Your Honor? Your Honor, do you have a paper copy with you?

5 THE COURT: I do not.

6 MR. KAIM: It might be helpful.

7 MS. RUCKER: Your Honor, if I may approach?

8 THE COURT: Yes.

9 MS. RUCKER: Here's the exhibits. It's
10 under Tab 1.

11 BY MR. KAIM:

12 Q. All right. Mr. McCarter, tell us what the
13 business does?

14 THE WITNESS: Before I jump into this,
15 Your Honor, let me take your patience. I've never been
16 through something like this before, so I'm going to do the
17 best I can given the audience we have.

18 THE COURT: All right.

19 A. I've worked for Propex -- before we jump
20 into the details, I've worked for Propex for approximately
21 seven years. Actually, I've been with Propex probably for
22 about two years, which came as part of the SI Acquisitions.
23 And that's part of the old Synthetic Industries,
24 SI Corporation, which has resided locally here for many,
25 many years, me since the year 2000. So basically the last

1 seven or eight years.

2 I would like to thank you for the
3 opportunity to come forward here. I know I can't do the
4 justice of my 3,000 teammates that are back at the office
5 back there, but we're going to do the best we can.

6 When we look at Propex, Propex is a global
7 supplier of fabrics and fibers for the business segments
8 that you see up on the slides here. And we're going to talk
9 about each of those segments. As previously disclosed, we
10 have locations that are in North America; Mexico;
11 South America; Brazil; in Europe, principally in Germany;
12 Hungary; and we have a sales office also in the UK. So we
13 market on a global basis to over 40 countries around the
14 world with various products participating in different ways
15 and different places.

16 As we move to the next slide, we have over
17 ten manufacturing facilities around the world. Six of those
18 are primarily in the United States in the South Georgia and
19 the North Georgia region, mostly around the North Georgia
20 region, specifically around the Ringgold area off of
21 Exit 348 off 75, and over here on Bonny Oaks off of
22 Industry Drive, off of Bonny Oaks where we have a facility.
23 And our offices are out on Lee Highway right next to the
24 Sam's Club there. There's an office complex there where we
25 have all of our administrative offices. As I mentioned, we

1 have some 300 teammates around the world.

2 Q. Are those employees that you're talking
3 about?

4 A. Excuse me. Employees. We call them
5 teammates around the world. So they help us drive for
6 improvement and profitability every day. We have a pretty
7 extensive portfolio. We're going to talk about some of
8 those products momentarily.

9 Q. Before we go there, I want to talk about
10 the employees. Can you advise the Court where those
11 employees are located, generally?

12 A. Sure. Generally, we have up here in the
13 North Georgia area -- we'll talk about the North Georgia,
14 South East Tennessee quarter, if you will. In the
15 South Georgia territory or area is where we have our
16 employees. There's roughly 800 of them up here, what I call
17 the Chattanooga area, between the locations of Ringgold up
18 at the Lee Highway offices and also at the Chattanooga
19 facility. Then, obviously, we have another thousand or so
20 employees in the South Georgia area. Principally, three
21 manufacturing facilities, Bainbridge, Nashville, and
22 Hazlehurst.

23 Our portfolio consists of engineered
24 fabrics. Many people think of us as a textile company. We
25 really are a converter of polypropylene. It's an engineered

1 fabric for solutions or technical solutions in the market
2 place, and we'll talk about that momentarily.

3 A strong focus on performance. The company
4 has engrained in its culture a series of metrics that drive
5 continuous improvement programs through either win
6 initiatives in our manufacturing facilities or even in our
7 administrative operations as well. Again, they focus on
8 results.

9 We have a theme that we engrain through the
10 company called "Winning the Game." It's the way we bring
11 our teammates -- it's modeled after football. We bring our
12 teammates in and help them win the game. Win the game means
13 securing our future, securing our jobs for ourselves and our
14 grandchildren, our children and our grandchildren for the
15 company as we move to the future.

16 Q. Before we go to the product line, can you
17 advise the Court where your vendors are located for the most
18 part?

19 A. Principally, a mature number of vendors,
20 for example, up here in the North Georgia area, the support
21 structure in the plants and the facilities is obviously all
22 localized in the immediate area as well as South Georgia.
23 There's localized vendors around the plants as well.

24 Principally, what we do in those plants is
25 we take polypropylene, which is imported, generally from the

1 Texas region where the large polypropylene manufacturing
2 facilities are, by railcar to our facility, and then we
3 convert that in our operations either in the North or
4 South Georgia locations.

5 Q. Can you give us an idea, we've talked about
6 the vendors and the suppliers, give us an idea of the type
7 of customer, especially on carpet backing side, that you
8 sell to?

9 A. Yes. I'm going to hit on the customers as
10 we go through here, if you will. Carpet backing is one of
11 our primary product lines. The carpet backing, we sell the
12 substraight of which carpet is tufted in, the face fiber of
13 carpet is tufted into. And, in essence, we supply to plants
14 that are all locally in the North Georgia area. Some
15 90 percent of the carpet from the United States is made, as
16 many have heard, within the call of a 50-mile radius of the
17 Dalton, North Georgia area. We sell it substraight, the
18 primary backing and a secondary backing that's used in the
19 manufacturing of that.

20 So large customers would be folks like
21 Dixie, who is a public company that's in the immediate area
22 here. Beaulieu, we actually sell to them. Shaw Industries,
23 we sell product to them, as well as other companies like
24 Candice and J&J. Again, all regionally located in the
25 immediate area here in terms of the carpet backing. And

1 we'll talk some more about some of the other customers in
2 the other product lines as we get into the product
3 description there, which we can say more on a meaningful
4 touch.

5 Q. All right, sir. Moving now from the
6 customers, let's talk about the product line, the Propex
7 product lines?

8 A. The company, as you can see on the chart,
9 actually supplies a variety of products with synthetics and
10 fibers. We're going to explore this in a little bit more
11 detail as we go to the next slides. But, basically, we
12 touch anywhere from concrete products to slabs to flooring,
13 carpet backing, filtration, certain recreation products like
14 pool covers and trampolines, for example.

15 As we move on to the next page, I'm going
16 hit on each of our segments, starting with the furniture
17 segments, which is basically made up of woven carpet backing
18 products and also nonwoven fabrics. It's just a different
19 manufacturing technology for furniture, bedding, and
20 automotive components.

21 If you move to the next page, please. I've
22 broken these up: Primary, secondary, carpet backings, and
23 tile, underlayments we're using, carpet manufacturers, which
24 I spoke about, the Shaws, the Dixies, the Mohawks, for
25 example, purchase from us.

1 Then on the furniture and bedding side,
2 customers such as Hanes, which is a division
3 of Leggett & Platt or Simmons, which actually makes bedding
4 or mattresses. We supply them products, for example, that
5 go in and wrap around the coils of springs within the
6 mattresses.

7 Let me back up. If you want, for your
8 information, we have some examples of the product for you,
9 if you would like to see that in the future. We have some
10 packets here, we'll be glad to leave behind. But it
11 sometimes helps to touch and feel it and understand what
12 we're talking about.

13 In terms of the automotive, again, we're
14 using nonwoven fabrics for the seats in the construction
15 applications. You generally don't see, when you're sitting
16 in your automobile -- when you think of our products,
17 they're using that interior instruction of those
18 applications.

19 THE COURT: Of the carpet backing?

20 MR. KAIM: It took me a while to figure
21 this out.

22 BY MR. KAIM:

23 Q. Just explain what you're talking about when
24 you're talking about carpet backing?

25 A. (Indicating.) Carpet backing, this is a

1 woven polypropylene carpet backing. So we convert the
2 polypropylene pellets. They come in like pea size form, go
3 through extruders, weave this into flat, what we call flat
4 tape extruded yarn, weave that together. This becomes a
5 substraight that all your face fibered carpet is tufted
6 into. So, basically, without this backing, you make no
7 carpet. And our customers, as such, are very dependant upon
8 us to keep their mills going.

9 Many people think that there is a large
10 supply of carpet backing in each of these mills. It's not
11 uncommon for us to do same day delivery in carpet backing.
12 An order received before twelve might be delivered before
13 two o'clock in the afternoon. So there's a minimal amount
14 of inventory in the supply chain of backing. And those
15 customers that are not backward integrated, like Shaw,
16 Mohawk, might own their own carpet backing, NASA, and really
17 depend upon us to keep their plants going. So we use the
18 primary backing for that.

19 And there is a secondary backing that is
20 used in the manufacturing of carpeting after the face fibers
21 have been tufted in. You use latex as a secondary backing
22 to bind the back really whole, the backing of carpet.

23 So that's how carpet is manufactured and
24 where our product is used in that process.

25 Q. Can you make carpet without carpet backing?

1 A. No, you can't. Without backing there is
2 not carpet. It's as simple as that.

3 Q. Let's move to our next line of products,
4 geosynthetics?

5 A. Geosynthetics is a little different animal,
6 as we refer to it. We refer to ourselves as a green
7 company, so we use engineered geosynthetic products really
8 in erosion control and some stabilization or reinforcement
9 type applications.

10 And as you move into the next product,
11 you'll see we've broken this down really between geotextiles
12 and erosion control. I'll take the erosion control and
13 we'll come back the geotextiles. You're familiar with the
14 Blue Cross building that's being built up here the hill just
15 off of Highway 27. You might have noticed over the last
16 weeks and months, as they've built up the embankment,
17 there's been a green fabric that has been visible from the
18 street as you're driving up the highway. Those green
19 fabrics are generally products that use these types of
20 applications, if you will, to reinforce the soil, hold the
21 soil in, promote vegetative growth, if you will, to help get
22 a green solution to what could be a pollution problem.

23 And that is one of the greatest, if not the
24 greatest, pollutant to our rivers and streams and waterways,
25 just plain ordinary dirt. It's the runoff that occurs out

1 in parking lots or off the sides of embankments that carry
2 soil and sediment into the waterways. Our products help
3 solve that problem by simply reinforcing and holding the
4 soil in place. Because of the design of the fibers, it
5 actually promotes the vegetative growth.

6 So this type of application is a Pyramat,
7 which is a propitiatory products is a three-dimensional
8 fabric that's used for higher strength or higher demanding
9 applications. As such, we've actually had to specify for
10 two areas of note. One, for example, the reconstruction on
11 the levees down in New Orleans. This product has been
12 specified by the core of engineers as a soft armour
13 mechanism for those levees.

14 The alternative for the product that you
15 have on the pyramid, is what we call riffraff, the ugly
16 rock, if you will, that you throw against the embankment or
17 you see in these ditches. This is the alternative product
18 that we have for riffraff, which you can use. Again, it
19 helps filter the dirt, filter the pollutants before it gets
20 to the rivers and waterways.

21 Notice, as well, we're working with the
22 Core presently, since it is specified down in New Orleans
23 area, and looking for that application of that on the
24 Moccasin Bend project. Locally it's been in the paper as
25 well.

1 So that's just a sense of what some of our
2 erosion control products are.

3 Q. Is this product also helpful to our
4 Armed Forces? Do we sell to them?

5 A. And, actually, a second product we have is
6 what we call a "nonwoven geotextile." It's made right over
7 here in our Ringgold facility. And a nonwoven textile is
8 just that. Traditional weaving that's been around for years
9 and years and years, 3,000 years. This is a nonwoven
10 technology that we use for a variety of applications of
11 geotextiles, whether it's being an underlayment for roadway
12 construction to help stabilize roadway or, in the case, if
13 you can see in the exhibit here, behind the soldiers on the
14 wall, there's a brown wall cage that's up behind that. What
15 that is is what we refer to as a bachelott. And we sell a
16 fabric that is put inside of a wire crate. If you think
17 about it, it's lined with our fabric and they fill it with
18 sand and build a temporary walls or bunkers to help protect
19 the troops from blast or terrorist activity over in Iraq.
20 We sell quite a bit of that over there, at present, as
21 they're going through the efforts in that area.

22 So we make a hundred percent of that
23 product. All of that product and supply is ran out of our
24 factory over here in Ringgold. So it's another application
25 with geosynthetics applications that we have as well.

1 Q. As we move down to our third line of
2 product, the concrete systems products?

3 A. The third line of this one is our concrete
4 products. And, again, it's polypropylene. It's steel,
5 called "synthetic," it's steel based products that are used
6 in help with reinforcement applications in concrete
7 applications.

8 If you flip to the next page, a place where
9 this would be applied would be in residential slabs, for
10 example, slab on the radius, we refer to it, principally,
11 down in the Southeast or out in the West, for example, in
12 California where you'll pour your driveway, pour your
13 sidewalk. And in lieu of or in addition to other
14 reinforcement materials, we'll put our fibers in that
15 concrete to help control our reinforcement properties of the
16 concrete itself.

17 So for more demanding applications, we
18 would do steel fibers, which we outsource from the outside.
19 We will put steel fibers in more demanding, light
20 industrial, like warehouse applications, for example.

21 In addition, another interesting one we are
22 using world-wide in Europe, as they're building mines and
23 tunnels, we'll actually shoot concrete out of the cannons,
24 if you will, on the earthen walls of tunnels as they're
25 being constructed to help in that construction practice as

1 well.

2 So that's pretty much what we utilize the
3 concrete fiber applications. A hundred percent of the
4 synthetic fibers for the concrete business are manufactured
5 right here off of our Chattanooga location off of
6 Bonny Oaks.

7 Finally, we have our industrial
8 applications, which is really a variety of dish
9 opportunities to leverage our capacity. If you look to the
10 next slide, you will see that we participate in anywhere
11 from the filtration in the mining and the liquid filtration
12 applications, building materials. Think about housewraps.
13 You might be familiar with a product called Tyvek, where
14 you'll see on the construction of homes. We just recently
15 lost a product, a competing product of that, to another
16 partner called "Pack-It," that basically allows us to
17 provide a printed product, for example, Lowes. We supply
18 product to Lowes that they use in applications for
19 housewrap.

20 In addition, as I mentioned earlier, we
21 have trampoline and swimming pool covers as well.
22 Ironically enough, we thought about the export of jobs out
23 of America to China. We send trampoline fabric from our
24 North Georgia location over to China. They convert that
25 into a trampoline and then send it back to Wal-Mart, for

1 example, for sale. So that's still a product that's more
2 technical in nature that's required to be produced here and
3 shipped there and sent back over here, as well as other
4 packaging and agricultural type products as well.

5 Q. All right. I think that next slide talks
6 about our international facilities. Can you briefly
7 describe them? Before you do that, would you, please,
8 confirm that our foreign subsidiaries are not in chapter 11;
9 is that correct?

10 A. That's correct. They're on stand-alone
11 basis. The stock is guaranteed under domestic credit
12 facilities, if you will. We have the locations in Mexico,
13 Brazil, in Germany, in Hungary. Primarily in Europe, we're
14 focused on carpet backing, supplying carpet backing into the
15 rest of the world over in -- into the European and the
16 Middle Eastern, if you will.

17 We are leveraging, at present, our existing
18 technologies in the geotextiles. And a game plan is in
19 place to launch out more broadly in Europe. Again, that
20 would be something that would be manufactured here and sent
21 up there. The reason, initially, in Brazil, it's a
22 combination of carpet backing and more agricultural oriented
23 type products. And in Mexico it's primarily carpet backing
24 and also some, what we call, "packaging type products." On
25 the carpet backing side, Shaw Industries and an affiliation

1 they have is our primary customer now.

2 Q. Okay. Let's talk about our domestic
3 facilities?

4 A. I wanted to give you a picture, just so we
5 see geographically where these sit. Again, the two
6 locations or the three locations, including the headquarters
7 in the North Georgia quarter, as we refer to it,
8 Southeast Tennessee quarter, and then the South Georgia
9 plants as well, Hazlehurst, Nashville, and Bainbridge is
10 where we have those locations. Again, about 800 people up
11 in the North; roughly, 1,100 down in the South.

12 In terms of manufacturing, just to touch on
13 this, again, we take polypropylene pellets and we convert
14 that to the finished product. We are one of the largest
15 consumers of polypropylene in the world as we convert
16 world-wide some 400 million plus pounds of polypropylene on
17 an interim basis. We focus on a wide range of technologies,
18 both woven, flatweaving and, in the case of carpet backing,
19 three-dimensional weaving. In the case of our geotextiles,
20 nonwoven products as well.

21 We focus on a high performance. A lot of
22 engineering goes into fabrics and fibers. For example, one
23 of the attributes of our three-dimensional fabrics for
24 erosion control is a trilobal yarn that actually is designed
25 to retain moisture and help facilitate that quick growth,

1 the vegetative growth of our products. And we really
2 customize this. In many cases, on the carpet backing, we'll
3 customize it in many cases to meet the customer's needs. We
4 customize it in an economical and efficient way. But we do
5 that to meet their needs.

6 From a research and technology standpoint,
7 on the next slide, I don't want you to think we have a bunch
8 of white men or a bunch of men in white coats running around
9 with test tubes. We don't do that type of R&D. We really
10 do engineering, if you will, fabrics and fibers to meet the
11 customer's needs. But we do have a defined process that can
12 rapidly move, based upon the customer's request. We can
13 rapidly move, go from the developer to the design to develop
14 into production. So we are proud of our workforce and our
15 ability to rapidly innovate, based upon the customer's
16 needs.

17 In terms of the innovative products, we
18 highlight this. You know, it isn't just about a
19 commodity-based business here. We have a fair amount of
20 intellectual property around our fiber technology, E3 fiber
21 technology or the X3 fiber technology, macro technology in
22 the 3D, three-dimensional weaving technology that I've
23 spoken about.

24 So we look to replace the traditional
25 technologies, the ones like the riffraff that I was

1 referring to before. It's much more economical for our tax
2 dollars, for example, to lay in our geosynthetic solution
3 than traditional practices. It simultaneously helps them
4 clean up the environment as well. So we have a bit of a
5 green thing going on.

6 In terms of our continuing improvement
7 commitment, we really break it down into the buckets here.
8 We do focus on our business processes. I'm proud of the
9 staff we have here in the headquarters area. We have state
10 of the art computing capabilities, if you will. We focus on
11 driving continuous improvement throughout all of our
12 operations. It starts with our strategic planning process,
13 leverage our lien initiatives, whether it's in our, what we
14 call "STNA components" or within our manufacturing
15 facilities to drive a culture of continuous improvement
16 through innovation or even into our wall as well.

17 We put that underneath an umbrella of what
18 we call "Winning the Game." And, again, that's about
19 getting each and every employee engaged in our operation to
20 drive for continuous improve to deliver value to the market
21 place, drive earnings to secure the future. And, again,
22 securing the future for our jobs today, securing the future
23 for our children's jobs and their children's jobs. And that
24 culture is grained. And it doesn't matter if your Joe Dana
25 of the CEO or the lowest, if you're the person that is at

1 the lowest level in one of our manufacturing facilities,
2 we're an open culture. We share with them. All of our
3 employees know exactly what's going on in the company. And
4 we feel that the open, honest communications to those
5 employees and engaging in them our continuous improvement
6 products is a winning formula for the company.

7 We come to Propex. Just to sum it up,
8 really we pick up a layer called the "advantage creators."
9 We have intrusted brands, unmatched quality focus on
10 day-in-day-out. We drive solutions, and a consultant will
11 sell to our customers. And, more important, most important,
12 we're committed. We're committed to our customers. We're
13 committed to our employees. We're committed to winning the
14 game.

15 Q. The next slide is an organizational chart.
16 I want to approach the chart and point to the debtors that
17 have filed for chapter 11 relief. I'll go to this side.
18 Are the chapter 11 debtors Propex Holdings Inc.,
19 Propex Inc., Propex Fabrics International Holdings I Inc.,
20 Propex Fabrics International Holdings II Inc., and
21 Propex Concrete Systems Corporation?

22 A. That's correct.

23 Q. The foreign subsidiaries that are shown on
24 this chart are not in chapter 11?

25 A. That's correct.

1 Q. The next slide reflects our debt structure?

2 A. It doesn't.

3 Q. Oh, I'm sorry, the financial performance.

4 Why don't you go over these number as to the

5 2007 Financial Performance of Propex Inc., world-wide?

6 A. These are unaudited numbers on a world-wide

7 basis. We haven't completed our audit for the year-end

8 process as of yet. It's roughly \$675 million in revenue,

9 \$21 million of operating profit, and EBDA of 45 million.

10 Q. Next slide?

11 A. From a debt structure standpoint, these

12 were layered into debt structure, excluding the liabilities

13 associated with the pension. It's primarily a revolving

14 credit, including the LOCs of \$6 million, which total

15 \$26 million; the secured term debt of approximately

16 \$200 million; unsecured noteholders, 150; and a domestic

17 trade payable to about 15 million to 391 million. In

18 addition, at the holdings level, we have an unsecured note

19 with BP of approximately, to include the accrued interest,

20 approximately \$30 million.

21 Q. When you say secured, that's meaning to say

22 they have collateral behind that debt?

23 A. That's correct. Collateral, yes.

24 Q. All right, sir. Can you tell the Court in

25 your own words what got the Propex in chapter 11?

1 A. Clearly, this started back -- what
2 initiated it, was back at the mid-October time period when
3 we were in breach of one of our financial companies
4 associated with our credit facility. At that point in time,
5 that pressure came to bear primarily because of the
6 deteriorating market place and the rising oil prices and the
7 impact of polypropylene cost during the fiscal year 2007.

8 At that point in time, we had notified the
9 agent that we were not in compliance with that particular
10 covenant, the revolver was cut off. At that point in time,
11 we sought discussions with the lender to resolve the
12 covenant issue. And then shortly, thereafter, we also
13 started discussions to see and looked into the ability to
14 refinance that debt in a timely matter such that we could
15 cure the issue associated with the existing lenders.

16 We ended up going down both paths.
17 Actually, on the debt side or refinancing activities, we had
18 two officers, one from Jefferies and one from Goldman Sachs.
19 We chose to ride one party, that being Jefferies, to try to
20 get through a refinancing effort. And at the end of the
21 day, they could not give us a fully underwritten deal.

22 Simultaneously, we, of course, made our
23 payments of interest on our bonds, which was due in early
24 December; made or interest in principle payment on our term
25 loan, which some was due in November, some due December and

1 the principal at the end of December, if you will. And then
2 it became apparent that Jefferies could not succeed in the
3 time frame that we needed to get this refinanced. So, as
4 such, I put in my words, we ran out of runway and were
5 forced to take action. We had to protect the interest of
6 all the appropriate parties. So here's where we sit today.

7 I would add one other note in there.

8 Clearly, it was exacerbating by the credit crunch upon
9 Wall Street and our ability to get these loans done in a
10 time frame.

11 Q. What affect has the decline in the U.S.
12 housing market had on the business?

13 A. If you go back from 2006, the carpet
14 backing market August of 2006 through 2007 is down roughly
15 23 percent or 24 percent. So we've had a significant
16 reduction in our carpet backing market since August of 2006,
17 when the slowdown in the housing industry had started, at
18 that point in time. So the company has battled with that as
19 well as we were battling the price of polypropylene cost.
20 Polypropylene is about 50 to 65 percent of our overall cost
21 of our products. So, clearly, as it moves we have to move.
22 And we have a practice of raising prices as polypropylene
23 goes up versus we have lower prices when it goes down. But,
24 unfortunately, for us all, we haven't had that situation of
25 recent.

1 So we had the decline market, we had
2 ongoing polypropylene pressures. The company had managed
3 effectively the polypropylene pressures. In terms of the
4 declining market, we sought and reduced cost. We
5 consolidated facilities. We took out some overhead to try
6 to deal with that but, clearly, couldn't achieve the rate of
7 reductions for the improvement and earnings required to keep
8 us from having a covenant issue with the existing credit
9 facility given the market numbers.

10 Q. Let's talk about the proposed
11 debtor-in-possession, the proposed debtor-in-possession
12 financing. Give the Court some idea, going into bankruptcy,
13 as of January 18th, approximately how much money do you have
14 remaining available to you at the present?

15 A. Yeah. Domestically here in the U.S., we
16 had -- we were down to somewhere around \$600,000 or so of
17 what was left in available cash to disburse. And since the
18 filing of chapter 11, we're trying to sort through exactly
19 how many checks are getting returned and all of that
20 relative to those actions. But we have exhausted our cash
21 going into the chapter 11.

22 Simultaneously, with all these actions over
23 the last six weeks, we had -- I mentioned the polypropylene
24 is our largest cost in our product, roughly 65 percent, if
25 you will. We had certain vendors that had gone cash in

1 advance. So, simultaneous, with the decline in the housing
2 market, the challenges of the credit markets to get a
3 refinancing done, we had our trade terms, which had
4 restricted their terms they were offering us as we were
5 going into this situation. So that basically put the
6 negative pressures on the cash of the company.

7 Q. Without a financing facility approved in
8 chapter 11, could this company operate on that amount of
9 money?

10 A. Absolutely not. And, yeah, absolutely not.
11 I have quite a few employees that are quite anxious about
12 today's events.

13 Q. Prior to the filing of the bankruptcy, have
14 you negotiated a debtor-in-possession financing facility
15 with a group of lenders?

16 A. Prior to the bankruptcy, consistent with
17 this, yes, we've done it.

18 Q. And are those lenders led by BNP and by a
19 hedgefund called "Black Diamond"?

20 A. That's correct.

21 Q. I want to talk about the high points of a
22 debtor-in-possession facility. How much is it?

23 A. \$60 million.

24 Q. How does that compare with the facility
25 that you have with the revolver prepetition?

1 A. We had a \$50 million facility on a revolver
2 previously with a sublimit for letters of credit, similar
3 sublimit for letters of credit in this facility.

4 Q. Are there financial covenants in this
5 facility?

6 A. There are financial covenants on this
7 facility. Basically two EBDA covenants, both total
8 domestically, Cap-X covenant, capital expenditures covenant,
9 as well as a minimum liquidity covenant. And all of those
10 have been negotiated, given the flexibility to the company
11 to operate over the next year.

12 Q. How do those companies compare to the
13 financial covenants you had prepetition?

14 A. They are much, much, much less restrictive.
15 Particularly, and I refer to that on the EBDA covenant. So
16 probably a little bit more restrictive on the Cap-X but a
17 lot less on the EBDA.

18 Q. Are you comfortable that the \$60 million
19 facility provides the company enough to pay for upfront cash
20 needs such as utility deposits, any very important vendors,
21 employees, operations, and reorganization cost?

22 A. Correct. Yes.

23 Q. Were you personally involved in the
24 negotiation of this DIP facility?

25 A. Yes.

1 Q. How would you characterize the
2 negotiations?

3 A. I would characterize this as probably one
4 of the more drawn-out processes up to as late as one or 1:30
5 or whatever it was last Thursday night trying to get the
6 terms of this finalized. A significant amount of back and
7 forth between the agent, Black Diamond, BNP Paribas,
8 Black Diamond, and their advisors and our advisors trying to
9 negotiate a deal that would work for the company and
10 considering our interest over at least the next 12 months.

11 Q. They were tough negotiations?

12 A. They were very difficult.

13 Q. Would you characterize those as being good
14 faith on both sides?

15 A. Yes, I do. And we've been open, gone both
16 ways, on trying to get to a productive solution for both
17 parties.

18 Q. Just for the record, what's the maturity
19 date?

20 A. The maturity date is going to be 12 months
21 from the date we close with an opportunity to extend it to
22 15 months, assuming we file a plan before the 12 month
23 anniversary.

24 Q. And that would commence a confirmation
25 hearing?

1 A. Correct.

2 Q. And there is a requirement that you
3 actually file a plan and disclosure statement within nine
4 months?

5 A. That's correct.

6 Q. Will that give you any trouble?

7 A. No. There's also a plan to have a business
8 plan developed in seven months, I guess, or six months,
9 rather, to get a business plan out there. It isn't any
10 trouble, no.

11 Q. Do you intend to languish in chapter 11 for
12 as long as you can?

13 A. Not a second longer.

14 Q. Like most DIPs, is this DIP secured by
15 assets of the estate?

16 A. Yes.

17 Q. What's the interest rate?

18 A. Interest rate is 11 plus 4.

19 Q. What are we paying in fees for this DIP
20 facility?

21 A. We're going to pay, at closing, roughly a
22 2 percent fee, total fee, \$1.2 million plus a \$75,000
23 upfront administrative fee.

24 Q. Did you get everything you wanted in the
25 negotiations?

1 A. Absolutely not.

2 Q. There's some things in this DIP that you
3 would rather have to do without?

4 A. Absolutely.

5 Q. Is one of those a prepayment penalty?

6 A. Absolutely.

7 Q. But there is a 2 percent prepayment penalty
8 prior to default?

9 A. That's correct.

10 Q. We're having to pay the lenders'
11 professional fees?

12 A. A significant amount, yes.

13 Q. We're paying the professional fees of the
14 DIP lender and the term lenders?

15 A. That's correct.

16 Q. We're paying the interest on not only the
17 DIP but the term lenders as well?

18 A. That's correct.

19 Q. But I want to make one thing clear. None
20 of this debt is being rolled forward. For instance, the
21 revolving credit debt of 26 million, that's going to stay
22 prepetition?

23 A. That's correct.

24 Q. The term debt of \$200 million, that stays
25 prepetition?

1 A. That's correct.

2 Q. It don't roll over here to convert that to
3 postpetition debt?

4 A. That's correct.

5 Q. As far as priming the liens that are
6 granted under this DIP will prime the term debt; is that
7 right?

8 A. That's correct.

9 Q. But that's essentially the only debt that
10 is being primed?

11 A. That's correct.

12 Q. What role does the investment firm Houlihan
13 play in this case?

14 A. In this particular case, over the last
15 several months they've advised us, advised the company, on
16 refinancing alternatives. They've advised the company on
17 the DIP alternatives that were out there, the DIP financing
18 alternatives that were out there. And we intend to engage
19 them to help advise the company, help us sufficiently get
20 out of the chapter 11 situation.

21 Q. Did they find any other DIP alternative for
22 you?

23 A. They had sought out other opportunities
24 from a DIP financing standpoint by other firms. I can't put
25 down a customer today they've spoken to. I don't know who

1 they are.

2 Q. Was this DIP facility, \$60 million DIP
3 facility, approved pursuant to their business judgement by
4 the board of directors by Propex?

5 A. Yes, it was.

6 Q. How much do you need in the next, say,
7 15 days during this interim time period between today and a
8 final hearing we hope to get in 15 days?

9 A. \$20 million.

10 Q. Are you comfortable that that's enough to
11 get you from here to there?

12 A. Absolutely.

13 Q. In your view as a chief financial officer
14 in the company, is this DIP in the best interest of the
15 these debtors to get you through the case?

16 A. Yes. Without the DIP, we would not
17 preserve the enterprise value that exists and what I believe
18 the enterprise value that can be delivered by this company.

19 Q. I would like you to tell the Judge in your
20 own words what your goal is for the Propex entities in this
21 chapter 11 case?

22 A. My goal is to get out of this situation as
23 fast as we possibly can. I mean, there's no doubt about
24 that. Come with a reorganized structure that can support
25 our philosophy of winning the game. And that is to help us

1 all secure our future and provide jobs for all of our
2 employees and their children and their grandchildren, as
3 I've said, from here to many years in the future, while
4 simultaneously balancing the needs of our customers and
5 vendors of all.

6 MR. KAIM: Thank you very much.

7 Your Honor, if the Court has any questions,
8 Mr. McCarter is here to answer them.

9 THE COURT: All right. Cross-examination?

10 MR. POHL: I'm happy to do that now, Judge,
11 but I think the way to handle this, there were several
12 motions that Mr. Kaim was going to ask for approval before
13 he got to the DIP. So I would defer to the DIP. I'm at the
14 Court's pleasure.

15 MR. KAIM: And so am I. Whatever the Court
16 wants.

17 THE COURT: Why don't you go ahead with the
18 cross-examination at this point.

19 CROSS-EXAMINATION

20 BY MR. POHL:

21 Q. Good afternoon, Mr. McCarter.

22 A. Good afternoon.

23 Q. Do you have in front of you, at your desk
24 there, sir, the cash flows for the four-week period included
25 in one of the binders?

1 A. Yes, sir, I do.

2 MR. POHL: Your Honor, do you happen to
3 have that in front of you? I believe it's in this thinner
4 binder, the last exhibit in the thinner of the two binders.
5 Do you have that, sir?

6 THE COURT: I do.

7 BY MR. POHL:

8 Q. Mr. McCarter, you testified about, after
9 it's made on behalf of the company, to negotiate with other
10 DIP lenders. Do you remember that?

11 A. Yes.

12 Q. Who is it that was involved in those
13 negotiates on behalf of the company?

14 A. Houlihan.

15 Q. Sorry. Say that again?

16 A. Houlihan.

17 Q. Okay. Do you know who they contacted?

18 A. I know of several companies that he did
19 contact, Marathon, for example, and Siver Point, which are
20 two firms that are typically providing these types of
21 financing. Let me just prefaces, I'm not an expert on
22 employing DIP financiers. So let me just state that before
23 you go on.

24 Q. Do you know whether any of those entities
25 are in the prepetition banking facility?

1 A. I don't believe either one of those are.

2 Q. And those negotiations were not surrounding
3 a prebankruptcy restructure of the debt outside of
4 bankruptcy but with contemplation of bankruptcy?

5 A. In a DIP facility to support the effort.

6 Q. In connection with the efforts that
7 Jefferies undertook, do you remember that testimony?

8 A. Uh-huh.

9 Q. Do you know why it was that Jefferies was
10 unable to provide the commitment?

11 A. The word that I was explained is that given
12 the uncertainty in the credit markets, that firm was not
13 able to provide a fully underwritten commitment to guarantee
14 a closing on next day.

15 Q. Is that based by discussions you had with
16 anybody at Jefferies?

17 A. Yes. There were a number of discussions
18 over about a two-month period with them around this firm
19 commitment and ability for them to provide that firm
20 commitment. So that's the last that I understood.

21 Q. When was it that you learned, finally, that
22 they wouldn't be able provide that commitment?

23 A. A week ago last Saturday. Excuse me. A
24 week ago last Friday afternoon at about five o'clock.

25 Q. Mr. McCarter, do you know what Debtwire is?

1 A. Yes.

2 Q. Are you familiar with the Debtwire article
3 written about Propex?

4 A. They had two of them. One that came out
5 today, which I haven't had a chance to digest fully, so.
6 And there was one 2 or 3 or 4 weeks ago.

7 Q. Do you know whether any of those Debtwire
8 articles had anything to do with Jefferies backing out?

9 A. I don't know. I don't believe that's the
10 case, but I don't know because we had subsequent
11 conversations ongoing with Jefferies. And, as I understand
12 it, Jefferies has just come down to a committee decision
13 within Jefferies.

14 Q. Okay. I would like to turn very briefly to
15 the discussions with the prepetition lenders on resolution
16 of the -- was it the EBDA covenant that was tripped?

17 A. Yes.

18 Q. Okay. What efforts were made to try to
19 resolve that covenant breach?

20 A. There were discussions -- if you will, let
21 me back up. The covenant breach happened in the October
22 time period when they were notified, as well as we made a
23 disclosure on that to the general public as well. At that
24 point in time we introduced into discussion with the
25 administrative agent, BNP, which then had further

1 discussion, I would presume, with their wider group back
2 then, which then came a set of their advisors, that being
3 Prosolzoforth (Phonetic) -- I forget the exact pronunciation
4 of it -- and their advisors coming in on behalf of term loan
5 individuals and having their look at the company from their
6 perspective.

7 Q. And you negotiated also with some of the
8 direct lenders of BNP, right?

9 A. I did not negotiate with them nor did the
10 company. It was basically the BNP agent on behalf of the
11 entire term group.

12 Q. Were there any other lenders involved in
13 the negotiations?

14 A. They had their -- as I understood it, they
15 had their own committee of lenders that had formed, and I'm
16 not sure to what extent beyond their committee to form a
17 committee how often communications went or didn't go. I
18 just don't know.

19 Q. Do you know whether Black Diamond was
20 involved in those discussions?

21 A. I do know that they were.

22 Q. Do you have any idea when Black Diamond
23 became a member of the lending group?

24 A. My understanding, my recollection, is that
25 they were a part of the original lending group, going back

1 to the time the deal was consummated, and furthered their
2 interest in that group sometime last summer, I believe it
3 was.

4 Q. Do you have any sense of what portion the
5 prepetition debt Black Diamond owns?

6 A. Of the term debt, of the \$200 million term
7 debt, it's approximately 20 percent, 19 or 20 percent of
8 that.

9 Q. And do you know what the prepetition agent,
10 on behalf of lenders, requested as consideration for a
11 waiver?

12 A. I'm not sure, no.

13 Q. Do you know if they asked for anything?

14 A. I'm not aware. All I know is a waiver was
15 not forthcoming.

16 Q. Fair enough.

17 MR. POHL: Your Honor. I'm going to -- I
18 know this is out of order, but I'm going to just ask a few
19 questions on the budget. I know that's not been presented
20 yet into evidence, but it's in the binder.

21 THE COURT: All right.

22 MR. POHL: We certainly are not going to
23 ask too much. I just want to ask him a few questions.

24 MR. KAIM: Your Honor, to make it clear,
25 we'll go ahead and offer our budget into evidence.

1 THE COURT: All right. That will be
2 admitted as Exhibit 1.

3 (Whereupon, Exhibit No. 1 was received
4 into evidence.)

5 BY MR. POHL:

6 Q. Mr. McCarter, I'm looking at both pages I
7 want to ask about. Is it fair to call this one budget?
8 There's a top page, but it's in detail.

9 A. That's correct.

10 Q. When was the budget prepared?

11 A. Just in the last, you can see the date on
12 the bottom of this, 1/22. But it was actually the last two
13 or three or four days.

14 Q. Well, on the bottom is?

15 A. That's basic.

16 Q. The one I have says 1/21 on the right side?

17 A. Right.

18 Q. Isn't that prep date and then the senders
19 1/14 prep date?

20 A. That's right. Midweek last week.

21 Q. Sorry?

22 A. Midweek last week.

23 Q. Okay. Do you have any idea why this wasn't
24 provided to the Court or filed on the docket before now?

25 A. No, I don't.

1 Q. Was this provided to the prepetition agent
2 and/or the postpetition agent prior to today?

3 A. Yes, it was.

4 Q. And do you know if --

5 A. Let me back up for a second. I'm not a
6 hundred percent positive about that. And the reason I'm
7 saying that is we have been preparing a weekly cash forecast
8 to the agent Ben Brohl. Their advisor was on that every
9 week for the last whatever 12 weeks or so.

10 Q. Is that a 13 week --

11 A. Thirteen-week roll-out on forecast, which
12 is a four-week snapshot of that. And as expenses developed
13 over the company over the last two or three weeks, obviously
14 this has been refined on a daily basis to try to clearly
15 understand exactly what the cash needs of the company are.

16 Q. Okay. So there's a 13-week cashflow then
17 that exists and extends this out a little bit more than two
18 months; is that right?

19 A. That's correct. I put more on this in the
20 first four weeks than I did the following nine weeks.

21 Q. I understand. Do you know what that
22 13-week cashflow budget shows by way of, you know, access
23 cash needs during that period?

24 A. One, I don't have the latest version to
25 talk on that. I would have to go look at those figures.

1 Q. Do you know whether it's even during the
2 period after this?

3 A. No, it's not.

4 Q. There's a cash need?

5 A. There's a cash drawn down over the next
6 four, eight, twelve weeks. Yes. I should say it in a
7 different form. It's a significant cash deficit over the
8 next twelve weeks.

9 Q. The revolver that was shown earlier as
10 having a drawn balance of 20 million and a LC exposure of
11 6 million?

12 A. Correct.

13 Q. The revolver piece was first drawn in
14 September of last year; is that right?

15 A. That's correct.

16 Q. Okay. And in your public report file, as
17 of the end of October, showed cash on hand of \$58 million;
18 is that right?

19 A. That's correct.

20 Q. Okay. And I know you testified about what
21 happened before the filing and why cash became restricted,
22 but can you describe where that \$58 million cash went in a
23 little more specificity?

24 A. Sure. Do you mind if I just take it in big
25 buckets for you?

1 Q. That's not a problem.

2 A. Okay. So if you go from a period of
3 October to the present, you have to understand the
4 seasonality of the company. Number one, let me start with
5 the working capital needs of the company. As you leave what
6 we call a "season," and we depart from that and call it the
7 "September/October period," we have a philosophy to keep
8 running our plants flat because that's the most efficient
9 way to operate those facilities.

10 So, naturally, as your sales decline, going
11 into the fall season, you basically increase your
12 inventories as you go, particularly, in the months of
13 December, January, and February, which if you look at the
14 company going back year after year for the last many, many,
15 many years, that's the typical, what we call, a
16 "working capital bill" as we get ready for the next season.

17 Here we are in mid-January and our season
18 kicks off in, you know, basically the March-April time
19 period. And if we don't build inventory in the December,
20 January, February, time period, in affect, we'll run out of
21 inventory when we're in the heart of the season, which would
22 be May, June and July.

23 So one area that we invest in during this
24 time frame, in particularly, and have to invest in, in order
25 to deliver the next year's sales, if you will, is the

1 inventory.

2 The second area that the cash went to for
3 the time period is the bond payments are due on December 1
4 and June 1 of each year. That's a \$7.5 million payment on
5 bond interest that is due in those particular time periods.
6 So, with that, we had a bond interest payment that was due
7 December 1st or the first week of December there, for which
8 that was paid as well.

9 Q. I have to ask you, the inventory bucket, is
10 that an estimated figure on a net basis that was used for
11 that on 58 million?

12 A. I would have to go pull that out. But it
13 could be net bed on a working capital bill. It's not
14 uncommon on a compete to draw to have \$20 or 30 million
15 changed on a compete to draw.

16 Q. And, I'm sorry, the suppliers at that time
17 had changed their creditors?

18 A. I'm getting ready to get to that next, if
19 you will.

20 So we had the working capital bill. We
21 made the bond interest payment. Let me just hit one other
22 one. We had also, because of a change, because of default
23 in our covenant on the credit facility, we also had interest
24 payments that shifted from what us underneath a contract on
25 an every three-month basis, if you will. That shifted to

1 having to be paid in mid-November and again at the end of
2 December to conform with what was spelled out in our credit
3 facility. And that work was somewhere around, just on
4 interest, if my recollection is correct, somewhere around
5 \$5 million.

6 In addition, we did a \$2.8 million
7 principle payment at end of December as well. Then, in
8 addition, in that time period vendors -- and I'm going to
9 say the time period, if you don't mind, from October to
10 January, first couple of weeks in January, vendors outside
11 of one basically shifted to a cash in advance type of
12 scenario. And that cash-in-advance scenario was somewhere
13 in the neighborhood \$12 to 15 million of lost financial
14 flexibility because of constrained payment terms.

15 Finally, over that time period, we also had
16 advisor fees we had to pay, in terms of advisors' fees for
17 the lenders, as well as our own advisors' fees, that was
18 several million dollars. And I don't think that accounted
19 for all 58, but I think you get the picture of that.

20 Q. Thank you. I may be mistaken, but
21 somewhere along the line I recall seeing a term loan balance
22 of \$210 million. Am I completely wrong? And the balance
23 today is 200 and that includes your \$2.8 payout?

24 A. That's correct.

25 Q. Okay. Turning to --

1 A. And the answer -- never mind. And the
2 answer to that is we sold a facility and actually applied
3 the proceeds for that facility to the term loan. That
4 closes your gap.

5 Q. Was that in addition to the 2.8 or that
6 wasn't in the 2.8?

7 A. No. That's in addition to that 2.8. It
8 brought me from the 210 down to roughly two I's.

9 Q. When was that sale?

10 A. That sale was our Austell facility, office
11 building that was outside of Atlanta. And it closed on late
12 October, first of November.

13 Q. Okay. So that would have been additional
14 cash that came in on top of the 58 million --

15 A. Yes.

16 Q. -- that was used to pay the balance?

17 A. Yes. I didn't have an opportunity to keep
18 that cash.

19 Q. I understand. Never hit your balance
20 sheet? Never stuck in your balance sheet?

21 A. Never even went through my balance sheet.

22 Q. I understand. Turning to the, I guess,
23 first the overage -- which, Your Honor, I'm just going to
24 highlight to make sure I understand it -- shows collective
25 receipts over this four-week period of \$29 million dollars,

1 collected cash needs of 40 -- 46 million with a net need of
2 about 16 million, and since you had half on hand, you ended
3 up with a negative 13. So you operate at a zero cash
4 balance and you drew 13 million; is that fair to say?

5 A. That's correct.

6 Q. Okay. Now turn to the next page, the more
7 detailed page. There's a line item for resin purchases.

8 MR. POHL: That's five or six lines down,
9 Your Honor, in the cashout section.

10 BY MR. POHL:

11 Q. That's your principle and inventory
12 component for raw material?

13 A. That's correct.

14 Q. Are these COD purchases?

15 A. They are.

16 Q. And is the company trying to get credit
17 terms once they get a DIP in place?

18 A. We are.

19 Q. Do you think you'll get them?

20 A. I honestly don't know. I have meetings on
21 them over the next two weeks, and we hope to try to start
22 the process to rebuild our trade credit out there. I can
23 tell you, to date, we have a limited number of suppliers of
24 polypropylene for our facilities. We have to go through a
25 qualification process, which is quite involved, to bring in

1 additional suppliers. So we are down to basically four
2 suppliers whereas, say, ten years ago there may have 20
3 suppliers out there, 25 suppliers out there.

4 So my discussions with those suppliers, up
5 to this point, have not been productive. We hope that this
6 DIP facility will provide the comfort as a stepping stone to
7 move us back to what I call "normalized trade terms." I
8 believe, from what I know of those organizations, the
9 decision process to do that is they aren't going to come in
10 Friday and make a decision. They're going to have to come
11 in, meet with the company, understand the dynamics that are
12 here, go back to their management, meet in their own
13 meetings back there. Some of these companies are large and
14 bureaucratic and not as minimal as a smaller company might
15 be, and it will take some time to restore those terms.

16 Q. You said normalized trade terms. What is
17 that considered to be?

18 A. Normalized trade terms would be -- there's
19 two aspects to it. Number one, that I would get terms
20 meaning, basically, 15 days. So if you think about it, on
21 average, I'm having to pay in advance, and most of the time
22 we pay for product on a summary billing 15 days after the
23 month ends. So it would be basic billing in advance and
24 adding another 45 days, if you assume the purchase on day
25 one for that item on day one. So the item on day 30, it's

1 only 15 days.

2 Q. So the four weeks of resin purchases here,
3 that are somewhere north of \$20 million, assumes cash in
4 advance to the extent, you know, with all your warnings
5 understood, the extent to get credit terms, that would
6 decrease?

7 A. That's correct. But there's a second input
8 to that. One aspect is credit terms on a certain credit
9 limit. Polypropylene over the last, say, the last year, has
10 increased some 20 percent or so or more, in terms of price.
11 So let me just draw an example for you. If I have a
12 \$5 million credit limit today?

13 Q. Right.

14 A. Polypropylene goes up. I am decreasing the
15 amount of polypropylene that I can buy on the same type of
16 credit limit.

17 So there's two aspects to it. Number one,
18 is getting normalized terms. And I define that as just
19 being able to move towards back to a summary billing where I
20 pay 10 days after the end of the month. And then the second
21 aspect is, because of the movement of polypropylene price,
22 I'm actually having to also increase my credit line so I can
23 actually purchase what I need to run the facilities so I
24 don't end up with having to pay cash in advance for those
25 items over our credit limit. And without the DIP facility

1 in place, they are not going to have an incentive to,
2 basically, loan me money, if you will, to keep my plants
3 running.

4 And just so you also understand, it's not
5 like the company has a 30-day supply of polypropylene
6 sitting in its plants. Literally, if we don't pay for these
7 cars today to move, our plants will begin shutting down in a
8 range of three to five days.

9 Q. Thank you. I want to ask about one more
10 line item. There is, I think it's four lines down, what you
11 just spoke of, it's called "keep the check running"?

12 A. That's correct.

13 Q. Could you explain what's included in that,
14 in particular --

15 A. Sure.

16 Q. -- the large, the larger --

17 A. The \$8 million one?

18 Q. Yeah.

19 A. What we've made an assumption in, that is,
20 that -- let me back up. Historically, the company has a
21 philosophy of trying to efficiently run its operations, and,
22 therefore, we tend to do, we try to do, one large check run
23 per month. You know, think about your home bills. Some
24 people pay all of their bills at the end of the month. But
25 there are certain bills that, as you go through the month,

1 you just have to pay, like your utilities, for example,
2 they're less accommodating towards the one check run.

3 Q. Your lawyers don't fit into that category?

4 A. Actually, they've been very accommodating
5 here recently.

6 But, in essence, what we do is we pay,
7 during the month, the smaller check run, we refer to, we
8 have to pay because of the due date, such as a utility bill
9 that might be due in five days or eight days or ten days or
10 whatever. And then we try to group all the bills together
11 so we aren't doing check run after check run. So what
12 you're seeing is a return to the larger check run activity,
13 the discipline the company had had in place before.

14 Q. And these AP check runs, these are all for
15 postpetition purchases?

16 A. Postpetition purchases, that is correct. I
17 will have to revisit that number in light of when I can get
18 sort of through what checks are represented, what has been
19 cashed or not cashed, which the company is trying to go
20 through that as we speak.

21 Q. So you have some suppliers that have terms
22 that are within a week because you're paying accounts
23 payable the first week of the case?

24 A. We have some things that are due. We've
25 built into the forecast here -- as we're coming out of

1 chapter 11, we will have some bills that are due, whether it
2 be, for example, a utility bill, which we put in motion to
3 be placed out there. Our utility bills, for example, run
4 over a million dollars. But I think we have that on a
5 separate line down below, which we do. But it's just
6 normalized bills, if you will, coming through as we're
7 coming out of chapter 11. Some of them may be deposits that
8 we need to just get the trade restarted.

9 Q. Are any of them part of the critical vendor
10 motion?

11 A. In terms of that line, the miscellaneous
12 line we have there, if you will, the forecast in general.

13 Q. Well, that was my first question. So let's
14 stick to that for a moment.

15 A. I mean, clearly, we have critical vendors
16 already identified and supplied in the motions, and if
17 they're due here, then, yes, it would be in that.

18 Q. They would be in the accounts payable line?

19 A. That's correct.

20 Q. Do you know what -- the critical vendors is
21 not postpetition amounts due, right? It's prepetition
22 amounts due?

23 A. Some may be post.

24 Q. If they're post they wouldn't be critical
25 vendors, would they?

1 A. Well, we keep our ordinary course in that
2 line is what I'm saying. Postpetition, ordinary AP runs
3 would flow through that line.

4 Q. Do you have any idea, as you sit here
5 today, out of that 12.5 what portion of that is prepetition
6 critical vendor?

7 A. No, sir I don't. I would have to get that
8 information.

9 Q. Earlier you testified that 2007 EBDA was
10 45 million. Do you remember that?

11 A. Approximately. Yes.

12 Q. Does the company have a projection for 2008
13 EBDA?

14 A. We do.

15 Q. What is that?

16 A. And the company projections, the board had
17 looked at and reviewed an EBDA of 50. But that was prior to
18 a chapter 11 filing, which the company gone through and
19 assessed what the impact of a chapter 11 filing would be on
20 its operations, because, as I preferenced before, when I
21 said up here I've never been through this before -- so what
22 we did is we set in a plan in our DIP facility that is
23 significantly lower than that \$50 million EBDA. I should
24 note that that essentially put those assumptions together,
25 which was last August.

1 The economic environment has continued to
2 deteriorate, the housing industry has continued to
3 deteriorate. And so as we go to look at our projections
4 going forward, you would have to work down from a
5 deteriorating market place for those projections.

6 MR. POHL: I have nothing further,
7 Your Honor.

8 Thank you Mr. McCarter.

9 THE COURT: All right. Any other Counsel
10 wish to cross-examine at this time? All right, if not any
11 redirect?

12 MR. KAIM: Judge, I don't have any
13 redirect.

14 THE COURT: All right. You may step down
15 at this time.

16 (Witness excused.)

17 MR. KAIM: Your Honor, before we go to the
18 motions themselves, I would like to do a little housekeeping
19 with respect to the exhibits. I think it will make the rest
20 of the afternoon go quicker.

21 THE COURT: All right.

22 MR. KAIM: With respect to the DIP motion,
23 there was a term sheet that was attached to the motion that
24 was filed. It is under Tab No. 4 in the notebook. We would
25 like to offer the summary of terms of DIP facility. It's

1 under Tab 4 in the notebook.

2 THE COURT: Do you have a separate copy of
3 that we can actually mark as an exhibit? I like to keep
4 these as my copies.

5 MS. RUCKER: Sure.

6 MR. KAIM: Can we mark that, Your Honor?

7 THE COURT: Yes. Exhibit 2 admitted.

8 (Whereupon, Exhibit No. 2 was received
9 into evidence.)

10 MR. KAIM: Thank you.

11 THE COURT: Let me have a copy of the cash
12 flow as well. We marked that as Exhibit 1. It's been
13 previously admitted.

14 MR. KAIM: As Exhibit 3, we have the
15 Declaration of Mr. Lee McCarter who just testified it's been
16 on file since the filing.

17 THE COURT: I don't think that was stated
18 under penalty of perjury, was it?

19 MR. KAIM: It should have been, Your Honor.

20 THE COURT: I didn't see that. He can
21 still be under oath and you can have him affirm that?

22 MR. KAIM: Let me just check that, if not
23 we'll have him come up right now.

24 THE COURT: All right.

25 (Whereupon, a brief pause was held.)

1 MR. KAIM: Mr. McCarter, would you take the
2 stand?

3 THE COURT: You are still under oath.
4 (Whereupon, Mr. McCarter was recalled to
5 the stand.)

6 MR. KAIM: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes.

9 REDIRECT EXAMINATION

10 BY MR. KAIM:

11 Q. Mr. McCarter, I hand you your declaration,
12 the declaration of Lee McCarter in support of first-day
13 applications and motions. Are you familiar with that
14 document?

15 A. (Perusing document.) Yes.

16 Q. Did you sign that document?

17 A. Yes.

18 Q. Are you affirming today that it's true and
19 correct under penalty of perjury?

20 A. Yes.

21 THE COURT: All right.

22 MR. KAIM: Exhibit 3, Your Honor.

23 THE COURT: Exhibit 3 admitted.

24 (Whereupon, Exhibit No. 3 was received
25 into evidence.)

1 THE COURT: You may step down.

2 (Witness excused.)

3 MR. KAIM: I apologize, Your Honor.

4 That's all the housekeeping exhibits,
5 Your Honor. At this point Mr. Ripley is going to address
6 several of our motions, joint administration, the wage
7 motion, the trust fund taxes.

8 So the podium is yours.

9 MR. RIPLEY: Judge, again, good afternoon.
10 I know you've got a number of new faces and names. And,
11 again, for the record, my name is Ed Ripley. I'm with the
12 King & Spalding law firm.

13 THE COURT: All right, Mr. Ripley.

14 MR. RIPLEY: Judge, we're going to go back
15 again to the big, big, black notebook. And we're going to
16 be starting under Tab 4. I'm going to be dealing with
17 Tabs 4, 5 and 6. And if I could get Your Honor on the same
18 page.

19 THE COURT: All right.

20 MR. RIPLEY: Behind Tab 4 is the motion for
21 joint administration. That's the first one we would like to
22 take up.

23 MS. RUCKER: Your Honor, if we may, also,
24 they may have been submitted in a different order.

25 THE COURT: All right. I could not --

1 MS. RUCKER: Tab 4 from the one we
2 delivered Friday. Thank you.

3 MR. RIPLEY: We have dueling black
4 notebooks. We have the large and small. This is the large
5 one.

6 THE COURT: I will say, with respect to the
7 notebook that I received, actually I got it this morning.
8 And you may have filed it late Friday, but I got it this
9 morning. I have read the Declaration. I have read the
10 motions and I have read your proposed orders.

11 MR. RIPLEY: Great. And those are just the
12 ones we're going to be dealing with this afternoon,
13 Your Honor.

14 THE COURT: All right.

15 MR. RIPLEY: Again, behind Tab 4 is the
16 joint administration motion. It is Docket No. 6, Judge, and
17 this is a very straight forward motion. It is designed to
18 be procedural only. And it's just to ease the
19 administrative burden on the Court, the parties, and the
20 clerk to have a single jointly administered case file so we
21 only have a single pleading filed instead of having five
22 duplicate pleadings. We're not seeking any kind of
23 consolidation or anything else. This is purely procedural.

24 THE COURT: Yes. That motion will be
25 granted.

1 MR. RIPLEY: Thank you, Your Honor.

2 Judge, if you will, will you turn behind
3 Tab 5? That's the debtors' expedited motion authorizing
4 payment of prepetition wages, payroll taxes, employee
5 benefits. It is Docket No. 7.

6 THE COURT: Yes. All right.

7 MR. RIPLEY: Judge, there were four primary
8 points that are set out in this. The first is we were
9 seeking -- this is the motion that we want to maintain our
10 approximately 2,000 employees in the United States.

11 The second important factor, this is
12 ordinary payroll compensation reimbursement. The next
13 payroll is actually due January 24 on Thursday. There are
14 no bonuses. There are no special compensations sought in
15 this motion.

16 The third important point, Your Honor, is
17 that no employee with respect to their 507(a)(4) or (a)(5),
18 their benefits and their compensation, no employee will
19 receive more than the ten-thousand dollar 507 Cap.

20 The last important point, Your Honor, is
21 that we are not assuming or adopting any plans or programs.
22 Again, the idea is to keep the status quo. It's just as if
23 we will have normal payroll and normal reimbursement so that
24 our employees aren't at risk with respect to the filing.
25 And, again, any time you file, you're in the middle of a

1 payment period. We were approximately halfway into the next
2 payment period. The chapter 11 was filed January 18th.

3 We do have a timing issue here, Your Honor.
4 As you get into the bank account motion with Mr. Wege, the
5 bank that is in charge of the payroll and the payroll
6 account, Bank of America, notified us this morning that they
7 require, not us, but they require, that this order, the
8 employee motion order and the bank account order, be signed
9 and on the docket by no later than 9 a.m. tomorrow or the
10 normal payroll, which includes direct deposit for about
11 80 percent of our U.S. employees, which is about 1,500
12 employees, is going to be disrupted. We've tried to talk with
13 them just because of the process. They notified us about
14 that this morning. That's the timing issue we have on this
15 motion and on the bank account motion.

16 Judge, we had prepared a PowerPoint to talk
17 about the highlights of the various aspects of our employee
18 motion. All the information is directly lifted out of our
19 moving papers and Mr. McCarter's affidavit. We'll be glad
20 to go through that with you if you think it would help.
21 But, again, it's all the same information.

22 THE COURT: No.

23 MR. RIPLEY: Unless the Court had a
24 question, we'll be glad to answer any questions.

25 THE COURT: No. I have read that. Is

1 there any objection?

2 MR. POHL: Your Honor, we have no objection
3 to any of the payment requested in this motion. I think I
4 heard Counsel say that there's no assumption or rejection of
5 the contracts.

6 THE COURT: Correct.

7 MR. POHL: I just wanted to confirm that no
8 annual or periodic bonus programs are somehow deemed to be
9 in the ordinary course --

10 THE COURT: Yes. I think the order makes
11 that clear.

12 MR. POHL: Okay.

13 MR. RIPLEY: And we appreciate that. No,
14 there are no bonus programs or anything else that we are
15 determining to be ordinary. And, again, the whole point of
16 this was normal payroll, normal reimbursement, normal
17 benefits.

18 THE COURT: All right. I will sign the
19 order that you have then submitted, with one addition that I
20 am going to put up in the top space of the order. As you
21 know, under electronic case filing there is a space where I
22 can add some language, especially in light of
23 Bankruptcy Rule, I think, 6003, and the new change to that
24 Rule. I am going to put that as an addition to that order
25 that based upon the declaration of debtors' representative,

1 Mr. Lee McCarter, relief requested is necessary to avoid
2 immediate irreparable harm to the debtors in this case. I
3 think that was established on the declaration. And so that
4 needs to be added to the order, and I will just do that in
5 the space provided.

6 MR. RIPLEY: Judge, thank you very much.

7 THE COURT: Other than that, that motion
8 will be granted.

9 MS. COMBS: Your Honor?

10 THE COURT: Yes.

11 MS. COMBS: The IRS has a balance of
12 payroll taxes and I don't know if I should bring it up now
13 or another time. But this should be addressed so that
14 there's a thing in the order that we require or request.

15 THE COURT: Well, should it be heard at
16 this time?

17 MR. RIPLEY: Judge, just so it's clear, the
18 motion the Court is approving, we would be paying over our
19 normal payroll taxes. That's one of the aspects of the
20 employee motion. And the bank account motion also maintains
21 the special accounts set up to deal with payroll and tax
22 obligations.

23 THE COURT: And that's pursuant to a
24 separate motion, is that not correct?

25 MR. RIPLEY: That is correct. Mr. Wege is

1 going to address the bank account and cash management
2 motion. But with this motion, we will be paying over in the
3 ordinary course all the payroll taxes.

4 THE COURT: And another order makes that
5 clear?

6 MR. RIPLEY: The order that the Court --
7 the employee motion, deals directly with the payroll taxes.
8 The procedural aspect of bank accounts is in another motion
9 because there's a variety of bank account issues.

10 THE COURT: All right.

11 MR. RIPLEY: But this order says we shall
12 pay over our payroll taxes.

13 THE COURT: All right. If you are not
14 satisfied later on just bring it back to my attention.

15 MS. COMBS: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. RIPLEY: And, Judge, that last matter I
18 have is behind Tab 6. It is Docket No. 9. It is the motion
19 to pay prepetition sales, use, trust fund and other taxes.
20 Again, Judge, this is very straight forward. It seeks to
21 pay approximately \$25,000 in essentially two components.
22 About \$15,500 are sales and use tax. The sales taxes are
23 those amounts that we have received from customers. They
24 would be trust funds and not property of the estate.

25 Because of our Delaware incorporation and

1 the number of jurisdictions of which we either have
2 operations or our license to do business, we have a number
3 of franchise related obligations. That's 9,000. Again,
4 it's less than \$25,000 all together. We request to pay
5 those as they come due in the ordinary course.

6 THE COURT: Any objection? Hearing none
7 that order will be entered.

8 MR. RIPLEY: Great. Thank you, Your Honor.
9 Those are the three matters I had. I will turn the podium
10 over to Mr. Wege.

11 THE COURT: All right.

12 MR. WEGE: Good afternoon, Your Honor.
13 Mark Wege, W-E-G-E, here on behalf of the debtors, from
14 King & Spalding. As Mr. Ripley referred, we will be
15 continuing on in your notebook, your large notebook, under
16 Tabs 7 and 8. So the next two consecutive motions, I'll be
17 dealing with and the filing order, and we'll be dealing with
18 the debtor-in-possession, financing motions. Tab No. 7, as
19 Mr. Ripley talked about, that is Docket No. 8. And
20 Tab No. 7 deals with cash management and what is referred to
21 as the bank account motion as well as our existing forms and
22 records.

23 Again, as Mr. Ripley talked about, this is
24 a motion that preserves the status quo in that it asks for
25 approval of all our existing bank accounts and cash

1 management processes that we have prepetition. We did have
2 attached to the motion, as Exhibit A, a list of all the bank
3 accounts. And then Exhibit B to the motion, which is
4 Exhibit B under Tab 7, is a schematic of all of the bank
5 accounts that the five debtors maintain. That schematic
6 shows basically the cash management functions of the debtor
7 and that they have lockboxes that they collect their funds,
8 and then those monies go into a master account and,
9 ultimately, out through various types of accounts.

10 Again, this motion goes hand in hand with
11 the wage motion that we make reference. The payroll account
12 and the Flux spending account are two particular accounts
13 the debtor maintains. All of the items that go through
14 those accounts are items and checks that relate to employee
15 obligations that would be approved under the wage motion.
16 And so we're seeking authorization to continue those
17 accounts on as they have been going, not only the
18 postpetition items but prepetition items as approved by the
19 wage motion.

20 We have actually been in communication with
21 our bank, Bank of America, which is taken on the role from
22 LaSalle Bank recently. Bank of America acquired
23 LaSalle Bank. And they are aware of this. They are aware
24 of the approach. They don't have any particular problems
25 with our approach with cash management continuing on these

1 accounts. They, as Mr. Ripley referred, are very anxious to
2 get the order approving these two motions so that they are
3 authorized to proceed under what we had proposed under our
4 motion.

5 THE COURT: So are you telling me they are
6 aware of the motions?

7 MR. WEGE: They are aware of the motions.
8 We had a conference call this morning at 9 a.m. with
9 Bank of America and the individuals responsible for cash
10 management. They are aware of the specific terms of the
11 motions, not only the bank account motion but the employee
12 motion.

13 THE COURT: There is only one provision in
14 here that enjoins the bank for freezing, freezing or
15 otherwise, impeding the debtors' bank accounts.

16 MR. WEGE: That's correct.

17 THE COURT: I am assuming they have no
18 problem with that language in the order?

19 MR. WEGE: That's correct, Your Honor.
20 They have not objected. In fact, they want to cooperate
21 with us and we are working to cooperate with them. We had,
22 you know, a significant amount of conversations this morning
23 about providing them a list of items that are prepetition
24 items that relate solely to the employee obligations. We're
25 going to provide that list to them, and that will be the

1 list they will use to honor prepetition items that relate to
2 employee obligations.

3 THE COURT: I assume the U.S. Trustee has
4 no problem?

5 MS. SWAFFORD: We do not. We've already
6 talked to the debtors' counsel about this.

7 THE COURT: Any problem?

8 MR. POHL: Your Honor, we didn't file an
9 objection to this because we have no objection to this
10 special relief sought. And we don't purport to attempt to
11 be a creditors committee at this stage. But I would ask
12 Your Honor for two things, and they are sometimes customary
13 in other cases. They're dealing with cash management,
14 motions and orders. And that would be to leave this order,
15 since it's a first-day order, interim as to a creditors
16 committee for the sole purpose of dealing with the transfers
17 between interim debtors.

18 In other words, cash management system, by
19 definition, means that funds belonging to one debtor will be
20 moved to another debtor. On a prepetition basis, that's
21 probably fine. But today we have separate estates, and
22 they're potential separate creditors, as you'll see when the
23 schedules come out. So that the company ought to have a
24 provision in here that tip the creditors committee that work
25 out with them that carefully tracks transfers between and

1 among entities.

2 And, I don't know this, the debtors would
3 know, to the extent that there's transfers of funds from the
4 domestic to foreign, it might be appropriate in the
5 bankruptcy case for the U.S. to limit transfers to foreign
6 entities because that's not where the U.S. creditors are.

7 So, you know, rather than me attempt to
8 negotiate that with the debtors, I'm suggesting that that's
9 a topic that is better served being interim for a creditors
10 committee to deal with.

11 THE COURT: Any problem with that?

12 MR. WEGE: Your Honor, I can make
13 representation to the Court that there will be no transfers
14 between debtors nor between the foreign debtors, between the
15 foreign nondebtors and the debtors. In fact, just to be
16 clear, and explain what we have here, your Honor, there is
17 an account, Propex Fabrics Holdings Inc. That's our parent
18 company. And at this moment that has no funds in it. There
19 will be no movement of any funds from that account.

20 There is another account which relates to
21 the a nonPropex Inc. debtor and that's Propex Fabrics Inc.,
22 Holdings I that has \$7,000 of cash in it. There will be no
23 movement from that account. So I can represent that all of
24 the remaining cash transactions relate solely to
25 Propex Inc., which is the operating company.

1 And, so, honestly, I don't believe there's
2 a need for that type of stipulation.

3 THE COURT: I would think with this type of
4 order, if there was a motion to revisit this issue, during
5 the progress of the case, I can always reconsider this kind
6 of order.

7 MR. POHL: That's perfectly fine.

8 THE COURT: All right.

9 MR. POHL: Based upon that representation.

10 THE COURT: All right. Based upon the
11 representations then, I will go ahead and approve this
12 motion.

13 MR. WEGE: Thank you, Your Honor.

14 The next motion, again, we're talking about
15 Tab No. 8, which is the next tab in your booklet. And, just
16 for the record, that is Docket No. 16. And we call this the
17 so called "notice motion."

18 Your Honor, what we are proposing in this
19 motion is, both, a notice procedure and the approval of a
20 noticing agent. That noticing agent is Epiq. We have had a
21 great deal of experience with Epiq. They are a frequent
22 noticing agent, including working Enron cases and WorldCom
23 and a series of others. But they are experienced at being a
24 claims balloting and noticing agent.

25 This motion really works together in that,

1 essentially, what we would propose to do with this motion is
2 instead of having every motion served on the 2002 list, we
3 would simply establish a master search list which would be
4 comprised of the key parts in the case: The debtor, its
5 counsel, financial advisor, the various governmental
6 entities, the secured parties agent, their counsel, the
7 30 largest on the consolidated list of unsecured creditors,
8 the DIP lenders and their counsel, and any party that wants
9 to be on the service list and request that.

10 We would have this master service list for
11 all of the motions that are filed. We, the debtors, would
12 maintain this list through Epiq, and then we would update
13 the list and file it with the Court so there's constantly a
14 master search list that's available and updated on the
15 Court's docket.

16 That master search list along with any
17 parties directly affected by a particular motion, such as a
18 contract rejection motion or some other motion that has
19 specific parties it would affect, of course would be served
20 in addition to the master search list.

21 There's an obvious exception to that in the
22 order in the motion which would be that any type of notice
23 that is required to all creditors, such as disclosure
24 statement, hearing or 341 notice or a notice of the claims
25 for bar date, obviously, we would go out as is typical under

1 the Rules and as required by the Rules, by written notes.
2 So there is that interim proposed order that is that
3 exception of the typical types of notices, besides an
4 ordinary motion. That is our notice procedure.

5 We also have a form of 341 notice that's an
6 exhibit to the motion. In addition, what we had proposed is
7 to establish a procedure where we would have either weekly
8 or biweekly hearings of the Court. The Court would
9 establish hearing dates that were available on the calender.
10 We would then -- if a movant wanted to file a motion, they
11 would call up the court coordinator, suggest one of those
12 particular dates for a hearing date, we would find out if
13 that hearing day is available, then we would file a motion
14 with the hearing date already established and submit it on
15 the motion. So the parties got notice not only in the
16 motion but of the hearing date.

17 We don't know if that's acceptable to the
18 Court, but we propose that as a way to have availability to
19 the Court's docket. We anticipate there will be a lot of
20 motions, and we thought that would be an appropriate
21 procedure if the Court approves that.

22 THE COURT: Five-days notice seemed a
23 little short to me. If we have biweekly hearings with
24 ten-days notice, would that not work? I mean, generally we
25 provide twenty-days notice to creditors of motions. And I

1 was thinking that perhaps ten-days notice with biweekly
2 hearings might be sufficient. But you have a better idea of
3 how this case may be progress than I do.

4 MR. WEGE: Your Honor, what we would
5 suggest --

6 THE COURT: I do not know how many motions
7 you anticipate being filed in the case, at this point.

8 MR. WEGE: Your Honor, I think biweekly
9 hearings would work.

10 THE COURT: On a Friday?

11 MR. KAIM: There's one flight going back to
12 Houston, Your Honor. It leaves at 3:40.

13 THE COURT: Well, Thursday is out. We
14 cannot do it Thursday.

15 MR. KAIM: Wednesday? Wednesday,
16 Your Honor?

17 THE COURT: Well, can you bring up my
18 calendar?

19 THE COURTROOM DEPUTY: Yes, sir.

20 THE COURT: Would you contemplate these
21 being in the afternoon or morning?

22 MR. KAIM: If it please the Court, if it
23 works in the Court's schedule, of course, I think not only
24 the debtor, but the creditors, who will also be traveling
25 from various places, New York, etc., I think it would be

1 better if we had morning hearings, and that way if we went
2 late in the day, following day, people could catch planes.

3 THE COURT: Okay. We can do it on
4 Wednesdays at nine o'clock biweekly.

5 MR. KAIM: Very good.

6 Your Honor, what we would propose, just to
7 be clear about deadlines and timing, we set five days as
8 sort of the minimum number of days you could possibly set a
9 motion, but with the understanding that if a motion were to
10 be filed and set for any less than 23-days notice, that you
11 would have come to the Court and explain the basis for which
12 you're seeking an expedited hearing. So that if somebody
13 comes in and files a motion on five-or -six-days notice,
14 they would have to have a very good reason as to why they
15 did and explain that right out of the box to the Court so
16 that we don't get any abuse of that privilege.

17 THE COURT: Right.

18 MR. WEGE: So that's what we're suggesting
19 in our procedure. If it's not stated completely, which is
20 that regardless of, you know, how quickly you want to set a
21 motion, if it's under 23 days you need to explain why.

22 THE COURT: Right. Right. Well, how about
23 ten days rather than five days, would that work?

24 MR. WEGE: Fine.

25 THE COURT: And you still have to explain.

1 MR. WEGE: Certainly. Less than 23 days.
2 We do not intend to file motions for hearing on less than
3 23-days notice unless there's a good reason for an expedited
4 hearing.

5 THE COURT: All right. Another question
6 that I had on the meeting of creditors. It states all
7 documents filed in these cases may be inspected at the
8 office of Eqip Bankruptcy Solutions, LLC. Well, what about
9 electronic case filing? I did not see how that came into
10 play here. Are not all parties inspecting documents filed
11 through electronic case filing? I did not see that in the
12 notes.

13 MR. WEGE: Your Honor, what we actually
14 propose to do is to have all the motions available on Epiq's
15 website so that instead of having to have a Pacer number in
16 the Pacer system --

17 THE COURT: Anyone could access it.

18 MR. WEGE: Anybody would have access
19 through the Epiq system. In fact, we do have Epiq -- they
20 do have their system up and running already with existing
21 motions that have already been filed on their website.

22 THE COURT: So that notice would provide
23 their website?

24 MR. WEGE: Correct, Your Honor.

25 THE COURT: It does not right now, but it

1 will?

2 MR. WEGE: It will.

3 THE COURT: All right.

4 MR. WEGE: And pending approval by the
5 Court of their retention, we are prepared to have them
6 maintain the claims docket, have them maintain the Matrix,
7 and provide all of this information to creditors and provide
8 this notice out to creditors.

9 THE COURT: How will the claims filing
10 process work? I mean, now we file claims under ECF. How
11 would it work in this case?

12 MR. WEGE: Your Honor, the way it would
13 work, and this is very typical in significant cases, is that
14 Epiq would maintain a claims docket such that a claim would
15 not be filed with the clerk's office, but rather with Epiq.

16 THE COURT: So it would have to be a paper
17 claim that is filed with Epiq?

18 MR. WEGE: It would be a paper claim filed
19 with Epiq. And they would maintain the claim docket and
20 they would provide that information, some of that
21 information, to the clerk's office on a routine basis.

22 THE COURT: What if creditors file claims
23 under ECF, because I think some of the large creditors do
24 that, then what happens?

25 MR. WEGE: Your Honor, Epiq is prepared for

1 that. In fact, they have access to ECF in the Pacer system
2 and they will go in and look at any claims that are filed
3 and incorporate that into the claims docket. So if people
4 do that way --

5 THE COURT: And they will pick it up
6 automatically?

7 MR. WEGE: That's correct.

8 THE COURT: All right. So the creditor
9 would not have to send a claim to Epiq if, in fact, he files
10 under the course, ECF system; is that right?

11 MR. WEGE: That's correct. That's right.
12 Epiq would pick that up. But the notice would direct all
13 creditors to file with Epiq and direct them to file their
14 proof of claims sent to them, to Epiq. And they would have
15 access --

16 THE COURT: And if the clerk receives a
17 paper claim, then the clerk forwards that on to Epiq. Well,
18 I guess the clerk would just scan it in the ECF claims
19 register and Epiq would pick that up?

20 MR. WEGE: The clerk could forward it on to
21 Epiq or they could scan it in, whatever they prefer to do.
22 We would prefer to have it sent to Epiq. It's a means to
23 offload a lot of trouble off of the clerk's office in terms
24 of claims, balloting, and allow this party to handle it.

25 THE COURT: There's one provision that on

1 page 3 of the notice that goes out that instructs all
2 creditors, down at the bottom of the page, under the caption
3 "Bankruptcy Clerk's Office," it says, Any paper that you
4 file under this bankruptcy case, it should be filed at the
5 bankruptcy clerk's office, Historic U.S. Courthouse. Well,
6 typically, creditors file pursuant to the electronic case
7 filing system and they do not bring papers to the clerk's
8 office. So I think we need to make provisions for filing
9 papers pursuant to our ECF system.

10 MR. WEGE: We will make the provision.

11 THE COURT: All right. So that needs to be
12 changed there. I take it the U.S. Trustee's had an
13 opportunity to look at these procedures?

14 MS. SWAFFORD: We have, Your Honor.

15 THE COURT: Any comment or question about
16 any of these notices and procedures?

17 MS. SWAFFORD: I don't believe so,
18 Your Honor. We did have a chance to talk to the debtors
19 this morning about some of these things. There's also a
20 meeting of creditors. There may be some delay on that
21 meeting as the debtor has asked for additional time to file
22 the schedules. So the Court can address the meeting of
23 creditors as to --

24 MR. WEGE: We will work with the
25 U.S. Trustee's office on the 341 meeting, time, and date,

1 and how we set up proof of claims deadline and incorporate
2 that into the schedules.

3 THE COURT: Just one moment.

4 (Whereupon, a brief pause was held.)

5 THE COURT: There was something in here, I
6 was trying to find it, concerning the filing of the
7 schedules, that the schedules would not actually be filed
8 with the Court?

9 MR. WEGE: We will file our statements and
10 schedules with the Court, but they will also be --

11 THE COURT: In the ECF system?

12 MR. WEGE: Yes, Your Honor.

13 THE COURT: But they will also be on the
14 website?

15 MR. WEGE: Yes, sir, they will also be
16 available.

17 THE COURT: All right.

18 MR. WEGE: In that regard, creditors will
19 have Epiq to look at their scheduled amount of their claim
20 and make determinations on their proof.

21 THE COURT: And this order goes out to all
22 creditors in the case?

23 MR. WEGE: Yes, it does. It goes to our
24 creditor Matrix.

25 THE COURT: All right. Well, make those

1 changes and then you can upload the order and I will grant
2 that motion.

3 MR. WEGE: We will do so, Your Honor.

4 Your Honor, that is all I have. I will
5 turn the podium over to Ms. Borders and, to the extent,
6 Mr. Kaim also.

7 THE COURT: All right.

8 MR. KAIM: Your Honor, we're down to the
9 final motion. And we've heard testimony today on the DIP.
10 We were judicious and didn't -- there are many other motions
11 that we filed with the petitions, but we were judicious as
12 far as what we needed to hear today. And those other
13 motions we'll hear whenever the Court sets the final
14 hearing.

15 Your Honor, if we may, would it be possible
16 to take a very short break before we come back to the DIP
17 motion?

18 THE COURT: Yes. I assume you seen the
19 objection that was filed?

20 MR. KAIM: Yes.

21 THE COURT: All right. We will take a
22 short break. Let me know when you are ready to continue.

23 (Whereupon, a brief recess was held.)

24 THE COURT: Be seated please.

25 MS. BORDERS: Good afternoon, Your Honor.

1 Your Honor, now I'm going to proceed with the DIP motion.
2 In addition to the testimony of Lee McCarter, which was
3 offered both in his affidavit and earlier this afternoon,
4 present in the courtroom today is Jonathan Cleveland, who is
5 the managing director of Houlihan Lokey Howard & Zukin. And
6 Mr. Cleveland is here and he is also prepared to testify
7 with respect to the DIP.

8 In the interest of time, Your Honor, I
9 would propose to proffer his testimony, if that's
10 acceptable, and then to offer him for cross-examination.

11 THE COURT: Very well.

12 MS. BORDERS: Your Honor, if called to
13 testify, Mr. Cleveland would testify that he is a managing
14 director of Houlihan Lokey Howard & Zukin, and that his firm
15 has been retained by the debtors in October of last year to
16 advise them with respect to financing alternatives and with
17 respect to financial restructuring.

18 He would further testify that his firm and
19 him, in particular, have significant expertise in working
20 with companies, lenders, and other parties in interest in
21 financing and financial restructuring matters.

22 Your Honor, Mr. Cleveland would testify
23 that in January 2006 the debtors obtained financing from a
24 group of 28 lending institutions led by BNP Paribas. Those
25 lending institutions at the time included, among others, and

1 continue to include today, Black Diamond, BNP Bank,
2 CitiBank, General Electric Capital, Goldman Sachs, LaSalle
3 and Merrill Lynch.

4 Mr. Cleveland would testify that
5 outstanding today under the facility provided by those
6 lenders to the debtors is approximately \$230 million and
7 that that indebtedness is secured by perfected liens on and
8 security interest in all material assets of
9 Propex Fabrics Inc.; it's parent, Propex Holdings Inc.; and
10 their domestic subsidiaries, and by claim of two-thirds of
11 Propex Fabrics Inc.'s interest in the equity of certain
12 foreign subsidiaries. He would testify that this collateral
13 constitutes all or substantially all of the material assets
14 of the debtors.

15 Your Honor, Mr. Cleveland would testify
16 that all of the cash generated by these debtors is cash
17 collateral within the meaning of the Bankruptcy Code.

18 He would testify that in addition to
19 approaching his current lenders, the debtors contacted three
20 other financial institutions and spoke with additional
21 financial institutions regarding their willingness to
22 provide DIP financing to the debtors. He would testify that
23 none of those institutions were willing or able to provide
24 financing to the debtors on terms more favorable than those
25 proposed by BNP Paribas and were able to complete such

1 financing in the time frame needed.

2 Mr. Cleveland would identify the term sheet
3 that has been submitted and admitted in court, as Exhibit 1,
4 as memorializing the agreement of the proposed DIP lenders
5 to provide DIP financing to the debtors. He would further
6 confirm the summary set forth in the motion, in the first
7 five pages of the motion, as being an adequate
8 memorialization of the terms of the DIP financing and concur
9 with the testimony provided by Mr. McCarter with respect to
10 the terms of the DIP financing.

11 He would testify that the negotiations over
12 the DIP financing were extensive, they were spirited, that
13 substantial concessions were made in favor of the debtors,
14 that those negotiations were undertaken at arm's length and,
15 at all time, in good faith.

16 Mr. Cleveland would testify that the all in
17 all that the terms reached with respect to the DIP financing
18 were favorable. He would testify that this is not a rollup,
19 as commonly seen in bankruptcy cases of this size, but
20 instead that the DIP facility represents all new money. And
21 the proceeds of the DIP facility with not be used to pay
22 down prepetition amounts owed to the bank group nor is the
23 prepetition indebtedness being rolled up into the DIP
24 facility.

25 The prepetition debt that is owed to the

1 debt will be frozen as of the petition date. Proceeds from
2 the operations of the debtors' business will be used to
3 provide working capital to the debtors. To the extent that
4 those proceeds are insufficient to meet the debtors budget
5 of operating expenses, the debtor may borrow under the DIP
6 facility to meet those obligations. If the debtor doesn't
7 have the need to borrow under the DIP facility, it will not
8 do so.

9 Mr. Cleveland will testify that the
10 covenants, the closing fees, and interest rate, maturity,
11 the collateral package, all of the material terms of this
12 DIP facility are all reasonable and consistent with
13 comparable financing in the market place for debtors of this
14 size.

15 Your Honor, he will, Mr. Cleveland, if
16 asked to testify would confirm the collateral package being
17 granted to the debtors as that represented in the motion and
18 testified to by Mr. McCarter. And, in particular, he would
19 point out that although the DIP facility will encumber
20 virtually all assets of the debtors, it will not provide for
21 a lien on avoidance actions nor will it provide that the
22 superpriority claim granted to the prepetition lenders as
23 part of their adequate protection package or to the DIP
24 lenders will be paid from the proceeds of avoidance actions.

25 Your Honor, Mr. Cleveland, if called to

1 testify, would point out that the interim order does not
2 purport to make any findings with regard to the amount of
3 the prepetition lenders' obligations or the validity,
4 extent, and priority of their liens and security interest
5 that binds the committee or other parties in interest in
6 this case other than the debtors themselves.

7 Mr. Cleveland would testify that without
8 the proposed DIP financing and the use of cash collateral,
9 the debtors in this case do not have sufficient working
10 capital and financing to carry on the operations of their
11 business. They have a payroll that is due on Thursday for
12 hourly and salary employees and another one due two weeks
13 thereafter. They must be able to provide for -- purchase
14 goods and services. He would testify there their customers
15 and their vendors want to know that a DIP that is adequate
16 and assured is available in this case.

17 Mr. Cleveland would testify that the
18 proposed DIP financing and use of cash collateral is
19 necessary to preserve the assets of the debtors' estates.
20 Without it serious and irreparable harm to the debtors'
21 estates would occur. Mr. Cleveland would testify that the
22 terms of the proposed financing are fair, reasonable, and
23 adequate given the circumstances of the debtors, and that
24 the acceptance of those terms represents a fair and prudent
25 exercise of the debtors' business judgement. He would

1 further testify that the debtors sought and were unable to
2 obtain any federal alternative for secured financing than
3 that proposed in the motion.

4 Finally, Mr. Cleveland if called to
5 testify, would testify that the debtors' believe that the
6 interim order represents a fair and reasonable interim
7 arrangement for the DIP financing, pending a final hearing.

8 Your Honor, we would ask that you accept
9 the proffer of Mr. Cleveland as so stated, and we would
10 offer him for cross-examination to any party.

11 THE COURT: Any objection to receiving the
12 proffer?

13 MR. POHL: No, Your Honor.

14 THE COURT: All right. The Court will so
15 receive that proffer as testimony in the case. Would you
16 like to cross-examine the witness as this time?

17 MR. POHL: Yes, Your Honor.

18 THE COURT: All right. Come around please.
19 Come right over here and raise your right hand.

20 JONATHAN CLEVELAND,
21 called as a witness, at the instance of the Creditors,
22 having been first duly sworn, was examined and testified
23 as follows:

24 THE COURT: Be seated please.

25 CROSS-EXAMINATION

1 BY MR. POHL:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. Were you involved for Houlihan on behalf of
5 the debtor in discussion with Jefferies that Mr. McCarter
6 testified to?

7 A. I was.

8 Q. What was your role?

9 A. Houlihan was engaged by the debtors in late
10 October. Our role was to undertake an assessment of
11 financing alternatives for the company. We did a very broad
12 process in terms of contacting financing parties. We
13 contacted the likes of Goldman Sachs, Merrill Lynch,
14 Morgan Stanley, a number of parties, Deutsche Bank,
15 Bank of America, Credit Suisse in a refinancing of
16 prepetition secured facilities.

17 At that same time members of the board, the
18 equity sponsors, had relationships with Jefferies, and they
19 made an introduction to Jefferies to companies. And
20 Jefferies wanted to conduct an independent process of, you
21 know, the principal role as opposed to being an agent role
22 or an intermediated role to conduct a refinancing or process
23 to refinance the prepetition bank debt.

24 So during this process we were introduced
25 to the Jefferies team sometime in the November time frame to

1 understand very preliminarily some of their thoughts of
2 structures and approaches to undertake that refinancing. We
3 tried to delineate our different efforts so we weren't
4 bumping into each other. And over the course of time, as
5 Mr. McCarter testified, at the same time we experienced the
6 market place, what has been labeled "the credit crunch."

7 Virtually, all the parties that we had
8 spoken to, the various Wall Street firms, had basically
9 removed themselves from underwriting credits, given the
10 problems in Wall Street. The only party left standing was
11 Goldman Sachs who continued to express an interest in
12 pursuing a financing. Ultimately, they came to conclusion
13 that they could not provide a firmly committed financing but
14 provide a best interest process to refinance the bank debt.
15 At the same time, Jefferies came to the company with a
16 proposal to conduct best efforts refinancing as well.

17 So, we were, during this time period, we
18 were actively managing the one process with the Wall Street
19 type firms. Jefferies was independently managing a process,
20 keeping us apprised of who they were contacting. They were
21 contacting hedgefunds and they were pursuing a different
22 type of structure. We were pursuing more of a bank debt
23 structure or something very similar to the structure that's
24 in place today. They wanted to pursue more of a bond like
25 structure.

1 So from, say, mid-November through two
2 weeks ago, when the Jefferies process came to a conclusion,
3 we were brought into the loop to understand their efforts,
4 assist them in their efforts, when they were ultimately
5 selected by the board exclusively to the exclusion of
6 Goldman Sachs, attempt to execute a refinancing and assisted
7 them to get to their credit committee. And, ultimately,
8 their credit committee decided not to pursue it here.

9 Q. Are you familiar with the Debtwire stories
10 that have been issued by Debtwire on Propex over the past
11 two months?

12 A. I am familiar that there have been stories
13 written. I've seen headlines, to be candid. But I did not
14 undertake to really read them.

15 Q. You don't read them in the ordinary course
16 of your business?

17 A. I -- sometimes. I glance at Debtwire. We
18 have subscription to it. I don't attach a lot of validity
19 sometimes to what they publish. So I take it with a grain
20 of salt.

21 Q. Do you know whether anybody on behalf of
22 the debtors released any projection information to Debtwire
23 that wasn't made publicly available?

24 A. Not my knowledge.

25 Q. Do you know whether anybody outside of the

1 debtors' control did that?

2 A. Not to my knowledge.

3 Q. Prior the bankruptcy filing, who, outside
4 of the debtors, would have received projections about the
5 debtors' future business prospects?

6 A. There were various parties that signed
7 confidentiality agreements. One party would be the Cooper
8 folks who were the advisor to the bank group. I believe
9 that our 2008 budget that was prepared and presented to them
10 and to their agent was posted to an interlink site, which is
11 an electronic database, and members of the bank group then
12 would have access too.

13 So, I'm not a hundred percent familiar with
14 all the procedures that they use to ensure confidentiality,
15 but my understanding is that a number of the bank group
16 members would have had access to that projection. Again, we
17 signed confidentiality agreements with more than five
18 financial institutions. The parties I mentioned earlier,
19 they received information packages which included financial
20 projections.

21 And I should also mention that Jefferies,
22 in their process, that Jefferies received financial
23 information. And I believe many of the hedgefund accounts
24 that they were speaking to, with respect to a refinancing,
25 also received financial projections.

1 Q. And what did those projections show for
2 2008 EBDA?

3 A. The projections that were being used for
4 purposes of refinancing, as Mr. McCarter testified to, was
5 the board approved budget for 2008. And that forecast
6 contemplated, very generally, an EBDA level of approximately
7 \$50 million. And it also contemplated that there would be
8 no chapter 11 filing in 2008.

9 It would be contemplated a refinancing of
10 the bank debt to eliminate any defaults under that facility,
11 to restructure the revolving credit facility; restructure
12 the bank facilities, because there's a broader restructuring
13 that needed to take place with respect to those facilities,
14 as their being open access to that working capital facility;
15 and the company would be able to fund its business and
16 pursue its operations without the interruption and
17 disruption caused by a chapter 11 process.

18 Q. Do you know whether any other projections
19 were provided to the bank lender group?

20 A. In the course of preparing for a
21 chapter 11, we undertook an assessment of the bankruptcy
22 consequences to the business, and have prepared, what we
23 call, "DIP Budget," which is a monthly forecast of 2008
24 reflecting, in our view, making estimates as to what the
25 impact of this business will be as a result of a chapter 11

1 filing. And so in connection with negotiating our DIP
2 financing, structuring our DIP financing, understanding what
3 our liquidity needs would be under a chapter 11 context as
4 opposed to an out-of-court refinancing context, we prepared,
5 with the assistance of the company, a financial forecast for
6 2008 and parts of 2009 reflecting that type of context.

7 Q. What did that show for 2008 EBDA?

8 A. Very generally, \$30 million EBDA.

9 Q. And is that EBDA the financial covenants
10 that's been set in the creditor agreement?

11 A. That is correct.

12 Q. Do you know whether that budget was linked
13 to Debtwire?

14 A. I have no knowledge whether it was.

15 Q. Do you remember reading the story and
16 Debtwire describing the company for \$430 million EBDA run
17 rate?

18 A. I do not recall reading a story like that.

19 Q. All right, sir. Going back to the
20 prepetition default, default of 2007. Do you remember that?

21 A. Yes, sir.

22 Q. Were you involved in discussions with the
23 prepetition lenders regarding the resolution or attempted
24 resolution of that default?

25 A. Well, our initial approach was to assist

1 the company in exploring the potential refinancing of the
2 bank debt as well as working with the existing bank group on
3 trying to seek an amendment of the bank facilities and
4 continue our utilization of those bank facilities. So we
5 worked on parallel paths as we contacted the market place to
6 develop financing alternatives. We wanted a contingency
7 plan if we couldn't arrange an amendment with the bank
8 group.

9 We developed a financial forecast. We made
10 a presentation to the bank agent and their advisors as to
11 what we thought an amendment should entail. There were a
12 number of features to the bank, the bank facilities as they
13 existed, at that time, which we thought weren't consistent
14 with how the business was going to operate, given the
15 downturn that Mr. McCarter testified to in terms of the
16 housing market and used markets, given some of the
17 difficulties in the uptake of certain of its products, those
18 being delayed, as well as a major integration of the Wrinkle
19 facility.

20 Those were the three main items that were
21 affecting the financial performance. And we thought that
22 the bank facility needed to be restructured in a way to
23 reflect that and the company would need more liquidity than
24 what that bank group or that bank facility provided. That
25 bank facility had amortization requirements, which we didn't

1 think were appropriate, scheduled amortization,
2 approximately \$11.8 million. And also the comfort levels
3 were no longer appropriate, given a revised view of how the
4 company was going to perform.

5 So we provided those thoughts to the bank
6 group in terms of what we would be seeking in terms of an
7 amendment, how to restructure this facility. And we would
8 have welcomed a conversation with the bank group to
9 restructure that facility. At the same time we couldn't
10 rely on it, and so we were out in the market place trying to
11 develop an alternative. If that didn't happen, we were
12 trying to avoid a chapter 11 filing, do we need an
13 alternative, and we were seeking one. Unfortunately, given
14 the combination of a difficult economic environment and
15 difficult performance for the company and, particularly, the
16 credit market environment, no refinancing alternative was
17 able to be developed.

18 Q. Were there any discussion with the
19 prepetition lenders as to a fee to be paid for a waiver?

20 A. There was never discussion of the fees.

21 No.

22 Q. The prepetition lending group was never
23 inclined to provide a waiver; is that fair to say?

24 A. We never had substant discussion on an
25 amendment.

1 Q. All right. Your proffer included, not to
2 put words in your mouth, but to my memory, a statement to
3 the affect that, in your view, the terms of this DIP were
4 reasonable considering the market term; is fair to say?

5 A. Yes.

6 Q. Okay. Do you consider yourself an expert
7 in debtor-in-possession financing?

8 A. Yes.

9 Q. Yes. When is the last time you obtained a
10 DIP for a company besides Propex?

11 A. Well, I've obtained a number of DIPs. I'm
12 also qualified as an expert by one of your partners,
13 Mr. Wadsworth.

14 Q. Can't use that against me.

15 A. Stage Door, Metal Management, Worth Steel
16 Purina Mills. So 2003 time frame is probably the most
17 recent where I've exclusively -- on behalf of the debtor,
18 most recently, we have worked on representing Movie Gallery.
19 Goldman Sachs is the agent, the secured lenders there. We
20 provided the DIP to that company. And so we were advising
21 that lending group in structuring the DIP in providing the
22 DIP.

23 Q. And when you reviewed -- well, I should ask
24 you this. In connection with doing this DIP, did you review
25 other recent DIPs for those terms?

1 A. Yes. Very much.

2 Q. And was your focus on the financial terms
3 of those DIPs?

4 A. We focused on the financial terms of those
5 DIPs, yes.

6 Q. Did you focus on the legal terms of those
7 DIPs?

8 A. We had less of a focus on the legal terms.
9 It was principally a focus on the financial terms.

10 Q. In connection with this DIP, did you have
11 discussion with the agent regarding the requirement that
12 this DIP and cash collateral order include a payment of
13 interest on the prepetition debt?

14 A. Yes.

15 Q. Okay. And was that a demand from day one
16 from the prepetition lenders?

17 A. That was a requirement that they had toward
18 the DIP financing. Yes.

19 Q. It was a requirement of the prepetition
20 lenders to grant the use of cash collateral or was required
21 of the postpetition lenders to provide the DIP?

22 A. They are one in the same, so. But in terms
23 of the distinction, the prepetition lenders were requiring
24 adequate protection, the fees, and interest payment on their
25 prepetition. So, at the same time, the postpetition agent

1 and underwriters, who are obviously members of the
2 prepetition facility in terms of providing the DIP, make it
3 clear that the consensual adequate protection was part of
4 the package of getting the DIP financing.

5 Q. When you say one in the same, are you, in
6 your mind, treating the prepetition agent and the
7 postpetition agent as basically the same?

8 A. I'm not. There is an important
9 distinction. We understand that. But, factually, they are
10 from the same institutions.

11 Q. Representing, in affect, the same lenders.

12 A. Same lenders.

13 Q. Okay. Did the company push back on that
14 request?

15 A. We made it clear that that was a
16 significant amount of money. And we -- but it was also
17 clear that that was a critical piece of the package they
18 were going to provide us. It was also clear to us by
19 entering into chapter 11, we know I'm going to be paying
20 \$15 million in bond interest and don't want to be paying
21 what we had previously contemplated approximately
22 \$12 million of amortization.

23 And our forecast had previously
24 contemplated, obviously, paying that level of interest in a
25 refinancing scenario that, you know, there was a give and

1 take that if we sized our facility appropriately we could
2 afford to pay the interest, and if we got the appropriate
3 facility to meet our liquidity needs that that was something
4 that we can and should pay.

5 Q. How much is that number over a one-year
6 period, interest to be paid on the prepetition facility?

7 A. I believe it's approximately \$22 million.

8 Q. And requested a DIP at 60 million?

9 A. That's right.

10 Q. And what's your projection over the
11 one-year period of how much of that \$60 million DIP you're
12 actually utilizing?

13 A. Our projection shows a fairly immediate
14 ramp up in utilization as we restore our working capital.
15 That's the testimony that's shown today. Over the last
16 eight weeks, in particular, there's been an exhaustion of
17 liquidity, which has been, principally, working capital
18 revenue.

19 And then by a need to build your inventory
20 levels, given the seasonal ramp up, the strong part of the
21 selling season that starts in March and lasts through the
22 summer, as Mr. McCarter testified. So we're building
23 inventory. At the same time we're hit by the key resin
24 suppliers eliminating the credit terms. So we've had an
25 exhaustion of liquidity principally driven by working

1 capital issues.

2 So over the next 13 weeks, in particular,
3 we show our most significant usage of the DIP, during the
4 course of the case, as we continue to build inventory. And
5 our anticipation is that trade credit is not immediately
6 restored by virtue of the chapter 11 filing. There's a very
7 organized communications plan that the management team has,
8 with its critical suppliers, to explain the chapter 11
9 process, explain the protections that they now have in a
10 chapter 11 environment, explain the liquidity that we have
11 under the DIP financing facility. And our game plan is to
12 restore that trade credit during the course of the next six
13 months. But it's not going to happen immediately.

14 As a result, our forecast shows utilization
15 of that DIP facility to the tune of approximately
16 \$40 million over the next three months. As I've said, that
17 is a principal working capital driven. You know, in that
18 period of time, you can't pay enough in interest and fees,
19 etc. So those are -- that is driven by the working capital
20 needs of this company.

21 The inventory build, with not getting the
22 amount of trade credit we need, from that peak period
23 utilization, which is, I believe, in the March/April time
24 frame, we show that the utilization declines towards the end
25 of the year to about \$20 million.

1 Q. And is that \$20 million for all end,
2 including payment of the interest to the prepetition
3 lenders?

4 A. Payment of interest to the prepetition
5 lenders, payment of interest on the DIP facility and their
6 professional fees, the pluses and minuses of the working
7 capital, as well as the pluses of EBDA generation, and the
8 finance of capital expenditure. So all the elements of the
9 forecast that come together show that we utilize the
10 40 million a little bit more, and then trails to about a
11 \$20 million level by the end of the year.

12 Q. So if your obligations did not include
13 payment of interest on prepetition facility, your ramp up
14 would cap out something less than 40 million because you
15 wouldn't have paid any interest for that period of time to
16 prepetition?

17 A. Again, remember that's the shortend period.

18 Q. It's not the full 20, it's 5 or 7,
19 something like that. And then at the end of the projection
20 period, you would have zero outstanding on the DIP; is that
21 what your testimony is?

22 A. It would not be zero, I don't think. I
23 mean, because we're dealing with a little bit less than a
24 year. But it would be significantly less. It would be to
25 the tune of approximately \$22 million less. And our

1 balances were somewhere in the 23 or \$25 million range, I
2 think, at the end of the year. I don't know if it would be
3 mathematically zero.

4 Q. I'm just trying to understand. You're just
5 saying that at the end of the projection period, which is
6 about a year, it would be around 20, \$23 million?

7 A. That's right.

8 Q. And you testified that a one-year period of
9 interest on prepetition debt is 20. So if you're slightly
10 less than that, what, 10 months, 11 months? I mean, from
11 what you're saying it sounds like you would be in the single
12 digits?

13 A. Yes, that's right.

14 Q. Okay. Were you involved in the
15 negotiations over the inclusion of the unencumbered foreign
16 stock into the adequate protection package for prepetition
17 lenders?

18 A. I was part of that process, yes. I'm
19 familiar with those negotiations.

20 Q. And that request came from whom?

21 A. From the lending group.

22 Q. Wearing whatever their hat is, right? It's
23 all the same to you, right?

24 A. Well --

25 MS. BORDERS: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. POHL:

3 Q. Do you know why they asked for that?

4 A. Because that's part of the collateral
5 package they don't have currently.

6 Q. Is that a valuable part of the business?

7 A. I'm not in a position -- we have not done a
8 financial analysis where I can be in a position to tell you
9 that. I could quantify what the value is. I know, dealing
10 from my experience, dealing with lending syndicates, that is
11 important for syndicates to complete a collateral package
12 and eliminate any absences that are available. So it is a
13 customary and not unexpected provision or reaction by a
14 lending group to shore up their collateral package and get
15 additional unencumbered collateral.

16 Q. So is the prepetition lenders going to
17 shore up their collateral package?

18 A. My understanding is that there's an
19 incomplete piece of their collateral package and they would
20 like to have it be complete.

21 Q. So, postpetition, they want to cure what
22 they failed to get prepetition?

23 MS. BORDERS: Objection, Your Honor. He's
24 not asking a question. He's just, you know, arguing with
25 the witness.

1 THE COURT: Sustained.

2 BY MR. POHL:

3 Q. You have no sense of what the value is of
4 that collateral?

5 A. We have not valued that collateral.

6 Q. Okay. You testified earlier that this was
7 not a rollup; is that right?

8 A. That is correct, as that term is
9 conventionally used.

10 Q. But don't you understand, in the case, that
11 by paying prepetition interest, by paying -- on a
12 postpetition basis, by paying interest on prepetition debt
13 that those lenders are getting a rollup of that obligation?
14 Do you understand that?

15 A. I don't understand that to be the case. I
16 understand that to be a fairly customary provision of
17 adequate protection.

18 Q. Okay. So let's try to splice it out, sir.
19 As adequate protection, for the use of cash collateral, the
20 prepetition lenders are getting, what, interest paid on
21 prepetition debt; is that fair?

22 A. Right.

23 Q. Okay. They're getting a replacement lien
24 on all assets to the extent of the diminution of value of
25 the collateral and to extent of the priming lien given to

1 the DIP lender; right?

2 A. That's my understanding.

3 Q. Okay. So at the end of this period of
4 time, when the DIP balance is \$23 million, that's your
5 projection?

6 A. That is correct.

7 Q. Okay. The prepetition lenders will have a
8 lien equal to at least \$23 million on the foreign stock,
9 right?

10 A. That would be correct.

11 Q. Okay. And that \$23 million would be single
12 digits if it weren't for the fact the companies are paying
13 interest on a postpetition basis to prepetition lenders,
14 right?

15 A. That's the way -- you're right. That is
16 correct with the way the financial analysis would work.

17 Q. Okay. You testified earlier that the
18 \$30 million EBDA run rate was used as the basis to determine
19 the financial covenants, right?

20 A. Correct.

21 Q. Were you involved in the determination of
22 the financial covenants?

23 A. Yes.

24 Q. Are you familiar with them?

25 A. Yes.

1 Q. Okay. Would it help you if you had a copy
2 of the DIP agreement to look at them or are you facile
3 enough so I can ask you questions?

4 A. In broad numbers, I'm pretty familiar with
5 them.

6 Q. If you want a document, just let me know.

7 A. Okay. Thank you.

8 MR. POHL: Your Honor, this is on page 93
9 of the DIP agreement. This happens to be section 7.6(b) as
10 in boy.

11 BY MR. POHL:

12 Q. Roman numeral I has the EBDA covenant
13 calender year --

14 THE COURT: What tab is that?

15 MR. KAIM: Tab 3, Your Honor.

16 THE COURT: Tab 3.

17 MR. RIPLEY: Judge, may I approach the
18 witness with a set of the exhibits? I think we took them
19 from him.

20 THE COURT: Yes.

21 BY MR. POHL:

22 Q. Tell me when you're there, sir. Do you
23 have page 93?

24 A. I'm ready. Yes.

25 Q. Okay. You're on page 93?

1 A. Yes.

2 Q. Okay. So in the middle of the page, there
3 is a December 31 line item, and the EBDA covenant is
4 slightly over 27 million. Do you see that?

5 A. (Perusing document.) Yes.

6 Q. So that means the company has to have at
7 least EBDA of 27 million and change in order to be compliant
8 with the covenant, right?

9 A. Yes.

10 Q. And that's the EBDA for all of Propex,
11 world-wide consolidated, right?

12 A. That's correct.

13 Q. Then there's a separate covenant for
14 domestic Propex, right?

15 A. Yes.

16 Q. Okay. And if we look at the bottom and
17 turn the page, on page 94, for that same period of time,
18 December 2008, that minimum covenant on a domestic basis is
19 11.5 million, right?

20 A. Yes.

21 Q. Okay. So where does the difference come
22 from between those two numbers? Is that from foreign
23 operations?

24 A. The difference -- I'll try to explain this.
25 Consolidated EBDA would be a function of foreign plus

1 domestic. So the difference between our budget and the
2 consolidated EBDA would be -- I think the missing piece
3 would be foreign. These were set off of different cushion
4 levels. These are not conforming to our budget levels.
5 These are, you know, obviously below our budget giving us
6 some cushion in order to give us some comfort that we will
7 comply.

8 As we negotiated the domestic EBDA
9 covenants, we asked for greater cushion levels. So they're
10 not necessarily consistent to look at. The difference
11 between 27.378 and eleven five means that we're budgeting
12 approximately \$16 million in our foreign businesses.

13 Q. Well, can you tell me what you are
14 budgeting?

15 A. Offhand, I don't -- I would have to go and
16 look at our budget.

17 Q. Well, did you get 50 percent flex? I'm
18 just trying to get a sense. In other words, 27.4 million is
19 consolidated, and 11.5 million is the EBDA covenant for
20 domestic. So how much margin did you get?

21 A. My recollection is that we got at least
22 double or more. To get to your question on another level --
23 I mean, I could huddle with Mr. McCarter and look at our
24 budget, if you want a precise answer, but my -- off the top
25 of my head, I believe we're budgeting somewhere between 12

1 and \$14 million of foreign EBDA.

2 Q. Okay. So out of the 27.4, 12 to 14 or
3 slightly less to approximately half of the companies EBDA is
4 foreign?

5 A. Out of the 30.

6 Q. Okay. I understand. Thank you. Just a
7 couple more questions, sir. You're aware that the DIP
8 includes 2 percent commitment fee, right?

9 A. Yes.

10 Q. So that's a \$1.2 million fee against a
11 \$60 million commitment, right?

12 A. Correct.

13 Q. And it has to be paid at closing. That is
14 as soon as this Court signs the interim order?

15 A. That's correct.

16 Q. And the time this Court signs the interim
17 order, the commitment is \$20 million, right?

18 A. We have the ability to use \$20 million on
19 an interim basis until the final order.

20 Q. And you won't be able to access the other
21 40 million until there's a final order satisfactory to the
22 bank, right?

23 A. That's my understanding.

24 Q. Okay. Yet, you're still paying the 1.2
25 nonrefundable now; is that right?

1 A. That is correct.

2 Q. Did you ask to pay only part of it now?

3 A. We had a number of very spirited
4 discussions on economics on all manner of their fees. I
5 don't recall specifically if we had that conversation.
6 We've had very -- there were numerous discussions on all
7 elements of their fees. And I, myself, don't recall making
8 that request to them. It may have been made by some other
9 partner.

10 Q. There's also a 2 percent prepayment fee,
11 right?

12 A. Yes.

13 Q. And that's intended to be implemented
14 immediately upon this Court approving the interim order?

15 A. I just want to be clear with your question.
16 The provision, the 2 percent, if we -- if they are, in fact,
17 early terminated, would exist. Yes.

18 Q. Yes.

19 A. But we're not paying an additional fee
20 unless we refinance them out early.

21 Q. I understand. Let me put it another way.
22 The creditors committee comes in and finds a better deal,
23 and before the final order does away with this deal, we've
24 got to pay that 2 percent fee?

25 A. That would be my understanding.

1 MR. POHL: Your Honor, I have no further
2 questions.

3 Thank you very much, sir.

4 THE COURT: Anymore cross-examination?

5 MS. BORDERS: Your Honor, I do have just a
6 couple of additional questions.

7 CROSS-EXAMINATION

8 BY MS. BORDERS:

9 Q. Mr. Cleveland, I want to go back to the
10 hypothetical that was raised by Counsel with respect to the
11 granting of the liens of the foreign subsidiaries to
12 prepetition lenders. You were asked a number of questions
13 about the interest, the 22 million or 20 million in interest
14 that's to be paid to prepetition lenders. Isn't it the case
15 that the prepetition lenders are only entitled to that
16 interest to the extent that they are fully secured today?

17 A. That is correct. If it's later found that
18 they're not fully secured, my understanding is that that's
19 credited against their principle.

20 Q. And, in fact, that's what they're entitled
21 to under the law, isn't that correct, in the
22 Bankruptcy Code?

23 A. That's what I've been educated.

24 MR. POHL: Objection, Your Honor. I let
25 the proffer go with all these --

1 THE COURT: Sustained.

2 BY MS. BORDERS:

3 Q. Let me ask you. So if it turns out that at
4 the end of the day there is \$23 million owed and the
5 prepetition lenders were fully secured, then isn't it the
6 case that they're in the same position, they would just have
7 a lien for \$23 million?

8 A. That's correct.

9 MS. BORDERS: Okay. Your Honor, we don't
10 have any additional questions with respect to Mr. Cleveland,
11 Your Honor.

12 MR. BROWN: May I? This may not be the
13 right witness, but I would like to find out.

14 THE COURT: All right. Come around. You
15 can ask. So, Mr. Brown, you represent?

16 MR. BROWN: The Hamilton County Trustee,
17 Your Honor.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. BROWN:

21 Q. Mr. Cleveland, I'm kind of embarrassed to
22 come and talk about a debt only \$90,000 but it's important
23 to our client. I represent the county trustee, the tax
24 collector here, who has a lien, personally, on a tangible
25 asset, like real estate and business personal property

1 located in the county. It is a first lien and superior to
2 other liens, and I'm not sure what your proposal is in terms
3 of treatment of that lien. Do you know?

4 A. I think I would need more information about
5 the nature of your claim before I could make an answer.

6 Q. All right, sir. Maybe I'll wait and ask
7 that in a little bit.

8 MR. BROWN: Thank you.

9 MS. BORDERS: Luckily, I know answer to the
10 question. So, in the interest of time, let me just respond
11 to that. The debtors would be granting to the DIP lenders,
12 the prepetition lenders, a junior lien behind any perfected
13 prepetition lien. And the lien for current year taxes and,
14 if the taxes are current, would still be, under the law, and
15 in this case a first priority lien on the property that
16 secures those taxes.

17 MR. BROWN: That's a good answer,
18 Your Honor. And I'm afraid there's also a prepetition tax
19 for the year 2008, as I understand the law. So we've really
20 got two tax years, but we have a lien that will secure both
21 of those.

22 MS. BORDERS: It's according to how the
23 different ones work. But I believe that the way it works in
24 Tennessee is that the taxes are payable in March for 2007.
25 And, then, so that would still be first because they're not

1 due yet. And then the taxes for 2008, which would become
2 due in 2009, would similarly be a priority claim above all
3 other interest holdings.

4 MR. BROWN: I would like to be superior in
5 every county.

6 THE COURT: All right. Anything further of
7 this witness? If not you may step down.

8 (Witness excused.)

9 MS. BORDERS: Your Honor, with that, that
10 will close our presentation of evidence on the DIP motion.
11 We are prepared to address and respond to the objections
12 filed by the note holders in the case. And they have
13 provided on -- beginning on page 4 and going through page 6
14 of their objection, a number of very specific objections to
15 the proposed relief that's sought. And I think we can
16 really put these in three different categories.

17 There's are a group of issues that they
18 raise that we can concede. There's a group of provisions
19 that they raise they I think we can clarify. And then
20 there's a group that's, frankly, just formed such an
21 intricate part of the financing that is proposed that we are
22 not able to make any concession on. So if I could just go
23 through those, Your Honor.

24 The first one is basically an objection to
25 any good faith finding. Your Honor, the good faith finding

1 is supported by the evidence in this case, plus Mr. McCarter
2 and Mr. Cleveland testified that the DIP facility was
3 proposed, it was negotiated at arm's length and the
4 negotiations were spirited, they were tough. They were
5 always undertaken in good faith. We believe that we have
6 presented an adequate evidentiary basis for a good finding,
7 a good faith finding.

8 And, moreover, Your Honor, the good faith
9 finding is intricate to the willingness of this DIP lender,
10 and, frankly, any other DIP lender in any other case for the
11 extension of credit to a debtor. We believe that without
12 that that the DIP lending group will not be willing to make
13 the loan. And, frankly, no other DIP lender would be
14 willing to make a loan similarly.

15 Your Honor, we know that there's still an
16 opportunity. This is an interim hearing. There's still an
17 opportunity for the committee, when it is formed, or for any
18 other party in interest to take discovery, to, you know,
19 ascertain whether, in fact, there's evidence beyond that
20 that was presented today and to come back to the Court to
21 challenge at a later time. But for purposes of the interim
22 period, we do believe that it's a necessary element of the
23 proposal, and we also believe that it's fully supported by
24 the evidence.

25 Your Honor, the second bullet point on page

1 four, is basically an objection to the fact that the
2 facility is a \$60 million facility. And it's true,
3 Your Honor, that we don't need \$60 million during the
4 interim period. In fact, the amount these debtors can
5 borrow during the interim period, prior to coming back for a
6 final order, is limited to \$20 million.

7 The evidence included the four week cash
8 flow budget. It showed the need to borrow, even in the next
9 three weeks. So if we got back very, very quickly to a
10 final hearing, it shows the need to borrow \$31.5 -- sorry,
11 to spend \$31.5 million on what are really bare-bone
12 expenses. And you're talking payroll, utilities, taxes, the
13 buying of product. There is no fluff.

14 There is the \$1.2 million closing fee that
15 we will have to pay to the lenders. But, beyond that, you
16 know, that's all that's in that budget. All of those
17 expenses have to be paid. The evidence before the Court
18 today is that all of them are necessary and that if you
19 don't pay those expenses that the estates and these debtors
20 will suffer irreparable harm. But we do know that that is
21 not 60 million for the interim period, it's only 20 million.

22 The next bullet point, Your Honor, is an
23 objection basically that goes to a process by which both the
24 agents for the DIP lender and the agent for the prepetition
25 lenders are paid their professional fees and expenses. I

1 think this goes to the category of either clarifying it or
2 conceding. But in footnote 2 of the order of the offending
3 section, it's very clearly provided that there will be
4 notice of the fees of both of the groups of lenders of their
5 professional fees. There will be an opportunity for parties
6 to object if they believe the fees are unreasonable, and
7 that if there is an objection or dispute that the issue will
8 come back to this Court for a resolution.

9 So I do believe that there is an adequate
10 mechanism for all parties in interest, the debtors included,
11 to be able to look at and review and pass all the fees that
12 are being provided to both the prepetition lenders and the
13 DIP lenders.

14 And further, with respect to the issue on
15 the prepetition lenders, their ability to keep those fees at
16 the end of day is dependant on them being fully secured in
17 this case. So if it turns out just like with the case of
18 interest, postpetition interest, if it turns out that
19 they're not fully secured, then the application of the money
20 that they get both for the payment of professional fees and
21 for postpetition interest is reserved and can be reapplied
22 consistent with the Code.

23 Going to page 5. There is an objection to
24 basically a provision in the order that makes both credit
25 agreement and the other loan documents. It's a finding in

1 the fact that those are valid and binding obligations of the
2 debtor. And, Your Honor, again, this is one of those
3 provisions that's just intricate to the willingness of any
4 lender to extend financing to a company, and that is knowing
5 the obligation of the company to perform under the reached
6 agreement, the obligation of the company to repay the money
7 is a valid and binding obligation of that entity. Without
8 it, I can't imagine that any lender would be willing to make
9 the loan.

10 The next bullet point, Your Honor, appears
11 to be a typographical error for which we apologize, and, of
12 course, we'll make that change.

13 The one after that is a provision that
14 deals with the termination of the automatic stay. The order
15 currently provides that if there is an event of default
16 under the credit facility, that the DIP lenders would have
17 perspective relief from the automatic stay, but they would
18 not be able to exercise that perspective relief for five
19 business days. And the intent of providing the five
20 business days is to allow debtors or, frankly, any other
21 party in interest, the committee, to seek a hearing from
22 this Court and to put them on an evidentiary basis or make
23 arguments as to why the stay relief ought not to be granted
24 or not reoppose notwithstanding the provisions in this
25 order.

1 This provision is very typical. I can't
2 imagine that we would have a situation where a hearing would
3 not be held. But that is the purpose of having the five
4 business days is to allow parties to effectuate an
5 opportunity to be heard through the Court.

6 The next bullet point, Your Honor, has
7 to deal --

8 THE COURT: There's such a hearing
9 requirement with at least five days notice should be added.
10 That is what this says. And you are saying that the order
11 already provides for a five day notice period?

12 MS. BORDERS: Well, the order provides,
13 just very technically, the order says DIP lenders. If the
14 debtor defaults, you're entitled -- this is an order that
15 grants you relief from the automatic stay. But you can't
16 exercise the relief that's granted to you today in this
17 order unless five business days have passed after the event
18 of default. So what that does is it puts the burden back on
19 the debtor or the committee or other parties in interest,
20 after an event of default, to come to the Court and say,
21 one, we need to have a hearing; and, two, to be able to
22 provide a basis for the Court, if appropriate, to reimpose
23 the automatic stay. So it's just a shifting in the process.
24 It's not unusual in financings of this type for --

25 THE COURT: I know the debtor would know

1 they are in default. How would the committee know that such
2 that it could come in and file a motion to block that stay
3 relief from going into effect on five days notice, unless
4 there is some provision for the debtor to notify other
5 interested parties that there has been a default?

6 MS. BORDERS: Your Honor, we can bill that
7 a notice provision requiring the DIP lenders to notify -- in
8 fact, they could ECF file it, just so the world knows. It
9 doesn't have to be just for the debtor or just for the
10 committee. But we'll add -- we can add a provision that
11 says, you know, DIP lender, in the event of default, you can
12 exercise remedies on, you got to make an ECF filing. And
13 that is instantaneous and it gives everybody an opportunity
14 to come in within that period and make whatever arguments
15 they want to make.

16 MR. POHL: Your Honor, I could address this
17 when I get up. The only question is whether you would hear
18 it back and forth immediately or wait and address all of
19 those, because I can give you just a couple of comments on
20 this or if I should wait?

21 THE COURT: Why don't we do that?

22 MS. BORDERS: That's fine.

23 THE COURT: That would be beneficial to do
24 it that way.

25 I have been told we need to take a very

1 short break, about five minutes and then we will resume.

2 (Whereupon, a brief recess was held.)

3 THE COURT: Be seated please. All right.

4 MR. POHL: Your Honor, I think we were at
5 page 5 of Nomura's objection, the bullet point governing
6 page 13 and 14, section 9(b).

7 THE COURT: Yes.

8 MR. POHL: And there was a discussion about
9 shifting the burden about this order. Ordinary is always
10 negotiated, so I'm not sure it was ordinary. But I will
11 tell you, Your Honor, that if you read the order on page
12 14 -- it starts on 13 and goes to 14 -- the only issue for
13 hearing, when the automatic stay is in question, if, in
14 fact, the debtor or the committee can get that hearing in
15 five days, whether an event of default has happened, not
16 what was suggested to you, whether or not there is merit for
17 relief from stay.

18 This Court will order that they get the
19 automatic relief from stay upon five days of default
20 happening, have to work through the notice. But the only
21 thing this Court gets to decide is whether there's a
22 default. So if we're six months out -- and you think back
23 to Mr. Cleveland's testimony, and six months out, you know,
24 we're well after the peak of the DIP. And the DIP, you
25 know, has come down to whatever it is, let's call it 25, 30

1 million, which is a fairly modest piece of debt for a
2 company this size, that is clearly secured, first priority,
3 and will be paid.

4 If there is a trip on a financial covenant,
5 say a EBDA covenant, these folks get relief from stay. And
6 when they get relief from stay, it's not as if you can cut
7 their head in half and say you'll foreclose on the DIP
8 lenders collateral, and you'll foreclose -- and nobody can
9 foreclose on the prepetition collateral. They're going to
10 go after the collateral, and that's going to harm this
11 business. Period. It could be \$30 million of debt and they
12 get to shut it down for their own benefit, and, ultimately
13 arguably, for the prepetition debt. So it ought to be a
14 provision that this Court has a say on.

15 THE COURT: How about that?

16 MS. BORDERS: Well, Your Honor, we would
17 have liked for it to have been more level. We would have
18 liked to talk about one of five at the hearing. We would
19 have liked to have raise a lot of issues. And we negotiated
20 for that, but we were unsuccessful in getting it. And, you
21 know, we negotiated in good faith for the very best deal we
22 could get for these estates, and we couldn't get any further
23 on this issue that we negotiated specifically on. You know,
24 I wish that it were more accommodating to other parties, but
25 this is the best deal that we could negotiate for.

1 THE COURT: Well, I am troubled by that
2 provision just for the reasons stated. We will come back to
3 it. You can proceed.

4 MS. BORDERS: Your Honor, the next
5 provision is at the end of the paragraph on page 14, and
6 it's basically a waiver of the concept of marshalling,
7 which, again, is a typical and customary provision in the
8 DIP lender entity. If invoked they would be in a position
9 where the debtors have defaulted on their obligation to
10 them. And they reasonably require of the debtors that they
11 be the ones to choose what collateral they go after and what
12 order and that they not be forced into marshalling rights.

13 THE COURT: All right. Response to that?

14 MR. POHL: Yes. What this really comes
15 back to, Your Honor, is the whole issue I've had with at
16 least one of the witnesses and some argument on the securing
17 of the prepetition lenders, adequate protection with the
18 foreign collateral. And while you heard argument from the
19 debtor, I believe, Your Honor, if you sat back and thought
20 about it, you would realize that it is a rollup of the
21 portion of their obligations that are interest.

22 And let's just take an example. Right now
23 nobody has an interest in that collateral. Nobody. And
24 it's available to bond holders and the banks, and pursuant
25 to their debt as unsecured creditors and the entities that

1 hold that stock. The banks get the first two-thirds, if
2 they're perfected. I don't debate that. But the other
3 third is as pursuant. And if Mr. Cleveland's testimony at
4 the end of the day hold out that the foreign assets are, you
5 know, 40, 45 percent EBDA, that's a pretty significant
6 number for this case.

7 And if there's \$30 million out in the DIP,
8 okay, and it's now time to collect on your debt, the DIP
9 says, okay, you know, we'll take those receivables, were out
10 of here with them, we'll see you later, now comes time for
11 the prepetition guys. Okay. They don't have any
12 marshalling either. And they say, okay, we're going to take
13 that nice little gift you gave us of the foreign stock
14 because we managed to rollup our interest, and we're going
15 to take that. Now that package that was with that
16 collateral, as today is available to all creditors, is gone.

17 That's the point of this, and that's the
18 point of making sure that whatever the law is, the law is.
19 And this Court doesn't have to bless extra marshalling
20 arguments with these lenders.

21 MS. BORDERS: Your Honor, let me just
22 clarify one thing. This proposal is in no shape, form, or
23 manner a rollup of any prepetition indebtedness. The
24 characterization that the graining of adequate protection to
25 a group of lenders, who is first on almost all material

1 assets of the estate, and they're willing to step aside in
2 their first position and be primed to the extent of
3 \$60 million, that granting them a lien in one-third of
4 equity of the foreign assets is somehow a gift is just a
5 blatant mischaracterization of the evidence in this case and
6 the pleadings that have been filed by the debtors and the
7 proposal that has been made. It's very clear they only get
8 it to the extent that it's a diminution as a result of the
9 priming. To the extent they lost something, it's not a
10 gift.

11 I would suggest that what is a gift is the
12 fact that the prepetition lenders are not taking any claim
13 or interest in the avoidance actions, which is the only
14 other asset of the estate which has any material value. And
15 their stepping aside and saying, okay, avoidance actions,
16 we're not taking. Even though they could take it under the
17 Code. It may not be common practice, but there's nothing in
18 the Bankruptcy Code or in the Bankruptcy Rules that would
19 suggest that that is inappropriate in any way. But they're
20 not taking the lien on the avoidance actions. They're
21 stepping back to tune of \$60 million. And the only deal is
22 if they get harmed by it, they get to look at the equity of
23 the foreign assets.

24 So, I mean, I'm not sure how that really
25 plays into the marshalling concept, but I want to make sure

1 that the record on that particular point is clear. The
2 marshalling is for the benefit of the DIP lenders and it's
3 what they required. It's reasonable.

4 If you loan money on a postpetition basis
5 and you come into court and you loan money to the debtor and
6 the debtor defaults and doesn't repay back, then it ought to
7 be their choice how they exercise their remedies, what
8 assets they get satisfied from. If they ought not to be put
9 in a position of saying, okay, you know what, DIP lenders
10 appreciate getting their \$60 million, glad you came in and
11 helped the company make it along, but now there's an event
12 of default.

13 So rather than looking to cash, which is
14 easy, or accounts receivable and inventory, which is easier,
15 you need to go to Hungary, Brazil, and Mexico, and Germany,
16 and go after those assets first. And if it turns out that
17 didn't work for you, well then come back. That's an
18 unreasonable request to make of the DIP lender, while we
19 think that the provision in the order is reasonable.

20 THE COURT: All right.

21 MS. BORDERS: Your Honor, the next bullet
22 point has to do with the 506 waiver. And I want to be
23 clear. There is no waiver of 506(c) in the interim order,
24 and it was not in tune of the parties to bootstrap the
25 interim order into -- the language in the interim order into

1 a required waiver for the final hearing.

2 The situation is this: The provision about
3 the 506(c) waiver being contingent upon entry of a final
4 order was just to give all parties notice that while there
5 will be no 506(c) waiver during the interim period, that the
6 DIP lenders are looking for it on the final order.

7 If we come back to the final hearing and
8 the DIP lenders insist on the 506(c) waiver and, for
9 whatever reason, the Court determines at the final hearing,
10 which is where that issue will be addressed, that the 506
11 waiver is inappropriate or there's no basis for it, then the
12 DIP lenders will have to make a choice on whether they're
13 going to continue to extend financing to the companies or
14 not. But we're not asking for a 506(c) waiver during the
15 interim period.

16 THE COURT: All right. With that
17 clarification, does that satisfy your objection on that
18 point?

19 MR. POHL: Yes. With that on the record,
20 it's fine, Judge.

21 THE COURT: Very well.

22 MR. POHL: Since the order says, if you
23 look at the language on page 14, it's says: Subsequent to
24 the entry of the final order. This will be the case.

25 What it ought to say is: Subject to entry

1 of a final order governing 506(c). Because if you read it,
2 it says it's going to happen. It's just going to happen,
3 you know, when the order is entered. What I'm trying to say
4 is it's hope. What I'm trying to say is, with that
5 clarification, if this Court remembers that when we show up,
6 you know, at the next hearing, which I know you will, I'm
7 fine.

8 THE COURT: All right.

9 MS. BORDERS: Your Honor, the next bullet
10 point is with paragraph 12, which contains an
11 acknowledgement by the debtors that a cash constitutes cash
12 collateral. The noteholders appear to want that stricken on
13 the basis that that ought to be preserved for a final
14 hearing.

15 A couple of points. One, it's only a
16 stipulation by the debtors. It doesn't bind any party in
17 interest, it doesn't bind the committee, doesn't bind the
18 noteholders. Second, the debtors did due diligence prior to
19 filing this case to figure out whether the prepetition
20 lenders had perfected liens in the assets. You're basically
21 talking about, you know, inventory and AR, which is a single
22 UCC filing in Delaware for each of the entities.

23 So there is a basis for making the
24 stipulation. It only binds the debtors. It doesn't bind
25 the other people and we think it's appropriate.

1 THE COURT: All right. Does that take care
2 of your problem?

3 MR. POHL: If this were in paragraph 4
4 that's entitled "debtors' stipulations," it would have been
5 more clear. Instead it's in paragraph 12, which is part of
6 the Court order.

7 THE COURT: Yes.

8 MR. POHL: With that stipulation, I'm okay.

9 THE COURT: Okay.

10 MS. BORDERS: Your Honor, the next bullet
11 raises an issue as to whether -- this is in paragraph 13(b),
12 whether a superpriority claim granted to the prepetition
13 lenders is part of their adequate protection package and can
14 attach to or be paid from the proceeds of avoidance actions.

15 And we will add additional language to the
16 order to clarify that that is not the case. In other words,
17 no payment of the superpriority claim for either DIP lenders
18 or prepetition lenders will be avoidance actions.

19 THE COURT: Very well.

20 MS. BORDERS: Your Honor, I think I've
21 already addressed the next point, which is basically whether
22 this is somehow a rollup or a conversion of prepetition debt
23 to postpetition debt because we're providing for the
24 provisional, what we call "provisional", payment of
25 postpetition interest, postpetition attorneys' fees to the

1 prepetition lenders.

2 Again, this is also subject to a finding
3 that they're fully secured and they're entitled to it under
4 the Bankruptcy Code, in any event. So on that basis, we
5 think --

6 THE COURT: Tell me again, they're not
7 entitled to it because of the affect?

8 MS. BORDERS: Well, if they're not entitled
9 to it, then they cannot -- they will have received cash
10 during the term of the case.

11 THE COURT: Correct.

12 MS. BORDERS: All right. So let's just
13 call it 22 million. So if we get to some point, it may be
14 four weeks into the case, it may be at the end of the case,
15 and a determination is made that they are not fully secured,
16 then their adequate protection package will cease to include
17 the payment of postpetition interest and attorneys' fees.
18 And then the money that they have gotten will be used in one
19 of two ways. It will either go to pay their adequate --
20 compensate them as an adequate protection payment, but
21 solely to the extent that they've experienced a diminution
22 in the value of their collateral. Okay. So if it turns out
23 that their collateral doesn't increase at all, for whatever
24 reason, the economy zooms and their collateral's worth more,
25 in fact, more than is owed on the DIP loan, then that money

1 would be used on account of a reduction in their claim.

2 So it would be provided for in the plan and
3 it would be used to reduce their claim in accordance with
4 1129 subject to, you know, their being treated the same as
5 people who are similar situated and so forth. So they will,
6 and we know that they will, have a claim. We believe they
7 will have a claim.

8 But the issue on the final application of
9 the money that's paid over to them for interest in
10 attorneys' fees, one, is conditioned on their being fully
11 secured. And, two, if they're not fully secured, then it
12 comes back to this Court for an application pursuant to the
13 Code on how it ought to applied. And we won't know until we
14 know what the facts and circumstances of the case are at the
15 time.

16 THE COURT: I see.

17 MS. BORDERS: But they don't get to keep it
18 for interest, they don't get to keep it for attorneys' fees,
19 and they don't get it as a gift.

20 THE COURT: All right. Does that satisfy
21 you?

22 MR. POHL: Since the number of these
23 objections and comments flow together, I'll make one last
24 statement and I won't say anything, Judge. On the
25 unencumbered stock, the easiest way to think about it is

1 based on the testimony of Mr. Cleveland.

2 And to try to address the comments made by
3 Counsel. If these banks, after a view by a committee, are
4 determined to be fully secured, no challenges made, and
5 their fully secured, I expect it will be the position of the
6 committee that there's an adequate equity cushion available
7 to provide adequate protection to these banks.

8 So, if you said to yourself, I'm not going
9 to pay you current on interest, but because you're fully
10 secured you get the added interest to your claim, that's the
11 case, Judge. You would have the \$225 million claim,
12 testified to earlier, about \$20 million in interest over a
13 year, you'd have a claim for \$245 million, and what would be
14 available to you is your entire prepetition collateral
15 package. You wouldn't have access to any adequate
16 protection liens on foreign stock for that increase of
17 \$20 million. But you're fully secured so you have it on
18 your other collateral.

19 By setting it up this way and permitting
20 not just, not just, a lien, an adequate protection lien for
21 the diminution in value, in other words, over the case, this
22 whole company creditor value is going down. But,
23 specifically, for the fact that you layered a DIP on my
24 prepetition debt. Remember, you know, is we're finding
25 ourselves. We've got one lender prepetition that's

1 basically the same on the postpetition for primary or self.

2 But by permitting a lien on the foreign
3 stock, in the amount of the DIP, you've moved that interest
4 from the prepetition party to the post. And I hope I'm
5 explaining it well enough and it's not being lost. And if
6 it is, Your Honor, my fault. I apologize. But that's what
7 all this runs to. The fact that you get paid interest as
8 you're layered deemed to be unsecured, it's a payment of
9 principle. These are two separate things, Judge. I have no
10 problem with the fact that you're going to pay or accrue
11 interest. And if it's -- if you're not perfected under
12 water as deeming principle that's customary in another case.
13 That's just 507(b) -- that's just 506(b), Judge. That's all
14 I'm going to say on that topic.

15 MS. BORDERS: Your Honor, I'll just
16 followup with two very brief comments on it. In Section 361
17 of the Bankruptcy Code clearly provides for periodic cash
18 payments to protect the prepetition lenders. It also
19 provides for the granting of replacement liens in the same
20 types of collateral or in different collateral for the
21 protection of the prepetition lenders. So their collateral
22 package is exactly what's prescribed by the Bankruptcy Code.

23 The second point, it's true today the DIP
24 lenders and the prepetition lenders are the same or we
25 believe that we will start with them being the same. That

1 may change tomorrow or next month or six months from now.
2 So it won't always be the case. It may not always be the
3 case that those interest are all the same. And the
4 prepetition lenders are entitled to what their entitled to
5 under the Bankruptcy Code. And what we have proposed in the
6 motion gives them exactly that.

7 THE COURT: Yes. I agree with that.

8 MS. BORDERS: Your Honor in -- the next one
9 is in Section 13(d). And this is -- what I think it is, and
10 I probably should just ask them to describe exactly what it
11 is that they're objecting to. But I wanted to make clear
12 that once we pay the closing fee, the 2 percent, then that
13 fee, and we say that it's pursuant to the amended rule very
14 clearly in the motion, that fee, if the order is approved on
15 an interim basis, that fee would be nonrefundable because
16 it's been paid. They've relied on in it in extending the
17 credit to the debtors. And then the ability of somebody
18 challenging that is exceedingly limited on a going forward
19 basis.

20 The fees and expenses though of a
21 prepetition lender and the DIP lender with respect to their
22 professional fees and expenses, again, those are always,
23 under the terms of the order, subject to notice, review, an
24 opportunity to object, and the opportunity for the Court to
25 decide the reasonableness of those.

1 THE COURT: What happens? I know if the
2 order is approved, there is 1.2 million that is paid.

3 MS. BORDERS: That's right.

4 THE COURT: And if the final order is not
5 approved, then what is the implication of that as far as an
6 additional payment to the DIP lender? Was there an interest
7 or prepayment penalty?

8 MS. BORDERS: That's very interesting.
9 What will happen is -- let's just suppose the interim order
10 is approved just as we submitted it. Tomorrow we will close
11 the DIP. We will pay -- we will draw on the DIP and we will
12 pay to the DIP lenders \$1.2 million as a closing fee. And
13 then in three weeks we will come back, three to four weeks
14 we will come back, for a final hearing. And if, for
15 whatever reason, at that hearing the Court were to determine
16 that no final order will be entered on the DIP, at that
17 point the debtors would be in default under the credit
18 agreement.

19 And we could do one of two things. Well,
20 if we're in default under the credit agreement, we owe the
21 prepayment penalty, in that event, only if we asked them to
22 waive the event of default and they are willing to do it
23 within a ten-day period. Then, in that event, we don't owe
24 the prepayment penalty.

25 If the ten days lapses and we go to them

1 and say, guys, we're really sorry but we couldn't get the
2 final order entered, and you need to waive this in the next
3 ten days and continue to extend credit to us, if they let
4 that ten-day period lapse and they don't waive that in the
5 event of default and they don't continue to fund us, then in
6 that event, we don't owe the prepayment penalty.

7 We could go out and get another DIP lender.
8 They could go to Bank of America, and they could come in and
9 make the same DIP. We don't have to pay the prepayment
10 penalty, but we have paid the 2 percent closing fee and we
11 have no ability to get that back.

12 THE COURT: All right. Then how --

13 MS. BORDERS: So just in the spirit, just
14 to add one more comment, the spirit of the prepayment
15 penalty was a situation where the debtor decides, hey, guys,
16 we're going to now go with a different group or we're going
17 to terminate all the commitments, and thanks a lot for the
18 fun, but we're going to get in bed with another group now.
19 That's the spirit of prepayment penalty. It's not intended
20 if we pay them off early on the plan of reorganization.
21 It's not intended if we default and they don't want to go
22 along with it, and then, you know, we basically go out and
23 find somebody else to take them out.

24 Really, the spirit of it is, you know, if
25 the debtor, in its discretion, decides to jump ship on the

1 DIP lenders, then we would have to compensate them.

2 THE COURT: All right. Any comments about
3 that provision?

4 MR. POHL: We're talking about a prepayment
5 penalty. I think I've made all my arguments and comments
6 earlier, Judge. No.

7 THE COURT: Yes. All right.

8 MS. BORDERS: I'm sorry. I have to admit,
9 I didn't -- did you respond to that?

10 MR. POHL: Yes. I said --

11 MS. BORDERS: I apologize.

12 THE COURT: He has made all his arguments.

13 MR. POHL: I've made all the comments I'm
14 going to make to that earlier.

15 MS. BORDERS: Okay. Your Honor, then the
16 last -- well, a couple. We're now the third bullet from the
17 end. This is waiver stipulations and admissions by the
18 debtor and should not be binding through the interim order.
19 Just to make clear, they're only binding on the debtor.
20 They're not binding on anybody else for any purpose.

21 The next objection --

22 THE COURT: Did you want to comment on
23 that?

24 MR. POHL: Well, the point we were making
25 was paragraph 17 should come out. If paragraph 17 were to

1 stay in, my point is, Judge, typically you would negotiate
2 with the creditors committee the period of time to challenge
3 the bank's position and releases. And, especially in this
4 case whereas there is before the Court a motion by the
5 debtors to extend their time for filing schedules, assets
6 and liabilities for 60 days beyond the due date.

7 If there were a 60 day deadline here from
8 the Court entering the order today or from when the
9 committee is formed, maybe next week, there will be no asset
10 liabilities schedules for you to look at to help make your
11 assessment challenging those liens if that order is granted
12 giving them a 60-day extension.

13 So besides the fact that 60 days, in a case
14 like this, probably is not enough, we were proposing to
15 leave this whole issue to a final order and not to determine
16 it today.

17 MS. BORDERS: And, Your Honor, this, you
18 know, unlike some other provision in the order, truly is
19 with respect to the time period. It's an interim
20 preventions. And we would expect the committee, you know,
21 once constituted if they decide the 60 is not the right
22 number of days --

23 THE COURT: Need more time for good reason?

24 MS. BORDERS: We'll negotiate with that
25 lender. And if they can't reach an agreement -- but this is

1 something the Court would rule on in determining the
2 appropriate period.

3 THE COURT: All right. Does that satisfy
4 you?

5 MR. POHL: Yes, Your Honor.

6 THE COURT: All right.

7 MS. BORDERS: Your Honor, let's see. The
8 next bullet has to do with financial covenants being
9 applicable during the interim period. And I think this is
10 one that falls in the clarify column in that, yes, there are
11 financial covenants. The liquidity covenant, the
12 accumulative -- consolidated accumulative EBDA, EBDAs
13 covenant, the domestic EBDA covenant, none of those start
14 testing until March 31st. So you're past this interim
15 period in any event. The Cap-X covenant, which is the only
16 other financial covenant in the document, doesn't begin to
17 test until February 29th.

18 So, again, you know, they're in the
19 document. The time period is running, but there is no test
20 to undergo until well after the final hearing on the DIP
21 motion.

22 MR. POHL: Your Honor, our comment really
23 wasn't the timing. It was a bigger picture of having a
24 130-page credit agreement approved on the first day of the
25 case and having no other set of eyes for an official

1 committee to look and see what financial covenants the
2 debtors have bound themselves to for down the road. That's
3 what our comment runs to. Similar to many other comments,
4 which had to do with -- because they really made
5 presentations that somewhat, you know, issue by issue. But
6 tying the debtor to every issue and point in a 130-page
7 agreement on the first day of the case before you ever have
8 a creditors committee to look at or attempt to negotiate
9 some provisions of the DIP agreement.

10 MS. BORDERS: Your Honor, again, these
11 were -- you know, the evidence was very clear these were
12 highly negotiated covenants. The debtors, DIP lender, their
13 advisors worked extensively on them, multiple rounds of
14 negotiation. The board approved them. The financial
15 covenants that the debtor has agreed to is an issue that
16 really falls very squarely within their business judgment
17 as to what they can live with.

18 But, again, they're not really applicable
19 for the interim period in the sense that they are not being
20 tested during the interim period. And if the committee
21 wants to take another run at it, I would suggest to the
22 Court that that would not be a very prudent use of their
23 resources or the resources of the estate. But there's
24 nothing in this order that that will keep them from doing
25 that. No more than, you know, there's anything in this

1 order that would keep them from saying we'd like the
2 interest rate to be lower or, you know, we would like
3 another provision to be different or having more days here.
4 I'm sure that there will be discussions on that.

5 THE COURT: And so they can do that, you
6 say?

7 MS. BORDERS: They can certainly engage in
8 it. I don't -- again, I don't think it would be fruitful.
9 I think that these have been very well negotiated. The
10 debtor would not have agreed to them if it did not have a
11 reasonable basis for conclusion that it comply with the
12 covenant. The covenants are part of a full package that's
13 being presented. But, you know, I would expect the
14 committee will want to, at least, understand how they work.

15 THE COURT: All right.

16 MS. BORDERS: And the final provision,
17 Your Honor, is that no commitment or prepayment fees are
18 payable until final order has been approved. And there's a
19 little bit of a chicken and egg. The closing fee will be
20 paid. The attorneys' fees and expenses, professional fees
21 and expenses, are subject to notice and objection and a
22 right to cure. The commitment -- the prepayment fee we've
23 already talked about.

24 The commitment fee is basically .75 percent
25 annually towards the unused portion of the facility. And

1 that's just a mix that fits in with your interest rate, and,
2 basically, the whole package. There's no ability to sort of
3 pull out one part of the compensation for the lenders and
4 say, okay, we'll, you know, we'll take what we liked, liable
5 plus four on the interest rate, but we don't want to give
6 you your commitment fee. They're all intertwined and we
7 don't have the ability to change one without affecting a
8 change in the other.

9 I will note that there are no commitment
10 fees that are due and payable during the interim period
11 though.

12 THE COURT: All right.

13 MR. POHL: That comment, Your Honor, only
14 had to do with the upfront 2 percent fee, and I've already
15 made that comment earlier.

16 THE COURT: All right. There were a few --

17 MS. BORDERS: I was going to sum up, but if
18 you --

19 MR. POHL: Sorry.

20 THE COURT: Go ahead and sum up.

21 MS. BORDERS: Well, first, Your Honor,
22 there were additional questions, and I'm having to address
23 them.

24 THE COURT: Well, I am concerned about that
25 automatic stay provision, just the five-days time period and

1 also the only thing that is to be determined is whether the
2 debtor is in default under some provision in this long
3 agreement. I am really concerned about that particular
4 provision.

5 MS. BORDERS: Your Honor, Counsel for the
6 lenders is here. I've told you what the position is from
7 the debtors, and I'm having to --

8 THE COURT: The decision takes the Court
9 out of the process. I mean, as I understand it, if there is
10 a default -- and I do not know how that is defined. But if
11 there is a default, then you have relief from the automatic
12 stay unless someone can come in and show me there is no
13 default. And that ends the question.

14 MR. NASH: Good afternoon, Your Honor.
15 Pat Nash on behalf of the agent BNP Paribas. You know,
16 Your Honor, when you look at a provision like that in a
17 vacuum, it may strike the Court as odd or potentially
18 offensive. But, again, this is a package of rights and
19 provisions. And you heard extensive testimony today about
20 the fact that covenants, for example, are significantly
21 looser than they were under the prepetition facility.

22 This a new money, \$60 million loan,
23 Your Honor, being underwritten by two of the prepetition
24 lenders. And it is the case, Your Honor, that after careful
25 consideration and extensive negotiation with the debtors,

1 these lenders have concluded that in the event that there is
2 an event of default under this postpetition agreement, this
3 is not a ratification or a waiver of a prepetition agreement
4 or prepetition right, if there is a postpetition default
5 under this postpetition agreement, number one, they have
6 agreed that they will wait five business days, effectively a
7 full week, to give the debtors an opportunity to get in
8 front of Your Honor, if the debtors believe that there's a
9 basis to get in front of Your Honor and bring that event of
10 default or that issue to the attention of the Court. We
11 will wait five business days before exercising any remedies.

12 When you think about having a lien on cash
13 and accounts receivable, waiting five business days as a
14 postpetition lender, when there isn't an event of default or
15 we think there is an event of default, that is, as we see
16 it, a concession that we've made.

17 And it is, in fact, correct, Your Honor,
18 that we are not willing, my clients, I should say, have
19 expressed, and after extensive negotiation, in the event
20 that there is a default on the credit agreement -- there has
21 been heavily negotiations with significantly looser
22 covenants for the benefit of this debtor and, ultimately,
23 this estate. If we have a postpetition default, Your Honor,
24 these lenders are not interested in being put in a position
25 where the estate has the opportunity to make section 105

1 equitable arguments or things of that nature that would
2 preclude the postpetition lenders from exercising its
3 remedies.

4 THE COURT: It is any default or is it a
5 material default?

6 MS. BORDERS: Well, it's a material
7 default.

8 MR. NASH: Material.

9 THE COURT: Material default. So at least
10 there is some avenue for the debtors to come in and argue if
11 there is a nonmaterial default here. You know, I have not
12 read all of the details of the agreement, but I am somewhat
13 concerned that you can just come in and get stay relief from
14 just a simple default without exploring what that default
15 is, whether or not it is material. I would assume, under
16 the law, it would be a material default, correct, and not
17 just any default?

18 MR. NASH: I would assume so too,
19 Your Honor. And, also, I'm very concerned of the fact that
20 we would be in front of Your Honor and while, you know --
21 number one, that the debtor negotiated very hard for their
22 not to be an inadvertent trip of any of these covenants. It
23 was a material give on the part of the lenders that these
24 covenants provided the debtors with operational flexibility,
25 number one.

1 Number two, it's incredibility unlikely
2 that in the event of a nonmaterial -- I can't think of one.
3 A nonmaterial default would be where it would be better for
4 us to go and foreclose on collateral as opposed to deal with
5 that in an arm's length relationship on negotiation.

6 And, number three, again, the day we would
7 be back in front of Your Honor on any sort of issue if the
8 debtor were to bring it to your attention.

9 What we are absolutely insisting, in the
10 first instance, that the debtor, in consideration for
11 receiving the postpetition financing, agree on the front end
12 that it will not make section 105 or other equitable
13 arguments if we do have an abundant default under the
14 postpetition credit document.

15 THE COURT: Well, what if they spell that
16 out? They will make it a 105 or equitable arguments? I
17 mean, I would go along with that.

18 MR. NASH: I think that's what it says,
19 Judge. I really -- I think they worked that in the system.
20 I do believe that at the end of the day that's what the
21 provision says. The only issue in front of Your Honor is
22 whether or not we have a default under a postpetition
23 contract.

24 THE COURT: All right. Response?

25 MR. POHL: Well, this falls, Your Honor,

1 this falls in the category of a 115-page document that the
2 Court and everybody else has to swallow on day one.
3 Remember, you know, often times it's, you know, the
4 U.S. Trustee sitting here by herself. The only reason we're
5 here today, Judge, you know, testing this on day one, is
6 because we represent clients with more than half of the bond
7 debt. You know, if we weren't here as a counter balance,
8 these arguments wouldn't even be made.

9 But the order says event of default. It
10 doesn't say material or nonmaterial. And the law on this,
11 Your Honor, I will guarantee you, everyone in this room that
12 represents a bank, comes into Court and says a default is a
13 default. It doesn't matter whether it's material or not.
14 And well crafted loan documents -- and I'm struggling to try
15 to find it -- say exactly that. It cannot be used against
16 us if this is merely a technical default. Now, I don't know
17 if that's in here, but it doesn't matter because if there is
18 a default that they can act upon, they will come in here and
19 they will say the only thing that's on the table, Judge, is
20 their default.

21 And, remember, this is an interim order,
22 and you're only supposed to grant the relief necessary to
23 avoid irreparable harm to the estate. And other thing this
24 Court is supposed to take a look at is whether or not -- and
25 I should just point out one of the cases, Judge. It was in

1 our brief, Tenney Villiage Co. You know,
2 debtor-in-possession financing terms must not pervert for
3 the reorganizational process from one designed to
4 accommodate all classes of creditors and equity interests
5 from one specially crafted for the benefit of secured
6 creditors.

7 So, yes, I admit some day there may be a
8 divergence between the DIP group and the prepetition group,
9 but they're substantially the same today and they're
10 improving their position, you know, by getting a lien on the
11 stock. And they're also, again, they're able to cut their
12 heads in half. You know, if they're going to act upon
13 collateral to pay the DIP, even though it's not the default
14 on cross-collateralized, that's going to damage this debtor.
15 And this Court should have the ability to say whether or not
16 the debtors can pay this balance off in the DIP, the short
17 term for the breather, instead of just shutting this company
18 down at the whim of these guys.

19 THE COURT: All right.

20 MS. BORDERS: Your Honor, again, I mean,
21 you heard Mr. Nash say it's a material event of default. We
22 agree that what, you know, the issue basically has to do
23 with an event of default. All the other arguments that you
24 could make would be it's not in the best interest of all of
25 the estate holders. You ought to do something equitable.

1 You ought not to enforce the law and hold the debtor to the
2 terms of the credit agreement if it is approved and the
3 Court blessed it. You ought to do something under 105. I
4 mean, that's what they're trying to take out.

5 I wish that they wouldn't take it out. I
6 wish they'd leave us the ability to come in and make all
7 those kinds of arguments, you know, about, you know, would
8 be in the best interest of everybody at the time. But the
9 truth is, you know, they are willing to loan company to a
10 company that's in bankruptcy. And what they've said is
11 we're not going to do that unless we know that we're going
12 to get the deal that's memorialized in these written
13 documents.

14 We don't want you or anybody else to
15 interject our equity or what might help the noteholders or
16 what might be better for, you know, the collective good at
17 the time. We want to know that if we come in on a
18 postpetition basis, you're going to do what you said you did
19 and you're going to live by the term of those documents.
20 Again, we wish it were different.

21 THE COURT: Yes, but the problem is, I have
22 not had time to study the terms of the documents and neither
23 have the creditors. You know, I am approving a blank slate
24 here. I am having to take word for the debtor and the
25 witness, of course, that they are reasonable terms. But

1 this one provision about the automatic stay just being
2 terminated without the Court having an opportunity to see
3 what event terminates it, you know, I mean, it does not say
4 material default. You know, there is a represent here that
5 is what you mean. But that one provision really bothers me.

6 I can understand you do not want a creditor
7 coming in arguing section 105. I understand that. But that
8 is not what the order says. The order says an entry or a
9 default, essentially, entitles you from relief of the
10 automatic stay period, right?

11 MR. NASH: Yes, definitely, Your Honor.
12 And in my experience that is a very common provision in a
13 DIP financing order.

14 THE COURT: On the first day?

15 MR. NASH: Well, frankly, yes, Your Honor.
16 But what I -- as to the first-day point, I did want to -- I
17 do want to make the point that this is an interim order.
18 It's not interim as to the \$20 million that is to be made
19 available on an interim basis.

20 But you heard testimony that the covenants
21 are not going to tested until March. There isn't going to
22 be any event of default during this interim period. And
23 Your Honor may or may not be willing to enter the final
24 order with this language in it. And depending upon what
25 Your Honor is or is not willing to do at the final order

1 stage, these DIP lenders may or may not have a decision to
2 make about whether or not they intend to loan money to this
3 company.

4 But in terms of the deal that we are before
5 Your Honor with tonight, you know, a quarter to six o'clock
6 or whatever time it is, this is not a point, Judge, that the
7 lawyers, some overeager, midlevel associate put into an
8 order or whatnot. This was very heavily negotiated. And
9 Mr. Kaim, who I've had a lot of experience with, Mr. Kaim
10 negotiated very, very strenuously on this point, and the DIP
11 lenders felt very, very strenuously the same way that they
12 want the benefit, the postpetition benefit, of the
13 postpetition bargain.

14 THE COURT: Can you represent to me that
15 you are talking about a material default?

16 MR. NASH: Your Honor, the only
17 representation I can make is I'm talking about an event of
18 default, capital E, capital D, which is a default which
19 exists under the credit agreement after there are
20 opportunities for no secure. I cannot represent. I can go
21 back and we can take a break and read the credit document
22 and see exactly what it says.

23 MR. KAIM: Your Honor, I just want to
24 confirm Mr. Nash's statement. I did argue this on behalf of
25 the debtor, and I made exactly the arguments the Court made.

1 I lost this one.

2 THE COURT: I would assume event of default
3 is specifically defined in the credit agreement?

4 MR. NASH: I would assume so, Your Honor.

5 THE COURT: Let us take a recess. I want
6 to take a look at it.

7 (Whereupon, a brief recess was held.)

8 THE COURT: I notice that default even
9 includes failure to enter a final order in the case. So if
10 I disapprove this agreement, what is the affect, this
11 company shuts down based on this?

12 MR. POHL: I'm not sure I'm the one to
13 answer that question, Judge. It's always who is going to
14 blame first. But, you know, these are always hardly
15 negotiated agreements and those get the counterweight. And
16 the answer from this side or from the lender is we're not
17 budging. We're not doing anything unless this Court gives
18 its, you know, views. You know, sometimes that's what's
19 required to push people to negotiate. But I'm not the one
20 here to answer that question.

21 THE COURT: This provision does bother me.
22 Of course, the next question is, if I disapprove the
23 agreement, I guess the company shuts down?

24 MS. BORDERS: Your Honor, I think there's
25 an interim step, and that is, if you're not willing to enter

1 the order with this provision in it then we would go back to
2 the DIP lenders and ask them to make the loan not
3 withstanding. But, to be clear, if they refuse to do so, we
4 cannot survive without the entry of a DIP order.

5 THE COURT: Well, I would stay this is the
6 only provision that really bothers me. The other provision,
7 even including the fee, I would be willing to approve. But
8 this one provision is very troubling to me because you have
9 got fully secured creditors here who can obtain relief from
10 the stay upon an entry of default which includes almost any
11 breach of this agreement, even a nonmaterial breach, the way
12 I read it.

13 MR. NASH: A perspective waiver of the
14 automatic stay, Your Honor, is very material to these
15 lenders and to any DIP lender that I've ever represented.
16 I'm not interested in appearing to jam the Court or jam the
17 debtors. I'm very sensitive to that. And these DIP lenders
18 are going to be in front of Your Honor for the next year.

19 But the reality is, is that if Your Honor
20 is unwilling to enter the order today that has that
21 provision in it, then if we do need to go get on the phone
22 with a group of lenders who, you know, may or may not be
23 willing to make the interim financing available, that's the
24 posture we're in at the moment.

25 THE COURT: Well, if you can represent to

1 me that it is a material default, rather than a technical
2 default, then I would have some discretion in determining
3 whether the default in the case is material, then, perhaps,
4 that would make a difference. I think you are troubled by
5 the fact that there may be a technical default and there
6 could be a foreclosure for just a technical breach of this,
7 you know, extension agreement here.

8 MR. NASH: Your Honor, there is not testing
9 of the covenants or whatnot during the interim period. And,
10 Your Honor, this issue is full aim for the committee or
11 anybody else to bring to your attention.

12 THE COURT: Right. The failure to enter a
13 final order is an event of default?

14 MR. NASH: Under the credit agreement,
15 absolutely.

16 THE COURT: Right.

17 MR. NASH: Yes, sir.

18 THE COURT: Well, you have no one here to
19 contact regarding this particular issue?

20 MR. NASH: Nobody here with me in
21 Chattanooga, that's right, Your Honor. I was out in the
22 hallway, and I was late getting back in here because I was
23 trying to reach people by telephone.

24 THE COURT: What do you propose that we do?

25 MR. KAIM: Judge, if I may? Henry Kaim on

1 behalf of the debtors. My suggestion, Your Honor, because
2 it is imperative that we get an order entered today, and
3 we've got to get the bank order and wage order signed. My
4 view of this is -- and let me tell you, I didn't like this
5 provision worth a darn. We argued virtually word for word
6 the same issues the Court put to the lenders today. This is
7 one we didn't win. But between now and the interim, at the
8 interim stage, between now and the final hearing, because
9 there is no testing dates on the financial covenants and
10 because as the payments, we control the payments and we're
11 going to make the payments.

12 THE COURT: You will make the payments? No
13 problem?

14 MR. KAIM: There is virtually no chance
15 that there's going to be a default or any -- it's not even
16 close. There's not going to be a default between now and
17 the final hearing. The final hearing I think is fair game
18 for a committee as well as any other points, some of which
19 have been raised today, and the committee may have other
20 points. I think they can raise whatever points they wish to
21 raise at the final hearing. So I don't think it's
22 necessarily an issue that the Court must rule on today and,
23 certainly, the Court is not bound by it at the final
24 hearing.

25 THE COURT: All right. All right. We will

1 certainly revisit this issue then at the final hearing.

2 Anything further?

3 MR. POHL: In that event, Your Honor,
4 before today started I had a lengthy presentation to give to
5 you, but I believe, Your Honor, towards this hearing I've
6 covered almost every point. I'm not going to go over any of
7 those points. I want to point out to Your Honor that
8 because we have such a clash of material position of bond,
9 we felt we needed to show up today as a sort of qua
10 committee for the moment and act as a counterweight and do
11 what we can to make sure that the interim relief, you know,
12 is only that which is necessary.

13 So that's why we're here, that's why we
14 made the argument. We were never here to try to stop the
15 financing. It's in our interest for the financing to go
16 forward. But sometimes you need a counterweight, that's why
17 we're here. Thank you for letting me appear here today,
18 Your Honor.

19 THE COURT: Yes. All right. I appreciate
20 your comments.

21 Now, was there any modification to any of
22 the points as we went through them that need to be made?

23 I am going to approve the financing with
24 the clarification that you stated on the record. I do not
25 recall that there needs to be any actual changes to the

1 order itself.

2 MS. BORDERS: I think in the order, change
3 to the orders in the superpriority claim we did agree to
4 accept them.

5 THE COURT: That is correct. So that needs
6 to be made, and then you need to upload that order again and
7 submit it.

8 MS. BORDERS: Yes. That's right.

9 MR. POHL: It was a typo.

10 THE COURT: It was a typo. It needs to be
11 corrected.

12 MS. BORDERS: We will correct the typo.

13 THE COURT: All right.

14 MR. POHL: And, Your Honor, I'm not from
15 around here, but the transcripts will be available prior to
16 the final hearing because there were a lot of -- some
17 concessions, some which will be revisited, some -- even
18 though the paragraph says this we mean this?

19 THE COURT: You can talk to the court
20 reporter about that.

21 All right. Now, we have a number of other
22 motions that we need to set for hearing.

23 MR. KAIM: Your Honor, I think we'd like to
24 set those motions for hearing as well as set the final
25 hearing on the DIP loan.

1 THE COURT: Right. And there is also your
2 applications for employment under 6003. I cannot actually
3 grant those.

4 MR. KAIM: No. And we're not asking you
5 to. There's nothing further today. I think we would simply
6 ask that those motions and our applications for retention be
7 set at the next hearing. Our suggestion, and it is a
8 suggestion, Your Honor, if we pick the Wednesday date, our
9 suggestion would be February 6th.

10 THE COURT: February 6th.

11 MR. POHL: Is that for the final DIP
12 hearing?

13 THE COURT: That is for the final hearing;
14 is that correct, on all of these pending motions including
15 payment of --

16 MR. POHL: I think, Your Honor, if the
17 trustee can speak because I think she has views on when the
18 committee will be formed. I don't know who will represent
19 the committee, but I think she has in mind. I'll let her
20 come up. The 30th of this month?

21 MR. KAIM: Which is next week.

22 MR. POHL: If you have a hearing on the
23 6th, you'll have a committee in place for six days to figure
24 out how to deal with a hearing. It's just that's unfair.

25 THE COURT: What about the following week?

1 The 13th?

2 MR. KAIM: That would be fine.

3 THE COURT: Would that be sufficient time?

4 MS. SWAFFORD: That would give the
5 committee two weeks, which would be more reasonable,
6 Your Honor.

7 THE COURT: All right. We will set it on
8 nine o'clock on the 13th, and then the motions for payment
9 of critical vendors. All those other motions, I gather,
10 will be separate hearing by the debtors?

11 MR. KAIM: Yes, Your Honor. We will send
12 the notice out.

13 THE COURT: I plan to enter the order on
14 the wages tonight. It probably will be docketed first thing
15 in the morning. Would that be sufficient time?

16 MR. KAIM: It would be great if you could
17 do it tonight, Your Honor.

18 THE COURT: We can get it done tonight.

19 MR. KAIM: Great. And the bank account
20 order, Your Honor?

21 THE COURT: Excuse me?

22 MR. KAIM: The bank account order?

23 THE COURT: Yes.

24 MR. KAIM: That's a separate order.

25 THE COURT: I can get that signed and filed

1 in ECF tonight.

2 MR. KAIM: That's great. And then the DIP
3 order in the morning, Your Honor, we'll probably be funding
4 tomorrow.

5 THE COURT: All right. You can upload that
6 and I will look for that in the morning.

7 MR. KAIM: Thank you very much.

8 THE COURT: Anything else come before the
9 Court?

10 MS. COMBS: Your Honor, if I may. On
11 behalf of the IRS, I know that the point of these emergency
12 motions related to payroll taxes so that these guys can pay
13 their employees, and we understand that. But we had an
14 opportunity to review the entities involved and check their
15 payroll-tax status, and we do have some issues because they
16 have some issues with that status. Propex itself did not
17 file its quarter, its third quarter, 941. And we would
18 request that the order require them to file that within five
19 days of this hearing with our -- there's a direct contact in
20 Knoxville, Constance Little is her name. We can provide
21 that information later.

22 THE COURT: What order? Are you talking
23 about the order to pay employees?

24 MS. COMBS: No, sir. About payroll taxes.

25 THE COURT: Right. You want that provision

1 added to what order?

2 MS. COMBS: To the order -- the motion --
3 one of the motions is related to an emergency motion
4 regarding payroll taxes. It says they are authorized to pay
5 payroll taxes. It's does not require them to pay those
6 payroll taxes. We want it to require them to pay them. We
7 also have some back payroll taxes that they have issues
8 with.

9 THE COURT: All right.

10 MR. KAIM: Judge, first of all, this is all
11 news to us. We do not believe we're behind on any payroll
12 taxes. And what the order does is authorize us, authorize
13 us, to make payments with respect to our payroll taxes,
14 which we fully intend to do. I'm not -- I just don't know
15 what she's talking about. We'll be happy to confer with
16 Counsel in the next day or two, and we'll -- our intent is
17 to pay our payroll taxes. That's the whole idea of the bank
18 account motion. But we would object, at the last minute,
19 without knowing the facts, putting an order ordering us to
20 do something.

21 THE COURT: Yes. I agree. You would need
22 to file a motion on that or consult with Counsel. I think
23 you could probably get that resolved.

24 MR. KAIM: Yes, sir.

25 MS. COMBS: Thank you, Your Honor.

1 THE COURT: All right. Anything further?
2 Have we forgotten anything? If nothing further I ask the
3 clerk to adjourn court.

4 (Proceedings adjourned.)

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