

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Objection Deadline: N/A

Hearing Date: N/A

Re: Docket Nos. 12, 86, 208, 210, 211 219, 220 & 240

**DEBTORS' MOTION FOR ORDER PURSUANT TO LOCAL RULE 9006-1(d)  
GRANTING THE DEBTORS LEAVE TO FILE AN OMNIBUS REPLY TO  
OBJECTIONS TO THE DEBTORS' MOTION FOR APPROVAL OF  
DIP FINANCING AND USE OF CASH COLLATERAL**

School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a "Debtor," and collectively, the "Debtors"), hereby move this Court (the "Motion") for entry of an order, pursuant to Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), in substantially the form attached hereto as Exhibit 1 (the "Proposed Order"), granting the Debtors leave to file the *Debtors' Omnibus Reply to Objections to Debtors' Motion for Approval of DIP Financing and Use of Cash Collateral* (the "Omnibus Reply"), a copy of which is attached hereto as Exhibit 2. In support of this Motion, the Debtors respectfully state:

1. On January 28, 2013 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the

<sup>1</sup> 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.



“Bankruptcy Code”) thereby commencing the instant cases (the “Chapter 11 Cases”). These Chapter 11 Cases are being jointly administered for procedural purposes only. The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

2. On the Petition Date, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) and 507, (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 36, and (E) Repay in Full Amount Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligations into Postpetition Secured Obligations, (II) Scheduling A Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (III) Granting Related Relief* [Docket No. 12] (the “DIP Motion”).

3. On January 31, 2013, the Court entered an order [Docket No. 86] (the “Interim DIP Order”) approving the DIP Motion on an interim basis. Pursuant to the Interim DIP Order, a hearing to consider the relief requested in the DIP Motion on a final basis is scheduled for February 25, 2013 at 11:00 a.m. (ET) (the “February 25 Hearing”). The deadline for filing objections to the entry of an order approving the DIP Motion on a final basis was initially set for February 15, 2013 at 4:00 p.m. (ET) (the “Initial Objection Deadline”).

4. The Debtors agreed to extend the Initial Objection Deadline for the Official Committee of Unsecured Creditors (the “Official Committee”) and the ad hoc committee of holders of certain convertible notes (the “Ad Hoc Noteholders’ Committee”) through February 18, 2013 at 4:00 p.m. (ET).

5. On February 18, 2013, the Official Committee and the Ad Hoc Noteholders' Committee each filed an objection to entry of an order approving the DIP Motion on a final basis [Docket No. 219] (the "Official Committee Objection") and [Docket No. 220] (the "Ad Hoc Noteholders' Objection"), respectively. In addition, on February 15, 2013 and February 19, 2013, certain other parties filed objections to the entry of an order approving the DIP Motion on a final basis (together with the Official Committee Objection and the Ad Hoc Noteholders' Objection, the "Objections").

6. Pursuant to Local Rule 9006-1(d), "[r]eple papers may be filed and, if filed, shall be served so as to be received by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda." In accordance with Local Rule 9029-3(a)(i), the agenda for the February 25 Hearing must be filed by noon on February 21, 2013, and thus, the deadline to file the Omnibus Reply under Local Rule 9006-1(d) was February 20, 2013 at 4:00 p.m. (ET) (the "Reply Deadline").

7. By this Motion, the Debtors respectfully request that the Court enter an order granting the Debtors leave and permission to file their Omnibus Reply beyond the time limits set forth in Local Rule 9006-1(d). In light of the extensions granted to the Official Committee and the Ad Hoc Noteholders' Committee, as well as the Debtors' ongoing efforts to work with their lenders to consensually resolve the issues raised in the Objections, the Debtors simply were not able to file the Omnibus Reply by the Reply Deadline. The Debtors believe that the Omnibus Reply will assist the Court in its consideration of the entry of an order approving the DIP Motion on a final basis and the Objections thereto.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, granting the Debtors leave and permission to file the Omnibus Reply, and such other and further relief as this Court deems just and proper.

Dated: February 21, 2013  
Wilmington, Delaware

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*Proposed Counsel to the Debtors and  
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**EXHIBIT 1**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket Nos. 12, 86, 208, 210, 211 219, 220 & 240

**ORDER PURSUANT TO LOCAL RULE 9006-1(d) GRANTING THE  
DEBTORS AUTHORITY TO FILE THE DEBTORS' OMNIBUS REPLY  
TO OBJECTIONS TO DEBTORS' MOTION FOR APPROVAL OF  
DIP FINANCING AND USE OF CASH COLLATERAL**

Upon consideration of the Debtors' motion (the "Motion")<sup>2</sup> for entry of an order pursuant to Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") granting the Debtors leave and permission to file the *Debtors' Omnibus Reply to Objections to Debtors' Motion for Approval of DIP Financing and Use of Cash Collateral*; and it appearing that the: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (iii) venue of these Chapter 11 Cases and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion was sufficient under the circumstances; and after due deliberation and sufficient cause therefore, it is

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

hereby ORDERED that:

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are granted leave and permission, pursuant to Local Rule 9006-1(d), to file the Omnibus Reply on or before February 21, 2013, at 12:00 noon (ET).
3. The Omnibus Reply shall be deemed timely filed and a matter of record in these Chapter 11 Cases.
4. The Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this order.

Dated: February \_\_\_\_, 2013  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 2**

**Omnibus Reply**



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket Nos. 12, 86 & 88

**DEBTORS' OMNIBUS REPLY TO  
OBJECTIONS TO DEBTORS' MOTION FOR APPROVAL  
OF DIP FINANCING AND USE OF CASH COLLATERAL**

The above-captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") hereby file this reply (this "Reply") in support of the Debtors' motion [Docket No. 12] for entry of a final order (the "Final Order")<sup>2</sup> approving the Debtors' proposed postpetition debtor-in-possession financing (the "DIP Motion")<sup>3</sup> and in response to the objections (collectively, the "Objections")<sup>4</sup> to the DIP Motion, including the objections of the

<sup>1</sup> 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.

<sup>2</sup> Attached hereto as Exhibit A is the proposed Final Order.

<sup>3</sup> Capitalized terms used and not defined herein shall have the meanings ascribed to them in the DIP Motion.

<sup>4</sup> The objections to the DIP Motion are: (i) *Limited Objection of America Art Clay Co., Inc., ACCO Brands USA and Mead Products LLC to the Debtors' Motion for Entry of Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) and 507, (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 Obligations into Postpetition Secured Obligations* [Docket No. 208] (the "ACCO Limited Objection"); (ii) *Limited Objection of Cameron Independent District, Milam County, Texas Ad Valorem Taxing Entities to Debtors Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) and 507 (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, and (E) Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured*

official committee of unsecured creditors (the “Official Committee”) appointed in these cases and the Ad Hoc Committee (the “Ad Hoc Noteholders’ Committee”) of School Specialty, Inc. 3.75% Convertible Subordinated Notes due 2026 (the “Notes”).<sup>5</sup> As discussed in detail in this Reply, the Objections lack merit and should be overruled. In support of the DIP Motion and this Reply, the Debtors respectfully state as follows:

### **PRELIMINARY STATEMENT**

1. The Debtors have an immediate and continued need for postpetition financing and more specifically, to the liquidity provided by both the ABL DIP Facility *and* the Bayside DIP Facility. To that end, prior to filing these Chapter 11 Cases, the Debtors, after extensive good faith and arm’s length negotiations with their prepetition secured lenders, successfully negotiated postpetition debtor-in-possession financing with Bayside and the ABL DIP Lenders. Approval of these DIP Facilities ensures the continuation of the Debtors’ businesses as a going concern and maximizes value for the estates and their creditors through a sale of substantially all of the Debtors’ assets to a proposed stalking-horse purchaser subject to higher and better bids in accordance with a Court approved auction process. As the record reflects and as the Court recently approved at the hearing held on February 15, 2013, the DIP milestones with respect to the proposed sale process are fair and reasonable because they permit the Debtors to maximize the value of their assets pursuant to the bid procedures and timeline, and because they enable the

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*Obligations into Postpetition Secured Obligations, (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (III) Granting Related Relief [Docket No. 210]; (iii) Dixon Ticonderoga Company’s Limited Objection to Debtors’ Motion Authorizing Post-Petition Financing and Other Relief [Docket No. 211] (the “Texas Taxing Authorities Limited Objection”); (iv) Objection of the Official Committee of Unsecured Creditors to Debtors’ Motion to Approve Postpetition Financing [Docket No. 219] (“Official Committee DIP Objection”); (v) Supplemental Objection of the Ad Hoc Committee and Joinder to the Steering Committee’s Objection to the Debtors’ Motion for Entry of a Final Order to Obtain Postpetition Financing [Docket No. 220] (“Noteholders’ DIP Objection”); (vi) Joinder of 3M Company to Certain Objections to Debtors’ Motion for Final Approval to Obtain Postpetition Financing [Docket No. 232] (the “3M Joinder”); and (vii) Joinder of Crayola LLC to Dixon Ticonderoga Company’s Limited Objection to Debtors’ Motion Authorizing Post-Petition Financing and Other Relief [Docket No. 240] (the “Crayola Joinder”).*

<sup>5</sup> Parties holding Notes are referred to herein as “Noteholders.”

Debtors to access liquidity required for advance inventory purchase to serve their customer base and exit from the Chapter 11 process before the Debtors' primary selling season.

2. Without access to the DIP Facilities and without the stalking-horse purchase agreement itself, the Debtors would likely not be able to continue operations, and all parties in interest, including general unsecured creditors, contract counterparties, landlords, secured creditors, priority claimants, vendors, customers, and the Debtors' approximately 2,000 employees, would all suffer serious harm.

3. The Objections make clear that no party questions the Debtors' immediate need for access to liquidity on a postpetition basis or the amount of liquidity needed by the Debtors as proposed by both of the DIP Facilities. Instead, the Official Committee (the majority of whose members are Noteholders<sup>6</sup>) and the Ad Hoc Noteholders' Committee object to the best (and only) financing presently available to the Debtors because they want the Ad Hoc Noteholders' Committee, and not Bayside, to be the postpetition lenders and because they continue to disagree with the timing for the completion of a sale of the Debtors' assets. Absent alternative financing, the only issues to be addressed at the hearing on February 25, 2013 are the technical issues described in ¶¶ 23-43 below.

4. Absent the Debtors agreeing to select the Noteholders as their DIP lenders, both the Official Committee and the Ad Hoc Noteholders' Committee have made clear that they will embark on a litigation path which will most likely result in the destruction of value to the detriment of all creditor constituents. However, the legal standard for approving postpetition

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<sup>6</sup> Specifically, Zazove Associates, LLC, Steel Excel Inc. and Davis Appreciation and Income Fund c/o Davis Selected Advisors, LLP are members of both the Official Committee and the Ad Hoc Noteholders' Committee, and The Bank of New York Mellon Trust Company NA is the indenture trustee for the Notes. *See Notice of Appointment of Creditors' Committee of Unsecured Creditors Filed by United States Trustee* [Docket No. 110]; and *Verified Statement of the Ad Hoc Committee of School Specialty, Inc. 3.75% Convertible Subordinated Notes due 2026 Pursuant to Bankruptcy Rule 2019* [Docket No. 194]; H'rg Tr., February 15, 2013 ("Feb. 15 H'rg Tr.") at 9:3-17, 10:13-25., attached hereto in relevant part as Exhibit B.

financing does not boil down to which proposed loan the Official Committee prefers. Moreover, as of the date of this Reply, with the exception of a signed commitment letter from the Ad Hoc Noteholders' Committee, the Debtors have yet to receive a definitive viable alternative DIP proposal from the Ad Hoc Noteholders' Committee to consider because the alternative DIP proposal from the Ad Hoc Noteholders' Committee requires certain amendments to the ABL DIP Facility which have not been agreed to. Neither the Debtors, nor their stakeholders can afford to forego postpetition financing from *both* the ABL DIP Lenders and Bayside for the unrealized promise of a better deal from the Ad Hoc Noteholders' Committee.

5. As demonstrated by the record, the Debtors diligently reviewed and considered several proposed postpetition financing proposals, and based on all of the circumstances, determined in their sound business judgment to enter into agreements with the ABL DIP Lenders and Bayside. Each of the DIP Lenders is making a significant new-money investment into the Debtors, and the proposed sale of the Debtors' assets as a going concern pursuant to this Court's recently approved bid procedures will maximize value for all stakeholders. In the process, the Debtors, with the new money provided by each of the ABL DIP Lenders and Bayside, have been and will be able to continue to stabilize their operations, to finance their Chapter 11 Cases, and have the ability to pay numerous prepetition unsecured claims, including employee obligations, priority vendor and supplier claims including section 503(b)(9) claims, customer obligations, and various tax claims.

6. Furthermore, the proposed sale process pursuant to the Court-approved Bidding Procedures is expected to result in the purchaser assuming many of the Debtors' contracts, continuing to operate most of the Debtors' businesses, and providing ongoing employment for most of the Debtors' employees. Finally, the DIP Facilities and the proposed sale provide the

solution for the Debtors to exit Chapter 11 subject to an orderly wind-down of the remainder of the Debtors' estates in that the DIP Budget attached as Exhibit A to the Final Order includes \$5.2 million for wind-down costs.

7. Nothing in the DIP Motion precludes the Noteholders from refinancing all secured debt prior to April 15<sup>th</sup> in order to pursue a plan alternative. Further nothing in the DIP Motion precludes the Noteholders from bidding at the auction or lending money to a potential purchaser.

8. For these reasons and as set forth below, the Debtors respectfully request that the Court overrule the Objections, and approve the DIP Motion on a final basis.

### **BACKGROUND**

9. Prior to commencing these Chapter 11 Cases on January 28, 2013 (the "Petition Date"), the Debtors negotiated with their existing secured creditors to develop the framework for their proposed sale.<sup>7</sup> The Debtors' Chapter 11 Cases and proposed sale will be financed through (i) the Bayside DIP Facility—comprised of super-priority postpetition financing in the aggregate principal amount of up to \$50,000,000 in respect of new money funding to be provided by Bayside Finance, LLC, and (ii) the ABL DIP Facility—comprised of a super-priority revolving credit facility in an aggregate principal amount of up to \$175,000,000 to be provided by the ABL DIP Lenders, and is expected to result in the sale of the Debtors' assets and operations as a going concern pursuant to a stalking-horse purchase agreement (the "Asset Purchase Agreement") between the Debtors and Bayside School Specialty, LLC, an affiliate of Bayside, as the stalking-horse bidder, or pursuant to such higher and better offers as may be received through the Court approved bidding procedures.

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<sup>7</sup> See DIP Motion at ¶¶27, 30-31; Tang Declaration [Docket No. 13] at 16, 19 and 21-23; H'rg Tr. Jan. 30, 2013 ("Jan. 30 H'rg Tr.") at 82:11-83:25, attached hereto in relevant part as Exhibit C.

10. On the Petition Date, the Debtors filed the DIP Motion<sup>8</sup> and a motion seeking approval of the bidding procedures (the “Bidding Procedures”) in connection with the proposed sale of the Debtors’ assets.<sup>9</sup> The declaration of Agnes K. Tang was filed in support of the Sale Motion.<sup>10</sup> There is no dispute of fact as to the process, the need for postpetition financing, or the amount of postpetition financing required by the Debtors, but rather only a contention that an alternative term sheet should be considered – which the Debtors are currently considering.

11. After a hearing held before this Court on January 30, 2013, subject to certain amendments made on the record at such hearing and over the objection of certain Noteholders, this Court approved the ABL DIP Facility and the Bayside DIP Facility on an interim basis. The Interim Order was entered on January 31, 2013.<sup>11</sup>

12. On February 5, 2013, the Office of the United States Trustee appointed the Official Committee.<sup>12</sup>

13. At the conclusion of a contested hearing held on February 15, 2013, the Court approved the Bidding Procedures as fair and reasonable, including the dates for parties to submit

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<sup>8</sup> In support of the DIP Motion, the Debtors submitted the Tang Declaration.

<sup>9</sup> *Debtors’ Motion for Entry of (A) an Order (I) Scheduling Hearing on Approval of Asset Sale, Assumption and Assignment of Executory Contracts to Bayside School Specialty, LLC (or its Assignee) and Assumption of Certain Liabilities, and (II) Approving Bidding Procedures, Assumption & Assignment Procedures, BreakUp Fee and Expense Reimbursement, and Form and Manner of Notice Thereof; and (B) an Order (I) Approving the Asset Purchase Agreement; (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests or Encumbrances; and (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* [Docket No. 18] (the “Sale Motion”).

<sup>10</sup> *See Declaration of Agnes K. Tang In Support of Debtors’ Motion for Entry of (A) an Order (I) Scheduling Hearing on Approval of Asset Sale, Assumption and Assignment of Executory Contracts to Bayside School Specialty, LLC (or its Assignee) and Assumption of Certain Liabilities, and (II) Approving Bidding Procedures, Assumption & Assignment Procedures, BreakUp Fee and Expense Reimbursement, and Form and Manner of Notice Thereof; and (B) an Order (I) Approving the Asset Purchase Agreement; (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests or Encumbrances; and (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* [Docket No. 175] (the “Tang Sale Declaration”).

<sup>11</sup> See Docket No. 86.

<sup>12</sup> See Docket No. 110.

competing bids, to hold an auction, and to conduct a hearing to approve a sale (the “Bid Procedures Order”).<sup>13</sup>

14. On February 15, 2013, certain parties filed objections to the DIP Motion,<sup>14</sup> and on February 18, 2013,<sup>15</sup> each of the Official Committee and Ad Hoc Noteholders’ Committee filed objections, asserting that the DIP Facilities should not be approved because the Bayside DIP Facility should be substituted with the Ad Hoc Noteholders’ proposed postpetition financing.<sup>16</sup> In addition, the Official Committee objected on the basis that the Bayside and the ABL DIP Lenders should be denied reasonable and customary protections routinely granted to DIP lenders.

15. Since receiving the Noteholders’ DIP Term Sheet, as of the date of the filing of this Reply, despite multiple meetings and telephone calls, the Debtors have not yet received a binding commitment from the Ad Hoc Noteholders’ Committee that provides the Debtors with a viable and sufficient alternative to the DIP Facilities offered by the ABL Lenders and Bayside. This is in part because the Ad Hoc Noteholders’ proposed alternative postpetition financing requires certain amendments to the ABL DIP Facility, including an extension of the maturity date of the ABL DIP Facility to accommodate the alternative milestones proposed by the Noteholders. As of the filing of this Reply, the Ad Hoc Noteholders’ Committee do not have an agreement with the ABL DIP Lenders for such required accommodations.

<sup>13</sup> See *Preliminary Order Under 11 U.S.C. §§105(a), 363 and 365 and Fed. R. Bankr. 2002, 6004, 6006 and 9014; (I) Scheduling Hearing on Approval of Asset Sale, Assumption and Assignment of Executory Contracts to Bayside School Specialty Inc. (or Its Assignee) and Assumption of Certain Liabilities, and (II) Approving Bidding Procedures, Assumption and Assignment Procedures, Expense Reimbursement, and Form and Manner of Notice Thereof* [Docket No. 213].

<sup>14</sup> For the Court’s convenience, attached hereto as Exhibit D is a chart of the objections filed to the entry of the Final Order.

<sup>15</sup> The Debtors and the DIP Lenders granted both the Official Committee and the Ad Hoc Noteholders’ Committee extensions of the deadline to object to entry of the Final DIP Order until 4 p.m. (prevailing Eastern Time) on February 18, 2013.

<sup>16</sup> The Noteholders’ Objection included a signed version of the Ad Hoc Noteholders’ Committee’s postpetition financing term sheet (the “Noteholder DIP Term Sheet”) See Noteholders’ Objection, Exhibit A.

16. In an effort to consensually resolve the issues raised by the objectors, including the Official Committee, the Debtors continue to negotiate modifications to the proposed Final Order approving the DIP Facilities, and expect to present a revised Final Order at the hearing on February 25, 2013.<sup>17</sup>

### **ARGUMENT**

#### **I. Approval of the DIP Facilities Is Integral to the Continued Success of the Debtors' Businesses.**

17. The DIP Facilities and the use of Cash Collateral in accordance with the Final Order are in the best interests of the Debtors' estates and should be approved. As established by the record of these Chapter 11 Cases, the DIP Facilities are fair and reasonable, were negotiated by the parties and their respective professionals in good faith and at arms' length, and are the best terms upon which the Lenders are willing to fund these Chapter 11 Cases.<sup>18</sup> No alternative deal on any terms, much less better terms, exists at this time.<sup>19</sup>

18. As described in the DIP Motion, the declarations filed in support and the testimony at the January 30 hearing,<sup>20</sup> approval of the DIP Facilities is necessary to avoid erosion of value and to maintain ordinary-course operations in chapter 11 and, ultimately, to transition to a new ownership structure through the public sale process contemplated by the Bidding Procedures. Without access to the DIP Facilities, the Debtors would be subject to a liquidity shortfall and would lack the capital necessary to continue operations as a going concern.<sup>21</sup> The

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<sup>17</sup> The Debtors also continue their efforts resolve the ACCO Limited Objection, the Texas Taxing Authorities Limited Objection, the Crayola Joinder and the 3M Joinder.

<sup>18</sup> See DIP Motion at ¶¶36-37; Tang Declaration at ¶¶15-16, 19, 212-23; Jan. 30 H'rg Tr. at 74:16-83:25; 125:18-133:10.

<sup>19</sup> See Jan. 30 H'rg Tr. at 124: 17-21, 125:13-133:10, 146:11-149:9.

<sup>20</sup> See DIP Motion at ¶¶38-41, 58; First Day Declaration at ¶48; Tang Declaration at ¶¶12, 13, 23-25; Jan. 30 H'rg Tr. 138:20-139:1, 177:1-10, 181:10-18; Tang Sale Declaration at ¶21.

<sup>21</sup> See Jan. 30 H'rg Tr. 142:12-143: 14.



DIP Facilities also allow the Debtors to minimize disruption to their businesses and instill confidence in their various creditor constituencies, including customers, employees, vendors, and service providers. To facilitate the continued operation of the Debtors' businesses and an orderly and efficient sale process through chapter 11, the DIP Facilities should be approved.

**II. By Maximizing Value of the Debtors' Estates, The DIP Facilities Are In the Best Interests of the Debtors' Stakeholders, and No Adequate Alternative Financing Is Available.**

19. There is a clear record in these Chapter 11 Cases that the Debtors followed an appropriate process to secure the most favorable DIP financing available. As established by the testimony at the January 30, 2013 hearing, prior to the Petition Date, the Debtors successfully negotiated with their existing secured creditors resulting in postpetition secured financing, including approximately \$30 million of new money available under the ABL DIP Facility and \$50 million of new money from Bayside to fund operations during the pendency of the Chapter 11 Cases.<sup>22</sup> The DIP Facilities, coupled with cash flow from the Debtors' operations, are designed to fund the administration of these Chapter 11 Cases, including through the post-sale period,<sup>23</sup> and implement an efficient, public process through which the Debtors will sell their businesses as a going concern.

20. After a contested hearing on January 30, 2013, and prior to the February 15 hearing, the Ad Hoc Noteholders' Committee provided a non-binding term sheet including possible alternative DIP financing; however, as of the date of this Reply, the Ad Hoc Noteholders have not yet provided the Debtors with a committed postpetition financing alternative that resolves how such alternative financing would function without the consensual modification of the ABL DIP Facility.

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<sup>22</sup> See Tang Declaration at ¶¶15-16, 19, 23-25, and Jan. 30 H'rg Tr. at 74:12-83:25, 94:3-6, 123:22-133:10.

<sup>23</sup> See Final Order at 9 and Budget providing \$5.2 million for the Debtors' wind down expenses.

21. Accordingly, as of the date of this Reply, the postpetition financing proposals offered by Bayside and the ABL DIP Lenders together continue to be the best and only viable DIP proposals received by the Debtors. The Debtors' liquidity position has not changed since the outset of these Chapter 11 Cases, and absent the liquidity provided by the DIP Facilities, the Debtors will not be able to continue their operations.<sup>24</sup> Absent the ability to access the proceeds of the financing available under *both* of the DIP Facilities, upon entry of the Final Order, the Debtors would not have sufficient cash on hand to administer the Chapter 11 Cases, pay their employees, satisfy essential postpetition obligations as they come due, promptly pursue consummation of a sale in accordance with the conditions of the Bayside DIP Facility, and preserve the value of their assets.

### **III. The Proposed Sale Milestones Contained in the DIP Facilities Are Reasonable.**

22. Contrary to the objections, the proposed sale process as recently preliminarily approved by the Court is reasonable and in the best interests of the Debtors' estates.<sup>25</sup> The Official Committee and the Ad Hoc Noteholders' Committee object to the Bayside Sale Milestones and ABL Sale Milestones contained in the Bayside DIP Facility and ABL DIP Facility, respectively. However, with respect to these Chapter 11 Cases, as set forth in the Tang Sale Declaration, the evidence presented at the February 15 hearing, and as indicated by the Court's approval of the bid procedures on February 15, 2013, the sale milestones required by the ABL and Bayside DIP Facilities are reasonable and appropriate under the circumstances and will

<sup>24</sup> See Jan. 30 H'rg Tr. 142:12-143: 14; Tang Sale Declaration at ¶¶18-21.

<sup>25</sup> See Bid Procedures Order, at ¶F (the "Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Acquired Assets [as defined in the Sale Motion] by the Debtors' estates.

provide the Debtors with sufficient time to market their assets and ensure a successful conclusion to these Chapter 11 Cases.<sup>26</sup>

23. Specifically, because the Debtors do not have sufficient liquidity to continue operating over the course of a lengthy chapter 11 case, it is in the Debtors' best interest to consummate a value maximizing asset sale before the start of the selling season.<sup>27</sup> As set forth in the Tang Sale Declaration, additional time spent in chapter 11 will only increase the risk of business loss and value deterioration given the Debtors' business and liquidity needs.<sup>28</sup> Moreover, the proposed timetable enables the Debtors to access liquidity required for advance inventory purchases to serve their customer base and exit from the Chapter 11 process before the Debtors' primary selling season.<sup>29</sup> As set forth in the Tang Sale Declaration, due to the seasonal nature of the Debtors' businesses and the fact that they are currently entering their purchasing cycle to meet the requirements of their sales season, it is important for the Debtors to emerge from chapter 11 as quickly as is practically possible with an improved capital structure.<sup>30</sup>

24. DIP lenders frequently require that debtors comply with certain milestones as a condition to extending credit in order to ensure continuous progress during the pendency of a bankruptcy case.<sup>31</sup> To the extent the Court or other parties dislike certain lending conditions, when the conditions extending credit are reasonable given the facts of the case, the risk in

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<sup>26</sup> See Tang Sale Declaration at ¶¶18-21; Bid Procedures Order at ¶F.

<sup>27</sup> See Tang Sale Declaration at ¶18.

<sup>28</sup> See Tang Sale Declaration at ¶ 21.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at ¶21.

<sup>31</sup> See e.g., Pinnacle Airlines Corp., Case No. 12-11343 (Bankr. S.D.N.Y. May 16, 2012) May 16 Hearing Transcript at pp. 185-187 (Judge Gerber observing that milestones are now common in DIP financing transactions and are acceptable when the terms are appropriate based on the facts of the specific case), attached hereto in relevant part as Exhibit E.

refusing to approve such conditions is that a DIP lender can simply refuse to lend.<sup>32</sup> Here, the DIP Lenders conditioned their DIP Facilities on certain milestones relating to bid procedures and a sale process which, as set forth in the Tang Sale Declaration, are appropriately designed to maximize the value of the Debtors' assets,<sup>33</sup> and which this Court ruled on a preliminary basis on February 15, 2013, are fair, reasonable and in the best interest of the estates.<sup>34</sup>

25. The Debtors and Bayside negotiated the DIP Facilities to maximize value (consistent with the Debtors' fiduciary duties) to all stakeholders in these Chapter 11 Cases. In spite of the attempts of the Official Committee and the Ad Hoc Noteholders' Committee to invent a bad-faith motivation behind the Debtors' and the DIP Lenders' efforts, these efforts have preserved value and will serve to maximize creditor recoveries (including those of the Official Committee's constituents) in these Chapter 11 Cases.

**IV. Avoidance Actions Are Properly Included in DIP Liens and the Proceeds Thereof Should Be Subject to the DIP Lenders' Superpriority Claims.**

26. Contrary to the objection of the Official Committee, under the circumstances of these Chapter 11 Cases, it is appropriate to provide the DIP Lenders with liens on Avoidance Actions and superpriority claims against the proceeds of such avoidance actions. Liens and superpriority claims on unencumbered assets, including avoidance actions, are not only permissible, but expressly included in the type of security a bankruptcy court may approve under section 364 of the Bankruptcy Code. See 11 U.S.C. § 364(c)(1)-(2).

27. Adequate protection is a flexible construct, assuming myriad different forms and frequently including liens and claims on avoidance actions and other unencumbered assets. See, e.g., In re Evergreen Solar, Inc., Case No. 11-12590 (MFW) (Bankr. D. Del. Sept. 8, 2011)

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<sup>32</sup> Id.

<sup>33</sup> See Tang Sale Declaration at ¶¶19, 21.

<sup>34</sup> See Bid Procedures Order, at ¶F.

[Docket No. 171] (granting liens on proceeds from avoidance actions on condition that secured parties enforce lien on collateral other than proceeds from avoidance actions, before enforcing collateral from avoidance actions); In re Jevic Holding Corp., Case No. 08-11006 (BLS) (Bankr. D. Del. July 25, 2011) [Docket No. 1103] (granting secured parties postpetition security interests in avoidance actions under sections 547, 548 and 550 of the Bankruptcy Code). The Official Committee admits as much in its support for the Ad Hoc Noteholders' Committee's postpetition financing proposal, which similarly provides that such postpetition financing shall be secured by liens on Avoidance Actions.<sup>35</sup> Accordingly, the Official Committee's request to deny such relief should be overruled.

**V. The Final Order Provides Appropriate Funding and Challenge Period for the Official Committee's Investigation.**

**A. The Official Committee Is Allocated an Appropriate Budget to Investigate Lender Claims.**

28. The Debtors and the DIP Lenders provide the Official Committee with sufficient amounts to investigate claims against the Prepetition Loan Documents. The Official Committee complains that the \$25,000 allocated for it to investigate claims against the Prepetition Loan Documents is inadequate. However, despite the Official Committee's request for more, these amounts are sufficient especially in light of the extensive diligence already conducted pre-petition by the Noteholders,<sup>36</sup> and the fact that the loans were recently entered into in May 2012.

**B. The Debtors' DIP Order Provides an Appropriate Challenge Period for the Committee's Investigation.**

29. The Official Committee also complains that a challenge period of 60 days from its appointment is insufficient. However, a 60 day period is consistent with Delaware local rules

<sup>35</sup> See Noteholders' DIP Objection, Exhibit A at 5.

<sup>36</sup> See Jan. 30 H'rg Tr. at 94:3-9; 189:17-190:22.

and practice. Courts have approved comparable challenge periods in other cases, and have also authorized even shorter timelines. See, e.g., In re Vertis Holding, Inc., Case No. 12-12821 (CSS) (Bankr. D. Del. Nov. 1, 2012) [Docket No. 203] (challenge period expired 47 days after entry of final DIP order); In re Friendly Ice Cream Corp., Case No. 11-13167 (KG) (Bankr. D. Del. Nov. 2, 2011) [Docket No. 282] (challenge period expired 40 days after entry of final DIP order); In re Evergreen Solar, Inc., Case No. 11-12590 (MFW) (Bankr. D. Del. Sept. 8, 2011) [Docket No. 171] (challenge period expired 47 days after entry of final cash collateral order).

30. No cause exists, nor has the Official Committee established a basis to deviate from this established standard. To the contrary, 60 days is appropriate here—especially where the Court has already agreed to hold a hearing on March 12, 2013 to consider the Official Committee’s challenge to the make-whole portion of Bayside’s prepetition claims. Finally, the Debtors’ corporate history – much of which is a matter of public record – and capital structure are not complex. The Debtors consist of ten entities, and have only two secured credit facilities. Thus, the Official Committee has ample time within which to fulfill its fiduciary duties by conducting a thorough investigation of prepetition liens and claims against the Debtors’ estates, and its request for additional time should be denied at this time, and its objection overruled.

**VI. The Debtors’ Proposed Waivers under Sections 506(c) and 552(b) are Appropriate as an Exercise of the Debtors’ Sound Business Judgment.**

**A. Proposed Section 506(c) Waiver**

31. The Official Committee’s objection to the proposed section 506(c) waiver in the Final Order for the DIP Lenders should be overruled. Such waivers are standard with respect to postpetition financings between sophisticated parties, particularly where, as here, the DIP Lenders are funding postpetition expenses on a current basis pursuant an approved budget, funding a post-default professional fee carve-out and funding all fees and expenses required to be

paid to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to 28 U.S.C. §§ 156(c) and 1930(a)(6). As a result, the DIP Lenders should not also be subject to surcharge under section 506(c).

32. Furthermore, there is no dispute that the Prepetition ABL Lenders are oversecured even after taking into account any conceivable costs of preserving and disposing of the ABL Priority Collateral (as defined in the Prepetition ABL Intercreditor Agreement) and as such, there is no good faith basis for the assertion of any claim under section 506(c) with respect to the ABL DIP Lenders.

**B. Proposed Section 552(b) Waiver**

33. The Official Committee also objects to the proposed section 552(b) waiver in the Final Order, and such objection should also be overruled.

34. Section 552(b) provides a very limited exception that if a debtor enters into a prepetition security agreement that extends to proceeds, products, offspring, or profits of the collateral, the terms of the security agreement and applicable non-bankruptcy law will be applied to the proceeds, products, offspring or profits acquired post-petition, unless the court orders otherwise based on the equities of the case. 11 U.S.C. § 552(b). “The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the . . . debtor-in-possession's use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value.” In re Muma Servs., 322 B.R. 541, 558-559 (Bankr. D. Del. 2005) (citing Delbridge v. Prod. Credit Ass'n, 104 B.R. 824, 826 (E.D. Mich. 1989)).

35. In In re Muma Services the court explained that the equities of the case doctrine was inapplicable because “neither the Debtors nor the Trustee invested any unencumbered funds available to the general unsecured creditors to enhance the value of the assets . . . . On the

contrary, since all assets were the security of the Bank Group, it was only through the use of the Bank Group's cash collateral (and the financing provided by [the DIP lender]) that the estate was able to continue to operate and maintain the value of the assets.” *Id.* Similarly, in this case, on a prepetition basis, Bayside and the ABL Lenders had security interests in all of the Debtors’ assets.<sup>37</sup>

36. Furthermore, there is no dispute that the Prepetition ABL Lenders are oversecured even after taking into account any conceivable costs of converting the Prepetition Priority Collateral into postpetition proceeds, and, as such, there is no good faith basis for the assertion of any claim under section 552(b) to limit the scope of the lien on postpetition proceeds. Thus, because a section 552(b) waiver is appropriate, the Official Committee’s objection with respect to section 552(b) should also be overruled.

**VII. Subject to Approval of the DIP Facilities, the Debtors’ DIP Budget Adequately Provides for Payment of Section 503(b)(9) Claims.**

37. Contrary to the concerns raised by the limited objection of Dixon Ticonderoga Company (“Dixon”) to the DIP Motion, the Debtors have adequately provided for the payment of section 503(b)(9) claims in connection with the relief sought to pay critical vendors. In connection with the DIP Facilities and the consensual use of cash collateral, the Debtors and the DIP Lenders agreed to a budget, which includes all of the expenses the Debtors believe will be incurred in the thirteen weeks following the Petition Date, as well as \$5.2 million earmarked for wind-down costs and a significant carve-out for the professional fees of the Debtors and the Official Committee.<sup>38</sup> Accordingly, subject to approval of the DIP Facilities, the Debtors should have sufficient cash to pay the Debtors’ section 503(b)(9) obligations.

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<sup>37</sup> See Jan. 30 Hr’g Tr. 64:17-20; 76:5-8.

<sup>38</sup> See Jan. 30 H’rg Tr. at 149:24-150:6; Budget.



38. Specifically, as set forth in the Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors, Foreign Suppliers, Freight Carriers and Section 503(b)(9) Claimants ("Critical Vendor Motion"),<sup>39</sup> the Debtors have conducted a thorough analysis of the section 503(b)(9) claims<sup>40</sup> and by the Critical Vendor Motion sought authority to pay \$5.2 million of section 503(b)(9) claims to avoid disruption or delay of essential goods during the pendency of these Chapter 11 Cases.<sup>41</sup> Based on the Debtors' current review of their books and records and subject to the Debtors' review of additional claims that may be asserted in connection with any bar date for filing prepetition claims established in these Chapter 11 Cases, the Debtors believe that the amounts authorized to be paid by the Critical Vendor Motion plus the additional funds available under the DIP Facilities should be sufficient to pay the section 503(b)(9) claims. In addition, by entry of the Bid Procedures Order, the Debtors have recently obtained Court approval to pursue a sale of substantially all of a debtor's assets which may yield additional value to the estates to pay creditors and by which certain of the section 503(b)(9) claims may be assumed by the winning purchaser.

39. Despite these assurances based on the Critical Vendor Motion, the Budget, and the sale process, Dixon argues that the secured lenders will "pocket" the asset sale proceeds and will not pay section 503(b)(9) claims, leaving the Debtors' estates "hopelessly" administratively insolvent, which "may lead to a conversion" to chapter 7. The truth is quite to the contrary. The liquidity provided through the DIP Facilities and the consensual use of cash collateral, as well as the prompt implementation of the sale process, are critical to avoid piecemeal liquidation.

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<sup>39</sup> See Docket No. 11.

<sup>40</sup> See Critical Vendor Motion at ¶22.

<sup>41</sup> Id.

40. The scant authority provided by Dixon is inapposite. Unlike the sale proposed in In re Encore Healthcare Associates, the Debtors' sale process contemplates a going concern sale that will preserve the Debtors' operating businesses and the jobs of employees.<sup>42</sup> In re Encore Healthcare Assoc., 312 B.R. 52, 54-55 (Bankr. E.D. Pa. 2004). Moreover, unlike the Debtor in Encore, the Debtors do not intend to convert the Chapter 11 Cases to chapter 7 following Court approval of the sale. As stated on the record of the first day hearing, the Debtors are committed to pursuing a wind-down of the estates pursuant to a plan process.<sup>43</sup> Importantly, however, these estates will never reach that point absent the Debtors' ability to continue to fund their business operations and execute the sale process without delay. Unlike in In re NEC Holdings Corporation, the Debtors have provided more than a "wing and a prayer" as to the payment of administrative expenses.<sup>44</sup>

41. Dixon points to the fact that the Budget does not currently include amounts for section 503(b)(9) claims as evidence that the Debtors are administratively insolvent. However, Dixon ignores the fact that the Critical Vendor Motion earmarked \$5.2 million for section 503(b)(9) Claims and that the Debtors have budgeted additional amounts in the Budget for wind down costs.

42. Section 503(b)(9) does not specify a time for payment of claims arising under such section or otherwise condition approval of postpetition financing on the payment of claims arising under such statute. See 11 U.S.C. § 503(b)(9); see also In re Vertis Holdings, Inc., Case No. 12-12821 (CSS) (Bankr. D. Del. Dec. 6, 2012) [Docket No. 203] and Nov. 7, 2012 Hr'g Tr.

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<sup>42</sup> See §6.5(a) of Asset Purchase Agreement.

<sup>43</sup> Jan. 30 Hr'g Tr. 83:1-7, 120:4-121:3.

<sup>44</sup> In re NEC Holdings Corp., Case No. 10-11890, July 13, 2010 Hr'g Tr. at 100:14-20.

at 34:18-35:3<sup>45</sup> (At final hearing on DIP financing, the Bankruptcy Court deferred a decision on 503(b)(9) claims until a later hearing.); In re Allen Family Foods, Case No. 11-11764 (KJC) (Bankr. D. Del. July 27, 2011) [Docket No. 120] and July 5, 2011 Hr'g Tr. at 29:2-8<sup>46</sup> (At final hearing on DIP financing, the Bankruptcy Court deferred a decision on 503(b)(9) claims until sale hearing.). Consequently, the Debtors are under no present obligation to pay such claims, but fully understand that the claims, as well as all other administrative expenses, must be satisfied in connection with a chapter 11 plan, which is the Debtors' intended conclusion in these Chapter 11 Cases.

43. Thus, the Debtors have demonstrated a reasonable probability that all administrative expenses of these Chapter 11 Cases, including section 503(b)(9) claims, will be paid. Accordingly, Dixon's limited objection should be overruled.

#### **VIII. The Official Committee's Remaining Additional Objections Should Be Overruled.**

44. In addition to the specific issues discussed above, the Official Committee has objected to certain other provisions of the Final Order. The Debtors and the DIP Lenders will be prepared to address the Official Committee's remaining technical objections at the February 25 hearing to the extent such objections have not been resolved.<sup>47</sup>

#### **CONCLUSION**

45. In sum, the Debtors have amply satisfied their burden for final approval of the relief requested by the DIP Motion, as modified. As set forth above, the DIP Facilities will enable the Debtors to preserve and maximize the value of the Debtors' estates for the benefit of

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<sup>45</sup> The relevant pages of the transcript are attached hereto as Exhibit F.

<sup>46</sup> The relevant pages of the transcript are attached hereto as Exhibit G.

<sup>47</sup> The Debtors and DIP Lenders will also be prepared to address any remaining technical objections from the ACCO Limited Objection, the Texas Taxing Authorities Limited Objection, the Crayola Joinder and the 3M Joinder.

all stakeholders. Accordingly, the complaints and objections of the Official Committee and the Ad Hoc Noteholders' Committee are without merit and should be overruled.

WHEREFORE, the Debtors respectfully request that this Court overrule the Objections and enter the Final Order, in the form submitted to the Court by the Debtors, and grant such other and further relief as is just and proper.

Dated: February 21, 2013  
Wilmington, Delaware

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**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re:**

**SCHOOL SPECIALTY, INC., et al.,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 13-10125(KJC)**

**Jointly Administered**

**Re: Doc No. 12, 86**

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION  
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(3),  
364(D)(1), 364(E) AND 507, (B) UTILIZE CASH COLLATERAL PURSUANT TO  
11 U.S.C. § 363, (C) GRANT PRIMING LIENS AND SUPERPRIORITY CLAIMS  
TO THE DIP LENDERS, (D) PROVIDE ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363  
AND 364, AND (E) USE CASH COLLATERAL AND PROCEEDS OF THE ABL DIP  
FACILITY TO REPAY OBLIGATIONS ARISING UNDER THE PREPETITION ABL  
CREDIT AGREEMENT AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),<sup>2</sup> dated January 28, 2013, of School Specialty, Inc. (“School Specialty” and, together with certain of its affiliates, the “Borrowers”) and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”) pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules (the “Local Rules”) of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), seeking, among other things:

<sup>1</sup> 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.

<sup>2</sup> Capitalized term used but not defined herein shall have the meanings ascribed to such terms in the Motion.

(a) authorization for each Borrower to obtain postpetition financing and to guaranty the obligations of each other Borrower in connection with the DIP Financing (as defined below), and for each of the other Debtors and certain of their non-debtor affiliates (the “Guarantors”) to guaranty the Borrowers’ obligations in connection with the DIP Financing, consisting of:

(i) a super-priority credit facility made available to the Borrowers in an aggregate principal amount of up to \$144,665,931.42 consisting of (A) a credit facility in the amount of \$50,000,000 in respect of new money funding (the “Bayside DIP Facility”); and (B) \$94,665,931.42 in respect of the Prepetition Term Loan Debt (as defined below),<sup>3</sup> subject to the terms and conditions hereof, with Bayside Finance, LLC (“Bayside” and, in its capacity as agent under the Bayside DIP Facility, the “Bayside DIP Agent”), for itself and one or more funds managed and/or advised by Bayside and its designees (the “Bayside DIP Lenders”); and

(ii) a super-priority revolving credit facility made available to the Borrowers in an aggregate principal amount of up to \$175,000,000 (the “ABL DIP Facility” and, together with the Bayside DIP Facility, the “DIP Financing”) with Wells Fargo Capital Finance, LLC (“Wells Fargo”) or an affiliate acting as administrative agent (in such capacity, the “ABL DIP Agent” and, together with the Bayside DIP Agent, the “DIP Agents”) for itself and a syndicate of financial institutions (collectively, the “ABL DIP Lenders” and, together with the Bayside DIP Lenders, the “DIP Lenders”) in accordance with that certain Debtor-in-Possession Credit Agreement, dated as of January 31, 2013 (as may be amended,

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<sup>3</sup> As set forth below, this portion of the relief requested in the Motion was withdrawn at the Interim Hearing (as defined below).



supplemented or modified from time to time, the “ABL DIP Credit Agreement” and, together with the Bayside DIP Credit Agreement (as defined below), the “DIP Credit Agreements” and, the DIP Credit Agreements together with all such instruments or documents executed and delivered in connection therewith or related thereto, the “DIP Documents”);

(b) authorization for the Debtors to: (i) use all cash collateral consisting of proceeds of ABL Priority Collateral (as defined in the DIP Intercreditor Agreement) coming into the possession or control of the Debtors to reduce the Obligations (as defined in the Credit Agreement dated as of May 22, 2012 (as amended, supplemented or otherwise modified from time to time, the “Prepetition ABL Credit Agreement”) among certain of the Debtors, Wells Fargo, as administrative agent and co-collateral agent (in such capacities, the “Prepetition ABL Agent”), and the lenders and other entities party thereto (collectively, the “Prepetition ABL Lenders”)) to the extent not repaid or otherwise satisfied with proceeds of the ABL DIP Credit Agreement and, to the extent allowable under Bankruptcy Code section 506(b), pay (A) interest at the default rate set forth in the Prepetition ABL Credit Agreement, (B) all fees, costs, expenses and other charges due or coming due under the Prepetition ABL Documents or in connection with the Prepetition ABL Debt (each as defined below), regardless of whether such fees, costs, interest and other charges are included in the budget set forth in the Prepetition ABL Documents, and (C) all costs and expenses at any time incurred by the Prepetition ABL Agent and Prepetition ABL Lenders in connection with (x) the negotiation, preparation and submission of the Interim Order (as defined below), this Final Order (as defined below) and any other order or document related hereto and (y) the representation of the Prepetition ABL Agent and the Prepetition ABL Lenders in the Chapter 11 Cases, including in defending against any Lender Claim (as defined

below) (such amounts set forth in subclauses (A) through (C), collectively, the “Allowable ABL 506(b) Amounts” and, together with the Obligations (as defined in the Prepetition ABL Credit Agreement), the “Prepetition ABL Debt”) arising under or in connection with the Prepetition ABL Credit Agreement and the Loan Documents (as defined in the Prepetition ABL Credit Agreement) executed in connection therewith (collectively with the Prepetition ABL Credit Agreement, the “Prepetition ABL Documents”); (ii) upon entry of this Final Order, use the proceeds of the ABL DIP Facility to fully repay or otherwise satisfy any outstanding Prepetition ABL Debt; and (iii) deem any extant letters of credit and Bank Product Obligations (as defined in the Prepetition ABL Credit Agreement) to be issued or otherwise incurred under the ABL DIP Credit Agreement (such Prepetition ABL Debt, letter of credit obligations and Bank Product Obligations, collectively, the “ABL Roll Up Obligations”)<sup>4</sup>;

(c) the granting of adequate protection to the secured parties under the Prepetition ABL Credit Agreement and the Credit Agreement dated as of May 22, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “Prepetition Term Loan Credit Agreement” and, together with the Prepetition ABL Credit Agreement, the “Prepetition Credit Agreements”) among School Specialty, the borrowers and guarantors party thereto, the lenders party thereto (collectively, the “Prepetition Term Loan Lenders” and, together with the Prepetition ABL Lenders, the “Prepetition Secured Lenders”) and Bayside, as administrative agent (in such capacity, the “Prepetition Term Loan Agent” and, together with the Prepetition ABL Agent, the “Prepetition Agents”), and each loan document executed in connection with the Prepetition Term Loan Credit Agreement (collectively with the Prepetition Term Loan Credit Agreement, the “Prepetition Term Loan Documents” and, together with the Prepetition ABL

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<sup>4</sup> This portion of the relief requested in the Motion has been modified as set forth herein.

Documents, the “Prepetition Loan Documents”), whose liens and security interests are being primed by the DIP Financing; and

(d) authorization for the Debtors to use any Cash Collateral (each as defined below) in which the Prepetition ABL Agent, any Prepetition ABL Lender, the Prepetition Term Loan Agent or any Prepetition Term Loan Lender (collectively, the “Prepetition Secured Parties”) may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral and all use and diminution in the value of their respective interests in collateral.

Due and appropriate notice under the circumstances of the Motion, the relief requested therein, the Interim Hearing and the Final Hearing (as defined below) having been served by the Debtors on the official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Creditors’ Committee”), the DIP Agents, the DIP Lenders, the Prepetition Agents, the Prepetition Secured Lenders, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), those parties requesting notice pursuant to Bankruptcy Rule 2002, the forty (40) largest unsecured creditors of the Debtors, the Internal Revenue Service and the Securities and Exchange Commission in compliance with Bankruptcy Rule 4001(b) and (c) and the Local Rules;

An interim hearing on the Motion (the “Interim Hearing”) having been held by this Court on January 30, 2013, and this Court having entered an interim order (the “Interim Order”) dated January 31, 2013 [Docket No. 86] which, among other things, (i) authorized each Borrower, on an interim basis, to borrow forthwith from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed (A) \$175,000,000 pursuant to the ABL DIP Facility and (B) \$25,000,000 under the Bayside DIP Facility (in each case, subject to any

limitations on borrowings under the applicable DIP Documents and in accordance with the Approved Budget (as defined in the DIP Credit Agreements),<sup>5</sup> (ii) authorizing each Borrower to guaranty the DIP Obligations (as defined below) of each other Borrower and the Guarantors to guaranty the DIP Obligations of each Borrower, (iii) authorizing the Debtors' use of Cash Collateral, (iv) granting the adequate protection described herein, and (v) scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") authorizing the balance of the borrowings and letter of credit issuances under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents, for February 25, 2013 at 11:00 a.m. (ET);

The Debtors having filed (x) a notice of filing of the proposed Final Order (the "Supplemental Notice"), dated February \_\_, 2013 and (y) executed versions of the DIP Credit Agreements on February 12, 2013; and due and appropriate notice of the Supplemental Notice and the relief requested therein having been served by the Debtors on the following notice parties: (a) (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein and Elizabeth R. McColm, 1285 Avenue of the Americas, New York, NY 10019 and (ii) Young, Conaway, Stargatt & Taylor, LLP, Attn: Pauline K. Morgan and Joel Waite, Rodney Square, 1000 North King Street, Wilmington, DE 19801, attorneys for the Debtors; (b) (i) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer & Meredith Lahaie, One Bryant Park, New York, NY 10036 and (ii) Pepper Hamilton LLP, Attn: David Stratton & David Fournier, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801, attorneys for the Prepetition Term Loan Agent, Prepetition Term Loan Lenders, Bayside DIP Agent and Bayside DIP Lenders, (c) (i) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs, 55 East

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<sup>5</sup> The Approved Budget is attached hereto as Exhibit A.

Monroe Street, Suite 3300, Chicago, IL 60603 and (ii) Richards, Layton and Finger, P.A., Attn: Paul Heath, One Rodney Square, 920 North King Street, Wilmington, DE 19801, attorneys for the Prepetition ABL Agent and ABL DIP Agent, (d) (i) Brown Rudnick LLP, Attn: Robert Stark, Seven Times Square, New York, NY 10036 and (ii) Venable LLP, Attn: Jamie L. Edmonson (jledmonson@venable.com), 750 Pratt Street, Suite 900, Baltimore, MD 21202, attorneys for the Creditors' Committee, (e) (i) Strook & Stroock & Lavan LLP, Attn: Kristopher M. Hanson & Jonathan D. Canfield (khansen@stroock.com, jcanfield@stroock.com), 180 Maiden Lane, New York, NY 10038 and (ii) Duane Morris LLP, Attn: Michael R. Lastowski, Christopher M. Winter & Jarret P. Hitchings (MLastowski@duanemorris.com, cmwinter@duanemorris.com, JPHitchings@duanemorris.com), 222 Delaware Avenue, Suite 1600, Wilmington, DE 19801, attorneys for the ad hoc group holders of convertible debentures, (f) the U.S. Trustee, Attn: Richard Shepacarter, Esq. and Juliet A. Sarkessian, Esq., (g) those parties requesting notice pursuant to Bankruptcy Rule 2002, and (h) any party that timely filed an objection to the entry of this Final Order;

Upon the record made by the Debtors and other parties in interest at the Interim Hearing and at the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:**

1. ***Disposition.*** The Motion is granted on a final basis in accordance with the terms of this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled. This Final Order shall become effective immediately upon entry. The DIP Intercreditor Agreement (as defined below) and that certain Intercreditor

Agreement dated as of May 22, 2012 (as amended, supplemented or modified from time to time, the “Prepetition Intercreditor Agreement” and, together with the DIP Intercreditor Agreement, the “Intercreditor Agreements”) in all respects are “subordination agreements” for purposes of Bankruptcy Code section 510(a).

2. ***Jurisdiction.*** This Court has core jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are Bankruptcy Code sections 105, 361, 362, 363 and 364, Bankruptcy Rules 2002, 4001 and 9014 and the Local Rules.

3. ***Notice.*** Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, the Interim Hearing, the Interim Order and the Final Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c) and the Local Rules, and no further notice of the relief sought at the Final Hearing is necessary or required.

4. ***Debtors’ Stipulations.*** Without prejudice to the rights of any other party (but which are subject to the limitations thereon contained in paragraph 23), the Debtors admit, stipulate and agree that:

(a) As of the date of the commencement of the Chapter 11 Cases (the “Petition Date”):

(i) the Debtors party to or otherwise obligated under the Prepetition Term Loan Documents, without defense, counterclaim or offset of any kind, were jointly and severally indebted and liable to the Prepetition Term Loan Lenders under the Prepetition Term Loan Documents in the aggregate principal

amount of \$92,054,001.06 (including the Early Payment Fee, as defined in the Prepetition Term Loan Credit Agreement) plus \$2,606,866.33 in accrued and unpaid interest, plus expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Prepetition Term Loan Documents), charges, Obligations (as defined in the Prepetition Term Loan Credit Agreement) and all other obligations incurred in connection therewith as provided in the Prepetition Term Loan Documents (collectively, the "Prepetition Term Loan Debt" and, together with the ABL Roll Up Obligations, the "Prepetition Debt"), which Prepetition Term Loan Debt is secured by (collectively, the "Prepetition Term Loan Security Interests"): (X) first priority liens on and security interests in the Term Loan Priority Collateral (as defined in that certain Intercreditor Agreement dated as of January 31, 2013 by and between the ABL DIP Agent and the Bayside DIP Agent (the "DIP Intercreditor Agreement")); and (Y) second priority liens on and security interests in the ABL Priority Collateral (as defined in the DIP Intercreditor Agreement); and

(ii) the Debtors party to or otherwise obligated under the Prepetition ABL Documents, without defense, counterclaim or offset of any kind, were jointly and severally indebted and liable to the Prepetition ABL Lenders in the aggregate principal amount of not less than \$43.496 million in respect of loans and Letters of Credit (as defined in the Prepetition ABL Credit Agreement) made by the Prepetition ABL Lenders plus the Allowable ABL 506(b) Amounts and all other Obligations (as defined in the Prepetition ABL Credit Agreement), secured

by (X) first priority liens on and security interests in the ABL Priority Collateral (together with the Term Loan Priority Collateral, the "Prepetition Priority Collateral") and (Y) second priority liens on and security interests in the Term Loan Priority Collateral (collectively, the "Prepetition ABL Security Interests" and, together with the Prepetition Term Loan Security Interests, the "Prepetition Security Interests"); and

(b) The Prepetition Debt constitutes the legal, valid and binding obligation of the respective Debtors named in the Prepetition Loan Documents, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from Bankruptcy Code section 362).

(c) No portion of the Prepetition Debt or any payments made to the Prepetition Agents or the Prepetition Secured Lenders or applied to the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law.

(d) The Debtors hold no valid or enforceable "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights of any kind against any of the Prepetition Agents or the Prepetition Secured Lenders. Each Debtor hereby forever waives and releases any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights against each of the Prepetition Agents, each of the Prepetition Secured Lenders, and their respective affiliates, subsidiaries, agents, officers, directors, attorneys, employees, advisors, consultants, predecessors-in-interest, successors and assigns (collectively, the "Lender Parties"), whether arising at law or in equity, including any



recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law; *provided, however*, that nothing herein or in any of the DIP Documents shall operate as a release or waiver of any claims or causes of action held by any party (including, without limitation, any of the Debtors) against any Debtor, any “affiliate” of any Debtor (as defined in the Bankruptcy Code) or any officer, director or direct or indirect shareholder (or affiliate thereof) of any Debtor. Each Debtor hereby covenants not to sue any Lender Party on account of any “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights, whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law.

(e) The Prepetition Security Interests granted to the Prepetition Agents in the Prepetition Priority Collateral pursuant to and in connection with the Prepetition Loan Documents, including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Agents, for such Prepetition Agents’ benefit and for the benefit of the applicable Prepetition Secured Lenders, (i) are valid, binding, perfected and enforceable liens and security interests in the real and personal property described in the Prepetition Loan Documents, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind, (iii) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) to which the DIP Liens are subject and (C) valid, perfected and unavoidable liens and security interests permitted

under the applicable Prepetition Loan Documents, but only to the extent that such liens and security interests are permitted by the applicable Prepetition Loan Documents to be senior to or *pari passu* with the applicable Prepetition Security Interests, and (iv) constitute the legal, valid and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents.

5. ***Findings Regarding the DIP Financing.***

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors need to obtain the DIP Financing and use Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to repay or otherwise satisfy the ABL Roll Up Obligations and to satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2) and 364(c)(3) for the purposes set forth in the DIP Credit Agreements without the Debtors (i) granting to the DIP Agents and the DIP Lenders, subject to the Carve-Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Final Order and in the DIP Documents

and (ii) using Cash Collateral consisting of ABL Priority Collateral coming into the possession or control of the Debtors and, upon entry of this Final Order, proceeds of the ABL DIP Facility to pay or otherwise satisfy any remaining ABL Roll Up Obligations.

(d) The terms of the DIP Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment and constitute reasonably equivalent value and fair consideration.

(e) The DIP Financing has been negotiated in good faith and at arm's length among the Debtors, the DIP Agents and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Financing and the DIP Documents, including without limitation, all loans and Letters of Credit (as defined in the ABL DIP Facility), the Bayside DIP Facility, the use of Cash Collateral consisting of ABL Priority Collateral coming into the possession or control of the Debtors and, upon entry of this Final Order, proceeds of the ABL DIP Facility to pay or otherwise satisfy any remaining ABL Roll Up Obligations, and the balance of the ABL DIP Facility made to and all guarantees issued by the Debtors pursuant to the DIP Documents, and any other obligations under the DIP Documents (including, with respect to the ABL DIP Facility, all Bank Product Obligations) (all of the foregoing collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their affiliates in good faith, as that term is used in Bankruptcy Code section 364(e), and in express reliance upon the protections offered by Bankruptcy Code section 364(e), and the DIP Obligations, the DIP Liens and the Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) Consummation of the DIP Financing and authorization of the use of Cash Collateral in accordance with this Final Order and the DIP Documents is in the best interests of the Debtors' estates.

6. *Authorization of the DIP Financing and the DIP Credit Agreements.*

(a) The Debtors were by the Interim Order and hereby are authorized to execute and enter into the DIP Documents, including that certain Senior Secured Super Priority Debtor-in-Possession Credit Agreement, dated as of January 31, 2013 (as may be amended, supplemented or modified from time to time, the "Bayside DIP Credit Agreement") and the ABL DIP Credit Agreement, and the DIP Credit Agreements and other DIP Documents are hereby approved. The DIP Credit Agreements and this Final Order shall govern the financial and credit accommodations to be provided to the Debtors by the DIP Lenders; *provided* that in the event of a conflict between the DIP Credit Agreements and this Final Order, this Final Order shall control.

(b) The Borrowers were by the Interim Order and hereby are authorized to borrow money pursuant to the DIP Credit Agreements, and the Borrowers and the Guarantors were by the Interim Order and are hereby authorized to guaranty such borrowings, in accordance with the terms of this Final Order and the DIP Credit Agreements (and subject to the Approved Budget provided for under the Bayside DIP Credit Agreement and the ABL DIP Credit Agreement) to, among other things, (x) provide working capital for the Borrowers and the Guarantors (including, without limitation, foreign affiliates guaranteeing the DIP Obligations) and (y) pay interest, fees and expenses in accordance with this Final Order and the DIP Documents (including, for the avoidance of doubt, the fees and expenses of the DIP Lenders' professionals, whether incurred pre- or postpetition). In addition, subject to the rights of parties set forth in

paragraph 23 herein, Cash Collateral consisting of ABL Priority Collateral and proceeds thereof coming into the possession or control of the Debtors and, upon entry of this Final Order, proceeds of the ABL DIP Facility, may be used to pay or otherwise satisfy any remaining ABL Roll Up Obligations. The Debtors are also authorized to incur Bank Product Obligations pursuant to the terms of the ABL DIP Facility, including overdrafts and related liabilities arising from treasury, depository and cash management services including any automated clearing house fund transfers provided to or for the benefit of the Debtors by the ABL DIP Agent or any of its affiliates, *provided, however*, that nothing herein shall require the ABL DIP Agent or any other party to incur overdrafts or to provide any such services or functions to the Debtors. Notwithstanding the foregoing, the ABL DIP Agent, with the consent of the Co-Collateral Agents (as defined in the ABL DIP Credit Agreement), may authorize the Debtors to use Cash Collateral consisting of ABL Priority Collateral, in lieu of incurring additional Obligations (as defined in the ABL DIP Credit Agreement), to fund expenses set forth in the Approved Budget, subject to the terms and conditions of this Order. The Debtors shall not (A) use the proceeds of the ABL DIP Facility or any proceeds of the ABL Priority Collateral to (i) repay or prepay any of the Prepetition Term Loan Debt or the Bayside DIP Facility, (ii) pay any Taxes (as defined in the ABL DIP Credit Agreement) upon or as a result of the Disposition (as defined in the DIP Intercreditor Agreement) of Term Loan Priority Collateral or (iii) affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender; or (B) use the proceeds of the Bayside DIP Facility or any proceeds of the Term Loan Priority Collateral to (x) repay or prepay

any of the Prepetition ABL Debt or the ABL Roll Up Obligations, (y) pay any Taxes (as defined in the Bayside DIP Credit Agreement) upon or as a result of the Disposition of the ABL Priority Collateral or (z) affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender.

(c) In furtherance of the foregoing and without further approval of this Court, each Debtor was by the Interim Order and hereby is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Financing, including, without limitation:

(i) the execution, delivery and performance of the DIP Documents, including, without limitation, the DIP Credit Agreements, any security and pledge agreements, any mortgages contemplated thereby and the letter agreements referred to in clause (iii) below;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents for, among other things, the purpose of (A) with respect to the Bayside DIP Facility, adding additional financial institutions as Bayside DIP Lenders and reallocating the commitments for the Bayside DIP Facility among the Bayside DIP Lenders, in each case in such form as the Debtors and the

Bayside DIP Agent may agree; and (B) with respect to the ABL DIP Facility, adding additional financial institutions as ABL DIP Lenders and reallocating the commitments for the ABL DIP Facility among the ABL DIP Lenders, in each case in such form as the Debtors and the ABL DIP Agent may agree; *provided that* no further approval of the Bankruptcy Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (or any non-material fees paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder; *provided, however,* that the Debtors shall provide notice of any material modification or amendment to the DIP Credit Agreements to counsel to the Creditors' Committee, counsel to each of the Prepetition Agents and the U.S. Trustee, each of whom shall have five (5) days from the date of such notice within which to object in writing to such modification or amendment. If the Creditors' Committee, the U.S. Trustee or the Prepetition Agents timely objects to any such material modification or amendment to the DIP Credit Agreements, such modification or amendment shall only be permitted pursuant to an order of this Court;

(iii) the non-refundable payment: (A) solely from proceeds of the Bayside DIP Facility or Term Loan Priority Collateral, to the Bayside DIP Agent or Bayside DIP Lenders, as the case may be, of the fees referred to in the Bayside DIP Credit Agreement (and in the separate letter agreement(s) between them in connection with the Bayside DIP Facility), but excluding the

Commitment Termination Fee (as defined in the Bayside DIP Credit Agreement, to the extent referenced therein), and the reasonable costs and expenses as may be due from time to time, including, without limitation, (x) fees and expenses of the professionals retained as provided for in connection with the Bayside DIP Credit Agreement (including, for the avoidance of doubt, all such fees and expenses incurred prior to the Petition Date) and (y) the fees and expenses of any advisors or consultants retained to assist the Bayside DIP Lenders or one or more affiliates in securing exit financing; and (B) solely from proceeds of the ABL DIP Facility or ABL Priority Collateral, to the ABL DIP Agent or ABL DIP Lenders, as the case may be, of the fees referred to in the ABL DIP Credit Agreement (and in the separate letter agreement(s) between them in connection with the ABL DIP Facility), and the reasonable costs and expenses as may be due from time to time, including, without limitation, (x) fees and expenses of the professionals retained as provided for in connection with the ABL DIP Credit Agreement and (y) the fees and expenses of any advisors or consultants retained to assist the ABL DIP Lenders or one or more affiliates in securing exit financing;

(iv) the conversion of the Prepetition ABL Debt and other satisfaction in full of the ABL Roll Up Obligations; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(d) The DIP Credit Agreements and the other DIP Documents shall constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Final Order for all



purposes during the Chapter 11 Cases, any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer or grant of security under the DIP Credit Agreements, the other DIP Documents or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under Bankruptcy Code sections 502(d), 548 or 549 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim; *provided, however*, that in the event of a final order sustaining a timely challenge under paragraph 23 hereof that the repayment or deemed satisfaction of the ABL Roll Up Obligations pursuant to the ABL DIP Facility resulted in the repayment or satisfaction of unsecured claims against the Debtors, then the repayment or other satisfaction shall be reversed, the ABL Roll Up Obligations shall be reinstated, and the accompanying obligations under the ABL DIP Facility shall be reduced or otherwise rescinded, on a dollar-for-dollar basis (including the reduction of revolving commitments thereunder).

7. ***Payment of the Prepetition ABL Debt.*** The Debtors are hereby authorized, upon entry of this Final DIP Order, to use the proceeds of the ABL DIP Facility to fully repay or deem issued or incurred under the ABL DIP Facility any remaining ABL Roll Up Obligations. All such application of proceeds of the ABL DIP Facility shall be final subject only to the right of parties in interest to seek a determination in accordance with paragraph 23 hereof that such applications to the ABL Roll Up Obligations resulted in a payment of an unsecured prepetition claim of Prepetition ABL Lenders.

8. ***Superpriority Claims.*** Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims against each of the

Debtors (the “Superpriority Claims”) with priority over any and all administrative expenses, adequate protection claims, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) or 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b), and which shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof, including, without limitation, all Avoidance Actions (as defined below), subject only to the payment of the Carve-Out to the extent specifically provided for herein. The Superpriority Claims granted hereunder and under the Interim Order to the Bayside DIP Lenders shall be *pari passu* with the Superpriority Claims granted hereunder and under the Interim Order to the ABL DIP Lenders.

9. ***Carve-Out.*** The “Carve-Out” means an amount sufficient to satisfy (a) all fees and expenses required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to 28 U.S.C. §§ 156(c) and 1930(a)(6) and (b) (i) unpaid allowed fees, expenses, and disbursements of the professionals for the Debtors and the Creditors’ Committee (collectively, the “Professionals”) incurred and accruing after the occurrence and during the continuance of an Event of Default (as such term is defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and delivery of a written notification by the ABL DIP Agent to the Bayside

DIP Agent and the Prepetition Term Agent, or by the Bayside DIP Agent to the Prepetition ABL Agent and the ABL DIP Agent, of the occurrence of such Event of Default (as such term is defined in the ABL DIP Credit Agreement or Bayside DIP Credit Agreement) for purposes of this paragraph 9 (the “Carve-Out Notice”), in an aggregate amount not in excess of \$500,000 and (ii) unpaid Professionals’ fees and expenses incurred and accruing prior to the delivery of a Carve-Out Notice and as allowed by the Bankruptcy Court and in such amounts (subject to any permitted variance under the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement) not in excess of the permitted line items for such amounts and for such periods as set forth in the Approved Budgets set forth in the DIP Credit Agreements and Carve-Out Report (as defined below) (clauses (i) and (ii), collectively, the “Professionals’ Carve-Out”); *provided that* (x) the dollar limitation in this clause (b) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the delivery of a Carve-Out Notice in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to any Prepetition Agent or Prepetition Secured Lender and (y) nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i) and (ii) above. Except as otherwise provided herein, as among the DIP Collateral (as defined below), the Professionals’ Carve-Out, if and to the extent invoked pursuant to this Final Order, shall be allocated one-half against and funded from the ABL Priority Collateral and one-half against and funded from the Term Loan Priority Collateral. Notwithstanding anything herein to the contrary, no (i) amounts payable in connection with the \$5.2 million wind-down budget as set forth in the Approved Budget, other than on account of Professional services rendered prior to the delivery of a Carve-Out Notice, or (ii) “success fee” or similar fee, whether or not set forth in the

Approved Budget, may be paid with proceeds of any loan or other advance under the ABL DIP Credit Agreement or the ABL Priority Collateral.<sup>6</sup>

10. ***Reservation of Rights Regarding Professionals' Fees.*** Nothing herein shall be construed as consent by the DIP Agents to the allowance of any fees or expenses of the Professionals or shall affect the right of each DIP Agent to object to the allowance and payment of such fees, costs or expenses, or the right of the DIP Agents to the return of any portion of the Carve-Out that is funded under its respective DIP Documents with respect to fees and expenses for a Professional that are approved on an interim basis but are later denied on a final basis.

11. ***The Carve-Out Report, Budget Periods and Variance Tests.***

(a) The Debtors and their Chief Restructuring Officer (as defined in the ABL DIP Credit Agreement) shall provide to the DIP Agents a written report (the "Carve-Out Report") every two weeks disclosing their then-current estimate of (1) the aggregate amount of unpaid professional fees, costs and expenses accrued or incurred by the Professionals through the date of the Carve-Out Report and (2) projected fees, costs and expenses of the Professionals for the 30-day period following the date of such Carve-Out Report, taking into account projected interim payments during such period.

(b) Section 6.15 (c) and (d) of the ABL DIP Credit Agreement and Section 6.31(c) and (d) of the Bayside DIP Credit Agreement will not restrict (a) any amounts otherwise chargeable under the DIP Credit Agreements for fees, costs and other charges incurred by the DIP Agent and DIP Lenders thereunder and (b) any disbursements to professionals to be paid in a particular Approved Budget period (the "Original Budget Period") but not paid during such period due to the delay in the approval of such professional fees by the Bankruptcy Court. Such

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<sup>6</sup> [The Employee Costs as set forth in the wind-down budget shall be subject to the Bayside DIP Lenders' consent.]

approved but unpaid amounts may be paid in a subsequent Approved Budget period (the “Subsequent Budget Period”) in which such Bankruptcy Court approval is received to the extent such payments are otherwise permitted pursuant to paragraph 9(b)(ii) of this Final Order, the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement, in which case the applicable line item in the Approved Budget shall be deemed to be increased to reflect the disbursement of such amounts in such Subsequent Budget Period; *provided that* for purposes of the Variance Test (as defined in the DIP Credit Agreements), unless the Original Budget Period and the Subsequent Budget Period are in the same budget test period, such amounts shall be deemed to have been paid in each of the Original Budget Period and the Subsequent Budget Period (for the avoidance of doubt, the Debtors must be in compliance with the Variance Test for each of the Original Budget Period and the Subsequent Budget Period as if such payments were made in each such period).

(c) Notwithstanding anything in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement to the contrary, disbursements with respect to the Lender Group Expenses (as defined in the ABL DIP Credit Agreement) or the Agent Expenses (as defined in the Bayside DIP Credit Agreement) included in the line item “Restructuring/Other Profess. Fees” in the Approved Budget paid in excess of the amounts reflected in such Approved Budget shall not constitute a Default or Event of Default under either such agreement; *provided, however* that such excess amounts shall be disregarded for purposes of determining compliance with the Variance Test.

12. **DIP Liens.** As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing

statements or other similar documents, or the possession or control by any DIP Agent or DIP Lender of or over any DIP Collateral, the following security interests and liens were by the Interim Order and hereby are granted by the Debtors to the DIP Agents for their own benefit and the respective benefit of the applicable DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”), subject, only in the event of the occurrence and during the continuance of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement), to the payment of the Carve-Out (all such liens and security interests granted to the DIP Agents, for their own benefit and the respective benefit of the applicable DIP Lenders, pursuant to the Interim Order, this Final Order and the DIP Documents, the “DIP Liens”):

(a) *First Lien on Unencumbered Property.* Subject to the terms of the Intercreditor Agreements, pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all pre- and postpetition property of the Debtors or their estates, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “Unencumbered Property”), including, without limitation, any such unencumbered cash of the Debtors (whether maintained with a DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, commercial tort claims, equity interests, and the proceeds of all the foregoing. Unencumbered Property shall also include the Debtors’ claims and causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550, and

553 and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise (collectively, "Avoidance Actions").

(b) *Liens Priming Prepetition Secured Parties' Liens.* Except as otherwise set forth in paragraph 13 herein, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including, without limitation, Cash Collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, equity interests, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to any existing lien presently securing the Prepetition Debt (including in respect of issued but undrawn letters of credit). The liens on (i) the ABL Priority Collateral securing the ABL Priority Debt (as defined in the DIP Intercreditor Agreement) shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current or future liens of the Prepetition Secured Parties (including, without limitation, adequate protection liens granted hereunder and under the Interim Order) and (ii) the Term Loan Priority Collateral securing the Term Loan Priority Debt (as defined in the DIP Intercreditor Agreement) shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current or future liens of the Prepetition Secured Parties (including, without limitation, adequate protection liens granted hereunder and under the Interim Order). The security interests and liens on the DIP Collateral securing the Bayside DIP Facility and the ABL DIP Facility shall be junior to any valid, perfected,

enforceable and unavoidable security interests and liens of parties other than the Prepetition Secured Parties, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Prepetition Secured Parties may become subject subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b).

(c) *Liens Junior to Certain Other Liens.* Except as otherwise set forth in paragraph 13 herein, pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all pre- and postpetition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 12, as to which the liens and security interests in favor of the DIP Agents will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), which security interests and liens in favor of the DIP Agents are junior to such valid, perfected and unavoidable liens; *provided that*, the Bayside DIP Liens and Wells DIP Liens shall be subject to any asserted tax liens solely to the extent that such tax liens (1) had priority under applicable law over the prepetition liens granted to the Prepetition Secured Parties, (2) were not subordinated by agreement or applicable law, and (3) were non-avoidable, valid, properly perfected and enforceable as of the Petition Date; *provided, further that* the Bayside DIP Liens and Wells DIP Liens shall not be deemed to have priority over any valid, enforceable, non-avoidable right of setoff in favor of American Art Clay Co., Inc., Acco Brands USA LLC, Mead Products LLC and 3M Company arising under Bankruptcy Code section 553 solely to the extent that (1) such right of setoff constitutes a "lien"



within the meaning of such term as used in Bankruptcy Code section 364(c)(3) and (2) the prepetition liens granted to the Prepetition Secured Parties were otherwise subject to such right of setoff in accordance with applicable law. Subject to any further order of Bankruptcy Court and notwithstanding anything to the contrary contained herein, for purposes of this Final Order, no liens or other rights or interests granted or permitted under this Final Order shall impair, be senior to, or in any way prime the liens and right of setoff (provided that such lien and right of setoff otherwise qualifies as a lien not being primed by reason of the last sentence of paragraph 12(b) of this Final Order) of Comerica Bank under that certain Pledge and Security Agreement (re: deposit account) dated May 2012 by School Specialty, Inc. in favor of Comerica Bank pledging the funds in Business Money Market Account No. 1852879814 in the name of School Specialty, Inc., maintained at Comerica Bank (the "Comerica Account") and all identifiable proceeds of the Comerica Account, which total \$1,458,537.10 as of the Petition Date, plus postpetition interest accruing on the Comerica Account, which funds shall continue to secure the reimbursement obligations of School Specialty, Inc. to Comerica Bank under the Letter of Credit Applications and Reimbursement Agreements, or otherwise, for any draws under Comerica Bank letter of credit no. 5183 in the amount of \$700,000, issued for the benefit of DEI CSEP or Comerica Bank letter of credit no. 5184 in the amount of \$755,000, issued for the benefit of Travelers Insurance Company.

(d) *Liens Senior to Certain Other Liens.* The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit,

commission, board or court for any liability of the Debtors to the extent permitted by applicable non-bankruptcy law or (iii) any intercompany or affiliate liens of the Debtors.

13. ***Priority of DIP Liens.*** Notwithstanding anything to the contrary herein, (a) the DIP Liens granted hereunder and under the Interim Order to the Bayside DIP Lenders (the “Bayside DIP Liens”) shall be immediately junior in priority and subject to the DIP Liens granted to the ABL DIP Lenders and to the prepetition liens granted to the Prepetition ABL Agent in respect of the ABL Priority Collateral and (b) the DIP Liens granted hereunder and under the Interim Order to the ABL DIP Lenders (the “Wells DIP Liens”) shall be immediately junior in priority and subject to the Bayside DIP Liens and to the prepetition liens granted to the Prepetition Term Loan Agent in respect of the Term Loan Priority Collateral; *provided that*, subject to entry of a final order in favor of a plaintiff sustaining a Lender Claim brought pursuant to paragraph 23 of this Final Order, (i) if any Prepetition ABL Lender is required to turn over, disgorge or otherwise pay to the Debtors’ estates any amount paid in respect of the Prepetition ABL Debt, then the Prepetition ABL Lenders shall be entitled to a reinstatement of Prepetition ABL Debt with respect to all such amounts and (ii) if any Prepetition Term Loan Lender is required to turn over, disgorge or otherwise pay to the Debtors’ estates any amount paid in respect of the Prepetition Term Loan Debt, then the Prepetition Term Loan Lenders shall be entitled to a reinstatement of Prepetition Term Loan Debt with respect to all such amounts. The ABL Priority Collateral shall include the proceeds of the Avoidance Actions described in subclause (i) above, and the Wells DIP Liens granted hereunder and under the Interim Order in respect of such Avoidance Actions shall be senior to the Bayside DIP Liens granted hereunder and under the Interim Order; the Term Loan Priority Collateral shall include the proceeds of the Avoidance Actions described in subclause (ii) above, and the Bayside DIP Liens granted

hereunder and under the Interim Order in respect of such Avoidance Actions shall be senior to the Wells DIP Liens granted hereunder and under the Interim Order; and the DIP Liens granted hereunder in respect of the proceeds of all Avoidance Actions not covered by subclauses (i) or (ii) above shall rank *pari passu* as between the DIP Agents.

14. ***Protection of DIP Lenders' Rights.***

(a) All DIP Collateral shall be free and clear of all liens, claims and encumbrances, except for those liens, claims and encumbrances expressly permitted under the DIP Documents or this Final Order.

(b) Subject to the terms of the DIP Intercreditor Agreement, so long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding) outstanding under the DIP Documents, (1) the Prepetition Term Loan Agent and Prepetition Term Loan Lenders shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Prepetition Loan Documents, the Interim Order or this Final Order, or otherwise exercise remedies against any ABL Priority Collateral, except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of ABL Priority Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the ABL Priority Collateral unless, solely as to this clause (iii), the ABL DIP Agent or ABL DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Interim Order or this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date

and (2) the Prepetition ABL Agent and Prepetition ABL Lenders shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Prepetition Loan Documents, the Interim Order or this Final Order, or otherwise exercise remedies against any Term Loan Priority Collateral, except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of Term Loan Priority Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Term Loan Priority Collateral unless, solely as to this clause (iii), the Bayside DIP Agent or Bayside DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Interim Order or this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date.

(c) The automatic stay provisions of Bankruptcy Code section 362 are vacated and modified to the extent necessary to permit the DIP Agents and the DIP Lenders to exercise (i) immediately upon the occurrence of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement), all rights and remedies under the applicable DIP Documents other than those rights and remedies against the DIP Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and the giving of five business days' prior written notice to the Debtors (with a copy to counsel to the Creditors' Committee and to the U.S. Trustee) to the extent provided for in any DIP Document, all rights and remedies against the DIP Collateral provided for in any DIP Document (including, without limitation, the right to set off against accounts maintained by the Debtors with any DIP

Agent or DIP Lender or any affiliate thereof). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) has occurred and is continuing, and the Debtors and the Prepetition Secured Parties hereby each waive their right to seek relief, including, without limitation, under Bankruptcy Code section 105, to the extent such relief would in any way impair or restrict the rights and remedies of either DIP Agent or the DIP Lenders set forth in this Final Order or the DIP Documents. In no event shall the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral. The delay or failure to exercise rights and remedies under the applicable DIP Documents or this Final Order by any of the DIP Agents or DIP Lenders shall not constitute a waiver of such DIP Agent’s or such DIP Lender’s rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

15. ***Limitation on Charging Expenses Against Collateral.*** Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in chapter 7 or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Prepetition Priority Collateral or the Cash Collateral pursuant to Bankruptcy Code sections 506(c), 552(b) or 105(a) or any similar principle of law without the prior written consent of the DIP Agents or the Prepetition Agents, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders.

16. **Cash Collateral.** Pending repayment in full of any outstanding ABL Roll Up Obligations, upon entry of this Final Order, all Cash Collateral consisting of ABL Priority Collateral shall be remitted to the Prepetition ABL Agent to be applied to repay outstanding ABL Roll Up Obligations. With the exception of any funds in a blocked account pursuant to the Prepetition ABL Documents, to the extent any funds of the Debtors were on deposit with any Prepetition Secured Party as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Prepetition Secured Party immediately prior to the filing of the Debtors' chapter 11 petitions (regardless of whether, as of the time of filing, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the "Deposited Funds") are subject to rights of setoff, except as otherwise set forth in the DIP Intercreditor Agreement. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Prepetition Secured Party, giving rise to a secured claim pursuant to Bankruptcy Code sections 506(a) and 553. The Prepetition Secured Parties are obligated, to the extent provided in the Prepetition Loan Documents and subject to the terms of the DIP Intercreditor Agreement, as the case may be, to share the benefit of such liens and setoff rights with the other Prepetition Secured Parties that are party to or are otherwise beneficiaries of such documents. Pursuant to Bankruptcy Code section 552, any proceeds of the Prepetition Priority Collateral of the Prepetition Secured Parties (including, without limitation, the Deposited Funds or any other funds on deposit at the Prepetition Secured Parties or at any other institution as of the Petition Date) are Cash Collateral of the applicable Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a). The Deposited Funds, all cash proceeds of the Prepetition Priority Collateral of the Prepetition Secured Parties and all other cash collateral (as

defined in the Bankruptcy Code) of the Prepetition Secured Parties constitutes "Cash Collateral" hereunder.

17. ***Use of Cash Collateral.*** Except on the terms and conditions of this Final Order and the Intercreditor Agreements, the Debtors shall be enjoined and prohibited from using the Cash Collateral absent further order of this Court. The Debtors' right to use Cash Collateral, and the Prepetition Secured Parties' consent to use of Cash Collateral, shall terminate automatically on the Maturity Date (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement, as applicable).

18. ***Adequate Protection.*** Subject to the terms of the Intercreditor Agreements, the Prepetition Secured Parties are entitled, pursuant to Bankruptcy Code sections 361, 363(e) and 364(d)(1), to adequate protection of their interests in their respective Prepetition Priority Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Priority Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Prepetition Priority Collateral, the priming of the Prepetition Secured Parties' security interests and liens in the Prepetition Priority Collateral by the DIP Agents and the DIP Lenders pursuant to the DIP Documents, the Interim Order and this Final Order, and the imposition of the automatic stay pursuant to Bankruptcy Code section 362. As adequate protection, the Prepetition Secured Parties were by the Interim Order and hereby are granted the following (collectively, the "Adequate Protection Obligations") (subject to recharacterization and/or disgorgement from the applicable Prepetition Secured Party solely to the extent that the Bankruptcy Court determines at

a later date that the applicable Prepetition Secured Party was not entitled to the adequate protection completed hereby):

(a) ***Adequate Protection Liens.*** Subject to the terms of the DIP Intercreditor Agreement, the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) were by the Interim Order and hereby are granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all DIP Collateral, subject and subordinate only to (i) the DIP Liens and any liens on the DIP Collateral that are senior to, or *pari passu* with, the DIP Liens and (ii) the Carve-Out (the “Adequate Protection Liens”). The Adequate Protection Liens granted hereunder and under the Interim Order to the Prepetition Secured Parties shall rank as follows: (i) the Adequate Protection Liens granted hereunder to the Prepetition ABL Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent in respect of the Term Loan Priority Collateral and (ii) the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted to the Prepetition ABL Agent in respect of the ABL Priority Collateral.

(b) ***Section 507(b) Claims.*** Subject to the terms of the DIP Intercreditor Agreement, the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) were by the Interim Order and hereby are granted, subject to the payment of the Carve-Out, allowed superpriority claims as provided for in Bankruptcy Code section 507(b), immediately junior to the claims under Bankruptcy Code section 364(c)(1) held by the DIP



Agents and the DIP Lenders; *provided however* that none of the Prepetition Secured Parties shall receive or retain any payments, property or other amounts in respect of the superpriority claims under Bankruptcy Code section 507(b) granted hereunder or under the Interim Order or under the Prepetition Loan Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full or as otherwise agreed by the DIP Lenders or as provided in the DIP Documents. The superpriority claims granted hereunder and under the Interim Order to the Prepetition Secured Parties shall rank *pari passu* as between the Prepetition Agents.

(c) ***Payment of Interest.*** Subject to the limitations regarding the use of proceeds and DIP Collateral as set forth in the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement and otherwise subject to the terms of the Intercreditor Agreements, the Prepetition Agents, for the benefit of the Prepetition Secured Lenders, shall receive: (i) the immediate cash payment of all accrued and unpaid prepetition interest, if any, at the rates provided for in the applicable Prepetition Loan Documents and all other accrued and unpaid fees and disbursements, if any, owing to the Prepetition Secured Lenders or Prepetition Agents, as applicable, under the applicable Prepetition Loan Documents incurred prior to the Petition Date and (ii) the current cash payment of all interest accruing after the Petition Date at the rates provided for in the applicable Prepetition Loan Documents.

(d) ***Fees and Expenses.*** The Prepetition Agents and the Prepetition Secured Lenders shall receive from the Debtors current cash payments of all fees and expenses payable to the Prepetition Agents or the Prepetition Secured Lenders, as applicable, under the Prepetition Loan Documents, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Prepetition Agents or Prepetition Secured Lenders promptly upon receipt of invoices therefor (subject in all respects to applicable privilege or work

product doctrines) and without the necessity of filing motions or fee applications, including such amounts arising before and after the Petition Date; *provided, however*, that the Prepetition Agents and the Prepetition Secured Lenders shall submit copies of their respective professional fee invoices for postpetition fees and expenses to the Debtors, and the Debtors shall send copies of such invoices to the U.S. Trustee and the Creditors' Committee within two (2) business days from receipt thereof, and the U.S. Trustee and the Creditors' Committee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoices; to the extent that the U.S. Trustee or the Creditors' Committee so objects to any such invoices, the Debtors shall remit payment on account of the portion of such invoices to which there has been no objection, and payment of the allegedly unreasonable portion of such invoices will be subject to review by the Bankruptcy Court; *provided, further, however*, if applicable, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. Notwithstanding anything in the foregoing to the contrary, all fees and expenses payable to (i) the Bayside DIP Agent, the Bayside DIP Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders shall be paid solely from the proceeds of Term Priority Collateral and the Bayside DIP Facility and (ii) the ABL DIP Agent, the ABL DIP Lenders, the Prepetition ABL Agent or the Prepetition ABL Lenders shall be paid solely from the proceeds of ABL Priority Collateral and the ABL DIP Facility. The Bayside DIP Agent and the ABL DIP Agent may charge the applicable loan accounts to pay for such fees and expenses.

(e) ***Monitoring of Collateral.*** Each of the Prepetition Agents shall be permitted to retain separate expert consultants and financial advisors at the expense of the Debtors, which consultants and advisors shall be given reasonable access for purposes of monitoring the Debtors' businesses and the value of the DIP Collateral. Notwithstanding anything in the foregoing to the contrary, all reasonable and documented expenses, as provided for in the Prepetition Loan Documents, as applicable, relating to (i) any consultants or financial advisors retained by the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders shall be paid solely from the proceeds of Term Loan Priority Collateral and the Bayside DIP Facility and (ii) any consultants or financial advisors retained by the Prepetition ABL Agent or the Prepetition ABL Lenders shall be paid solely from the proceeds of ABL Priority Collateral and the ABL DIP Facility.

(f) ***Financial Reporting.*** The Debtors shall provide the Prepetition Agents and the Creditors' Committee with financial and other reporting as described in the DIP Documents.

19. ***Reservation of Rights of Prepetition Secured Parties.*** Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Bankruptcy Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. However, each Prepetition Agent may request further or different adequate protection, and the Debtors or any other party may contest any such request; *provided* that, except as otherwise provided in the DIP Intercreditor Agreement, any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agents and the DIP Lenders granted under the Interim Order, this Final Order and the DIP Documents. Except as expressly provided herein, nothing contained in this Final Order (including, without

limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party, DIP Agent or DIP Lender, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

20. ***Perfection of DIP Liens and Adequate Protection Liens.***

(a) Subject to the provisions of paragraph 12(b) above, the Debtors, the DIP Agents, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder or in the Interim Order. Whether or not the DIP Agents on behalf of the DIP Lenders or the Prepetition Agents on behalf of the Prepetition Secured Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder or under the Interim Order, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the request of either DIP Agent, each of the Prepetition Secured Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the DIP Agents to further validate, perfect, preserve and enforce the DIP Liens.

The Debtors shall execute and deliver to the DIP Agents and the Prepetition Agents all such agreements, financing statements, instruments and other documents as the DIP Agents and the Prepetition Agents may reasonably request to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens and the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording.

(c) After notice to any affected landlord or other parties, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign or otherwise transfer any such leasehold interest, or the proceeds thereof, or other postpetition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting postpetition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Final Order.

21. ***Preservation of Rights Granted Under the Interim Order and this Final Order.***

(a) Subject to the terms of the DIP Intercreditor Agreement, no claim or lien having a priority superior to or *pari passu* with those granted by the Interim Order or this Final Order to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties shall be granted or allowed

until the occurrence of (i) the payment in full in cash or immediately available funds of all of the DIP Obligations, Prepetition Debt and Adequate Protection Obligations, (ii) the termination or expiration of all commitments to extend credit to Debtors, (iii) with respect to the ABL Roll Up Obligations and ABL DIP Facility, the termination of, or providing Cash Collateral in respect of all outstanding letters of credit and Bank Product Obligations that comprise a portion of the ABL Roll Up Obligations or ABL DIP Facility, as set forth in the Prepetition ABL Credit Agreement or ABL DIP Credit Agreement, respectively, and (iv) the cash collateralization in respect of any asserted or threatened claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any Prepetition Secured Lender, any DIP Lender, Prepetition Agent or DIP Agent may be entitled to indemnification by any Debtor pursuant to the indemnification provisions in the Prepetition Loan Documents and Loan Documents (as defined in the applicable DIP Credit Agreement), as applicable ("Paid in Full"). While any portion of the DIP Financing (or any refinancing thereof), the DIP Obligations or the Adequate Protection Obligations remain outstanding and the commitments thereunder have not been terminated, the DIP Liens and the Adequate Protection Liens shall not be (x) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551 or (y) subordinated to or made *pari passu* with any other lien or security interest, whether under Bankruptcy Code section 364(d) or otherwise.

(b) Unless all DIP Obligations shall have indefeasibly been Paid in Full (and, with respect to outstanding letters of credit issued and Bank Product Obligations pursuant to the ABL DIP Credit Agreement, cash collateralized in accordance with the provisions thereof) and the Adequate Protection Obligations shall have been indefeasibly paid in cash in full, the Debtors shall not use or seek to use any Cash Collateral, unless, in addition to the satisfaction of all

requirements under Bankruptcy Code section 363, the DIP Agents and Co-Collateral Agents (as defined in the ABL DIP Credit Agreement) have consented to such order, and, with respect to Adequate Protection Obligations, the Prepetition Agents and Co-Collateral Agents (as defined in the Prepetition ABL Credit Agreement) have consented to such order.

(c) If an order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise is at any time entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agents and the DIP Lenders and, as applicable, the Prepetition Secured Parties pursuant to the Interim Order or this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in cash in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) to the extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(d) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby, under the Interim Order, or pursuant to the DIP Documents with respect to any DIP Obligations, or the Adequate Protection

Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Final Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in Bankruptcy Code section 364(e), this Final Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and the Adequate Protection Obligations.

(e) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and the Adequate Protection Obligations and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by



the provisions of the Interim Order or this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are Paid in Full.

22. ***Limitation on Use of DIP Financing Proceeds and Collateral.*** Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, proceeds of letters of credit, Cash Collateral, Prepetition Priority Collateral, DIP Collateral, portion of the proceeds of the DIP Financing or part of the Carve-Out may be used for any of the following (each, a "Lender Claim") without the prior written consent of the Prepetition Agents: (a) to object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Prepetition Loan Documents, or the liens or claims granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Loan Documents, (b) to investigate or assert any claims, defenses or causes of action that may exist under law, equity or otherwise against the DIP Agents, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Lenders, or their respective agents, affiliates, representatives, attorneys or advisors, (c) to prevent, hinder or otherwise delay the DIP Agents' assertion, enforcement or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Documents, the Interim Order or this Final Order, (d) to seek to modify any of the rights granted to the DIP Agents or the DIP Lenders hereunder, under the Interim Order or under the DIP Documents, in each of the foregoing cases without such applicable parties' prior written consent, or (e) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreements. Notwithstanding the foregoing, any party other than the Debtors may investigate claims and issues with respect to the Prepetition Loan Documents (the

“Investigation”) and, subject to any applicable law with respect to standing, commence and prosecute any related proceedings as a representative of the Debtors’ estates; *provided that* in the case of the Creditors’ Committee, not more than \$25,000 of DIP Collateral shall be used for such Investigation of the Prepetition Loan Documents.

23. ***Effect of Stipulations on Third Parties.***

(a) Each stipulation, admission and agreement contained in this Final Order, including, without limitation, in paragraph 4 of this Final Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of the Interim Order. Each stipulation, admission and agreement contained in this Final Order, including, without limitation, in paragraph 4 of this Final Order, shall also be binding upon all other parties in interest, including, without limitation, the Creditors’ Committee, under all circumstances and for all purposes, except to the extent that (i) a party in interest has, subject to the limitations contained herein, including, *inter alia*, in paragraph 22, timely and properly filed an adversary proceeding asserting a Lender Claim with respect to any of the stipulations or admissions set forth in paragraph 4 by no later than the earlier of the date that is (X) seventy-five (75) days after the Petition Date or (Y) with respect to any Lender Claim asserted by the Creditors’ Committee, sixty (60) days (or such later date as has been agreed to, in writing, by the applicable Prepetition Agent in its sole discretion) after the appointment of the Creditors’ Committee, and (ii) there is a final order in favor of the plaintiff sustaining such Lender Claim.

(b) The success of any particular Lender Claim shall not alter the binding effect on each party in interest of any stipulation or admission not subject to such Lender Claim. Except to the extent (but only to the extent) a timely and properly filed adversary proceeding asserting a Lender Claim as provided for in clause (a) above is successful, (i) the Prepetition Debt shall constitute allowed claims, not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defense or "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, (ii) the Prepetition Security Interests shall be deemed to have been, as of the Petition Date, legal, valid, binding perfected and enforceable liens and security interests not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defense or "claim" (as defined in the Bankruptcy Code) of any kind, and (iii) the Prepetition Debt and the Prepetition Security Interests shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors).

(c) Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including the Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Lender Claims with respect to the Prepetition Loan Documents or the Prepetition Debt.

(d) Notwithstanding anything to the contrary herein, upon written notice to the landlord of any of Debtors' leased premises that an Event of Default (as defined in the Bayside DIP Credit Agreement or ABL DIP Credit Agreement) has occurred and is continuing, each DIP Agent may enter upon such leased premises for the purpose of exercising any right or remedy

with respect to the collateral located thereon and shall be entitled to the Debtors' rights and privileges under such lease(s) without interference from such landlord; *provided* that such DIP Agent shall pay to such landlord rent first accruing after the above referenced written notice and during the period of occupancy by such DIP Agent, calculated on a per diem basis and any such amount paid shall be deemed to be DIP Obligations, as applicable.

24. ***Collateral Agent.***

(a) Subject to the terms of the Intercreditor Agreements, to the extent that the Prepetition Term Loan Agent is (a) the secured party under any account control agreements in connection with the Prepetition Term Loan Documents, (b) listed as loss payee under the Debtors' insurance policies in connection with the Prepetition Term Loan Documents, or (c) the secured party under any Prepetition Term Loan Document, so shall the Bayside DIP Agent (x) be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Term Loan Document, (y) have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and (z) act in that capacity and distribute any proceeds recovered or received first, for the benefit of the Bayside DIP Lenders in accordance with the Bayside DIP Credit Agreement and the DIP Intercreditor Agreement, and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Prepetition Term Loan Lenders.

(b) To the extent that the Prepetition ABL Agent is (a) the secured party under any account control agreements in connection with the Prepetition ABL Documents, (b) listed as loss payee under the Debtors' insurance policies in connection with the Prepetition ABL Documents, or (c) the secured party under any Prepetition ABL Document, so shall the ABL DIP Agent

(x) be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition ABL Document, (y) have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and (z) act in that capacity and distribute any proceeds recovered or received first, for the benefit of the ABL DIP Lenders in accordance with the ABL DIP Credit Agreement and the DIP Intercreditor Agreement, and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Prepetition ABL Lenders, to the extent of any outstanding Prepetition ABL Debt.

(c) Each Prepetition Agent shall serve as agent for the DIP Agents for purposes of perfecting their respective security interests in and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

25. ***Order Governs.*** In the event of any inconsistency between the provisions of this Final Order and the DIP Documents, the provisions of this Final Order shall govern.

26. ***Binding Effect; Successors and Assigns.*** The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, the Creditors' Committee and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties and the Debtors and their

respective successors and assigns, *provided, however*, that the DIP Agents, the DIP Lenders, the Prepetition Agents and the Prepetition Secured Lenders shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreements, promissory notes or otherwise) or permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates or (iii) be deemed to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

27. ***No Impact on Certain Contracts or Transactions.*** No rights of any entity in connection with a contract or transaction of the kind listed in Bankruptcy Code sections 555, 556, 559, 560 or 561, whatever they might or might not be, are affected by the provisions of this Final Order.

28. ***Exclusions.*** Nothing herein or in any of the DIP Documents shall operate as a release or waiver of, or a limit on expenditures in pursuit of, any claims or causes of action held or assertable by any party (including, without limitation, any of the Debtors or any other party in interest) against any Debtor, any “affiliate” of any Debtor (as defined in the Bankruptcy Code) or any officer, director or direct or indirect shareholder (or affiliate thereof) of any Debtor.

29. **Release.** Upon the date that each applicable portion of the DIP Financing shall be Paid in Full and prior to the release of the applicable DIP Liens, Debtors shall execute and deliver to the applicable DIP Agent and DIP Lenders a general release of any and all claims and causes of action that could have been asserted or raised under or in connection with the ABL DIP Facility or Bayside DIP Facility, as applicable.

30. **Effectiveness.** This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

31. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

Dated \_\_\_\_\_, 2013  
Wilmington, Delaware

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The Honorable Kevin J. Carey  
United States Bankruptcy Judge

**Exhibit A**

**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	2/9	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	\$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
Payroll	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
Rent	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
Taxes	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
AP Disbursement	0.0	0.0	0.0	0.0	0.0	0.0	1.2	0.0	0.0	0.0	0.0	1.1	1.9
Debtor Professionals Fees	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
Professional Fees for Unsecured Creditors	0.0	0.0	0.0	0.0	0.0	0.0	0.7	0.0	0.0	0.0	0.0	0.7	8.2
Restructuring/ Other Profess. Fees	\$19.4	\$15.9	\$8.2	\$11.6	\$10.2	\$13.8	\$10.6	\$12.6	\$8.7	\$14.6	\$11.1	\$17.0	\$20.8
Total Operating Disbursements	\$27.7	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.3
ABL Interest/ Fee	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 Interest	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
Term Loan DIP Interest/ Fees	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
Convertible Notes Interest	\$26.4	\$15.9	\$8.2	\$13.3	\$10.2	\$13.8	\$10.6	\$12.6	\$10.6	\$14.6	\$11.1	\$17.0	\$22.8
Total Disbursements	(\$19.0)	(\$8.7)	(\$0.6)	(\$5.1)	(\$1.2)	(\$4.8)	(\$2.2)	(\$5.3)	(\$0.8)	(\$5.4)	(\$3.7)	(\$7.9)	(\$12.0)
Net Cash Flows	\$ 4.4	\$ 4.4	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0
Beginning Cash Balance	(19.0)	(8.7)	(0.6)	(5.1)	(1.2)	(4.8)	(2.2)	(5.3)	(0.8)	(5.4)	(3.7)	(7.9)	(12.0)
Net Cash Flows	23.4	4.2	0.6	5.1	1.2	4.8	2.2	5.3	0.8	5.4	3.7	7.9	12.0
Net Borrowings/(Paydowns)	\$ 4.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Unrestricted Cash Balance	\$ 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 DIP Balance	43.6	52.0	55.6	56.1	56.6	55.6	58.9	61.1	61.4	62.3	63.5	66.4	70.6
ABL Balance	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
Minimum Liquidity	\$8.4	\$3.6	\$0.5	\$0.4	(\$0.9)	\$3.3	\$2.2	\$0.3	\$1.9	\$1.3	\$2.8	\$4.2	\$2.8
Excess/(Deficit) ABL Availability	\$ 8.4	\$ 3.6	\$ 0.6	\$ 0.4	(\$0.9)	\$ 3.3	\$ 2.2	\$ 0.3	\$ 0.8	\$ 1.3	\$ 2.8	\$ 4.2	\$ 2.8
Incremental ABL Funding/(Paydown)	\$2.0	\$5.6	\$6.1	\$6.6	\$5.6	\$5.9	\$6.1	\$6.4	\$6.3	\$6.5	\$6.4	\$7.0	\$7.4
Funded ABL Debt Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.09	\$ -	\$ 1.1	\$ -	\$ -	\$ -	\$ -
Excess ABL availability after reserves and minimum liq	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Term Loan DIP	-	15.0	15.6	15.7	20.3	22.4	23.9	23.9	28.9	28.9	33.1	34.0	37.7
Funded Bayside DIP Balance	15.0	0.6	0.0	4.6	2.1	1.5	-	5.0	-	4.2	0.9	3.7	9.2
Incremental Bayside DIP Funding	\$ 15.0	\$ 15.6	\$ 15.7	\$ 20.3	\$ 22.4	\$ 23.9	\$ 23.9	\$ 28.9	\$ 28.9	\$ 33.1	\$ 34.0	\$ 37.7	\$ 46.9
Ending Funded Balance	\$ 15.0	\$ 15.6	\$ 15.7	\$ 20.3	\$ 22.4	\$ 23.9	\$ 23.9	\$ 28.9	\$ 28.9	\$ 33.1	\$ 34.0	\$ 37.7	\$ 46.9

**Note**

As among the DIP Collateral, the Professionals' Carve-Out, if and to the extent invoked pursuant to this Interim Order, shall be allocated one-half against and funded from the ABL Priority Collateral and one-half against and funded from the Term Loan Priority Collateral, other than the Professionals' Carve-Out for amounts anticipated to be incurred on or after the earlier of the Required Prepayment Date (as defined in the ABL DIP Credit Agreement) and April 30, 2013 (including any success fee), which amounts shall be funded exclusively from the Term Loan Priority Collateral or the Bayside DIP Credit Agreement.

School Specialty, Inc.  
Wind Down Analysis  
\$(000s)

Wind Down Costs (May - October) (1)  
School Specialty Inc. DIP Budget

Employee Wind Down Costs

Management  
Staff  
Other

Comments

\$	374	CFO and Controllers at \$375 and \$200k annually
	455	2 IT members and 5 Accountants at \$100k annually
	156	Rent, Utilities and Insurance
\$	985	

Operating Costs

Hold Over Leases  
LC's and Surety Bonds  
IT Cost

[Open]	Unknown due to timing
[Open]	Unknown due to timing
[Open]	Unknown if covered by Transition Services Agreement
\$	-

Professional Fees

Paul Weiss  
A&M  
Local Counsel  
Other Counsel  
April -13 Unpaid Professional Fees

\$	450	Assumed to be as high as 1 month of fees
	550	
	300	
	150	
	2,525	
\$	3,975	

Ch. 11 Items

Remaining Administrative & Priority Claims  
Trustee Fees

[Open]	
220	
\$	220
\$	5,180

Balance does not account for "Open" costs

Total Disbursements

Notes:

(1) Assumes no significant litigation

**EXHIBIT B**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE  
Case No. 13-10125 (KJC)

- - - - -x

In the Matter of:

SCHOOL SPECIALTY, INC., et al.,  
  
Debtors.

- - - - -x

United States Bankruptcy Court  
824 North Market Street  
Wilmington, Delaware

February 15, 2013  
11:05 AM

B E F O R E:  
HON. KEVIN J. CAREY  
U.S. BANKRUPTCY JUDGE  
  
ECR OPERATOR: DANA MOORE

SCHOOL SPECIALTY, INC., ET AL.

9

1 THE COURT: Good morning. Who's the committee chair,  
2 Mr. Stark? Has one been chosen yet?

3 MR. STARK: We have co-committee chairs.

4 THE COURT: Okay.

5 MR. STARK: One is a trade creditor, A.T. Clayton, and  
6 the second is Zazove Associates or Zazove Capital, which is a  
7 bondholder.

8 THE COURT: Who is the other co-chair?

9 MR. STARK: A.T. Clayton, which, I believe, appears as  
10 Integrated Resources.

11 THE COURT: Okay. All right. And if you can't --  
12 maybe you can answer this question, but is -- I see that Davis  
13 Appreciation and Income Fund is listed as one of the committee  
14 members. Is that the same or a related entity to Davis  
15 Selected Advisers LLP?

16 MR. STARK: I think so, Your Honor, but I'm not a  
17 hundred percent certain. I can diligence that pretty quickly.

18 THE COURT: Okay. And I take --

19 MR. STARK: Are you looking at the 2019 statement  
20 filed by Stroock?

21 THE COURT: I'm looking at two things. I'm looking at  
22 the page from the committee's response which lists the  
23 committee members, because I didn't see a U.S. Trustee filing  
24 yet notifying the world that a committee had been appointed. I  
25 don't know why it hasn't been filed --

SCHOOL SPECIALTY, INC., ET AL.

10

1 MR. STARK: There is one. I think that --

2 THE COURT: Or if it was I missed it.

3 MR. SAFERSTEIN: Do we have it?

4 MS. SARKESSIAN: Yes, Your Honor. I believe there is  
5 one.

6 THE COURT: Okay.

7 MR. STARK: I'll see if we can send it up quickly for  
8 Your Honor.

9 THE COURT: And then the other thing I'm looking at is  
10 Exhibit A to the verified statement -- 2019 statement that was  
11 filed, and I'm trying to figure out what common membership  
12 there is.

13 MR. STARK: I believe there is overlap, Your Honor,  
14 for Zazove and Davis. Mr. Hansen's here and can confirm for  
15 me.

16 THE COURT: I think that the indenture trustee is the  
17 indenture trustee for the noteholders.

18 MR. STARK: Yes, sir.

19 THE COURT: Okay. So that would it be fair for me to  
20 conclude that of the seven unsecured creditor committee  
21 members, four of them were noteholders or the indenture trustee  
22 for the noteholders?

23 MR. STARK: Accurate, Your Honor. Three actual  
24 beneficial holders or their funds are beneficial holders, one  
25 indenture trustee, and the other are trade.

**EXHIBIT C**

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 13-10125 (KJC)

- - - - -x

In the Matter of:

SCHOOL SPECIALTY, INC., ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

January 30, 2013

9:04 AM

B E F O R E:

HON. KEVIN J. CAREY

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: AL LUGANO



SCHOOL SPECIALTY, INC., ET AL.

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1           The facility is to be used by the debtors to operate  
2 their business, to satisfy working capital and operational  
3 needs, provide much needed liquidity, and pay the expenses of  
4 this case, all in accordance with a budget which had been  
5 agreed to by the DIP lenders and the debtors. The budget is a  
6 thirteen-week cash flow forecast which will be updated monthly  
7 and include actual cash receipts and disbursements.

8           Your Honor, in return for the financing, the DIP  
9 lenders are being granted a superpriority administrative  
10 expense claim with priority over all other administrative  
11 claims, including 507(b) claims, to be granted to them as pre-  
12 petition secured lenders as adequate protection. This is all  
13 subject to a carve-out which I'll get to in a minute.

14           Additionally, Your Honor, the DIP lenders will receive  
15 a first lien on all unencumbered property of the estate. And  
16 pursuant to the --

17           THE COURT: Is there any unencumbered property in this  
18 estate?

19           MS. MCCOLM: I don't believe there is, actually. No.  
20 I'm told no.

21           THE COURT: It didn't look like it. All right.

22           MS. MCCOLM: Part of the problem. Additionally, Your  
23 Honor, pursuant to the DIP intercreditor agreement, the Bayside  
24 DIP lenders will receive a junior lien on the ABL DIP lenders'  
25 ABL collateral. And the ABL DIP lenders will have liens junior

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1 issues. We evaluate strategic alternatives, raise exit and DIP  
2 financings.

3 Q. And you submitted a declaration in support of the debtors'  
4 motion for debtor-in-possession financing. Is that correct?

5 A. That is correct.

6 Q. And that declaration sets forth your background and  
7 experience.

8 MS. VULLO: And I won't belabor that here, if that's  
9 okay with Your Honor?

10 THE COURT: That's fine with me.

11 MS. VULLO: Thank you.

12 Q. Can you describe when Perella Weinberg Partners was  
13 retained by the debtors in connection with this matter?

14 A. Absolutely. October -- I believe it was the end of  
15 October; October 29th or thereabouts.

16 Q. And can you just generally describe what things you've  
17 done since that time, and so on?

18 A. Absolutely. We -- when we were first hired, we evaluated  
19 all the -- the variety of alternatives that were available to  
20 the company with respect to liquidity. It was clear that the  
21 company was -- that their liquidity situation was deteriorating  
22 rapidly.

23 We spoke to a variety of -- it's a public company, Your  
24 Honor. And so we also fielded a number of calls from third  
25 parties. We made outbound calls through the existing capital

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1 structure constituents to evaluate what alternatives were  
2 available to the company with respect to its capital structure  
3 and its liquidity situation.

4 Q. How many third parties, or including those within the  
5 capital structure, were contacted by Perella Weinberg?

6 A. Over the course of November, December, and January, we  
7 talked to twenty-nine parties, consisting of third parties as  
8 well as existing capital structure constituents. And twenty-  
9 two executed NDAs.

10 Q. Executed nondisclosure agreements?

11 A. That's exactly correct.

12 Q. And were provided with certain information from the  
13 company, as well as what they could get publicly. Is that  
14 correct?

15 A. Yes, that is correct.

16 Q. And can you -- and were these people contacted with  
17 respect to potential purchase of the company, financing for the  
18 company, both? What was the general --

19 A. Yeah. It was -- comprehensively, I mean, we looked at all  
20 different alternatives: the sale of the company, new money  
21 options. We looked at potential equity infusions, debt  
22 infusion, refinancing. So we looked at, you know, all the  
23 potential alternatives.

24 Q. And at a point in time, you started talking to companies  
25 about DIP financing. Is that right?

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1 A. That's exactly right.

2 Q. Okay. And what challenges did you face in terms of  
3 finding third parties who might be interested in providing DIP  
4 financing to the company?

5 A. Well, I think the first thing is, looking at the company's  
6 capital structure, there was an ABL that secured -- has the  
7 first lien on the AR and inventory. And then there was a term  
8 loan that also has the first lien on all other collateral. And  
9 so talking to potential DIP lenders, the question was where the  
10 DIP financing could be placed. With respect to priming, that  
11 was out of the question, because Bayside and Wells will not be  
12 primed based on their existing pre-petition obligations.

13 Then we looked at a potential to potentially wedge in  
14 capital. It was obvious that the most likely constituents that  
15 were -- that would be able to put forth the financing would be,  
16 you know, the convertible noteholders with a junior DIP  
17 financing. But otherwise, based on all the other third parties  
18 we spoke to, there were no -- there were no other parties that  
19 provided proposals.

20 THE COURT: Let me ask you to pause for a moment. I  
21 hear a buzzing over our system. So let's start by asking those  
22 on this side of the bar to turn off any PDAs or cell phones if  
23 they have.

24 MS. VULLO: Yeah, I hear it too.

25 (Pause)

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1 THE COURT: Ask someone from downstairs to come up.  
2 Meanwhile we'll proceed. Thank you.

3 MS. VULLO: Thank you, Your Honor.

4 Q. Ms. Tang, ultimately, how many proposals for DIP financing  
5 did the company received?

6 A. We received a proposal from the ABL lenders -- the  
7 existing ABL lenders, Wells Fargo and the bank group; a  
8 proposal from Bayside; a proposal from the group of ad hoc  
9 convertible noteholders; and a third-party proposal on the ABL  
10 facility.

11 Q. Okay. So just starting with the third-party proposal --  
12 the third-party bank proposal on the ABA (sic), can you just  
13 generally describe that proposal and why the company did not  
14 accept it?

15 A. Yeah. So that was primarily -- that was for the ABL, to  
16 replace the Wells Fargo ABL. And we wanted to see if there was  
17 an alternative that could yield additional liquidity relative  
18 to the existing Wells Fargo ABL. And you know, I think by the  
19 time -- frankly, one of the main reasons is because we ran out  
20 of time. And so even though the term sheet that was put forth,  
21 it was comparable to the financing that Wells proposed, and you  
22 know, based on where we were, it was just not something that we  
23 would consider, given that we had an ABL that worked and  
24 provided similar economics.

25 Q. So that third-party bank was only going to replace the

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1 existing ABL, not provide additional liquidity. Is that  
2 correct?

3 A. Correct.

4 Q. Okay. And when you say you ran out of time, is that  
5 because the company ran out of money?

6 A. It was very close to running out of money, yes.

7 Q. And now turning to the proposal by the convertible  
8 noteholders, did the company receive a proposal by the  
9 convertible noteholders?

10 A. Yes.

11 Q. Can you just generally describe the terms of that  
12 proposal?

13 A. Certainly. Initially it was for forty million dollars,  
14 and it was subsequently increased to fifty million dollars of a  
15 junior term DIP financing, that was junior to the ABL and the  
16 term loan. What it was also -- what it also did was it was  
17 linked to a plan of reorganization. So for the fifty million  
18 dollars, it was linked to a plan that effectively gave all of  
19 the equity to, you know, the funding of the junior DIP, which  
20 is the convertible noteholders, as well as the convertible  
21 notes.

22 Q. When you say it was linked to a plan of reorganization,  
23 can you describe more specifically what your understanding is  
24 as to what that proposed plan of reorganization --

25 A. Sure.

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1 Q. -- was to do, that the company was supposed to accept on  
2 day one?

3 A. Our understanding -- and again, I think the first proposal  
4 we saw was in the beginning of January. And we received it --  
5 I guess the official proposal at the end of January or January  
6 23rd or thereabouts. And what it effectively did was, you  
7 know, it was an offer for fifty million dollars of a junior  
8 term DIP. It provided for a refinancing of the ABL under a  
9 reorganized plan. It assumed that as far as a term loan was  
10 concerned, you know, I think there was a description on -- they  
11 reserved a make-whole on the term loan, but effectively that  
12 the term loan would be crammed up, would be reinstated, either  
13 with a lower number, not recognizing the make-whole, or with a  
14 higher number, recognizing a make-whole. And it reserved for a  
15 litigation of that concept. And that the equity would then be  
16 owned by the junior DIP as well as the convertible noteholders.

17 Q. And did you and your colleagues at Perella Weinberg  
18 discuss this proposal with the financial advisors for the  
19 convertible noteholders?

20 A. Yes.

21 Q. And that was Blackstone?

22 A. Yes.

23 Q. And did you have ongoing discussions with them about the  
24 proposal?

25 A. Yes.

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1 Q. And they provided you with sort of a presentation, and you  
2 provided -- you and your colleagues provided them with comments  
3 on the proposal?

4 A. Yes.

5 Q. And did Perella Weinberg discuss the proposal and its  
6 details with company management?

7 A. Yes.

8 Q. And what was the response by the company, both its  
9 management and its board of directors to the convertible  
10 noteholders' --

11 A. Well --

12 Q. -- proposal?

13 A. -- because of the fact that it's linked to a plan of  
14 reorganization and it implied a cram up of the term loan, there  
15 were a slew of issues that were going to be litigated, which  
16 led to uncertainty of the proposal and what would effectively  
17 happen, you know, starting with the DIP and the cram-up -- the  
18 nature of the cram-up itself.

19 THE COURT: I know, forcing to take a secured party  
20 back to which it agreed, terrible. Go ahead.

21 A. A make-whole was another one that was kind of uncertain.  
22 That was going to be litigated. And then overall, the  
23 feasibility of the plan, because it assumed a capital  
24 structure, pursuant to the proposed plan; and so, given the  
25 uncertainty of the outcome of those issues, that led to the



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1 timing of what a Chapter 11 process would look like. And it  
2 could potentially be an open-ended protracted process. And  
3 that uncertainty really led us to our conclusion.

4 Q. Okay. And you heard here counsel for the noteholders say  
5 that the proposal was fifty million dollars in financing  
6 available today. Did the company conclude as to whether that  
7 fifty million dollars was sufficient liquidity to take the  
8 company through this Chapter 11 and into a contested  
9 confirmation process?

10 A. Well, because of the uncertainty that I just outlined, it  
11 was thought that the fifty million dollars was inadequate, it  
12 was insufficient.

13 Q. And the proposed plan of reorganization that was tied to  
14 this DIP financing proposal, what did it propose with respect  
15 to the payment of trade creditors?

16 A. It assumed that they were going to ride through in full.  
17 So that they were going to get a hundred percent recovery paid  
18 in installments, if I recall correctly.

19 Q. And how much was the -- how much is the trade debt, to  
20 your knowledge?

21 A. My understanding was, as of the petition date, it was  
22 sixty million dollars or thereabouts.

23 Q. And did the convertible noteholders propose additional  
24 liquidity to pay that trade debt under the plan?

25 A. Not in the -- not in the proposal that I saw.

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1 Q. And did the convertible noteholders' proposal provide for  
2 any deleveraging of the company's balance sheet?

3 A. Yeah. It provided for the convertible notes to be  
4 converted into equity.

5 Q. And what about the rest of the capital structure?

6 A. It remained.

7 Q. And did the company have a view that was expressed in  
8 meetings that you attended, as to whether or not the company  
9 would be able to post-emergence, pay that continued debt on an  
10 ongoing basis?

11 A. You know, given the tenuous nature of the industry and  
12 when the recovery would be, I think there was uncertainty on  
13 what the run rate EBITDA of the company would be, and  
14 therefore, you know, there was question on the company's  
15 ability to support that when we were evaluating the option.

16 Q. So again, evaluating the options, ultimately it was  
17 determined that the company would support the Bayside proposal.  
18 Is that correct?

19 A. Correct.

20 Q. And did you and your colleagues at Perella Weinberg so  
21 advise the company and its management?

22 A. Yes.

23 Q. And can you describe the Bayside proposal and why, in your  
24 opinion, it was the best of the proposals given to the company  
25 at the time?

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1 A. Yeah. So the Bayside proposal provided for fifty million  
2 dollars to fund a 363 process. It was tied to certain  
3 milestones pursuant to that 363 sale. And why we thought it  
4 was best is really twofold. One is, is that it provided the  
5 certainty on a defined path for the company to exit out of the  
6 Chapter 11 process. And secondly, it was -- and through the  
7 363 process, it was open to higher and better bids.

8 Q. And the Bayside proposal, if accepted, and if the sale  
9 process goes forward, what does that do to the company's  
10 leverage on its balance sheet?

11 A. Well, it would be -- you know, all the assets would be  
12 purchased. It was our understanding that based on that, the  
13 company would be financed with the ABL. And so only the ABL  
14 would be outstanding, pursuant to that process, if Bayside was  
15 the winner of that auction.

16 Q. Okay. Now, you participated in discussions with the  
17 company as well as individuals at Bayside. Was the Bayside --  
18 was the terms of the Bayside financing, the DIP financing  
19 that's before the Court, negotiated at arm's length and in good  
20 faith by the parties, based upon what you observed?

21 A. Yes.

22 Q. And do you believe that the terms of the Bayside DIP  
23 proposal that is before the Court, are fair under the  
24 circumstances that are facing the company today?

25 A. Yes.

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1 vis the covenants, it may have been around there that  
2 discussions started.

3 Q. Um-hum. Do you recall that Blackstone did due diligence  
4 between that December 21 date and the end of the year with  
5 Perella's assistance, to rapidly come up to speed?

6 A. I think we were providing information at the time.

7 Q. Okay. Do you recall them working through Christmas Eve  
8 and New Year's Eve?

9 A. Absolutely.

10 Q. Okay. Were you aware that they -- that Blackstone pushed  
11 to make a presentation to the noteholders on December 31 about  
12 their due diligence?

13 A. Sorry, can you repeat that?

14 Q. Do you recall that Blackstone was preparing, as part of  
15 their due diligence, to make a presentation to noteholders on  
16 or before December 31, right?

17 A. Yes.

18 Q. Okay. So between December 31 and January 4th, at what  
19 point did it become clear that the company should sell to  
20 Bayside?

21 MS. VULLO: Objection to form. Lacks foundation.

22 THE COURT: Sustained.

23 Q. Do you recall, between December 31 and January 2nd, as  
24 you -- January 4th, as you were talking about a moment ago,  
25 that the company was having 363 sale discussions with Bayside?

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1 BY MR. SCHEPACARTER:

2 Q. Good afternoon, Ms. Tang. I believe you had testified  
3 that with respect to the noteholders' proposal -- they had made  
4 a proposal -- and I think your testimony was that to a certain  
5 extent, that proposal was left some uncertainties, correct?

6 A. Correct.

7 Q. Okay. And then with respect to the proposal that was made  
8 by -- the Bayside proposal, I think that for the debtor, that  
9 it -- that the Section 363 sale gave the debtor more certainty,  
10 correct?

11 A. A more defined path.

12 Q. A more defined path, your actual term, okay. Now, the  
13 noteholders' plan or the noteholders' proposal -- I think it  
14 was your testimony that it paid trade creditors in full,  
15 correct?

16 A. Correct.

17 Q. Okay. Under the Bayside plan, we have a Section 363 sale,  
18 correct?

19 A. Correct.

20 Q. Is there any -- after the Section 363 sale, what is the  
21 contemplation of the prospects of a Chapter 11, either plan or  
22 reorganization, or plan of liquidation in this case?

23 A. Sorry, can you repeat the question?

24 Q. Yes. After the conclusion of the Section 363 sale in this  
25 case that is proposed, what is the debtors' proposal with

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1 respect to a Chapter 11 plan in this case?

2 A. That there would be a wind-down of the remainder of the  
3 estate.

4 Q. Okay. Now, when you say a wind-down, does that  
5 necessarily mean a plan of reorganization in this case?

6 A. I -- I guess -- it would be -- it would be a wind-down of  
7 the estate pursuant to a plan that would provide for the  
8 remaining of what's left over.

9 Q. Okay. Now, when you say a plan, are we talking about -- I  
10 want to make sure that we're talking about the same thing.  
11 When you say a plan, we're talking about a plan that's filed in  
12 this case that provides for a -- either a recovery for  
13 creditors or a confirmation hearing in this case?

14 A. I'm -- I don't know.

15 Q. Okay. You don't know that -- do you not understand  
16 the question --

17 A. Yeah, I'm not --

18 Q. -- or you don't -- is it the debtors' intention to file a  
19 plan of reorganization in this case?

20 MS. VULLO: Your Honor, objection; I've not sure if  
21 she's -- there's a lot of legal conclusions in this. I'm not  
22 sure if she's so --

23 MR. SCHEPACARTER: I'm not sure it's calling for a  
24 legal conclusion. I think it calls for a --

25 THE COURT: Well, they've said they intend --

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1 MR. SCHEPACARTER: -- a restructure.

2 THE COURT: -- to file a plan. I think what you want  
3 to get at is what's the plan going to say about distribution to  
4 creditors --

5 MR. SCHEPACARTER: Right.

6 THE COURT: -- if I'm reading it correctly.

7 MR. SCHEPACARTER: Okay. I --

8 THE COURT: Maybe you should ask that question.

9 MR. SCHEPACARTER: I can ask that question. Thank  
10 you, Your Honor.

11 Q. In this case, the -- as Judge Carey just stated, the plan  
12 in this case, does it call for any payment to trade creditors  
13 in this case?

14 A. No.

15 Q. Okay. Does it call for any payment to any unsecured  
16 creditors in this case?

17 A. No.

18 Q. Okay. Now, the noteholders' plan or the noteholders'  
19 proposal indicated that a plan of reorganization would be  
20 confirmed on or about May 31st, correct?

21 A. The noteholders' plan?

22 Q. Yes. Okay. And under the Bayside proposal, the  
23 milestones -- part of the milestones are the entry of a sale  
24 order by March 27th, correct?

25 A. I believe that's correct.

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1 Q. Okay. And then there would be a closing of that  
2 transaction on or about April 11th, correct?

3 A. That's correct.

4 Q. Okay. Now, your testimony was that the Section 363 sale  
5 gave a defined path to this case, correct?

6 A. Yes.

7 Q. Okay. How is that defined path, after the Section 363  
8 sale, to be completed? Where does the path lead to at that  
9 point?

10 A. After the sale's completed, depending on the outcome of  
11 that sale, the distribution -- there would be -- whatever  
12 distribution would be provided would be part of the wind-down  
13 of the estate for claimants.

14 Q. Okay.

15 MR. SCHEPACARTER: All right. I don't have any  
16 further questions, Your Honor. Thank you.

17 THE COURT: Anyone else wish to cross-examine Ms.  
18 Tang? Any redirect?

19 MS. VULLO: Just a little, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. VULLO:

22 Q. Ms. Tang, going back to Ms. Lonstein's questions about the  
23 end of December forbearance negotiations, do you recall that  
24 testimony?

25 A. Um-hum. Yes.



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1 Q. Does it put you back there? In the end of December, was  
2 the company in default?

3 A. The actual trigger was, I think, on Dec -- the end of  
4 December, so December 31st.

5 Q. And what was the purpose of the forbearance negotiations?

6 A. The purpose of the forbearance negotiations is to -- is  
7 for the ABL and the term loan lenders not to accelerate so that  
8 the company -- to give the company additional time.

9 Q. And how much time was the company given?

10 A. I think through the beginning of -- I think it was for a  
11 month.

12 Q. Until February 1st?

13 A. February 1st.

14 Q. And during that time period, the company considered  
15 alternatives, as you've already testified?

16 A. Yes.

17 Q. And at the end of that time period, did the company  
18 conclude whether there was any viable alternative to the  
19 Bayside DIP proposal that is before the Court?

20 A. The company concluded that there was no other alternative  
21 relative to the Bayside.

22 Q. And I want to ask you some questions about that process.  
23 Did Perella Weinberg make any presentation to company  
24 management or its board of directors with respect to the  
25 alternatives?

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1 A. Yes.

2 Q. And did you participate in that presentation? And can you  
3 just describe, generally, that process?

4 A. Sure. We made a -- we made a series of presentations  
5 along the way since our retention to the company, as well as  
6 this board, regarding transactions that could be -- that could  
7 be pursued. So whether it be a new money transaction, raising  
8 new debts, raising new equity, doing any kind of, you know,  
9 debt-to-equity conversion as a possible sale of the company,  
10 possible monetization of a segment of the business -- those  
11 were the types of alternatives that we discussed with the  
12 company and its board.

13 Q. And did you also make a presentation to the board of  
14 directors with respect to the DIP financing alternatives,  
15 including the one that was provided by the convertible  
16 noteholders?

17 A. Yes.

18 Q. And was the board of directors apprised of all the various  
19 terms of the alternative proposals?

20 A. Yes.

21 Q. And what did the board of directors conclude?

22 A. The board of directors concluded that the viable path for  
23 the company was to pursue the Bayside and the Wells Fargo DIP  
24 financing.

25 Q. And what were the reasons for that conclusion?

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1 A. The reasons were that -- first and foremost, that it  
2 provided a defined path to getting out of a Chapter 11 process.  
3 Secondly that -- as part of that, there was a -- there was  
4 sufficient liquidity to fund the Chapter 11 proceedings as part  
5 of that process. And then, I think, the third rationale was  
6 also that because -- you know, it is a 363 process so pursuant  
7 to that process, higher and better bids could emerge and  
8 doesn't preclude anybody from coming to the auction.

9 Q. Okay. Now, turning to the noteholders' proposal and I  
10 think Ms. Lonstein showed you the one page. Do you have it up  
11 there? The one page comparison between the two.

12 A. Yes.

13 Q. And I want to -- Ms. Lonstein asked you a number of  
14 questions about the various terms of the Bayside proposal  
15 including interest rate and fees and all of that. But I think  
16 the one thing that we haven't discussed is the condition in the  
17 convertible notes proposal -- that is the one to the right, the  
18 second from the bottom.

19 A. Um-hum.

20 Q. She asked you about the .87 million dollars in costs,  
21 remember that? And then what does it say there?

22 A. The one second from the bottom?

23 Q. Yes.

24 A. That the convertible notes will be converted into equity.

25 Q. Right.

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1 A. Into a hundred percent of the equity.

2 Q. Pursuant to a plan of reorganization, is that right?

3 A. That's right.

4 Q. And that was a condition to the -- and is a condition to  
5 the convertible noteholders' proposal, is that right?

6 A. That's right.

7 Q. Have the convertible noteholders or their financial  
8 advisors at Blackstone ever made a proposal for a DIP facility,  
9 to the best of your knowledge, that was not conditioned on the  
10 court confirming a pre-packaged plan of reorganization that  
11 gave the noteholders one hundred percent of the equity in the  
12 company?

13 A. No, they haven't.

14 MS. LONSTEIN: Object to the question, Your Honor, in  
15 terms of a pre-packaged or any characterizations of the  
16 proposal.

17 THE COURT: You may answer it if you're able.

18 A. No, they have not made such proposal.

19 Q. And putting aside whether a plan of reorganization would  
20 be pre-packaged or other, their proposal, at all times, always  
21 required a confirmed plan of reorganization that provided for  
22 the noteholders to have one hundred percent of the equity, is  
23 that correct?

24 A. That's correct.

25 Q. And their proposal at all times, also required that that

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1 plan of reorganization would give new paper to the secured  
2 creditors, the ABL and the term loan holders, that the company  
3 would have to pay post-emergence from bankruptcy, is that  
4 correct?

5 MS. LONSTEIN: Objection as to form, Your Honor.  
6 Compound question leading her own witness. This is a redirect.

7 THE COURT: Well, it is leading but I'll allow it.  
8 You may answer.

9 A. That's correct.

10 Q. And in your discussions with company management, as well  
11 as Alvarez & Marsal, did the company inform you as to whether  
12 the company believed that its cash situation was sufficient  
13 liquidity to pay the new paper under the proposed plan of  
14 reorganization by the convertible noteholders?

15 A. Sorry; can you repeat the question?

16 Q. In your discussions with company management about the  
17 convertible noteholders' proposal --

18 A. Um-hum.

19 Q -- did company management express a view as to whether or  
20 not the company's liquidity would be sufficient, post-emergence  
21 from bankruptcy, to pay the new paper to the secured creditors  
22 that would exist pursuant to the plan of reorganization?

23 A. The company's --

24 MS. LONSTEIN: Objection, Your Honor; it lacks  
25 foundation. There's no evidence of what projections for this

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1 company look like post-emergence incorporating our plan of  
2 reorganization. All we have is the committee's exhibit on the  
3 company's EBITDA projection, which Ms. Tang testified excludes  
4 bankruptcy impacts, so that she's assuming facts not in  
5 evidence and it's hearsay.

6 THE COURT: Well, maybe you could lay a little  
7 foundation for why --

8 MS. VULLO: Sure.

9 THE COURT: -- Ms. Tang would know the answer to the  
10 question.

11 MS. VULLO: Sure.

12 Q. Ms. Tang, in the course of your work advising the company  
13 with respect to alternatives, including DIP financing  
14 alternatives, did company management provide various DIP --

15 MS. VULLO: Withdrawn.

16 Q. -- various budget numbers, including the ones that Ms.  
17 Lonstein provided to you, with respect to the company's cash  
18 position over a period of time?

19 A. The company provided such perspectives, yes.

20 Q. And did you engage with Alvarez & Marsal, which was the  
21 restructuring advisors for the company, on -- with respect to  
22 the budget issues?

23 A. Yes.

24 Q. And in the course of your work with them, did they express  
25 a view as to whether or not the proposed plan of reorganization

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1 by the convertible noteholders would -- that the company had  
2 sufficient liquidity to pay the secured debt that that plan  
3 would require?

4 A. The company provided a perspective that, based on the pro  
5 forma capital structure as it relates to the plan that's tied  
6 to the convertible note's DIP, that there would not be -- that  
7 the company could not support such debt loads.

8 Q. Okay. Now, Ms. Lonstein also asked you about the three  
9 percent breakup fee provided in the Bayside proposal; do you  
10 recall that?

11 A. Yes.

12 Q. Okay. Now, that breakup fee would occur only if there  
13 were a higher or better offer, is that right?

14 A. That's right.

15 Q. And where would the breakup fee come out of in that event?

16 A. In that event, it would be based on the consummation of  
17 the sale, to the extent that Bayside was not paid back -- to  
18 the extent that Bayside was not the winner of that auction  
19 right.

20 Q. So the winner of the auction, who would be paying more,  
21 would be paying the breakup fee, is that fair?

22 A. Yes.

23 Q. And the breakup fee is also subject to bankruptcy court  
24 approval? Are you aware of that? You mentioned, in response  
25 to the U.S. Trustee's questions, that the noteholders' plan

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1 provided that the trade creditors would be paid in full. Do  
2 you recall that?

3 A. Yes.

4 Q. Did the noteholders provide a source of liquidity to pay  
5 those trade creditors under the plan?

6 A. No. Not explicitly in the proposal.

7 Q. In your discussions with the company Alvarez & Marsal and  
8 the board of directors, were issues of feasibility of the  
9 noteholders' proposed plan discussed?

10 A. Yes.

11 Q. Can you explain what was discussed on that subject?

12 A. Sure. Again, as linked to the --

13 MS. LONSTEIN: Object -- I'd like an opportunity to  
14 object. Because I'm not sure -- counsel was asking about Ms.  
15 Tang's conversation with Alvarez & Marsal; it's hearsay.  
16 Alvarez & Marsal is not here. They're not being put on as a  
17 witness. I object.

18 MS. VULLO: We actually have Mr. Hill in the  
19 courtroom.

20 MS. LONSTEIN: Why don't you put him on?

21 THE COURT: Well, it doesn't make it not hearsay but  
22 I'll allow it.

23 A. So based on our conversations, in terms of feasibility,  
24 the analysis that was provided would be the discussion analysis  
25 that was had was regarding the pro forma capital structure.



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1 Again, the pro forma capital structure, based on the plan that  
2 was proposed by the convertible notes, provides for, you know,  
3 treatment of the ABL to be either replaced or to stay in place  
4 so there were be an ABL -- there would be ABL financing for the  
5 company after it emerges. There would be the term loan that  
6 would be, you know, reinstated. And so the discussion of  
7 feasibility was really regarding -- and in addition, there  
8 would be -- they didn't discuss it explicitly but the pre-  
9 petition trade, to the extent that it has to be paid in full,  
10 that's another piece of financing that would have to come in to  
11 fund that.

12 And so based on the pro forma capital structure, the  
13 secured debt was actually, you know, increased as opposed to,  
14 you know, reduced. And so the question on feasibility was,  
15 given the uncertainty of the company's -- the trajectory of the  
16 company in -- you know -- in the education market, whether or  
17 not that capital structure could be supported and whether or  
18 not that could be -- you know, if that's feasible. And so that  
19 was the -- that was the nature of the discussion.

20 Q. Okay. And by contrast, the 363 sale proposal -- once  
21 there's a purchaser, after the 363 process, is the capital  
22 structure of the company improved?

23 A. Depending on, you know, the outcome of the auction, based  
24 on the stalking horse bid as part of the 363, it was -- the  
25 intent was to capitalize the company with just the ABL

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1 facility.

2 Q. Okay. We've discussed, at some length, the proposal  
3 that's before the Court for Bayside to provide DIP financing.  
4 Based upon all of your work and your colleagues work on this  
5 matter, in your opinion, was the company able to obtain the  
6 same credit otherwise?

7 A. No.

8 Q. And did the company consider the noteholders' proposal to  
9 qualify as a comparable credit to the Bayside?

10 A. No.

11 MS. VULLO: I have no more, Your Honor. Thank you.

12 THE COURT: Any recross?

13 MS. LONSTEIN: Yes, Your Honor.

14 RECROSS-EXAMINATION

15 BY MS. LONSTEIN:

16 Q. Ms. Tang, I think you still have in front of you  
17 Committee's Exhibit number 2. If you could turn to page 3 of  
18 Committee's Exhibit number 2.

19 MS. LONSTEIN: With apologies to the Court, to  
20 everyone.

21 Q. These are the fiscal year projections from -- the  
22 projections from fiscal year 13 through fiscal year 16, which  
23 we saw on page 2 earlier. We talked about the EBITDA  
24 projections. On page 3, we see a little bit more detail about  
25 the revolver and the term loan. And if you -- if I could call

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1 A. I am a managing director at Alvarez & Marsal.

2 Q. Sorry. And can you just describe, generally, what the  
3 business of Alvarez & Marsal is?

4 A. Alvarez & Marsal. Bryan Marsal and Tony Alvarez started a  
5 business back in 1983 basically to assist underperforming  
6 companies. Since then, it's grown into a very large global  
7 restructuring and advisory firm for non-underperforming  
8 companies.

9 Q. Okay. And did there come a time when you and Alvarez &  
10 Marsal became retained or became involved with School  
11 Specialty, the debtors here?

12 A. January 7th of 2013.

13 Q. And do you have a position with the debtors since January  
14 7th of 2013?

15 A. Yes. I was retained as the chief restructuring officer of  
16 the company.

17 Q. Okay. And in that capacity, from the time of your  
18 engagement until now, can you just generally describe what  
19 you've been doing for the company?

20 A. We got a deep dive -- from January 7th to January 18th, a  
21 deep dive into liquidity and vendor issues that the company was  
22 experiencing.

23 Q. Okay. And did you also become involved in discussions  
24 about the company's budget?

25 A. Yes. That's the -- part of the liquidity, yes. We looked

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1 at the budget.

2 Q. And did you also become involved in the discussions with  
3 respect to the debtor-in-possession financing?

4 A. Yes.

5 Q. Okay. Can you take a look, sir, at the Committee's  
6 Exhibit 3 --

7 A. They're not --

8 Q. -- which is --

9 A. They're not marked so I don't --

10 Q. Okay.

11 A. -- really know.

12 Q. It's the one that says, I think on the first page, Exhibit

13 A.

14 MS. VULLO: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 A. No, that can't be it.

17 THE COURT: It's titled DIP budget. Exhibit A, DIP  
18 budget.

19 THE WITNESS: That's the DIP budget.

20 UNIDENTIFIED SPEAKER: That's Committee Exhibit 3.

21 THE WITNESS: 3; okay.

22 Q. Do you have that?

23 A. I have it.

24 Q. And it's the one that's the DIP budget. Mr. Hill, can you  
25 just describe what Committee Exhibit 3 is?

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1 able to start spending money. My worry is the delay now, we're  
2 not even going to get to the eighteen million dollars of  
3 disbursements this week we said and I might have to go back to  
4 my lenders and say, hey guys, I need to move some things out  
5 and I'm going to have to -- I mean -- the negotiations are very  
6 difficult when you're dealing with two sets of lenders, also.

7 But what we've tried to develop here is, okay, how do we  
8 get the company back running in, kind of, normal mode, getting  
9 the inventory in and then being in a position to fulfill  
10 customer orders, which is very important. Fill-rate, in any  
11 distribution business, is key.

12 Q. Does the company have any cash right now to fill any  
13 orders?

14 A. Yeah. I think there might have been 20 to 50,000 left in  
15 a bank account somewhere along the line. But nothing --  
16 nothing beyond that.

17 Q. Okay. Now, you said that this --

18 THE COURT: Excuse me for interrupting --

19 MS. VULLO: Sure.

20 THE COURT: -- direct. I normally hate to do this but  
21 it has been on my mind. Is that because -- is there no money  
22 because there's no revenue or because there's no availability  
23 to borrow?

24 THE WITNESS: The availability was very, very tight.  
25 The lenders, the ABL lenders and the term lenders did allow --

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1 there was a twenty million dollar excess cap and they did take  
2 that down to three million. So there was that seventeen  
3 million. The company was, as you can -- might imagine, started  
4 blowing through that seventeen million really quickly. When we  
5 walked in the door January 7th, I said we've really got to  
6 curtail disbursements. We're not even going to make it until  
7 the end of the month. And that's, in essence, how we're here  
8 today. I mean we, basically, really curtailed but we weren't  
9 buying any inventory because we just didn't have the liquidity  
10 to buy the inventory.

11 THE COURT: Okay. But is there revenue coming in  
12 or -- and if it comes in, where does it go?

13 THE WITNESS: This -- well, this is the slowest part  
14 of our season, Your Honor.

15 THE COURT: I understand.

16 THE WITNESS: And when it does come in, it comes in in  
17 big, big bunches in the August, September, October time frame.  
18 So -- and that goes to pay down the revolving debt, it goes  
19 down to pay term debt and interest and all that. But right  
20 now, as you'll see and hear, it's a need every week.

21 THE COURT: Okay. But it comes to the company as  
22 opposed to a lockbox.

23 THE WITNESS: It goes into the lockbox --

24 THE COURT: Okay.

25 THE WITNESS: -- and then gets swept by our ABL

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1 you know, the CEO was very concerned about continuing to have  
2 significant amount of debt on this entity when --

3 MS. LONSTEIN: Your Honor, I hate to interrupt and I  
4 apologize but he's testifying as to hearsay. It's one thing to  
5 ask the witness what his professional opinion is about the  
6 budget or about feasibility but asking him to go on ad nauseum  
7 about what the CEO said to him is inappropriate and it's  
8 hearsay. He said it -- it's stricken from the record and --

9 THE COURT: Rephrase the question.

10 MS. VULLO: Sure, Your Honor.

11 Q. Mr. Hill, do you have an opinion, sir, based upon your  
12 experience in your work with this company, as to whether the  
13 noteholders' proposal provides sufficient liquidity for this  
14 company to pay the debt that it would have post-emergence from  
15 bankruptcy under the noteholders' plan?

16 A. Well, I have concern. I have concern and it was based on  
17 discussions because, again, I came into the door January 7th.  
18 When I looked at this, I tried to understand the financing that  
19 occurred back last May. And I tried to look and say, okay,  
20 what do we need now? What's really going to fix the balance  
21 sheet? And I believe, based on discussions, my review of the  
22 documents, my discussions with Perella, that this company needs  
23 to severely delever its balance sheet in order to be successful  
24 and not be in front of Your Honor again later on down the road.

25 Q. Mr. Hill, can you turn to Committee's Exhibit 2, which is,

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1 A. Familiar with that.

2 Q. And in your opinion, sir, is that 363 sale preferable to  
3 the other proposal?

4 A. It's certainty. The other proposal, I didn't see  
5 certainty in the deal itself. I didn't understand how they  
6 were going to address a still -- an overlevered balance sheet.  
7 In my opinion. And the 363 sale gives us certainty. And  
8 again, maybe there's somebody that's going to come out of the  
9 woodwork and bid above what's being offered now.

10 Q. One final question. Ms. Lonstein, in her questioning of  
11 Ms. Tang, referred to a twenty-million-dollar number for wind-  
12 down costs. Are you familiar with that figure?

13 A. I'm very familiar with it. I've been yelled at, by not  
14 only the board of directors for that number, but every other  
15 creditor in this case over that number. So that twenty million  
16 dollar, when I did the original budget after being on board  
17 January 7th, but January 18th is when I had to deliver our  
18 first DIP budget that people could start looking at and  
19 approving. And we shared it with -- with the agent for the  
20 ABL, we shared it with the term loan and we shared it with the  
21 noteholders. And everybody screamed and yelled because in the  
22 last week of that, I put twenty million dollar wind-down costs  
23 because I didn't have a clue what it was actually going to be.

24 Q. And have you now done more work since that time as to what  
25 the wind-down costs might be?



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1 A. Significant work on that area, yes.

2 Q. Okay. And is that reflected in Exhibit 3 on the second  
3 page?

4 A. Yes, it is.

5 Q. And is that the five million and change number?

6 A. Yes, it is.

7 Q. Okay. Now, also on that page, I noticed that there's a  
8 line that says "remaining administrative and priority claims",  
9 and it says "open". Do you know what that's a reference to,  
10 sir?

11 A. That's a reference -- because I don't know after the 363  
12 sale what's going to be a remaining estate issue and I wanted  
13 to put down here as many qualifications as I could on this  
14 thing because, again, we've done a lot more work, we've  
15 scrubbed it down, we said what's it going to take to go through  
16 and do clean management and really get to a plan process.

17 And I sat with counsel and said, okay, guys, how much do  
18 you think you're going to spend? How much do we need to spend?  
19 How much help do I need from employees or former employees of  
20 the company? So that's really what I went through with this  
21 exercise. But there's going to be just so many unknowns today,  
22 until we get to the 363 sale, to know what's remaining and what  
23 the estate has to take care of.

24 Q. And pursuant to the 363 sales, certainly the -- whoever  
25 purchases the company might assume some of the contracts that

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1 A. And what you really need in this kind of a business, a  
2 seasonal business that's distributions, you need to have the  
3 flexibility of -- you have the seasonal borrowings but when  
4 that season's over, you really got to be lean and mean because  
5 the company loses money outside of the months of June, July,  
6 August, September, October. These are loss months. So I  
7 really think you need to have a flexible facility in place.  
8 And, yeah, there can be some debt above the ABL, obviously,  
9 because I'm saying, yeah, you need that. But you don't need  
10 100 million, 200 million, 300 million on top of it.

11 Q. Okay.

12 A. The company can't survive.

13 Q. Okay. Did you negotiate in any way or were you involved  
14 with negotiating the purchase agreement with Bayside?

15 A. I reviewed it. I did not negotiate it.

16 Q. Okay. Are you aware that the APA requires the company to  
17 be looking for a debt above the ABL currently?

18 A. As far as exit financing or what are you referring to?

19 MS. LONSTEIN: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 Q. Can you turn to page 43 of --

22 MS. LONSTEIN: What I've just handed to the witness,  
23 Your Honor, is the asset purchase agreement which is attached  
24 as Exhibit A, I believe, to the sale motion -- to the bid  
25 procedures motion. May I approach the bench if Your Honor

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1 would like a copy?

2 THE COURT: I have it.

3 MS. LONSTEIN: Okay.

4 Q. Turning to page 43, Mr. Hill, at the bottom, there's a  
5 Section 6.13. It says "Purchaser Financing Cooperation". Do  
6 you see that?

7 A. Yes.

8 Q. It says, "From the execution date through and including  
9 the closing and after or the earlier termination of this  
10 agreement, Sellers" -- meaning the debtors -- "shall use their  
11 reasonable best efforts and shall cause their officers,  
12 employees and other representatives to use their respective  
13 reasonable best efforts to assist Purchaser" -- Bayside --

14 A. Um-hum.

15 Q. -- "in obtaining any financing necessary to fund the  
16 business after the closing." Do you see that?

17 A. Yes, I do.

18 Q. Okay. So from a business perspective -- I'm not asking  
19 you any legal questions -- is it your understanding that this  
20 means at the auction, if Bayside is the successful purchaser  
21 and in between now and then, the company is cooperating with  
22 Bayside to find a new loan above the ABL?

23 MR. KLEIN: Your Honor --

24 A. I think this is to replace the ABL. Oh, I'm sorry.

25 MR. KLEIN: Objection, Your Honor. The witness

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1 testified that he was not part of the negotiations. Counsel  
2 read a paragraph in here and it speaks for itself although the  
3 witness is qualified to answer that.

4 THE COURT: Any response?

5 MS. LONSTEIN: I'll re-ask the question.

6 Q. What's your understanding, as the chief restructuring  
7 officer of the company, and -- with respect to the company's  
8 current search for additional debt above the ABL facility?

9 A. Again, I think it's to replace the ABL facility. That's  
10 what I think. But as far as I know, after the APA happens and  
11 the assets get sold, the ABL lenders want to get paid. And  
12 they've made that very clear to me.

13 Q. Let's assume for a moment that Bayside is the successful  
14 credit bidder fifty-six days -- fifty-five days from today for  
15 a moment. Is there any certainty that Bayside would not  
16 replace board members and put additional debt -- dividend recap  
17 at the company?

18 MR. KLEIN: Your Honor, objection. It calls for --

19 THE COURT: Sustained.

20 MR. KLEIN: -- speculation.

21 THE COURT: Sustained. Ms. Lonstein, I have to tell  
22 you, this line of questioning doesn't seem to me to be terribly  
23 relevant. And I will tell you, even --

24 MS. LONSTEIN: Well --

25 THE COURT: -- if you think it might be, it's not very

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1 helpful to the Court in making the determination that I have to  
2 make today.

3 MS. LONSTEIN: Well, Your Honor --

4 THE COURT: Not a confirma --

5 MS. LONSTEIN: -- I understand and I'm --

6 THE COURT: It's not a confirmation hearing.

7 MS. LONSTEIN: I have no further questions from this  
8 witness, Your Honor. And I'll explain this in our closing  
9 comments --

10 THE COURT: All right.

11 MS. LONSTEIN: -- why it's relevant.

12 THE COURT: Thank you.

13 MS. LONSTEIN: With that, Your Honor, we would call  
14 Mr. Nick Le --

15 THE COURT: Well, let's see if there's --

16 MS. LONSTEIN: Oh, I'm sorry.

17 THE COURT: -- more cross-examination?

18 MR. KLEIN: Thank you, Your Honor. Randy Klein on  
19 behalf of Wells Fargo Capital Finance, the administrative agent  
20 for the ABL lenders.

21 CROSS-EXAMINATION

22 BY MR. KLEIN:

23 Q. Mr. Hill, I just have a few quick questions for you  
24 because I want to understand the relationship between the  
25 proposal that the bondholders have been talking about and how

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1 it interacts with the current DIP that the debtors are asking  
2 to be entered into today.

3 The current DIP proposal as you understand it has  
4 milestones, correct?

5 A. Correct.

6 Q. One of those milestones is that there has to be a sale  
7 that pays the ABL lenders in full on or before April 15th,  
8 correct?

9 A. That has been made perfectly clear to me, yes.

10 Q. So in the absence of additional ABL financing today that  
11 would replace the financing that would not be available without  
12 those milestones, does the debtor have the financing it needs  
13 between now and April 15th? In other words, if the ABL lenders  
14 do not increase their exposure to the debtor from the 43.6  
15 million, where it is today, to what it is projected to be on  
16 April 15th, you'll need additional liquidity, correct?

17 A. Yes. We need both the ABL and the DIP term. We need both  
18 loans to basically operate the plan. So, yes, we need both.

19 Q. And the debtor has not received additional commitments for  
20 that incremental financing that otherwise is being provided by  
21 the ABL lenders today.

22 A. No.

23 Q. And after April 15th, does your model propose that the ABL  
24 increment would go up if there were an ABL lender willing to  
25 provide those funds?

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1 Q. So feasibility of a plan, you're saying, hasn't typically  
2 come up in the context of a company seeking approval of a DIP.

3 A. I was about to say typically not but I could probably even  
4 go further and say I can't really think of an example.

5 Q. Okay.

6 MS. LONSTEIN: Your Honor, I would like to move Mr.  
7 Nick Leone as an expert witness and financial advisor for the  
8 noteholders for the steering committee.

9 THE COURT: Is there any objection?

10 MR. SAFERSTEIN: No objection, Your Honor.

11 THE COURT: You may proceed accordingly.

12 DIRECT EXAMINATION

13 BY MS. LONSTEIN:

14 Q. Mr. Leone, when you were retained as a financial  
15 advisor -- when were you retained as a financial advisor to the  
16 steering committee?

17 A. I was interviewed for the role right around December 20th.  
18 I think I was selected the day after. But I think our formal  
19 engagement with the company was documented in early January.  
20 But my team and I really started work on behalf of the converts  
21 around December 20th or 21st.

22 Q. Um-hum. Were there any presentations made by the company  
23 between the date of your engagement, December 20/21st through  
24 December 31st?

25 A. Soon after we were selected to represent the converts,

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1 even prior to getting formally engaged, I personally interacted  
2 with Perella Weinberg, and they were very helpful in terms of  
3 getting information to us so that my team and I could start  
4 reviewing information, start getting up to speed.

5 My recollection is our first interaction with the  
6 management team was the management team made a presentation to  
7 us telephonically on Christmas Eve, so the 24th.

8 Q. And what was the environment at the company at the time in  
9 terms of whether or not there was a crisis one way or the  
10 other?

11 A. It was made very, very clear to me and the rest of my team  
12 which was this was a very live situation in terms of the  
13 company needed liquidity ASAP.

14 Q. And did you engage in due diligence between December 21  
15 and December 31?

16 A. Yes. Again, we reviewed whatever information was given to  
17 us, either directly by the management team or from Perella. We  
18 had a number of diligence calls with Perella. I mentioned that  
19 we had an initial diligence call with the management team on  
20 Christmas Eve and everyone was very helpful and accommodating  
21 in terms of trying to get us up to speed as quickly as  
22 possible.

23 Q. Okay. And did there come a time when you made a  
24 presentation on December 31st to the committee at that time?

25 A. Yes. We were very good at picking holidays for big



**EXHIBIT D**

**SUMMARY OF OBJECTIONS TO SSI DIP MOTION**

<b><u>No.</u></b>	<b><u>Responding Party</u></b>	<b><u>Type of Objection</u></b>	<b><u>Basis for Objection</u></b>
1	<b>American Art Clay Co., Inc., ACCO Brands USA LLC and Mead Products LLC</b> Barnes & Thornburg LLP David M. Powlan Telephone: (302) 300-3434	Formal, Limited (Docket #208)	<ul style="list-style-type: none"> <li>Any alteration to rights, claims and defenses such as reclamation, setoff and recoupment ("Recovery Rights") by Final Order is contrary to due process and not authorized under Bankruptcy Rules.</li> <li>Certain provisions in the Interim Order, if carried over to the Final Order, could be read or applied too broadly so as to adversely affect Objectors' Recovery Rights.</li> <li>Objectors request language in Final Order to avoid alteration in Recovery Rights, and provide draft language.</li> </ul>
2	<b>Cameron Independent District and Milam County, Texas Ad Valorem Taxing Entities</b> Perdue, Brandon, Fielder, Collins & Mott, L.L.P. Attorneys for Cameron Independent Taxing Entities Owen M. Sonik Telephone: (713) 862-1860 McCreary, Veselka, Bragg & Allen, P.C. Attorneys for County of Milam, Texas Lee Gordon Telephone: (512) 323-3200	Formal, Limited (Docket #210)	<ul style="list-style-type: none"> <li>Taxing Entities object to any characterization of DIP Liens as superior to their prepetition liens without providing adequate protection of those liens (11 U.S.C. §§ 364 (d)(E))</li> <li>Taxing Entities object to the extent that DIP Motion and Interim Order seek to elevate priority of prepetition debt that is subordinate to its tax liens to postpetition debt with priority over its pre and/or postpetition taxes.</li> <li>Taxing Entities object to the payment of proceeds from sale of their collateral to any party whose interest is inferior to their tax liens, unless and until they are adequately protected.</li> <li>Taxing Entities object to use of their cash collateral unless and until they are adequately protected.</li> <li>Taxing Entities request adequate protection in the form of sufficient funds to pay their claims plus interest at the applicable non-bankruptcy rate set aside in a segregated account. They further request that the Court enter an order that such funds shall not be paid to any other party until their claims have been paid in full, that their 2012 tax claims be paid as soon as practicable together with interest at the applicable non-bankruptcy rate, and that their 2013 and subsequent taxes be paid in the ordinary course without further order of the Court.</li> </ul>

<u>No.</u>	<u>Responding Party</u>	<u>Type of Objection</u>	<u>Basis for Objection</u>
3	<b>Dixon Ticonderoga Company</b> Akerman Senterfitt Sundeep S. Sidhu Telephone: (407) 423-4000	Formal, Limited (Docket #211)	<ul style="list-style-type: none"> <li>DIP Motion and its budget do not provide funding to pay administrative claims under Section 503(b)(9), and is not in the best interest of the Debtors or their estates.</li> <li>The Company's secured debt is in excess of Bayside's credit bid, so the purchase price proposed under APA will go almost entirely towards satisfying secured debt.</li> <li>Case law indicates that a Chapter 11 case should not be administered and that DIP Financing should not be procured for the sole benefit of secured lenders.</li> <li>If the secured lenders pocket the asset sales proceeds, the Debtors' estates will be left administratively insolvent, which may lead to conversion to Chapter 7.</li> <li>It is inappropriate for a case to remain in Chapter 11 without having a realistic possibility of plan confirmation.</li> <li>Proposed DIP Facilities are not in the best interest of the Debtors and their estates, and until the Budget provides for section 503(b)(9) claims, the Court should not grant the DIP Motion on a final basis.</li> </ul>
4	<b>Official Committee of Unsecured Creditors</b> Venable LLP Jamie L. Edmonson Telephone: (302) 656-3929 Brown Rudnick LLP Robert J. Stark Telephone: (212) 209-4800 Brown Rudnick LLP Steven D. Pohl Telephone: (617) 856-8200	Formal (Docket #219)	<ul style="list-style-type: none"> <li>Committee objects to the DIP Motion because it grants liens on Avoidance Actions. The Committee argues that this shifts value from unencumbered assets to the DIP Lenders. Further, the avoidance powers can only be exercised for the benefit of the estate and avoidance actions should be pursued in an attempt to treat all similarly situated creditors alike. Restricting recoveries from Avoidance Actions distorts the purpose of allowing a debtor to pursue avoidance actions in the first place. Further, the Avoidance Actions are not the Debtors' property but are rights that may be exercised for the benefit of the Debtors' creditors, and as such the Debtors cannot grant a security interest in the Avoidance Actions for the benefit of select creditors. The Committee objects that it is inappropriate to secure the ABL Roll Up Obligations and Adequate Protection Obligations with Liens on Avoidance Actions because the Avoidance Actions only came</li> </ul>

<u>No.</u>	<u>Responding Party</u>	<u>Type of Objection</u>	<u>Basis for Objection</u>
			<p>into being after the filing of the bankruptcy petition and are therefore after-acquired property. Section 552(a) prohibits property acquired post-petition from being subjected to a lien securing pre-petition debt.</p> <ul style="list-style-type: none"> <li>Committee claims that the budgeted fees and Carve-Out for the Committee's professionals are inadequate and inhibit the Committee from fulfilling its statutory duties. The Committee therefore requests that the Budget and Carve-Out should be modified to: (i) align the Committee's professionals line-item with the Debtors' professionals line-item and (ii) provide for an increased post-default Carve-Out. This is especially important since there have already been two contested evidentiary hearings, an expected competing post-petition financing proposal and a short sale process, all requiring extensive efforts by the professionals.</li> <li>Committee argues that the terms of the Investigation are inappropriate. The Committee objects that the \$25,000 maximum that it may spend is too low because the document review performed so far already indicates that the budget is inadequate. Further, the Debtors have significant assets perfected by means other than filing of a financial statement and the Debtors own a substantial amount of intellectual property. The Committee also must investigate whether any claims exist against Bayside and a contested hearing regarding Bayside's make-whole claim is set for March 12, 2013. The Committee also requests standing now to pursue Lender Claims, given the 60 day window to commence an adversary proceeding to prosecute any Lender Claims.</li> <li>Committee objects to the waiver of section 506(c) surcharge rights as inappropriate. The waiver eliminates a further avenue of recovery for the Debtors' estates and ensures that the cost of restructuring will fall only to the unsecured creditors. The Committee argues that courts regularly reject such waivers. The Committee claims that unsecured creditors will be particularly effected by a waiver in this case because the short sale process and credit bid make the case akin to a state law foreclosure action; yet</li> </ul>

<u>No.</u>	<u>Responding Party</u>	<u>Type of Objection</u>	<u>Basis for Objection</u>
			<p>because the Debtors elected chapter 11 the Bankruptcy Code should govern.</p> <ul style="list-style-type: none"> <li>Committee argues that the waiver of the "equities of the case" exception provided in section 522(b) is inappropriate. The Committee argues that the purpose of section 522(b) is to prevent a windfall to the secured creditor at the expense of unsecured creditors from the appreciation in value of its collateral and that it should only be authorized if the waiver is critical to financing. Additionally, the Prepetition Secured parties are oversecured and the unsecured creditors bear the restructuring costs, therefore negating the need for a waiver of the "equities of the case" exception.</li> <li>Committee cites several technical objections to the DIP Financing which require clarification: <ul style="list-style-type: none"> <li>Pursuant to paragraphs 10 and 18(f) of the Interim Order, the Committee submits that the Debtors should also provide any financial reporting to the Committee.</li> <li>Paragraph 14 (c) of the Interim Order relating to rights upon an Event of Default should be modified to preserve the Committee's rights challenge the exercise of rights or remedies and whether, in fact, an Event of Default has occurred and is continuing.</li> <li>The Committee objects that Section 2.4(e)(viii), which requires that if any portion of the ABL Roll Up Obligation is avoided or disgorged that amounts recovered shall be used to prepay outstanding amounts due under the ABL DIP Facility, frustrates the Committee's ability to pursue and recover on Lender Claims or Avoidance Actions for the benefit of unsecured creditors. This provision should therefore be rejected.</li> </ul> </li> </ul>
5	<b>Ad Hoc Committee</b> Duane Morris LLP Jarret P. Hitchings Telephone: (302) 657-4900	Formal (Docket #220)	<ul style="list-style-type: none"> <li>Since the Noteholders will offer an alternative, superior proposal to the Bayside DIP Facility, there is no legitimate reason for the Debtors to relinquish control of the reorganization process to Bayside and rush to sell their assets at a fire-sale that will almost certainly extinguish junior creditor interests.</li> </ul>

<u>No.</u>	<u>Responding Party</u>	<u>Type of Objection</u>	<u>Basis for Objection</u>
	Stroock & Stroock & Lavan LLP Kristopher M. Hansen Telephone: (212) 806-5400		<ul style="list-style-type: none"> <li>The Debtors' enterprise value is well in excess of their secured debt and thus presents viable restructuring alternatives, which would not be realized through a sale to Bayside. Therefore, the Bayside DIP Facility serves only as a means for Bayside to take this significant upside value by forcing a sale on a commercially unreasonable timeline.</li> <li>The process embedded in the Bayside DIP Facility strips away the Debtors' ability to manage their own restructuring process by imposing mandatory milestones, which lock the Debtors into a course of action that will eliminate any ability to restructure through other alternatives or to generate real bids of any value, given the one month time frame. These milestones are completely arbitrary and serve no legitimate business purpose. The Debtors have sufficient time to pursue an alternative. The Bayside DIP Facility will harm all other creditors by denying the Debtors the opportunity to maximize recoveries, and thus circumvents the fundamental underlying principles of the Bankruptcy Code.</li> <li>The Alternative Proposal "effectively unlocks the handcuffs" Bayside has placed on the Debtors by facilitating a commercially reasonable marketing and sale process on a relaxed timeframe and allowing the Debtors to dual-track their sale effort with a plan process. It would allow over 90 days for due diligence and allow Debtors to simultaneously pursue reorganization to preserve "optionality."</li> </ul>
6	<b>3M Company</b> Elliott Greenleaf Rafael Zahralddin-Aravena Telephone: (302) 384-9400	Formal (Docket #232)	<ul style="list-style-type: none"> <li>3M supports Alternative Proposal of Ad Hoc Committee, which allows for dual-track process with a longer timeline that offers greatest chance for recovery to the estate.</li> <li>The Alternative Proposal's longer sale process minimizes the risk that potential cash purchasers will limit their bids because of questions that remain unanswered due to the shortened due diligence process necessitated by the Bayside Facility and the no-shop provision in Bayside's APA.</li> <li>3M joins in objections to final approval of Bayside Facility.</li> </ul>

<u>No.</u>	<u>Responding Party</u>	<u>Type of Objection</u>	<u>Basis for Objection</u>
			<ul style="list-style-type: none"> <li>• 3M joins in limited objection of American Art Clay, et al. to clarify that nothing in the Final DIP Order affects recovery rights.</li> <li>• 3M joins in limited objection of Dixon Ticonderoga – Debtors’ budgets need to be adjusted to reflect inclusion of 503(b)(9) claims prior to approval of Final DIP Order.</li> <li>• 3M joins in objection of Creditors’ Committee to the extent that any final order: (a) grants liens on avoidance actions; (b) provide an inadequate carve-out for the Creditors’ Committee; (c) contains provisions that are too restrictive with respect to the Creditors’ Committee’s ability to challenge Bayside’s or the ABL Lenders’ prepetition liens or Bayside’s “make whole” provision; or (d) contains a waiver of the Debtors’ ability to surcharge the collateral under 506(c).</li> </ul>
7	<b>Crayola LLC</b> Morris, Nichols, Arsht & Tunnell LLP Erin Fay Telephone: (302) 658-9200	Formal (Docket #240)	<ul style="list-style-type: none"> <li>• DIP Motion and budget don’t contemplate payment of 503(b)(9) claims.</li> <li>• Crayola shares Dixon Ticonderoga’s concerns and holds a claim against the Debtors of not less than \$2,243,697.85 that is entitled to priority as a 503(b)(9) admin expense for the value of goods received by the Debtors within 20 days before the Petition Date.</li> </ul>

**EXHIBIT E**



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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 12-11343-reg

- - - - -x

In the Matter of:

PINNACLE AIRLINES CORP, et al.,

Debtors.

- - - - -x

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

May 16, 2012

10:28 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

**PINNACLE AIRLINES CORP, ET AL.**

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1 Then going back to factor number four: particular  
2 terms. This is the only factor as to which there really can be  
3 any legitimate debate, that dealing with particular terms of  
4 the transaction which, in a perfect world, many would prefer  
5 not to have at all or in the form in which they appear. The  
6 full standard, as articulated by Judge Venters in Farmland  
7 Industries, is whether the terms "are fair, reasonable, and  
8 adequate given the circumstances of the debtor-borrower and the  
9 proposed lender." This factor requires a court to look at any  
10 particular terms that are the subject of the objection. A  
11 bankruptcy court has the power to say it won't approve one or  
12 more of such terms, but at the same time, the court can't  
13 require a lender to lend, and thus, the bankruptcy court must  
14 use its power with some common sense, knowing that if it  
15 overreaches and tries to rewrite a deal under which tens of  
16 millions of dollars of financing are to be advanced, the lender  
17 will simply say, nope, I just won't lend on that basis. I  
18 won't lend if I lose the protection I need or want.  
19 Importantly, that standard requires the Court to consider the  
20 last clause of the language I quoted, "given the circumstances  
21 of the debtor-borrower and proposed lender". A court can't  
22 ignore those circumstances. Decisions of this character are  
23 made in the real world.

24 With all of that stated, there are, of course, terms  
25 that DIP lenders sometimes ask for that are beyond the pale,

**PINNACLE AIRLINES CORP, ET AL.**

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1 that are overreaching by the DIP lenders, and that simply  
2 require the court to say no, I'm not going to bless that.  
3 Fortunately, this case is not in that category.

4 In the connection of looking at the particular terms,  
5 we judges look at those terms with the prism, if I can use that  
6 expression, of what has become customary in DIP financing  
7 transactions and look to legitimate needs and concerns of the  
8 lender's side. And I'm going to talk about some of those  
9 particular terms in that context. Milestones have become  
10 common in DIP financing transactions, as was shown at some  
11 length by the debtors in their papers, having given me tables  
12 with respect to several of the important provisions evidencing  
13 their basis in precedent. Though I wish it were otherwise,  
14 terms that I would prefer not to have in a perfect world have  
15 now become common, if not customary, in DIP financing  
16 transactions. Though I wish it were otherwise, I've learned to  
17 live with DIP financing facilities with durations of only one  
18 year; facilities of longer duration are much rarer than they  
19 were when I started doing bankruptcy work, and even when I came  
20 on the bench.

21 Milestones for filing a plan have also become  
22 customary, or at least ubiquitous, and they're also acceptable,  
23 so long as the time to do so isn't unreasonable under the  
24 circumstances. Here, that deadline is within the range of  
25 reasonableness.

PINNACLE AIRLINES CORP, ET AL.

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1 DIP lenders also have legitimate needs and concerns  
2 with respect to getting paid back. That is the concept  
3 underlying change-of-control provisions which are sometimes  
4 referred to in slang as "know thy borrower". The legitimate  
5 need to get paid back also justifies many provisions requiring  
6 the debtor to show progress in increasing its profitability,  
7 and though I wouldn't provide an advisory opinion as to the  
8 extent to which they're appropriate in other cases with each  
9 case being unique, and Farmland having reminded us that the  
10 inquiry is made "given the circumstances" of the debtor and  
11 lender, I think they're okay here.

12 I did have reservations as to a potential impairment  
13 of my ability to do my job in helping the debtors' management  
14 and labor get along with each other and to reach a consensual  
15 resolution without requiring a full-blown and potentially  
16 stressful 1113 hearing; and Delta, to its credit, gave me the  
17 extra comfort I needed in that regard; the creditors' committee  
18 was also helpful in that respect.

19 Rollups are evaluated on a case-by-case basis. Here,  
20 I found the explanations for the rollup, including as most  
21 important to me, Delta's setoff rights, to be satisfactory, and  
22 I saw no material prejudice to the unsecured creditors in this  
23 case or to the equity which, of course, represents the  
24 objectors here. The releases aren't as broad as the objectors  
25 thought they were, and in any event, strike me as reasonable

PINNACLE AIRLINES CORP, ET AL.

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1 under the circumstances.

2 To the extent I haven't expressly discussed other  
3 particular terms that were the subject of the objection, it's  
4 only because I've been talking for so long and I've already  
5 gone at such great length. But to the extent it's necessary  
6 for the record, I've considered the other points and rejected  
7 them.

8 Now, with that said, I do not find all of the  
9 individual terms that are part of this DIP financing  
10 transaction necessarily to be desirable from the debtors'  
11 perspective or even find that those terms are wholly benign.  
12 But at the risk of repeating myself, decisions of this  
13 character must be made in light of the risks associated with  
14 disapproving the proposed DIP financing facility, and in light,  
15 especially, of the debtors' need for DIP financing, the  
16 alternatives or lack of alternatives, and the consequences of  
17 disapproval, nor do I suggest or especially rule, that each of  
18 these terms would be appropriate in another case or under other  
19 circumstances. But they all have a basis in precedent, and  
20 under the facts here, are not unreasonable.

21 Finally, a few other considerations. I don't analyze  
22 a DIP financing facility by counting noses as to who supports  
23 the facility and who objects. I look, instead, to the Farmland  
24 factors. But consideration of the level of comfort of the  
25 stakeholders whose money and jobs are on the line is often a

**EXHIBIT F**

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF DELAWARE

3 Case No. 12-12821 (CSS)

4 - - - - - x

5 In the Matter of:

6

7 VERTIS HOLDINGS, INC., et al,

8

9 Debtors.

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11 - - - - - x

12

13 United States Bankruptcy Court

14 824 North Market Street

15 Wilmington, Delaware

16

17 November 1, 2012

18 3:05 PM

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21 B E F O R E :

22 HON CHRISTOPHER S. SONTCHI

23 U.S. BANKRUPTCY JUDGE

24

25 ECR OPERATOR: LESLIE MURIN

1 which types of collateral. And I wanted to make the record  
2 clear, and I'm available, of course, if the Court has  
3 questions.

4 THE COURT: Okay.

5 MR. SWETT: Thank you, Your Honor.

6 THE COURT: Anyone else before I go through the  
7 order?

8 (No response)

9 THE COURT: No? Okay.

10 (Pause)

11 THE COURT: By the way, I just -- as an aside, Mr.  
12 Indyke, it was very helpful to attach to your objection the  
13 mark up as you did. I found that very helpful. I wanted to  
14 thank you for that.

15 (Pause)

16 THE COURT: I'm sorry, on page 17, I just don't  
17 understand the change, paragraph L into N or M, I'm not  
18 really sure I understand where that new language in old  
19 paragraph N what that means, and how it reacts or interacts  
20 with the other provisions around it.

21 MR. SWETT: It's intended, Your Honor, to be added  
22 to the end of existing paragraph L.

23 THE COURT: Okay.

24 MR. SWETT: So that it refers back to the finding  
25 with respect to negotiation and good faith, and makes it



1 clear that all of the terms of the DIP credit agreement are  
2 subject to that finding by the Court.

3 THE COURT: Okay. Got it. Thank you.

4 (Pause)

5 THE COURT: So there is a 506(c) waiver, correct?

6 MR. SWETT: Yes, Your Honor.

7 THE COURT: What's the -- in case I missed it,  
8 what's the resolution on standing for the committee?

9 MR. SWETT: The references to automatic committee  
10 standing and authority for the committee to proceed under  
11 2004 without further relief were not revisions that we were  
12 prepared to accept, so they are not reflected in this order  
13 as it's marked against. The interim is entered by the  
14 Court, and therefore, doesn't show the committee's comments  
15 that we didn't take.

16 THE COURT: Okay.

17 (Pause)

18 THE COURT: Looks like we kicked the 503(b)(9) can  
19 down the road, is that --

20 MR. INDYKE: Your Honor, that's -- we're covering  
21 that in the adequate protection order and hearing.

22 THE COURT: Oh, okay.

23 MR. INDYKE: So that's where -- we're going to  
24 deal with that.

25 THE COURT: I understand. Okay. I don't have any

1 further questions. I'll approve it as provided, you'll  
2 interlineate the changes, attach the exhibits, and you can  
3 hand it up either as the hearing progresses or afterwards.

4 MR. SWETT: Yes, Your Honor, we are interlineating  
5 it now, and we have a full set of exhibits in scanable form.

6 THE COURT: Okay. Thank you.

7 MR. SWETT: Thank you, Your Honor.

8 MR. UZZI: Your Honor, Gerard Uzzi of Milbank  
9 Tweed on behalf of the agent for the prepetition term loan  
10 lenders. Excuse me. Just a process point. Our order  
11 expires by its terms I think on November 8th. So we'll  
12 submit, we'll circulate to the parties in interest and then  
13 just submit a bridge order extending it to the next hearing  
14 date, Your Honor.

15 THE COURT: Very good.

16 MR. UZZI: Thanks.

17 MR. SMITH: Thank you again, Your Honor.

18 THE COURT: You're welcome.

19 MR. SMITH: Your Honor, I apologize, just to  
20 clarify, with respect to the hearing on the final term  
21 lender adequate protection order, the date, would it be  
22 November 20th, our existing hearing date?

23 Thank you, Your Honor.

24 THE COURT: And whatever time you have.

25 MR. SMITH: Yes, thank you, Your Honor.

**EXHIBIT G**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: ) Case No. 11-11764 (KJC)  
 ) Chapter 11  
ALLEN FAMILY FOODS, INC., et al., )  
 ) Courtroom No. 5  
Debtors. ) 824 Market Street  
 ) Wilmington, DE 19801  
 )  
 )  
 ) June 30, 2011  
 ) 1:30 P.M.

TRANSCRIPT OF HEARING  
BEFORE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Young Conaway Stargatt & Taylor LLP  
By: ROBERT BRADY, ESQUIRE  
CRAIG GREAR, ESQUIRE  
SEAN GREECHER, ESQUIRE  
ANDREW MAGAZINER, ESQUIRE  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, Delaware 19801  
(302) 571-6600

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E-Mail: [gmatthews@reliable-co.com](mailto:gmatthews@reliable-co.com)

Proceedings recorded by electronic sound recording:  
transcript produced by transcription service.

1 important to us financially any DIP lender is concerned about  
2 a marshalling argument tying up funds preventing the DIP loan  
3 from being paid from a ready source while someone argues it  
4 should go to a slower source. And so everything becomes  
5 hypothetical but it's just we maintain inappropriate for a  
6 DIP loan for there to be you I know the possibility of  
7 marshaling of assets.

8 THE COURT: All right. Thank you. Mr. Greecher,  
9 does the stalking horse bid include purchase of intellectual  
10 property?

11 MR. GREECHER: Yeah, there's a short term license of  
12 intellectual property as part of sort of the transitional  
13 period, but it is not acquired.

14 THE COURT: All right. No notion of what the value  
15 of the intellectual property might be?

16 MR. GREECHER: I don't think we have any sort of  
17 estimate.

18 THE COURT: You know with these kind of matters  
19 because the parties don't typically present very much of a  
20 factual record, and it's not a criticism, it's difficult for  
21 the Court to work through these issues and in a reasoned way  
22 based on a factual record, make a decision. So courts are at  
23 least in my experience limited to drawing on experience and  
24 trying to determine at an early stage in the case what's fair  
25 and what's not for all concerned. These are not always

1 difficult decisions, but sometimes are. I'll address the  
2 Committee's remaining objections one by one, and I'm content  
3 to permit what I'll generally call the administrative carve-  
4 out to sit where it is for the moment understanding that at a  
5 time no later than when it comes time to approve the sale  
6 I'll consider what if anything will be left over and you know  
7 it's, others, and I myself have sometimes referred to what  
8 chapter 11 looks like now as a new paradigm. I don't know  
9 whether Congress ever considered or would have anticipated  
10 that things would go this way. And really the exercise comes  
11 down to how do parties get in and out of a bankruptcy without  
12 running afoul of the absolute priority rule either in or out  
13 of the plan context. And that's part of what underlies the  
14 struggle here. And I don't know if there's any really good  
15 answer to that. Appellate courts are starting to offer some  
16 views about that. Third Circuit hasn't gone quite as far as  
17 the Second Circuit, not yet anyway. So I will overrule that  
18 objection. With respect to budget for Committee  
19 professionals, I will accept the bank's increased offer of  
20 \$250,000, but I will tell you again that to the extent this  
21 turns out to be not enough, the Committee is free to come  
22 back and ask for more. This is, the Committee's got an  
23 exercise to do and it's part of the cost of getting through  
24 the bankruptcy. I'm happy to hear the parties are  
25 cooperating and I hope they will continue to do that. I

1 understand why the lender wants a waiver of requirement of  
2 marshal assets and I'm prepared to agree to that. But I will  
3 say absent some, absent some factual record, other than  
4 generally I don't think anyone disagrees that you know the  
5 case is under water here. It may be a matter of only degree.  
6 And in light of the Committee's objection, I am willing to  
7 carve out the intellectual property, that's the only asset  
8 that's been identified as possibly unencumbered, and to the  
9 extent it is, that the IP lender is going to have to do  
10 without it. I think that covers all the issues that were  
11 unresolved. To the extent there are any other outstanding  
12 objections, I overrule them. I'll give, but before I go  
13 further, I'll give the lender a chance if it wishes to  
14 consider whether it's willing to lend under the ruling I've  
15 just made.

16

17 MR. MENDOZA: Your Honor, if I might, can I have  
18 just a moment to consult with my client who is present?

19 THE COURT: You may.

20 MR. MENDOZA: Thank you Your Honor.

21 THE COURT: Yes. I'll take a short recess.

22 MR. MENDOZA: Thank you sir.

23 MR. GREECHER: Your Honor can I ask before the  
24 recess one clarification on the ruling?

25 THE COURT: Yes, back on the record now. Yes?