

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:

Chapter 11

SCHOOL SPECIALTY, INC., et al.¹

Case No.: 13-10125 (KJC)

Debtors.

Jointly Administered

Re: Docket Nos. 12 and 86

Hearing Date: Feb. 25, 2013 at 11:00 AM (ET)

**DIXON TICONDEROGA COMPANY'S LIMITED OBJECTION TO DEBTORS' MOTION
AUTHORIZING POST-PETITION FINANCING AND OTHER RELIEF (DOCKET NO. 12)**

Dixon Ticonderoga Company ("Dixon"), a claimant holding administrative expense claims against the Debtors' estates, files this limited objection (the "Limited Objection") to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) to Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) to Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, and (E) to Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligation into Postpetition Secured Obligations; (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(a) and (c); and (III) Granting Related Relief* (the "DIP Financing Motion") (Docket No. 12), and states as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty Inc., (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.



PRELIMINARY STATEMENT

Dixon objects to the DIP Financing Motion, on a limited basis, because the Budget in support of the DIP Financing Motion does not provide for the payment of claims arising from Section 503(b)(9) of the Bankruptcy Code.

RELEVANT BACKGROUND

1. On January 28, 2013 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession.

2. On the Petition Date, the Debtors filed the *Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") (Docket No. 2).

3. The Debtors filed the DIP Financing Motion, justifying the financing sought therein on the ground that "absent the liquidity solution offered by the DIP Facilities proposed by the Agents under the Debtors' prepetition secured credit facilities, the Debtors would have been required to commence an immediate shutdown of their operations and liquidation of their assets to the detriment of their vendors, employees and all other stakeholders." DIP Financing Motion at ¶ 7. On January 31, 2013, the Court entered an Interim Order authorizing certain of the relief sought in the DIP Financing Motion (Docket No. 86).

4. As stated in the DIP Financing Motion, on the Petition Date, School Specialty, Inc. ("SSI") had approximately \$139.6 million in outstanding principal secured indebtedness to certain lenders (the "Prepetition Lenders"), consisting of a revolving credit facility and a term loan which the Company entered into on May 22, 2012 to repay existing secured indebtedness. DIP Financing Motion at ¶ 18. This secured indebtedness consisted in part of a revolving senior

secured asset-based credit facility ("ABL") provided under the Prepetition ABL Credit Agreement between SSI and certain of its domestic subsidiaries as borrowers, the Prepetition ABL Lenders, and Wells Fargo Capital Finance, LLC as administrative agent. As of the Petition Date, approximately \$47.62 million was outstanding under this agreement. DIP Financing Motion at ¶ 19.

5. The secured indebtedness also consisted of a Prepetition Term Loan Credit Agreement (together with the Prepetition ABL Credit Agreement, the "Prepetition Loan Agreements") between SSI and certain of its domestic subsidiaries as borrowers and Bayside Finance, LLC ("Bayside") as administrative agent, collateral agent, and lender. This agreement provides up to \$70 million in term loan credit and matures on October 31, 2014, which may be extendable if the Company has refinanced its Convertible Notes (as defined below) by that date. As of the Petition Date, approximately \$92,054,001.06 was outstanding under this agreement (including an Early Payment Fee), along with \$2,606,866.33 in accrued and unpaid interest. DIP Financing Motion at ¶ 21.

6. Under the Prepetition Loan Agreements, SSI's domestic subsidiaries were guarantors of SSI's obligations under the agreements. Pursuant to a May 22, 2012 Prepetition Intercreditor Agreement, obligations under the Prepetition ABL Credit Agreement were secured by a first priority interest in substantially all of the working capital assets of SSI and its subsidiary borrowers and guarantors and a second priority interest in all other assets. Pursuant to that same agreement, obligations under the Prepetition term Loan Credit Agreement were secured by a second priority interest in substantially all of the working capital assets of SSI and its subsidiary borrowers and guarantors and a first priority interest in all other assets. DIP Financing Motion at ¶ 20, 22.

7. As stated in the First Day Declaration, SSI also had approximately \$157.5 million in outstanding convertible subordinated debentures due 2026 (the "Convertible Notes") that were issued in 2011. In addition, the Debtors have approximately \$60 million in ordinary course trade debt that was unpaid as of the Petition Date. First Day Declaration at ¶ 25, 27.

8. On the Petition Date, the Debtors filed their *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Claims of Certain Vendors, Foreign Suppliers, Freight Carriers and Section 503(B)(9) Claimants* (the "Critical Vendor Motion") (Docket No. 11) which seeks authorization to pay certain prepetition vendors of the Debtors, including claims owed to such vendors under Section 503(b)(9) of the Bankruptcy Code of approximately \$5.2 million. Critical Vendor Motion at ¶ 22. On January 30, 2013, the Court entered an Interim Order authorizing certain of the relief sought in the Critical Vendor Motion (Docket No. 79).

9. The DIP Financing Motion seeks approval of, among other things, a super-priority postpetition financing in the aggregate principal amount of \$144,665,931.42 to be provided by Bayside (the "Bayside DIP Facility"), which will consist of a credit facility in the amount of \$50,000,000 in respect of new money funding (the "Incremental DIP Term Facility") and, upon entry of a Final Order, a repayment by way of a "roll up" of \$94,665,931.42 in respect of Prepetition Term Loan Debt. In addition, the DIP Financing Motion seeks approval of a super-priority revolving credit facility in an aggregate principal amount of \$175,000,000 to be provided under an ABL DIP Facility (together with the Bayside DIP Facility, the "DIP Facilities" and their lenders the "DIP Lenders"), and repayment of the full amounts outstanding as of the Petition Date in respect of the Prepetition ABL Debt. The DIP Financing Motion also seeks use of cash collateral. DIP Financing Motion at ¶ 5.

10. The DIP Financing Motion also seeks permission to use, upon entry of an Interim Order, up to \$175,000,000 under the ABL DIP Facility and \$25,000,000 of the \$50 Million Incremental DIP Term Facility, but states that, from the Closing Date through the entry of the Final Order "the DIP Borrowers shall be permitted only to use such amounts as are consistent with the Budget and the DIP Credit Agreements." DIP Financing Motion at ¶ 39.

11. The DIP Financing Motion also states the following:

Borrowings under the DIP Credit Agreements will be used, among other things, for payment of (a) postpetition operating expenses and other working capital and financing requirements of the DIP Borrowers (as defined below) subject to the Budget (as defined below), (b) certain transaction and chapter 11-related fees, costs and expenses, (c) the Carve-Out (as defined below), (d) "adequate protection" (as set forth in section 361 of the Bankruptcy Code), and (e) the Prepetition Debt[.]

DIP Financing Motion at ¶ 11(b). Accordingly, the Budget governs the use of the DIP Facilities.

12. The DIP Facilities are conditioned on a sale of substantially all of the assets of the Debtors under Section 363(b) of the Bankruptcy Code. In furtherance thereof, on the Petition Date, the Debtors filed a Bid Procedures Motion (Docket No. 18) seeking approval of a sale process in conformity of the sale contingency required by the DIP Facilities.

13. The Bid Procedures Motion essentially seeks approval of an asset sale to Bayside School Specialty, LLC ("BSS"), an entity affiliated with Bayside. Bid Procedures Motion at ¶ 14(a). As stated in the Bid Procedures Motion, BSS would purchase certain of the Debtors' assets for the following:

(i) an amount equal to \$95,000,000, which amount shall be payable in the form of a credit bid of an amount of the obligations then outstanding under the DIP Credit Agreement and Term Loan Agreement (such amount as may be increased pursuant to Section 3.1(b) of the Asset Purchase Agreement, the "Credit Bid Amount"); (ii) unless such obligations have been assumed by the Purchaser pursuant to Section 2.3(e) of the Asset Purchase Agreement, an amount in cash equal to the outstanding obligations under the ABL Agreement; and (iii) the assumption by Purchaser of the Assumed Liabilities.

Bid Procedures Motion at ¶ 14(c). The Asset Purchase Agreement, attached as Exhibit C to the Bid Procedures Motion, states in Section 2.3 that the buyer will assume certain liabilities, including, as stated in Section 2.3(b) "to the extent not already paid or included in the DIP Obligations, all ordinary course Liabilities with respect to the Acquired Assets (including ordinary course trade payables) arising after the Petition Date to the extent (i) relating to the conduct of the Business after the Petition Date through the Closing Date and (ii) set forth in the Budget...." Section 2.4 excludes certain liabilities, stating in Section 2.3(a)(xiii) that it excludes "any other Liabilities of Sellers not expressly assumed by Purchaser pursuant to Section 2.3."

14. The Budget referred to by the DIP Financing Motion and the Asset Purchase Agreement is attached as Exhibit G to the DIP Financing Motion and is attached as **Exhibit A** hereto for convenience.

15. Dixon is a prepetition creditor of the Debtors, including with regard to goods received by the Debtors in the 20 day period prior to the Petition Date. Accordingly, Dixon is entitled to an allowed administrative expense claim under Section 503(b)(9) of the Bankruptcy Code, for payment of goods it provided to the Debtors.

LIMITED OBJECTION

16. As discussed more fully below, the DIP Financing Motion and its accompanying Budget does not appear to provide funding to pay administrative claims under Section 503(b)(9) of the Bankruptcy Code. It appears from the Debtors' filings that these cases are administratively insolvent and being run solely for the benefit of secured lenders. The Asset Purchase Agreement, like the Budget, does not address Section 503(b)(9) claims. Therefore, the DIP Financing Motion is not in the best interest of the Debtors or their estates and should not be granted until adequate provision is made for the payment of Section 503(b)(9) Claims.

Failure to Address Section 503(b)(9) Claims

17. The DIP Financing Motion and its associated Budget does not appear to make adequate provision for payment of administrative claims under Section 503(b)(9) of the Bankruptcy Code. Treatment of Section 503(b)(9) claims are not mentioned anywhere in the DIP Financing Motion, and the Budget does not include any line items that include payment of such claims. While it appears that up to \$5.2 million in Section 503(b)(9) claims may be paid under the Critical Vendor Motion, the Budget does not include a line item for these claims. Therefore, the DIP Financing Motion and the Budget do not provide sufficient funding to pay these claims in full, as required by the Bankruptcy Code.

18. This is particularly troubling here because the DIP Facilities are being provided in part by Bayside, a secured creditor under the DIP Facilities, which was also a prepetition secured lender and is the proposed buyer under the Bid Procedures Motion and its accompanying Asset Purchase Agreement.² The asset purchase contemplated by the Bid Procedures Motion and the accompanying Asset Purchase Agreement essentially consists of a credit bid by Bayside of \$95 million, payment of certain funds owed for prepetition secured debt under the ABL, and certain limited assumed liabilities, meaning the purchase funds would go almost entirely towards satisfying secured debt. In addition, the Debtors have significantly more debt than the purchase price offered – approximately \$139.6 million in prepetition secured indebtedness, \$157.5 million in indebtedness to noteholders, approximately \$60 million in prepetition trade debt, and potentially up to about \$319 million under the superpriority DIP Facilities (or up to \$200 million on an interim basis) whose use is governed by the Budget. Thus, it is not clear what if any funds would be available for administrative claimants such as Section 503(b)(9) claimants.

² While the proposed buyer in the Asset Purchase Agreement is BSS, BSS is an affiliate of Bayside.

19. The Asset Purchase Agreement contemplates the buyer's assumption of certain liabilities, but not prepetition liabilities such as Section 503(b)(9) Claims, and as discussed above, the Budget does not account for them either.

20. Numerous cases have indicated that a Chapter 11 case should not be administered and that DIP financing should not be procured for the sole benefit of secured lenders. See, e.g., In re Aqua Associates, 123 B.R. 192, 195-196 (Bankr. E.D. Pa. 1991) ("[C]redit should not be approved when it is sought for the primary benefit of a party other than the debtor."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) ("[A] proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate."); In re Tenney Village Co., Inc., 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (DIP financing terms must not "pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit "of the secured creditor.").

21. Moreover, given that the purchase price proposed under the Asset Purchase Agreement will go almost entirely towards satisfying secured debt, it appears that the asset sale proceeds are likely, at best, to satisfy the claims of the prepetition and postpetition secured lenders, and thus unlikely to fund payment of Chapter 11 administrative expense claims such as Section 503(b)(9) claims. Rather, it appears as if the secured lenders would pocket the asset sales proceeds and not pay Section 503(b)(9) claims, leaving the Debtors' estates hopelessly administratively insolvent, which may lead to a conversion to Chapter 7.³

³ It is not clear here whether the Debtors intend to convert the case to a Chapter 7 liquidation. However, as discussed above, given the fact that BSS is seeking to purchase the assets here with a credit bid and other proceeds that would go almost entirely to other prepetition secured lenders, it may be a possibility.

22. It is particularly inappropriate for a case to remain in Chapter 11 where there is no realistic possibility that a plan will be confirmed and where lenders are simply using the Chapter 11 process to arrange a Section 363 sale to be followed by a possible Chapter 7 liquidation while not providing for payment of Chapter 11 administrative expense claims like Section 503(b)(9) claims. See, e.g., In re Encore Healthcare Associates, 312 B.R. 52, 54-55 (Bankr. E.D. Pa. 2004) (court denied bid procedures motion, finding that Section 363 sale, which was for the sole benefit of the secured lender, served no legitimate business purpose when debtor admitted that it would convert the case to Chapter 7 following the sale). Accord In re Duro Industries, Inc., 2002 WL 34159091 (Bankr. D. Mass. 2002) ("Where all equity in a debtor's assets belongs to the secured creditor, with no appreciable expectation of a remainder for unsecured creditors, the liquidation of the assets serves no bankruptcy purpose and should not be permitted to occur in bankruptcy."); In re Fremont Battery Company, 73 B.R. 277, 279-80 (Bankr. N.D. Ohio 1987) (denying approval of Section 363 sale because no business reason justified the sale, which would terminate the debtor's existence, benefit only the secured creditor, and would not create proceeds for the benefit of unsecured creditors); In re Au National Restaurant, Inc., 63 B.R. 575, 581 (Bankr. S.D.N.Y. 1986) (need for expedited sale is not a sufficient business justification to sell substantially all of the debtor's assets when the prospect of proceeding to confirmation and making distributions to unsecured creditors is unlikely).

23. The Delaware Bankruptcy Court has addressed facts similar to this case before, stating that it "can't let a case...[run] that's administratively insolvent." In re NEC Holdings Corp., Case No. 10-11890, July 13, 2010 Hearing Transcript (the "NEC Transcript") (Docket

No. 224), p. 78:18-20.⁴ With particular regard to Section 503(b)(9) Claims, the Court stated the following:

[While] I generally have held in the past that you can run a case for the benefit of a secured creditor...[t]hey've got to pay the freight, and the freight is...certainly an administratively solvent estate. And while there's not a guarantee, there has to be something other than a wing and prayer on the payment of admin claims. And counsel very honestly and appropriately answered the question here that at least it's unclear, as we stand here, and it's quite unclear whether 503(b)(9) claims would be paid."

NEC Transcript, p. 100:14-20. This is not a singular occurrence, as in the case of In re Townsends, Inc., Case No., 10-14092, the Delaware Bankruptcy Court also initially refused to approve DIP financing on grounds of a failure to provide for payment of Section 503(b)(9) claims; the court urged the parties to reach a resolution⁵ and they eventually did, in the form of a final financing order that authorized the debtors to establish an escrow to be funded from sales proceeds to pay Section 503(b)(9) claims.

24. The Budget indicates that the Debtors will have negative cash flows throughout the budget period, and that after net borrowings, they will have no unrestricted cash flow with the exception of the first week. The Debtors owe more than \$5.2 million in Section 503(b)(9) Claims as indicated by the Critical Vendor Motion. Generally, Section 503(b)(9) claims are treated just like any other administrative claim. See generally In re Plastech Engineering, 394 B.R. 147 (Bankr. E.D. Mich. 2008) (rejecting application of Section 502(d) to Section 503(b)(9) claims and concluding that Section 503(b)(9) claims should be treated like any other administrative claim). These claims must be paid at confirmation under Section 1129(a)(9) of the Bankruptcy Code. Yet nothing in the DIP Financing Motion or its accompanying Budget

⁴ Relevant portions of the NEC Transcript are attached hereto as **Exhibit B**.

⁵ Townsends January 21, 2011 Hearing Transcript (Docket No. 338), p. 23:14 - 26. Relevant portions of the this Transcript are attached hereto as **Exhibit C**.

appears to adequately provide for these claims. And the Bid Procedures Motion and its accompanying Asset Purchase Agreement do not address these claims either. Therefore, there is nothing in the record to indicate that the proceeds of the DIP Facilities or the proposed sale of the Debtors' assets will be sufficient to pay the claims of the DIP Lenders, the Prepetition Lenders, and all administrative claims, including Section 503(b)(9) claims.

25. Therefore, the Debtors have failed to show that the proposed DIP Facilities are in the best interest of the Debtors and their estates. Unless and until the Debtors are able to provide a Budget that provides for payment of Section 503(b)(9) claims, the Court should not consider granting the DIP Financing Motion.

CONCLUSION

WHEREFORE, Dixon Ticonderoga Company respectfully requests that the Court enter an Order (i) sustaining its Limited Objection to the DIP Financing Motion, (ii) requiring that this or any future DIP Financing Motion, Order, and Budget proposed by the Debtors account for payment of Section 503(b)(9) claims, and (iii) granting such other relief as the Court deems just and proper.

Dated: February 15, 2013

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Limited Objection was furnished via electronic mail using the Court's CM/ECF system on all parties having appeared electronically on February 15, 2013, as well by U.S. Mail to all parties on the attached Rule 2002 Service List, except that the following parties were served via Federal Express:

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EXHIBIT A

EXHIBIT G

Budget

School Specialty Inc.
DIP Summary

School Specialty Inc. DIP Budget

\$ Millions	Feb-13 Week 1	Feb-13 Week 2	Feb-13 Week 3	Feb-13 Week 4	Mar-13 Week 1	Mar-13 Week 2	Mar-13 Week 3	Mar-13 Week 4	Mar-13 Week 5	Apr-13 Week 1	Apr-13 Week 2	Apr-13 Week 3	Apr-13 Week 4
2/2	2/2	2/9	2/16	2/23	3/2	3/9	3/16	3/23	3/30	4/6	4/13	4/20	4/27
Receipts:													
Collections	\$ 7.4	\$ 7.2	\$ 7.7	\$ 8.2	\$ 9.1	\$ 9.0	\$ 8.5	\$ 7.3	\$ 9.7	\$ 9.2	\$ 7.3	\$ 9.1	\$ 10.8
Disbursements:													
Operating Disbursements													
Payroll	\$0.1	\$3.9	\$0.0	\$4.0	\$0.5	\$4.1	\$0.2	\$4.1	\$0.3	\$4.1	\$ 0.3	\$ 4.2	\$ 0.3
Rent	0.7	0.0	0.0	0.0	0.7	0.0	0.0	0.0	0.0	0.7	0.0	0.0	0.0
Taxes	0.1	0.0	0.2	0.2	0.0	0.0	0.0	0.3	0.0	0.0	0.3	0.3	0.0
AP Disbursement	18.5	12.0	8.0	7.4	9.0	9.7	8.2	8.2	8.4	9.8	10.4	10.4	10.4
Debtor Professionals Fees	0.0	0.0	0.0	0.0	0.0	0.0	1.2	0.0	0.0	0.0	0.0	1.2	2.4
Professional Fees for Unsecured Creditors	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.0	0.4	0.0
Restructuring/ Other Profess. Fees	0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0	1.0	10.2
Total Operating Disbursements	\$19.4	\$15.9	\$8.2	\$11.6	\$10.2	\$13.8	\$11.0	\$12.6	\$8.7	\$14.6	\$11.1	\$17.5	\$23.3
ABL Interest/ Fee	\$2.7	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.3
Term Loan Interest (1)	2.6	0.0	0.0	1.2	0.0	0.0	0.0	0.0	1.2	0.0	0.0	0.0	1.2
Term Loan DIP Interest/ Fees (1)	1.7	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.5
Convertible Notes Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Disbursements	\$26.4	\$15.9	\$8.2	\$13.3	\$10.2	\$13.8	\$11.0	\$12.6	\$10.5	\$14.6	\$11.1	\$17.5	\$25.3
Net Cash Flows	(\$19.0)	(\$8.7)	(\$0.6)	(\$5.1)	(\$1.2)	(\$4.8)	(\$2.5)	(\$5.3)	(\$0.8)	(\$5.4)	(\$3.7)	(\$8.4)	(\$14.5)
Beginning Cash Balance	\$ -	\$ 4.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Flows	(19.0)	(8.7)	(0.6)	(5.1)	(1.2)	(4.8)	(2.5)	(5.3)	(0.8)	(5.4)	(3.7)	(8.4)	(14.5)
Net Borrowings/(Paydowns)	23.4	4.2	0.6	5.1	1.2	4.8	2.5	5.3	0.8	5.4	3.7	8.4	14.5
Unrestricted Cash Balance	\$ 4.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ABL DIP Balance													
Projected ABL Availability	\$ 57.0	\$ 60.6	\$ 61.1	\$ 61.6	\$ 60.6	\$ 63.9	\$ 66.2	\$ 66.4	\$ 68.3	\$ 68.5	\$ 71.4	\$ 75.6	\$ 78.4
ABL Balance	43.6	52.0	55.6	56.1	56.6	55.6	58.9	61.2	61.4	62.3	63.5	66.4	70.6
Minimum Liquidity	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Excess/(Deficit) ABL Availability	\$8.4	\$3.6	\$0.5	\$0.4	(\$0.9)	\$3.3	\$2.2	\$0.2	\$1.9	\$1.3	\$2.8	\$4.2	\$2.8
Incremental ABL Funding/(Paydown)	\$ 8.4	\$ 3.6	\$ 0.5	\$ 0.4	(\$0.9)	\$ 3.3	\$ 2.2	\$ 0.2	\$ 0.8	\$ 1.3	\$ 2.8	\$ 4.2	\$ 2.8
Funded ABL Debt Balance	52.0	55.6	56.1	56.6	55.6	58.9	61.2	61.4	62.3	63.5	66.4	70.6	73.4
Excess ABL availability after reserves and minimum liq	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.1	\$ -	\$ -	\$ -	\$ -
Term Loan DIP													
Funded Bayside DIP Balance	-	15.0	15.6	15.7	20.3	22.4	23.9	24.2	29.3	29.3	33.4	34.3	38.5
Incremental Bayside DIP Funding	15.0	0.6	0.0	4.6	2.1	1.5	0.2	5.1	-	4.2	0.9	4.2	11.7
Ending Funded Balance	\$ 15.0	\$ 15.6	\$ 15.7	\$ 20.3	\$ 22.4	\$ 23.9	\$ 24.2	\$ 29.3	\$ 29.3	\$ 33.4	\$ 34.3	\$ 38.5	\$ 50.2

Note

(1) Term Loan related interest and fees will be paid using funds from the Term Loan DIP

EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF DELAWARE

3 Case No. 10-11890-PJW

4 - - - - - x

5 In the Matter of:

6

7 NEC HOLDINGS CORP, ET AL.,

8

9 Debtors.

10

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 824 North Market Street

15 Wilmington, Delaware

16

17 July 13, 2010

18 9:32 AM

19

20 B E F O R E:

21 HON. PETER J. WALSH

22 HON. CHRISTOPHER S. SONTCHI

23 U.S. BANKRUPTCY JUDGES

24

25 ECR OPERATOR: MICHAEL MILLER/LESLIE MURIN

1 THE COURT: Mr. Austin, if you want to put people on
2 the stand and make a record, make a record. Okay? Otherwise,
3 it's not in the record.

4 MR. AUSTIN: With respect to the Gores APA, it too has
5 an August 29th date in it. So this budget and the DIP
6 financing is tied into that APA. From that standpoint, we
7 think the Court should overrule that objection.

8 The 503(b)(9) and the 506(c), I'm going to take in
9 conjunction, together. We are not a guarantor of claims
10 incurred post -- pre-petition. On the 503(b)(9), yes, while
11 they are administrative claims, I think it's important to note,
12 they were claims incurred within twenty days of a bankruptcy
13 filing.

14 THE COURT: Well, admin claims are admin claims.

15 MR. AUSTIN: Admin claims are admin claims, Your
16 Honor. But that's not what we believe should be an issue for
17 the DIP financing in this particular instance. And at --

18 THE COURT: But I can't -- I can't let a case -- Judge
19 Walsh -- I can't let Judge Walsh run a case that's
20 administratively insolvent.

21 MR. AUSTIN: We can appreciate that, Your Honor.

22 THE COURT: All right.

23 MR. AUSTIN: But at the same time, if it's -- these
24 claims, if we are in a liquidation, our secured claims,
25 wherever they are, fall out in front of them. And you look at

1 the level of the 503(b)(9) claims, a fair number of those
2 claims, as the testimony indicated, are being effectively paid
3 through the essential vendor motion. So there is -- there is a
4 process here through the overall financing, that 503(b)(9)s, at
5 least if they're not a hundred percent taken care of, will,
6 indeed be somewhat reduced.

7 The 506(c) waiver provision, again, is a negotiated
8 provision of the DIP financing, but as was pointed out by Mr.
9 Athanas, in the terms of the order itself, does provide for
10 actual coverage if there is a termination event of the DIP, to
11 cover the fees as well as the trade claims incurred post
12 Chapter 11, to the point of that termination date, in
13 accordance with the budget. So from our perspective, we are
14 effectively assessing our own collateral. And to seek a waiver
15 of 506(c) for all other purposes is certainly appropriate under
16 the current circumstances.

17 We've carved out of the collateral, as a practical
18 matter, Your Honor, the 2.5 million for professionals. We've
19 carved out the accrued and unpaid professionals to date, over
20 the termination event, and we've carved out the accrued and
21 unpaid trade claims incurred in accordance with the budget up
22 to that date. I don't know what more this lender -- these
23 lender groups should be asked for, when they're being asked to
24 fund out of formula, on a possibility of trying to provide
25 value, not necessarily to themselves, but to other

1 constituents.

2 What's before the Court today is a packaged financing
3 deal. We've made a number of accommodations. The lenders did
4 not get everything they asked for. The accommodations since
5 the committees and other creditors have been engaged here, have
6 been significant. We've increased the investigation period by
7 ninety -- to ninety days. We've increased the budget for
8 investigation of claims. We agreed to an increase in the
9 overall budget for fees and expenses to the committee. Parties
10 can talk about, in this case, how do the 503(b)(9) claims get
11 paid. One of the real concerns here is that this case is heavy
12 on professional fees and expenses, which shouldn't go
13 unnoticed.

14 We've agreed to pay critical vendors from the DIP
15 financing. And we're funding a significant amount of dollars
16 out of formula. We're covering the carve out and the claims in
17 case of a liquidation. We're not receiving any additional
18 collateral. And we are providing the financing to maintain the
19 operations and preserve the jobs of this debtor's company.

20 In return, we do ask for approval of the final order
21 of the DIP, which does include the carve out, cannot
22 specifically provide for payment at this time of the 503(b)(9)
23 claims, does include a roll-up, does have an August 29 sale
24 process. We think under the circumstances, it's a fair ask in
25 the give and take of these negotiations. And we ask this Court

1 to overrule the objections and enter the final order approving
2 the DIP facility as amended by the amendment and waiver filed
3 today, to address the existing defaults under the facility.
4 Thank you.

5 THE COURT: Let me ask you a question. If we go
6 forward, I approve the final DIP, we go forward and the
7 stalking-horse bid, unmodified, is consummated, post-closing,
8 the day after closing, is there enough money to pay admin
9 claims in full, including the 503(b)(9) claims?

10 MR. AUSTIN: I'll answer your question this way, Your
11 Honor. Probably not from the proceeds of the sale of the Gores
12 transaction proposal as currently structured. But there are
13 excluded assets. Whether or not the 503(b)(9) claims can then
14 be paid from the liquidation of those additional assets, I
15 can't answer. And those assets, obviously, include preference
16 actions, fraudulent conveyances, things like that, which are
17 not being encumbered and not even being asked to be encumbered
18 in this particular instance.

19 So I can't really say, other than to say, at least
20 with the Gores transaction as structured, we are cautiously
21 optimistic, at least, the DIP loan will be paid from the
22 proceeds of that claim, so that the excluded assets, and to the
23 extent that there's a better working capital adjustment, to the
24 extent that there's a better result on post-closing admin costs
25 to the case, may well provide the opportunity to pay the claims

1 this Court is inquiring about.

2 THE COURT: All right. And in any event, seven and a
3 half million have been approved by Judge Walsh earlier today?

4 MR. AUSTIN: That is correct.

5 THE COURT: Of approximately twenty?

6 MR. AUSTIN: That's correct.

7 THE COURT: Okay. Thank you. Anyone else in favor of
8 the loan?

9 I'd like to take a short recess before I hear the
10 objectors. So just a few -- five, ten minutes.

11 (Recess from 3:19 p.m. to 3:33 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated. Can I hear from the
14 committee?

15 MR. FEINSTEIN: Thank you, Your Honor. Once again,
16 Robert Feinstein for the committee. Your Honor, I'm going to
17 take the arguments in, I think, reverse order since the last
18 thing Mr. Austin spoke about was 503(b)(9) and 506(c), so for
19 continuity's sake, I'll start with arguments on those points.

20 Your Honor, in 2005, Congress amended the statute, as
21 we know, to enact Section 503(b)(9), and made claims based on
22 goods delivered within twenty days, the petition dated
23 administrative claims. Yes, those claims arise from
24 circumstances that occurred prepetition, but Congress intended
25 to provide a benefit to vendors as a policy matter to encourage

1 vendors to deal with companies that were in financial stress,
2 and the quid pro quo for that vendor's support was granting
3 those vendors an administrative claim, even though the goods
4 were supplied prepetition.

5 Now, Your Honor made an argument that I would, which
6 is that it's not appropriate to run a Chapter 11 case unless
7 you're paying all of your administrative expenses, or at least
8 make provision for payment of all of your administrative
9 expenses. And I don't think anybody in the courtroom would
10 dispute that the debtors' DIP budget does not make provision
11 for payment of all of its administrative expenses, and in
12 particular, the 503(b)(9) expenses. The notion that some of
13 those expenses will be selectively paid under the critical
14 vendor motion, seven and a half million out of twenty, is not
15 adequate, Your Honor, any more than it would be adequate to say
16 that we'll pay some but not all of Latham & Watkins fees or
17 that we'll repay some of the DIP loan, which is an
18 administrative expense. It's all or nothing. Either you stay
19 in Chapter 11 and you pay your administrative expenses, or you
20 get out of Chapter 11.

21 We're not advocating that this company convert to
22 Chapter 7, but recognizing that Congress said that these claims
23 are administrative claims, and GE is here claiming that it
24 deserves a Section 506(c) waiver because it's providing funding
25 to run this Chapter 11 case, they're not. They're short by

1 about twelve and a half million dollars. So they don't deserve
2 a Section 506(c) waiver, and Mr. Austin's speculation that
3 unencumbered assets, which are few and of uncertain value at
4 best, that those may be sufficient to pay the administrative
5 expenses that have been left out of this budget is simply an
6 inadequate provision. We have no confidence, Your Honor, that
7 the residual assets, which are few, will be anywhere close to
8 generating twelve and a half million dollars to pay
9 administrative expenses that this debtor is obligated to pay.

10 So what you have, Your Honor, is a setup where the DIP
11 lender is -- it's like the creditor-in-possession. They're
12 dictating which expenses the debtor will pay and essentially
13 prohibiting the payment of a substantial portion of
14 administrative expenses, meaning the 503(b)(9) claimants that
15 are not fortunate enough to be chosen for participation in the
16 essential vendor program. That's simply inappropriate after
17 2005, Your Honor.

18 And what's more, it's inequitable because the
19 503(b)(9) claimants, the vendors, are here unpaid because they
20 provided goods to the debtor which is now collateral --
21 collateral that, if and when sold, will go to pay the unsecured
22 debt. That's not consistent with the premise for Section
23 503(b)(9) which was to provide encouragement and an incentive
24 to vendors to supply goods. What's happening here is that
25 these vendors supplied goods; they'll be sold; the proceeds

1 will be used to pay the secure creditor whose debt's being
2 rolled up. And yet these vendors who were supposed to be
3 protected by the statute are left out in the cold. And
4 selectively paying some, to be clear, is not the same as
5 committing to pay them all.

6 Now, let me turn next to the rollup, Your Honor. It's
7 very clear from Mr. Marlowe's testimony that, as in most cases,
8 this debtor had no leverage in the negotiations, and
9 particularly after the 2008 credit crisis, it's hard to find
10 third-party DIP financing. I could count, I think, on maybe
11 one finger, Your Honor, the number of cases I've been in where
12 the DIP financing has come from somebody who wasn't already in
13 the --

14 MR. AUSTIN: Your Honor, I think he's testifying.

15 THE COURT: Yes, you are. Very good. I like that,
16 Mr. Austin.

17 Move on.

18 MR. FEINSTEIN: Okay, Your Honor.

19 THE COURT: But it is -- the testimony, I believe, you
20 are correct, indicated that there was not necessarily a lot of
21 leverage.

22 MR. FEINSTEIN: And in fact, Your Honor, I -- despite
23 the testimony and the testimony of Mr. Athanas and the
24 testimony of Mr. Austin, I did not hear one request that GE
25 made that it didn't get. I didn't hear one request of the

1 debtors that it got in these negotiations. Like any debtor-DIP
2 lender negotiation, this day and age, the debtor really has no
3 leverage. It's suffer -- a forced liquidation or agree to the
4 secured lender's demands. And I don't fault Mr. Marlowe for
5 acceding to the secured lender's demands. That happens all the
6 time. But that's why there are committees, and that's why
7 there are courts: to put a buffer into the situation to try to
8 prevent overreaching by secured lenders. And this is an
9 overreaching DIP, Your Honor.

10 There is no justification for the rollup. What are
11 the benefits of the rollup to the secured lender? Well, let's
12 start with cross-collateralization. They're proposing to take
13 a lien on all postpetition collateral and prepetition
14 collateral to secure their postpetition advance of twenty
15 million and to secure their prepetition debt which is being
16 rolled up. So new collateral, new postpetition collateral --

17 THE COURT: No, no, no.

18 MR. FEINSTEIN: Yes.

19 THE COURT: They have a lien on the prepetition
20 collateral.

21 MR. FEINSTEIN: Yes.

22 THE COURT: You're going to use their collateral
23 postpetition, so you're going to have to give them, now, core
24 protection lien on the postpetition collateral. So what's the
25 difference if they don't expand the collateral base to

1 unencumbered assets on a postpetition basis? There is no
2 difference, especially if you include the superpriority claim
3 that you'd also have to give them as adequate protection, which
4 are going to get paid in front of everybody else, anyway.

5 MR. FEINSTEIN: I agree, Your Honor. I dispute,
6 however, the notion that they're not taking new collateral.
7 Mr. Austin argued that; I think the papers read otherwise.
8 They're taking a blanket lien on every asset, regardless of
9 whether or not it was in the prepetition collateral package.

10 THE COURT: Well, let me put it this way. They're
11 not, because I'm going to make it clear in any order I approve
12 that the collateral that would be involved in any rollup would
13 be limited to the collateral on the prepetition basis.

14 MR. FEINSTEIN: Thank you, Your Honor.

15 THE COURT: At least -- at least to the old money.

16 MR. FEINSTEIN: Thank you. Then I'm going to quit
17 while I'm ahead, Your Honor.

18 Let me address one other major --

19 THE COURT: Because that's the mischief in a rollup,
20 right there, which --

21 MR. FEINSTEIN: Well, that's --

22 THE COURT: One of the mischiefs.

23 MR. FEINSTEIN: Yeah, let me discuss the other one.

24 THE COURT: Which is the admin claim issue.

25 MR. FEINSTEIN: Yes. By rolling up the debt, not only

1 do you prevent cram-down, you prevent reinstatement. And the
2 silent player at the table today, Your Honor, are the Term B
3 lenders who, under their intercreditor agreement, as is usual,
4 are not supposed to object when the senior secured lender
5 extends DIP financing or has use of cash collateral, but the B
6 lenders -- conceivably, a plan could emerge in this case that
7 reinstates the senior secured debt, but you can't do that
8 anymore now because it's an admin claim. You have to pay it a
9 hundred cents on the dollar, in cash, in full at confirmation
10 or you can't confirm a plan. So --

11 THE COURT: I think that's not true either. I think
12 you're -- there's no difference. Again, you're going to use
13 the prepetition -- you're going to use that collateral -- to
14 the extent there's -- okay, all right, wait a minute. Only to
15 the extent there's a diminution would they get adequate
16 protection. So it becomes a valuation find on what the
17 collateral was worth on the petition date. And if the
18 collateral's worth less than the prepetition lien, you can
19 perhaps cram them down. But now you're saying, it doesn't
20 really matter what the collateral is worth on the prepetition
21 claim, it doesn't matter whether it's gone up in value or down
22 in value, you have a lien and superpriority admin claim to the
23 full amount of the --

24 MR. FEINSTEIN: Yes, and there's only one way to
25 satisfy it, which is in cash, in full, reinstatement, cram-down

1 are no longer options.

2 THE COURT: I've never heard that argument before.

3 It's an interesting argument.

4 MR. FEINSTEIN: So when you combine the rollup with
5 the milestones, which I'll discuss next, there's really only
6 one outcome in this case, which is a fast sale dictated by the
7 secured lender -- the debtor's got no leverage in the process -
8 - with the proceeds going to the secured lender, no plan
9 option, no option to develop other offers because the time
10 frame is just so short, and --

11 THE COURT: Well, but the -- a sale case is a sale
12 case, and it's within the debtors' business judgment to decide
13 how to proceed. And if they feel that it maximizes value to go
14 through a sale process, they have that right under 363. I
15 mean, there's nothing inherently evil in a sale process.

16 MR. FEINSTEIN: No, sale cases occur all the time,
17 Your Honor. But a sale on this fast a track really presents
18 the opportunity for mischief and loss of value.

19 THE COURT: Well, and then the response to that is,
20 well, it's been shopped since March.

21 MR. FEINSTEIN: But it wasn't, Your Honor.

22 THE COURT: Okay.

23 MR. FEINSTEIN: And this is -- let me turn, then, to
24 the milestones.

25 Well, actually, well, okay, let me do that.

1 THE COURT: Proceed how you like. I --

2 MR. FEINSTEIN: No, I'm just trying to gather my
3 thoughts. I don't think anybody in the courtroom would
4 dispute, Your Honor -- and it's in the first day affidavit --
5 that prepetition, there was a marketing process, but one that
6 was limited to financial buyers. This is a family-owned
7 business; perhaps they weren't anxious to have a strategic come
8 in, but no one would dispute that there was no marketing to
9 strategic buyers, prepetition. And the ink is still wet on the
10 petition. There has not been an adequate process of marketing
11 this company to strategic buyers and to other buyers who might
12 come forward. And in fact, you see from the motion practice --

13 MR. AUSTIN: Objection, Your Honor. I don't think
14 he's now testifying; I don't think there's facts in evidence on
15 this.

16 THE COURT: Well, I didn't even hear the -- what was
17 the sentence, again. I'm sorry.

18 MR. FEINSTEIN: I'm not sure what he was picking
19 apart.

20 MR. AUSTIN: He says there hasn't been a fulsome sale
21 process pre-Chapter 11. I don't know that there's any evidence
22 that they don't.

23 MR. FEINSTEIN: I pointed to the first day affidavit,
24 which I can pull out.

25 THE COURT: Yeah, the declaration which I think is --

1 is the declaration in evidence?

2 MR. ATHANAS: Your Honor, it's Joe Athanas on behalf
3 of the debtors. It is in evidence, and I'll confirm that only
4 financial buyers were marketed prepetition, although right now,
5 Cenveo is -- and this is also public information -- is
6 performing due diligence. They're our largest competitor.

7 THE COURT: All right.

8 MR. FEINSTEIN: Well, and Mr. Athanas has made my
9 point for me. Cenveo turns up postpetition. There's been
10 motion practice over their desire to get information, to get in
11 the game. They're working under a disability that they were
12 never marketed prepetition. Again, nobody disputes that. So
13 now they're playing catch-up and against a timeline which is
14 remarkably fast. So fast, in fact, that -- and again, this is
15 one of the mischief of milestones, Your Honor -- so fast that
16 the debtor already missed the first milestone.

17 THE COURT: Um-hum.

18 MR. FEINSTEIN: July 2nd to get an APA. Everybody
19 hoped and believed they would get there, but life throws us all
20 curveballs. But deals get negotiated; it takes more time. But
21 when you have a set of milestones with no margin for error --
22 everything has to go right to meet the milestone -- they're
23 going to be missed, and the miss of the first milestone is
24 proof that this timeline is simply too fast.

25 THE COURT: Well, let me -- if I approve a DIP budget

1 with milestones, if I approve a DIP with milestones in it, and
2 you go to your bid procedures hearing on July 22nd with Judge
3 Walsh, he's going to make a decision based on what he believes
4 is appropriate, regardless of whether it's in the DIP or not,
5 and then it'll be up to -- assume he expands it out to sixty
6 days, for example, then it's up to the lender to decide whether
7 to call a default or not. And then it's up to Judge Walsh,
8 although it will probably end up back here, to decide whether
9 it's an appropriate default to call on five days' notice. So
10 there's a mechanism in place. So my question to you is, sort
11 of, so what? They've set the parameters, they've set what they
12 want, but the judge is going to do what the judge -- I know
13 Judge Walsh is going to do what Judge Walsh wants to do, or
14 what he thinks is appropriate. And then they'll have to make a
15 decision based on whether to enforce the milestone or not. So
16 does it really matter?

17 MR. FEINSTEIN: I agree with your description of the
18 sequence of events. My problem is with the premise of setting
19 the milestone today because if it's missed, it creates an event
20 of default. It gives the secured lender a whole bundle of
21 rights, stay of relief and so forth under the DIP order that
22 they otherwise wouldn't have if there was no event of default.
23 So when the debtors, with their hands tied behind their back,
24 agree to very fast milestones, they're basically agreeing to
25 incur tremendous risk of event of default that will give the

1 lender a whole new round of leverage in new negotiations. And
2 on this go-round, GE, perhaps -- well, GE was kind enough to
3 waive the default that occurred and to push out the deadline
4 for sale procedures, but they haven't changed the milestone for
5 the end of the process; they've just compressed the process,
6 now, with the end date still the same. So those dates are
7 going to be missed. The sales procedures hearing won't be
8 missed because it's been scheduled, but there's a material risk
9 that the other milestones will be missed. When they're missed,
10 it gives GE -- Your Honor, you're right -- the right to decide
11 what to do. But why should we give them that right today? Why
12 did they earn that?

13 MR. AUSTIN: I object. There's no evidence about the
14 future -- about missing -- Jeff Austin, for the record.

15 THE COURT: Well, he's speculating. I understand, Mr.
16 Austin. It's argument.

17 MR. FEINSTEIN: Now, the fact of the matter is, Your
18 Honor, GE does not care about maximizing value to the estate,
19 and they don't have to. They're not a fiduciary. The debtor
20 is; we are. And we are deeply concerned by a set of milestones
21 that will result in a fast sale for enough money to pay off GE
22 and leave everybody else behind.

23 THE COURT: Okay.

24 MR. FEINSTEIN: Now, what's the risk, Your Honor, of
25 not approving the milestones and not approving a rollup? Well,

1 GE's been very clear. These are our terms of doing business.
2 Without you agreeing to our terms -- and that would include
3 you, Your Honor -- then this -- the company won't have
4 financing and will be forced to shut down. Now, nobody likes
5 to play chicken, Your Honor. The creditors in this case
6 include vendors. They want to see this enterprise survive;
7 they want to see some recoveries, if possible. But let's not
8 accept at face value the notion that if GE doesn't get their
9 way, they're going to force a shutdown because they would be --

10 THE COURT: Let me tell you how I think about that. I
11 don't care what they threaten me with. I will make the
12 decision based on what's appropriate. If they don't want to
13 lend, don't lend. If they want to convert, convert. I'll save
14 Judge Walsh a lot of trouble. And that sounds -- I mean, look,
15 that sounds, perhaps, cold-hearted to anyone who hasn't done
16 Chapter 11 for twenty years, but the reality is it is a
17 slippery slope that will never end. And it's not my job to
18 save the company.

19 MR. FEINSTEIN: Understood, Your Honor. The only
20 point I was trying to make, and then I'll close, is that it's
21 difficult to speculate about this, Your Honor, but I don't see
22 any material risk to this debtor that if GE doesn't get their
23 way on every point, and the evidence indicates that they have,
24 that they're going to force the liquidation of their own
25 collateral and impair their own collateral, because it's not

1 rational. And I asked the witness, before, did they appear to
2 be rational or irrational. Well, of course, they're rational.
3 They're aggressive; they're holding a lot of cards, maybe
4 fifty-one or fifty-two. But they're not irrational and they're
5 not going to shut this company down if they don't get their way
6 on every last point.

7 THE COURT: Well, again, I -- it is what it is, and I
8 don't take -- I give it zero weight, one way or the other.

9 MR. FEINSTEIN: Well, Your Honor, for the reasons I've
10 stated, the rollup is unwarranted, it only benefits them, the
11 milestones are way too short, and this company is not having
12 its administrative expenses funded in Chapter 11, so the 506(c)
13 waiver should be denied. Thank you.

14 THE COURT: You're welcome. Mr. Loizides?

15 MR. LOIZIDES: Thank you, Your Honor. Again, for the
16 record, Chris Loizides for Neenah Paper. I don't want to
17 repeat the very able arguments of committee counsel in this
18 case. I would note that it might be wise -- I don't advocate
19 it one way or the other -- for Congress to enact something that
20 says a secured lender can effectively do a nationwide federal
21 going-concern foreclosure and not worry about everybody else.
22 But that's not the law right now. And I'm not here to testify
23 either, but a case where you have a quick sale followed by a
24 conversion would not be the first. If that happens here, it
25 wouldn't be the first time, and I would just suggest that

1 that's an inappropriate use of Chapter 11, even if you adopt
2 what I believe is a changing view as to whether or not 11s can
3 be administered primarily or even exclusively for the basis of
4 secured creditors. You still need to deal with administrative
5 claims. You still need to deal, therefore, with 503(b)(9).

6 The debtors' testimony on this subject was, basically,
7 we really don't have a plan. Yeah, we're going to pay the
8 seven and a half million, and then there's going to be twelve
9 and a half million left, and we're just kind of have our
10 fingers crossed. And I think this maybe just sort of states
11 the committee's argument another way, but the test can't be
12 that if there's some kind of chance that 503(b)(9)s will be
13 paid, they can keep the case in 11. I mean, that can't be the
14 right test, that you've got a better chance here than you do in
15 an 11. I mean, 1129 requires the payment in full of these
16 claims. You can't say, well -- 1129 doesn't say confirm a plan
17 if you've got the best shot at paying compared to converting to
18 7.

19 The record also shows fairly consistently that there
20 is -- that if the sale price, at least as it exists now, were
21 insufficient, or it would be insufficient even to pay off the
22 secured lenders, it would certainly not be sufficient to pay
23 off administrative claims on top of that and 503(b)(9) on top
24 of that. The record is clear. This may cut both ways, but of
25 course, the marketing process -- some marketing process existed

1 prepetition, so I don't know how much weight we can give to the
2 hope, essentially, that the bidding process will not only go up
3 enough to pay that shortfall for the secured, but in addition,
4 will pay the postpetition admins and the 503(b)(9). And of
5 course, if some 503(b)(9) claimants do get paid, it's little
6 solace to those who do not.

7 I would like to, and -- just mention 506(c) briefly,
8 and that is, it seems to me that if you wind up in a situation
9 where -- let's say the sale is enough to pay off the secured
10 debt, but not the postpetition, but there's some unencumbered
11 assets that can be used to pay that, and no money goes to any
12 unsecured creditors in this case, it seems to me that a 506(c)
13 waiver, in that case, would be inappropriate, and that it's not
14 asking GE to pay twice. I'm not advocating that anybody
15 require to be paid -- to pay twice. In fact, I'm not
16 advocating that they be charged with a 506(c) claim today.
17 Merely that it not be waived, and that we see what happens in
18 the future. And I think under these facts, where there's no
19 evidence that there's really any money for unsecured creditors
20 in this case, that we essentially give a blanket waiver of the
21 506(c).

22 Unless Your Honor has any questions, that's all I
23 have. Thank you, Your Honor.

24 THE COURT: Mr. Palacio?

25 MR. PALACIO: Good afternoon, Your Honor. May it

1 please the Court. Again, Ricardo Palacio of Ashby and Geddes
2 on behalf of Multi-Plastic, Inc.

3 Your Honor, I'm going to be very brief, given the
4 comments made by Mr. Feinstein and Mr. Loizides. But I do want
5 to start with, I guess, just two general overriding points, the
6 first being, again, consistent, I think, with Judge Walrath,
7 which is never cite a prior court ruling to Your Honor in
8 support of a position, and two, be careful what you wish for.

9 With respect to the first point, Your Honor, and I
10 think Your Honor already alluded to this, is your position we
11 stated, I think, in court, here, previously, that a case can be
12 run for the benefit of a secured creditor, provided that the
13 estate is administratively solvent. And I think that's the
14 case here, and I think Your Honor picked up on it, and I think
15 that's the situation we're facing here. That we're facing the
16 uncertain and looming prospect that this case might be
17 administratively insolvent, at least with respect to 503(b)(9)
18 claims.

19 That takes me to the second point, though, and that is
20 be careful what you wish for. As I think Mr. Feinstein noted,
21 and as I think Your Honor at least alluded to, Multi-Plastics
22 does want to see an ongoing viable business, here. It's a
23 trade vendor and it certainly has that interest in mind.

24 So with that said, Your Honor, we rise -- that is,
25 Multi-Plastic rises to simply ask Your Honor for something that

1 is right, that is fair, and that is to provide some kind of DIP
2 financing that is fair and is cognizant of 503(b)(9) claims.

3 Much has been made with respect to the essential
4 vendor motion. I do acknowledge its existence; we're all aware
5 of it, and it's been referenced several times, particularly
6 with respect to the cap that's been approved today by Judge
7 Walsh. I do want to note at least a couple things for Your
8 Honor's consideration. First, if I recall correctly -- and I
9 don't have a copy handy -- that essential vendor motion also
10 contemplated payments to shippers, non-503(b)(9) claimants.
11 And to the extent those payments have been made and fall within
12 the 7.5 million cap, it reduces the amount otherwise available
13 for 503(b)(9) claims.

14 Two, there are terms that go with those admin
15 claimants. You have to agree to certain terms, whether it's
16 most favorable otherwise, and to the extent you default, that
17 triggers other events where we might be haled back into court,
18 otherwise. I don't remember the terms, but there's something
19 and it's typical, I think, of most essential vendor or critical
20 vendor programs. Of course, those requirements are not
21 applicable to other admin claimants. So I throw that out there
22 with respect to the 503(b)(9) admin claimants, specifically.

23 With that, Your Honor, again, I just want to
24 reiterate, Multi-Plastics is interested in seeing a business go
25 forward on a viable basis and not face liquidation. But again,

1 that needs to be tempered with 503(b)(9) claimants being left
2 out in the lurch.

3 THE COURT: All right.

4 MR. PALACIO: Thank you, Your Honor.

5 THE COURT: Anyone else? I assume the Term B issues
6 have been resolved?

7 MR. ATHANAS: They have, Your Honor.

8 THE COURT: Okay. Just wanted to make sure.

9 Let me give you some thoughts, maybe, before you
10 reply.

11 MR. ATHANAS: Certainly, Your Honor.

12 THE COURT: 503(b)(9), the lender is not a guarantor
13 of the 503(b)(9) or any other admin claims, and neither is the
14 debtor. Mr. Palacio's right in that I generally have held in
15 the past that you can run a case for the benefit of a secured
16 creditor. It's the crime of having collateral that some people
17 seem to say that they can't. They've got to pay the freight,
18 and the freight is, at least -- the freight is not necessarily
19 a tip to the unsecureds, but the freight is certainly an
20 administratively solvent estate. And while there's not a
21 guarantee, there has to be something other than a wing and a
22 prayer on the payment of the admin claims. And counsel very
23 honestly and appropriately answered the question that at least
24 it's unclear, as we stand here, and it's quite unclear whether
25 503(b)(9) claims would be paid. It doesn't need to be in the

1 DIP budget, necessarily, but there has to be something -- and
2 again, not a guarantee, but something, some evidence that
3 there's a possibility -- probability that they'll be paid.
4 Excuse me. And I don't -- I really don't see that, as we stood
5 here today. So I don't know how you address it, but that's a
6 thought.

7 Another thought is this is a position I inherited from
8 Judge Walsh years ago, and I agree with it, which is basically
9 you don't give a 506 waiver over an objection by the committee.
10 And if necessary, we'll have a substantial contribution
11 hearing -- not a substantial -- I'm sorry, but we'll have a
12 hearing on 506(c), and in twenty years, he's never had one. So
13 I would not be inclined to give a 506(c) waiver.

14 I'm okay with the milestones, I think, for the reasons
15 I articulated with the committee, with Mr. Feinstein. I don't
16 think I'm putting the case on a highway to a sale that's
17 inappropriate. But Judge Walsh will decide that, and if the
18 secured creditor calls a default based on that, I'll look on it
19 at the merits. I don't think it's inappropriate, frankly, to
20 give them the "leverage" at this time. They are lending money.
21 It is their collateral at risk. It is not inappropriate for
22 them to agree to fund a case based on certain conditions,
23 provided they're reasonable and within the confines of the law.
24 So as we sit here today, I'm okay with sale milestones.

25 The rollup, I really would like to hear more from the

1 debtor and from Mr. Austin on this argument, which is -- which
2 I said, is one I haven't heard, which gives me some pause to
3 approve it, which is the removal of the ability, ever, to cram
4 down a secured creditor. I don't know if we'd be there or not
5 in this case. I think I made it clear, just to -- you know,
6 I'm not going to allow, through the rollup, additional
7 collateral -- an expansion of the collateral base, other than,
8 obviously, it now applies postpetition. But an expansion of
9 the collateral base on the prepetition claim to previously
10 unencumbered assets, that really is an improvement in position.
11 Generally speaking, as I said, I think with the concept of
12 adequate protection and superpriority admin claim, et cetera,
13 usually rollup, frankly, I don't think matters, when you work
14 the priority scheme out.

15 But I'd like to hear -- those are, I guess,
16 thoughts/rulings, if you will, but I would like to hear more on
17 this rollup issue.

18 MR. ATHANAS: All right, anything else, Your Honor?

19 THE COURT: No.

20 MR. ATHANAS: Your Honor, Joe Athanas on behalf of the
21 debtors. There's one thing you said today that really made me
22 nervous sitting over there, and --

23 THE COURT: Just one?

24 MR. ATHANAS: Just one. Just one, Your Honor. It is
25 my job to save this company. That's my job. And maybe not to

1 save the company, but certainly to maximize value for all
2 creditors, and I don't distinguish between secured creditors,
3 unsecured creditors, administrative claimants. I'm just trying
4 to make the pie as big as possible, and then they can all beat
5 each other up about how to split it up. And the Bankruptcy
6 Code has a way of splitting it up that maybe some of them don't
7 like, and maybe they'll work it out. I've had other cases that
8 were administratively solvent in terms of what happened from
9 the petition date to the end of the petition date where it was
10 not solvent on 503(b)(9) claims, but at the end of the case, we
11 went to the 503(b)(9) claimants and we said we have this pile
12 of money available, and we made a deal, and certainly --

13 THE COURT: Well, and I --

14 MR. ATHANAS: -- in the Bankruptcy Code, it says
15 administrative claimants can agree to take less.

16 THE COURT: Right, but they haven't yet.

17 MR. ATHANAS: No, they haven't.

18 THE COURT: And you're --

19 MR. ATHANAS: But Your Honor, we're not deciding a
20 plan today. We're just deciding whether our case should
21 disappear or whether we should get financing.

22 THE COURT: Well, I understand you're not deciding a
23 plan today, but you're proceeding under a course of action to
24 sell on a going-concern basis the business, improving -- almost
25 certainly improving the enterprise value of the estate to the

1 benefit of, among others, secured creditor, but at the same
2 time, with no reasonable prospect that at least -- or no
3 probable prospect that administrative claims will get paid in
4 full. And if that's the case, let's go to a foreclosure.
5 Let's convert and have a foreclosure and let the secured
6 creditor go about its business of foreclosing on its
7 collateral. Now, that's not in the Code. That's in Judge
8 Sontchi's Code. It's a much weightier document.

9 MR. ATHANAS: And Your Honor, I'd like to talk about
10 the Code.

11 THE COURT: And my point on that is, and I've had
12 cases that went the other way. I had Goody's (ph.) I and II,
13 and Goody's I, we had a plan of reorganization and we had
14 evidence that what money was set aside for 503(b)(9) claims
15 would be sufficient and it was uncontested evidence, and it was
16 thorough. There were two witnesses on it. And six weeks
17 later, it turns out it was woefully inadequate and the
18 503(b)(9) claims and other admin claims were not paid in full
19 and became general unsecured claims of the Goody's II estate.
20 That happens. Like I said, nobody's a guarantor. But you
21 would -- you have to, at least, have a path forward that
22 contemplates the probability that these claims are going to get
23 paid. Otherwise, you know, go somewhere else.

24 MR. ATHANAS: Your Honor, if I may quibble with you,
25 just a little bit.

1 THE COURT: And I'd be happy to revoke the interim
2 comp order, if Judge Walsh doesn't mind. I mean, look, you
3 can't select among administrative expense claims.

4 MR. ATHANAS: Well, Your Honor, when I look at the
5 Code, I know one thing. Secured claims get paid before
6 administrative claims.

7 THE COURT: I understand.

8 MR. ATHANAS: I know another thing, that the Code
9 doesn't say anything about other claimants -- that you can't
10 have a bankruptcy case where only the secured creditors get the
11 money. There's nothing in the Code about that, either.

12 THE COURT: Um-hum.

13 MR. ATHANAS: Your Honor, if you look at -- I know
14 many, many judges who've said, look, the price of admission for
15 this case is you're not going to run up administrative expenses
16 on my watch so that the secured creditor can sell its
17 collateral. Totally understand that, and we've provided for
18 that.

19 But it's a totally different thing to say, you know
20 what, the secured creditor's going to have to pay not only the
21 cost of the freight of this case, which they've already agreed,
22 but the secured creditor's going to have to go back and pay all
23 these prepetition claims --

24 THE COURT: I don't want to hear --

25 MR. ATHANAS: -- that are junior to them.

1 THE COURT: I don't want to hear that they're
2 prepetition claims. Congress says they're admin claims. I
3 don't care if they were from fifty years ago. If Congress
4 makes the ruling, an admin claim is an admin claim.

5 MR. ATHANAS: Well, Congress has made some other
6 rulings. If you look at Section 1112 of the Bankruptcy Code -
7 - because we're not dealing with a plan, here, Your Honor;
8 we're dealing with should this case, you know, should the
9 financing be approved, should this case be converted. If you
10 look at the conversion statute and what constitutes cause,
11 there are cases that say failure to pay your administrative
12 claims constitutes cause. Congress didn't say so. If you look
13 at the list of 1112, it doesn't say failure to pay
14 administrative claims is grounds for conversion of a case in
15 the Bankruptcy Code.

16 THE COURT: I believe that section starts including.

17 MR. ATHANAS: It does. It does start including. But
18 why didn't they list that, Your Honor? Because they wanted to
19 provide people the flexibility to maximize value. We've got
20 3,600 people whose jobs are riding on this financing and on a
21 going-concern sale of this company. I wonder, really, if
22 Neenah Paper, who's sitting over there, wants to lose their
23 biggest customer --

24 THE COURT: That's --

25 MR. ATHANAS: -- over 800,000 dollars.

1 THE COURT: That's an issue to talk about out in the
2 hallway. Okay?

3 MR. ATHANAS: I understand, Your Honor.

4 THE COURT: I'm not -- I'm not involved in
5 negotiations. That's not what I do. And by the way, I think
6 you could make a very good argument that 1112(b)(4)(A) that
7 says "cause includes substantial or continuing loss to or
8 diminution of the estate" --

9 MR. ATHANAS: But we have the opposite of that, Your
10 Honor. That's my entire point. I absolutely agree. If we
11 weren't --

12 THE COURT: Estate includes liabilities, not just
13 assets.

14 MR. ATHANAS: But Your Honor, what we're doing here is
15 we are increasing the value of the estate by getting this loan
16 by more than the amount of the loan. We are improving the
17 value of the estate; we're not diminishing it. Yes, we're not
18 paying these -- some of these admin claims for sure; maybe we
19 will. It depends on what happens at the sale.

20 THE COURT: You're beating a dead horse, sir.

21 MR. ATHANAS: Understood, Your Honor.

22 THE COURT: You've got to do more, all right? I don't
23 know what you have to do, you can work it out, but you've got
24 to do more.

25 MR. ATHANAS: Okay.

1 THE COURT: And again, you're not a guarantor.
2 Nobody's a guarantor. But I need some evidence that there's a
3 probability that admin claims are going to get paid in full,
4 including 503(b)(9) claims or I won't approve the financing.

5 MR. ATHANAS: Your Honor, I understand where you
6 stand. Before we convert the case, I'd like --

7 THE COURT: Whoa. What?

8 MR. ATHANAS: -- I'd like to take a brief recess.

9 THE COURT: I didn't say we're converting the case.

10 MR. ATHANAS: Understood, Your Honor, but without
11 financing, it would be inevitable. So I'd ask for just a very
12 brief recess so I can talk to the parties and make sure they
13 really want what they're asking for.

14 MR. FEINSTEIN: We're okay with that, Your Honor.

15 THE COURT: All right. Take a recess.

16 (Recess from 4:08 p.m. until 4:51 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 MR. ATHANAS: Your Honor, Joe Athanas on behalf of the
20 debtors. Your Honor, we would ask for a continuance until
21 Friday morning. At that time we'll either put on evidence
22 regarding 503(b)(9) claims or maybe even there'll be a deal.
23 Who know?

24 THE COURT: All right. Let's see what I have. Pretty
25 wide open Friday. Any preference?

1 MR. FEINSTEIN: We'd like to go as early as possible,
2 if that's okay.

3 THE COURT: That's fine. I'll give you 9:30.

4 MR. ATHANAS: Thank you, Your Honor.

5 THE COURT: At that time, maybe I could get more
6 argument on this issue on the roll-up, specifically the
7 inability to cram down, the effect of that in this case. I
8 just haven't thought about those issues before.

9 MR. ATHANAS: Understood, Your Honor. And I think --

10 THE COURT: And I'm making no ruling right now one way
11 or the other. I just haven't thought of them.

12 MR. ATHANAS: Understood, Your Honor.

13 THE COURT: If somebody wants to submit a letter or
14 something like that, that's fine too.

15 MR. FEINSTEIN: We'll come prepared in any event, Your
16 Honor.

17 THE COURT: Very good.

18 MR. FEINSTEIN: Hopefully we can work out something
19 before then, but if not, we'll come prepared.

20 THE COURT: Okay. I guess we'll wait till then to put
21 on the other resolutions on the record, if you were going to.
22 I don't know.

23 MR. ATHANAS: Your Honor, I think, the only thing --
24 you mean the DIP financing?

25 THE COURT: Yes.

EXHIBIT C

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 10-14092 (CSS)

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In the Matter of:

TOWNSENDS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

January 21, 2011
1:09 PM

B E F O R E:
HON. CHRISTOPHER S. SONTCHI
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: DANA MOORE

1 would be the date that we would need to close by. And so we
2 would presume to either ask the Court to hear that sale
3 approval at the February 18th hearing at 10 a.m., or if it was
4 possible, we'll work with chambers to move that omnibus date
5 one day earlier to the 17th. We would try to do it then so
6 we've got a little bit more room at the closing. That's
7 obviously subject to the Court's approval of the bid procedures
8 and calendar. But that's the -- one of the fundamental
9 assumptions of this resolution, Your Honor.

10 THE COURT: All right. Anyone else?

11 MR. BUECHLER: Your Honor, Bruce Buechler from
12 Lowenstein Sandler on behalf of the official committee of
13 unsecured creditors. Just briefly, Your Honor, because the
14 resolution would have the committee withdraw the objection to
15 the final DIP. The committee, just by very brief background,
16 is very concerned and has come to the conclusion that these
17 debtors, as currently constituted financially, and these
18 bankruptcy cases are administratively insolvent. And we were
19 faced with a very untenable position, given what it looks like
20 the assets will likely be sold for and the amount of secured
21 debt that we are behind in the form of the debt owed to the
22 lenders. And granted, we are doing our lien review, and
23 nothing in our proposed settlement of the DIP impacts the
24 committee's ability to complete its lien review, and if there
25 is a valid challenge to the lenders, whether with regard to

1 perfection, validity, or other claims or causes of action, the
2 committee reserves those rights under paragraph 29 of the order
3 to commence such a cause of action before our deadline, which
4 is sometime in the latter part of February, if I recall.

5 But we realized, and we were very concerned as a
6 committee with ensuring that post-petition, trade creditors
7 that are doing business with this debtor may not realize the
8 gravity of this situation, make sure that there's adequate cash
9 to cover them, and the only way that was done was by the
10 debtors shortening the sale process. And in part, when you
11 push behind their budget, it's done, also in part because they
12 were liquidating some of the inventory that they have on hand
13 to speed up their cash.

14 Number two, we negotiated to the best that we could to
15 get some monies for the 503(b)(9) claimants because in our
16 view, the Bankruptcy Code puts them on the same level.
17 Granted, they're not entitled to, by most courts, payment up
18 front, but rather at a plan, but realistically, we don't
19 envision that once these sales are done, that there's any
20 financial wherewithal or ability, financially, for these
21 companies to then confirm a plan of liquidation. We
22 unfortunately view it as unsecured creditors we have, beside
23 the 503(b)(9)s, will have no distribution unless, from the sale
24 or the disposition, liquidation of the assets that these
25 debtors operate, unless there are potential litigation claims.

1 And therefore, the committee was very concerned that unsecured
2 creditors shouldn't suffer what I'll call a double travesty
3 which is they don't get paid anything on their unsecured
4 claims, and then the trustee may get likely appointed in these
5 cases, unless there's potentially a dismissal, and they face
6 preference actions which, in our experience from trade creditor
7 cases, never really results in much of a dividend going back to
8 the unsecured creditors in cases such as this, nature of this,
9 especially where many of the larger creditors did business with
10 the debtor on very short terms.

11 So part of the negotiation with regard to the
12 avoidance actions is that there will be part of the bank's
13 lien, but the bank covenants that they will never prosecute or
14 sue, nor will they transfer, sell or assign them to a third
15 party, so in essence, they will not be available. And
16 preference actions against trade creditors will not be pursued.
17 It does, as Mr. Abbott made clear, carve out that that does not
18 include claims against insiders, as defined in the Code, or the
19 members of the bank group.

20 But we were dealing with a very -- facing a very
21 serious financial reality that while this company may have done
22 a lot of business, the asset value, simply put, isn't there to
23 deal with the 503(b)(9)s to the level that we would have really
24 liked to achieve. And therefore, we tried to negotiate, under
25 the circumstances, what was the best case and looked at whether

1 a liquidation or a dismissal would result in a better result
2 for creditors, including the 503(b)(9) claimants, as well as an
3 alternative. And that is why we have come to this agreement
4 with both the lender group and the debtors. And while it's
5 clearly a settlement that nobody is happy and in love with, it
6 just deals with very, very bad reality, which, as we comment on
7 the first page of our objection, and Your Honor commented at
8 the initial hearing that nobody was pleased with the DIP, but
9 there's some real issues that we all had to face and grapple
10 with and do the best we could.

11 So that's the rationale of why the committee is not
12 pushing this, because at the end of the day, a dismissal gets
13 nobody anything, nor does a conversion, right away, get
14 unsecured creditors any more money, and it probably will result
15 in a more negative result from the unsecured creditor
16 perspective.

17 With the settlement that we reached concerning the
18 final order and the DIP financing motion, the committee has
19 agreed to withdraw its objection to the rejection of Huron and
20 Mr. Edgecomb as the chief restructuring officer.

21 With regard to the third item on the calendar which is
22 the debtor's motion to extend time to file the statements and
23 schedules, the debtors are still seeking the deadline of
24 February 17th, which is possibly the day of the sale or the day
25 before the sale, depending on the Court's calendar. The

1 committee still thinks that's a little too far out. Mr. Abbott
2 has assured us that the debtor's personnel and people in his
3 office are working to get those done as soon as possible. We
4 were hoping that by adjourning that from last week's hearing
5 till today, they might have been done. He's asked us to
6 withdraw that objection, as well. Candidly, I'm somewhat
7 ambivalent because we'd like to have them filed sooner than
8 later, but he's assured us that if the committee needs any
9 data, we will get what we need, and to date, the debtor's
10 personnel, as well as the Huron team, have been cooperative
11 with the committee in giving us in a real-time basis the data
12 that we need. So I'm not going to be pushing that objection
13 before the Court, vis-a-vis the extension of statements and
14 schedules, but the committee is somewhat realistic with the
15 economics of what we're facing. Clearly not very happy
16 campers, if you will, in this situation, but to use the
17 expression we can't get money where it doesn't exist, and
18 unfortunately, nobody expects, given the difficult time and the
19 amount of time this has been shopped, that at this date, the
20 debtor still does not have a signed asset purchase agreement to
21 go forward with or a letter of intent that's been signed at an
22 economic value that the lenders find acceptable to move
23 forward, so that's all still in a state of play. And we hope
24 they get there because that's crucial to that. But that's why,
25 if there's a credit bid ultimately by the banks on the

1 collateral, the same million-eight will be available for the
2 503(b)(9) claimants, given their administrative priority status
3 is protected by the Code.

4 Unless Your Honor has any questions of the committee
5 position, that's why we have come to difficult conclusions, and
6 it's been a lot of conversation by the committee including
7 direct conversation between the committee members and the
8 bankers, yesterday, with no professionals on the phone call to
9 discuss these issues.

10 THE COURT: Okay.

11 MR. BUECHLER: Thank you.

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

14 Let me see if I understand, Mr. Abbott. Under no
15 scenario will the 503(b)(9) creditors be paid in full?

16 MR. ABBOTT: Your Honor, technically, it's possible;
17 practically, impossible. The range of values, given the amount
18 of debt, here, we just don't see a buyer clearing the secured
19 debt.

20 THE COURT: But other administrative claims will be
21 paid in full?

22 MR. ABBOTT: Post-petition administrative claims, we
23 expect to be paid in full under this revised budget, Your
24 Honor.

25 THE COURT: Well, we've got a problem. Not going to

1 run an administratively insolvent estate. There are benefits
2 to the current administrative claims that are accruing. There
3 are benefits to the unsecured creditors. But it can't be done
4 on the back of the 503(b)(9) admin claims, which are admin
5 claims. Congress has made that determination. So certainly I
6 would have a problem running any case that was administratively
7 insolvent. But one that is both administratively insolvent and
8 prefers one set of administrative creditors over another is
9 doubly troubling. So that's -- well, I'm not going to do it.

10 MR. ABBOTT: To clarify --

11 THE COURT: I'm not making -- I'm not making the --
12 this came up on Goody's, for example, Goody's I, and it turned
13 out we were all wrong. But the point there was there had to be
14 a set aside to pay these claims in the plan that the evidence
15 indicated was a reasonable estimate that they would get paid.
16 Turns out, it was wrong. But the point being, I'm not making
17 anyone guarantors or insurers of the fact that the case is
18 administratively solvent. But to go in with a path forward
19 that indicates -- and I certainly appreciate your candor to the
20 Court -- that a certain type of administrative expense claim
21 won't get paid in full but yet others will, I just -- I can't
22 run that kind of case.

23 MR. ABBOTT: I understand that, Your Honor. Could I
24 ask the -- well, is it --

25 THE COURT: Need help? Go ahead.

1 MR. ABBOTT: -- fair to say, Your Honor, that that is
2 a denial, perhaps, without prejudice to our financing motion?

3 THE COURT: Well, it's hard for me to say. I haven't
4 seen it. I haven't seen the final order. But if the final
5 order indicates that that's what's going to be in it, I'm not
6 going to approve it.

7 MR. ABBOTT: Understand, Your Honor.

8 THE COURT: And in addition, if it appears that the
9 case is administratively insolvent, I would be inclined to
10 either, upon motion or even sua sponte, either convert or
11 dismiss the case. Mr. Buechler?

12 MR. BUECHLER: Maybe the parties need to talk, Your
13 Honor, and maybe we need to adjourn this to the beginning of
14 next week to do that. The only point I will make is if we get
15 to that point where Your Honor is faced with conversion or
16 dismissal, the committee has set forth in the objection that we
17 did file regarding the DIP financing, made very clear what our
18 preference was and why. And so we would ask the Court to -- if
19 we get to that point, understanding Your Honor's position, and
20 we appreciate that, and that's part of what we said in our
21 objection, but we had to deal with reality, too, and tried
22 to -- would clearly support dismissal as being in the best
23 interest of the unsecured creditors in the estates for the
24 reasons I stated before as well as in our response, or
25 objection, if Your Honor gets to that fork in the road. But I

1 think given what Your Honor has said, maybe it makes sense to
2 see -- either talk for a few minutes or possibly adjourn this
3 to the beginning of next week to let the lenders reconsider
4 whether they're going to make a shift in position because the
5 numbers, and the budget numbers and the 503(b)(9) numbers,
6 simply put, don't change.

7 THE COURT: Yeah, I --

8 MR. BUECHLER: There's a cash burden.

9 THE COURT: I can't ask anyone to change reality, and
10 it is what it is. Not all cases are appropriate to be handled
11 in Chapter 11.

12 MR. ABBOTT: Understood, Your Honor.

13 Your Honor, I think my preference would be to ask the
14 Court to adjourn at least that motion until sometime next week,
15 early next week, if Your Honor has time.

16 THE COURT: Certainly. I'll make time. No, it's
17 important that this issue get taken care of sooner rather than
18 later in any event because as the business continues,
19 administrative expenses continue to accrue.

20 MR. BUECHLER: That's been one of our driving
21 concerns. So it's really a matter of Your Honor's
22 availability. I don't know if Diane has any idea of when
23 you'll have response from your clients, in part.

24 MR. ABBOTT: May we have a moment, Your Honor?

25 THE COURT: Of course. Having said all that,

1 Wednesday is difficult for next week.

2 MR. BUECHLER: Excuse me?

3 MR. ABBOTT: I'm sorry, Your Honor?

4 THE COURT: Having said all that, Wednesday would be
5 difficult for me next week. Otherwise --

6 MR. ABBOTT: Your Honor, as you said, this is an
7 urgent issue that needs to be dealt with. We'd prefer Monday
8 afternoon, if the Court's got any time.

9 THE COURT: Absolutely. Let's see. I can do -- hang
10 on, I'm getting a message here. Not good. Joint hearing with
11 Canada. Yeah, I've got a joint video hearing with the Canadian
12 court in Pope & Talbot at 1. Let me put you on for 3, but
13 don't be surprised if --

14 MR. ABBOTT: I've never seen a joint video hearing
15 with a Canadian court go short, Your Honor.

16 THE COURT: Yeah, no, no, there's too much formality
17 involved.

18 MR. BUECHLER: Is 3:30 better?

19 THE COURT: I'm sorry?

20 MR. BUECHLER: Pushing it back another half hour,
21 would that --

22 THE COURT: Well, I -- in case -- I don't want you to
23 waste your time cooling your heels out in the hallway, but I
24 don't want to waste a lot of time if the hearing's over early.
25 So 3:30's fine.