

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

In re:)	Chapter 11
)	
BLITZ U.S.A., Inc., <i>et al.</i> , ¹)	Case No. 11-13603 (PJW)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 574 and 749

**PRE-PETITION AND POST PETITION LENDERS' AGENT'S RESPONSE
REGARDING COMMITTEE'S OBJECTION TO BLITZ USA SALE**

BOKF, NA, d/b/a Bank of Oklahoma ("BOKF"), as Agent for Prepetition and Postpetition Lenders (as defined in the Final DIP Financing Order) hereby respond to the limited objection (the "Limited Objection") [Docket No. 749] of the Official of Unsecured Creditors (the "Committee") to the Debtors' motion [Docket No. 574] (as supplemented, the "Sale Motion") to sell substantially all of the assets related to the Debtors' Blitz USA and Blitz RE businesses. In support of this Response, BOKF respectfully states as follows:

Preliminary Statement

1. The Committee's objection must fail in that it is premised upon the patently false statement that payment of the proceeds of the sale will leave the relevant bankruptcy estate's administratively insolvent. The heart of the Committee's objection is stated in paragraph 22 of the Objection, saying in pertinent part, that Debtors are proposing to pay the Prepetition Lenders' secured claim "without leaving any funds for the payment of any of the unpaid administrative expense claims or wind-down costs, and will leave these estates administratively insolvent." The

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.



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Committee's assertion is simply false. Indeed, the Debtors' estimate that every single administrative expense claim made in this case (including claims of the Debtors' and the Committee's professionals that were unpaid in that they exceeded the cash collateral budget or that were "held back" pursuant to this Court's fee application process), can be paid in full, and there will still be at least \$1.7 million left in these estates (not including any value for the Reliance Products Holding, Inc. stock held by Blitz Acquisition Holdings, Inc., nor any potential collection of accounts receivable outstanding, nor any other claims and causes of action the estates may have). Therefore, not only have the Debtors and the Prepetition Lenders "paid the freight" in these cases to date, there are sufficient assets to wind down the affairs of the Debtors.

2. The Committee attempts to disguise the above facts by asserting that the Debtors' successful efforts in these cases and the fact that no draw on the DIP Financing Facility was required somehow makes it "equitable" to reopen the Final DIP Financing Order entered in this case. This argument is farcical. The order was entered with the Committee's consent, and then the Committee affirmatively waived any claims related to 112 U.S.C. §§ 506(c) and 552(b) when stipulated to a circumscribed extension of its challenge period under the order. The Committee also attempts to make much of the fact that the Debtors did not ultimately draw upon the DIP Financing Facility. The mere fact that the DIP Financing Facility was not drawn upon does not obviate its value at the outset of these cases in calming the vendor community nor the fact that the Debtors projected at the time that the facility would be drawn upon. There is also not one shred of evidence that there was anything inappropriate or unwarranted in the entry of the order that would allow for revisiting the order under the Federal Rules. Even if the Final DIP Financing Order could be reopened and amended at this date, because all administrative

expenses to date can be paid with a \$1.7 million surplus, there are no Section 506(c) charges to be made against the collateral and no Section 552(b) equitable concerns implicated.

3. In addition, under Section 363(e), if a debtor proposes to use or sell property in which a creditor has an interest, then the “court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. §363(e) (emphasis added). In such a situation, the trustee or debtor-in-possession has the burden of demonstrating adequate protection. 11 U.S.C. §363(p).

4. By virtue of the Sale Order and applicable law, the liens of the Prepetition Lenders attached to the proceeds of the sale. Therefore all proceeds are the cash collateral of the Prepetition Lenders. The Debtors have made no request to use the Prepetition Lenders’ collateral, nor offered to provide adequate protection for such use. The Committee clearly has no standing to make such a request or offer adequate protection for such use. Escrowing the sale proceeds to pay all unspecified future “wind-down” costs in these cases is clearly a request to use the Secured Lenders cash collateral. BOKF, as Agent, and the Lenders, have not consented to the use of cash collateral for any purpose beyond September 30, 2012. Further, no plausible adequate protection for such use is available from the Blitz USA and Blitz RE estates where such claims would arise. Section 363(e) of the bankruptcy code therefore prohibits the use of the sale proceeds as proposed by the Committee in its objection.

Response

5. Essentially, the Committee requests that this Court require the Secured Lenders to serve as guarantors for all administrative claims of these cases. It cannot be stated too plainly or directly: such a result is *not* a requirement under the Bankruptcy Code. Even the Judge’s comments from the transcript cited by the Committee in support of the Committee’s position acknowledged this basic principal. Specifically, this Court noted in *In re NEC Holdings Corp.*,

et al., Case No. 10-11890, that the assertion that a section 363 sale provide for the payment of administrative expenses is not in the Bankruptcy Code and stated that “Now, that’s not in the Code. That’s in the Judge Sontchi’s Code.” *In re NEC Holdings Corp., et al.*, Case No. 10-11890 p. at 103:22-23; 104:1-8 (Bankr. D. Del. July 13, 2010) (Sontchi, Judge) (the “NEC July 13 Transcript”)².

6. While certain Bankruptcy Code provisions make specific reference to the payment of administrative expenses, section 363 certainly does not. Indeed, there is no support in the Bankruptcy Code or the case law for the proposition that a sale under section 363 of the Bankruptcy Code result in the payment in full of all administrative expense claims. To the contrary, this Court recently ruled alternatively on this very issue. In *In re Real Mex Restaurants Inc.*, Case No. 11-13122, the Court approved a sale under section 363 of the Bankruptcy Code despite the fact that the estate was administratively insolvent. *See In re Real Mex Restaurants, Inc. et al.*, Case No. 11-13122 at p. 186:12-16 (Bankr. D. Del. Feb. 10, 2012) (Shannon, Judge) (the “Real Mex Transcript”)³. Notwithstanding the absence of any such requirement in the Bankruptcy Code, the Committee is asking this Court to interlineate the requirements for confirming a plan under section 1129 of the Bankruptcy Code into section 363.

7. Specifically, in order to confirm a plan, “administrative expenses must be paid in full on the effective date of the plan as provided in § 1129(a)(9).” *In re Global Home Prods.*, 2006 WL 3791955, *3 (Bankr D. Del. 2006); *see also* 11 U.S.C. § 1129(a)(9). The Debtors, however, are not seeking to confirm a plan and the Bankruptcy Code does not require the payment of administrative expenses in full when a debtor, like these Debtors, is merely seeking to sell substantially all of its assets under section 363. Moreover, there is nothing in the

² Copies of the relevant pages of the *NEC July 13 Transcript* are attached hereto as Exhibit A. Although Judge Walsh is assigned to the *NEC* case, Judge Sontchi presided over the July 13th hearing cited to above.

³ Copies of the relevant pages of the *Real Mex Transcript* are attached hereto as Exhibit B.

Bankruptcy Code mandating that all chapter 11 cases must end in confirmation of a chapter 11 plan. Such a requirement clearly does not exist, as section 1112 of the Code provides for the conversion or dismissal of a chapter 11 case. *See* 11 U.S.C. § 1112.

8. The Committee's objection is a continuing rehash of its Section 503(b)(9) argument, which is simply not relevant here. The Debtor estimates that total 503(b)(9) claims from Blitz USA will be \$115,000. Those claims can be paid from cash on hand, still leaving \$1.7 million to wind down the estates. The Committee cites two recent cases regarding the payment of claims under section 503(b)(9) of the Bankruptcy Code, but fails to cite the more recent and relevant case on the issue. In *In re Allen Family Foods*, Case No. 11-11764, the Court was confronted with the 503(b)(9) argument that the Committee seeks to expand here, and from the same counsel. *See In re Allen Family Foods, Inc. at el.*, Case No. 11-11764 at p. 5 (Bankr. D. Del. July 27, 2011) (Carey, Judge) (the "Allen Family Foods July 27 Transcript"),⁴ p. 5 (discussing open issues regarding certain 503(b)(9) administrative claims not provided for). In *Allen Family Foods*, the Court approved the sale over the creditors' committees' objection and did *not* require a reserve for the section 503(b)(9) claims. *Allen Family Foods July 27 Transcript*, pp. 44:23-25; 45:1-3 ("I am troubled, I am troubled by the fact that all 503(b)(9) expenses are not covered I'm not compelled to require that as a condition of approval of the APA that they be reserved for."). In addition, unlike this case, where the possibility of confirmation of a plan remains, in *In re Allen Family Foods*, the Court approved the sale and did not require payment (or a reserve for the payment) of section 503(b)(9) claims even though the case most likely was headed toward dismissal or conversion. *See id.*, p. 7:3-6 ("[W]hat's the post-sale plan here? Wind down and then conversion, wind down then dismissal? I don't smell a

⁴ Copies of the relevant pages of the *Allen Family Foods July 27 Transcript* are attached hereto as Exhibit C.

plan in the offing here.”). While the same counsel seems insistent on following this same playbook from case to case, the Debtors assert that the result should likewise remain the same; and that result is that there is no basis to compel a reserve for administrative expenses or the “wind down” costs of a case out of the proceeds of the Sale.

9. Most recently, as noted above, in *In re Real Mex Restaurants Inc.*, the Court approved a sale even when the Debtors stipulated that they were administratively insolvent. See Real Mex Transcript, p.186:12-16 (“As I said, the debtors have stipulated that they are presently in an administrative insolvency, and there is no dispute that even with approval of this sale there is still a measure of administrative insolvency”). The Court reasoned that denial of the sale “would only yield more administrative insolvency” and that circumstances would be much worse for all creditors without the sale *Id.*, pp. 186:17-18; 192:22-24. The Court approved the sale. *Id.*, p. 193:21-23.

10. Further, a critical distinction between this case and certain of the cases cited by the Committee, is that such cases were at or near the beginning of the chapter 11 case in the context of approval of requested debtor-in-possession financing and the section 503(b)(9) issue was not being considered in the context of a sale under section 363 of the Bankruptcy Code. See NEC July 13 Transcript, p. 80:21-24 (requesting that the Court approve debtor-in-possession financing that “cannot specifically provide for payment at this time of 503(b)(9) claims”); see also generally *In re Townsends, Inc.*, Case No. 10-14092 at pp. 12-26 (Bankr. D. Del. Jan. 21, 2011) (Sontchi, Judge) (the “Townsends January 21 Transcript”), (discussing the debtor-in-possession financing)⁵. In addition, the parties in those cases *settled* the matter; therefore, the Court did not make any ruling that it would not approve the debtor-in-possession financing

⁵ Copies of the relevant pages of the *Townsends* January 21 Transcript are attached hereto as Exhibit D.

without payment of section 503(b)(9) claims, but rather in each instance the Court was offering preliminary views regarding the treatment of administrative claims. *See In re NEC Holdings Corp.*, Case No. 10-11890 at p. 6:6-10 (Bankr. D. July 16, 2010) (Walsh, Judge) (the “NEC July 16 Transcript”), (“Your Honor told us that we needed to find a path of satisfaction for the 503(b)(9) claims and we think we have a path that gets us there.”)⁶; *In re Townsends, Inc.*, Case No. 10-14092 at p.4:10-13 (Bankr. D. Del. Jan. 25, 2011) (Sontchi, Judge) (the “Townsends January 25 Transcript”) (“I’m happy to advise the Court that we have reached a settlement with the debtors and the lenders that will, we believe, adequately addresses the potential 503(b)(9) claims ...”)⁷. Accordingly, the Committee overstates the precedential value of the transcripts cited in their Limited Objection and fails to acknowledge the relevant portions as mere remarks of the Court as opposed to actual rulings on the issue. *See Limited Objection* ¶ 16.

11. Here, the Final DIP Financing Order has long since been entered, and there is no risk of administrative insolvency.

12. Although it is nowhere to be found in the Bankruptcy Code, the Prepetition Lenders acknowledge that the United States Bankruptcy Court for the District of Delaware has recognized that in certain circumstances it is appropriate in a chapter 11 case that “he who benefits [from conducting business in a chapter 11] has to pay the freight for that.” *In re Allen Family Foods at el.*, Case No. 11-11764 at p. 8:8-9 (Bankr. D. Del. June 20, 2011) (Carey, Judge) (the “Allen Family Foods June 30 Transcript”)⁸. In *In re Allen Family Foods, Inc.*, the Court noted that the “greatest concern was that you know the cost of conducting at least this

⁶ Copies of the relevant pages of the *NEC July 16 Transcript* are attached hereto as Exhibit E.

⁷ Copies of the relevant pages of the *Townsends January 25 Transcript* are attached hereto as Exhibit F.

⁸ Copies of the relevant pages of the *Allen Family Foods June 30 Transcript* are attached hereto as Exhibit G.

phase of the 11 be covered by those who benefit from it.” Allen Family Foods July 27 Transcript, p. 27:3-5.

13. Given that all administrative expenses claims are more than covered through this phase of the case and there is, at minimum, \$1.7 million in cash left to wind down these estates, the “pay the freight” concerns on which the Committee’s arguments are based have been fully addressed, and it would be inappropriate to use the Prepetition Lenders’ cash collateral to pay whatever future “wind down” costs the Committee might envision for some version of an all-encompassing plan involving channeling injunctions and future claims representatives.

14. Further, by its objection, the Committee is attempting to change the Bankruptcy Code. “The Supreme Court has instructed that the Bankruptcy Code should not be read ‘to erode past bankruptcy practice absent clear indication that Congress intended such a departure.’” *See In re Bookbinders’ Restaurant, Inc.*, 2006 WL 3858020, *4 (Bank. E.D. Pa. Dec. 28, 2006) (quoting *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 563 (1990); accord, *Cohen v. de la Cruz*, 523 U.S. 213, 221-22 (1998); *Official Committee of Unsecured Creditors of Cybergene Corp. ex. rel. Cybergene Corp. v. Chinery*, 330 F.3d 548, 571-72 (3d Cir. 2003) (en banc), cert. dismissed, 540 U.S. 1001-02 (2003)). There is no clear indication that Congress intended that administrative expenses be paid in full in connection with a section 363 sale. If Congress intended such a requirement, then it would have amended the Bankruptcy Code to include such a provision.

15. The Committee also argues that a chapter 11 case should not be administered for the sole benefit of secured lenders; however, the Bankruptcy Code was not created to erode the rights of a secured creditor to its collateral. *See* H.R. Rep. No. 95-595, 95th Congress., 1st Sess. 338-40 (1977) (“Secured Creditors should not be deprived the benefit of their bargain.”). “[T]he

protections afforded to secured creditors under the Code generally adhere first to the principal that the secured creditor is entitled to priority payment out of its collateral ...” 4 Collier on Bankruptcy ¶ 506.02 (16th ed. 2011). Indeed, “No [Bankruptcy Code] provision is made for the distribution of secured creditors. This is because a fully secured creditor is not entitled to a distribution of property of the estate. Rather it is entitled to its collateral to the extent of its lien.” Park North Partners, Ltd. v. Park North Assocs., (In re Park North Partners, Ltd.), 85 B.R. 916, 918 (N.D. Ga. 1988). The requirement that a secured creditor must pay administrative claims out of the proceeds of its collateral undermines the priority rights the Bankruptcy Code guarantees a secured creditor. If Congress intended to elevate a prepetition unsecured creditor’s claim above the rights of a prepetition secured creditor to the proceeds of the secured creditor’s collateral, Congress would have specifically and expressly provided for that elevation in the Bankruptcy Code - but Congress did not. The Committee is asking the Court to re-write the Bankruptcy Code for Congress, and fundamentally change the rights of secured creditors. This Court should decline the Committee’s request that it supplant Congress as the legislative body responsible for drafting the Bankruptcy Code. Moreover granting the Committee’s request would require this Court to ignore long-standing black letter legal principals that a secured creditor’s rights to realize on its collateral is a superior right to other ordinary course unsecured creditors of the debtor.

16. On December 12, 2011, this Court approved the Final DIP Financing Order. The Committee actively negotiated with the Postpetition Lenders regarding the terms of that order. The Final DIP Financing Order provides as follows:

“If a Challenge is not filed on or before the Investigation Termination Date, then ... (y) the Prepetition Agent's and Prepetition Lenders' security interests in and liens upon the Prepetition Collateral shall be determined to be, legal, valid, standing, perfected, security interests and liens, not subject to recharacterization,

subordination or otherwise avoidable, and ... The Committee reserves all of its rights to object to the payment of, and the Prepetition Agent and Prepetition Lenders reserves of [sic] all of their rights to seek and obtain payment of, proceeds from the sale of any of the assets or stock of any of the Debtors or non-Debtor affiliates to the Prepetition Lenders in repayment of the Prepetition Indebtedness or until: (i) expiration of the Investigation Termination Date if no Challenge is filed or Lender Claims Notice served; or (ii) if a Challenge is timely filed or a Lender Claims Notice is timely served until after the Challenge and the claims articulated in the Lender Claims Notice are resolved by final order.

Final DIP Financing Order at ¶ 19(e).

17. As set forth in the Final DIP Financing Order, the Committee was obligated to assert any Challenge by a date certain. The Challenge deadline was extended by agreement of the Secured Lenders and the Committee on several occasions, the most recent through September 30, 2012. Importantly, the extension agreements only reserved the Committee's Challenge rights for a limited subject of the overall universe of potential claims.⁹ Specifically, the stipulation provided that only Reserved Claims were preserved under the Committee's Challenge rights:

with respect to or in connection with any or all claims of any or all of the Estates or the Committee: (i) challenging or objecting to the validity, perfection, enforceability, or priority of the Prepetition Agent's and Prepetition Lenders' security interests or liens granted in, to or in respect of the stock of Reliance Product Holdings, Inc., and/or payments or other transfers made pursuant to the Forbearance Agreement; (ii) to recover or preserve for the benefit of the Estates or the Committee any security interests or property transferred pursuant to the Forbearance Agreement on any legal or equitable theory; (iii) with respect to any of the subordinated loans entered into in connection with or related to the Forbearance Agreement; or (iv) otherwise arising out of or related to the Forbearance Agreement and the security interests granted and payments or other transfers made pursuant thereto.

Stipulation and Agreement By and Among the Official Committee of Unsecured Creditors and Prepetition Agent and Prepetition Lenders Reserving Certain Claims of the Estates and the Committee at ¶ 1 [Docket No 342] filed on March 23, 2012 (the "Stipulation").

⁹ Pursuant to the Stipulation, the Committee retains Challenge Claims with respect to certain security interests granted to the Secured Lenders with respect to the Forbearance Agreement, effective as of October 4, 2011 entered into by each of the Debtors and BOK, as administrative agent. Under the terms of the Forbearance Agreement, the security interest granted to the Secured Lenders was that of Blitz Acquisition Holdings, Inc. entering into a stock pledge agreement granting BOK a security interest in 100% of the equity of Reliance Products Holdings, Inc., a non-debtor affiliate. The Forbearance Agreement does not refer to the security interest of the Lender in Blitz USA, Blits RE or proceeds from the sale of any of its collateral.

18. As of March 23, 2012 the date of the Stipulation, the Committee's rights to Challenge the payment of proceeds of the sale of the Secured Lenders collateral related to Blitz USA and Blitz RE expired. The Committee expressly negotiated the terms of the Final DIP Financing Order and expressly negotiated the preservation of only a limited subset of Challenge Claims. Challenges related to payment of the Blitz USA and Blitz RE sale proceeds were not included in the preserved Challenge Claims. This Court should not allow the Committee to seek to revise, alter or amend the terms of the Final DIP Financing Order.

19. Certainly, the Committee has never challenged, until now, the appropriateness of the Section 506(c) waiver and the Section 552(b) finding contained in the Final DIP Financing Order. The Committee should not be allowed to do so now. This kind of "reopening" of financing and cash collateral orders at the end of a case would send a distinct chill through the DIP financing market, making reorganization in Chapter 11 an even more daunting task that it already is.

20. Further, the Committee offers no real justification for reopening the terms of the Final DIP Financing Order. The Committee claims that since the DIP Financing was never drawn, it must never have been needed, and therefore the court is free to disregard its previous orders. There is no reality to the Committee's skewed, revisionist version of the course of these cases. The Debtors', at the time of the entry of the Final DIP Financing Order clearly articulated both a current need to show vendors that they had sufficient liquidity to operate, and also projected in the fairly near term a need to access the DIP Financing Facility. The fact that subsequent events, including the Debtors' work in managing their costs, made a draw on the DIP Financing Facility unnecessary is not sufficient to undue the order entered with the Committee's consent early in this case. There is not one scintilla of evidence that there was anything

inappropriate or unwarranted in regard to the entry of the order that would justify revisiting the order under any provision of the Federal Rules of Procedure. See Fed.R.Pro. 59-63.

21. Even if there were some reason to revisit the order, the Committee's proposition that the Prepetition Lenders be charged the future "wind down" costs of these estates (with no budget or limits of any kind) is simply not a proposition countenanced by the Bankruptcy Code. Section 506(c) is a provision limited to charging secured creditors the costs of preserving their collateral. That would include items like insurance that a trustee was forced to place on a property. It does not include the entire costs of a Chapter 11 reorganization, which is what the committee proposes. All administrative expenses to date have been provided for, with a surplus of not less than \$1.7 million. It would be a patent violation of Sections 361 and 363 of the code to use Section 506(c) to allow the charging of all administrative costs that might be incurred in these cases against the Prepetition Lenders cash collateral.

22. A claim of "equities of the case" under Section 552(b) would be equally unavailing to the Committee. All administrative expenses have been accounted for. Employees have been paid. A reserve for medical expenses is included in such accounting. Employee bonuses have been paid. Prepetition Lenders have more than "paid the freight" in these cases, and are now entitled to realize the benefit of their bargain: realizing on the sale of their collateral.

23. The Committee has no standing to seek use of cash collateral. The request that proceeds be escrowed for the payment of administrative expenses is simply a disguise for a request to use cash collateral. The Debtors have not made any such request and, given the surplus of funds on hand, it would be nonsensical to do so. There are no incurred expenses, no Section 503(b)(9) claims, no extant costs of any kind that have not been accounted for, with \$1.7 million left over. What the Committee seeks, then, is the use of that \$1.7 million. Even if the

Committee were in a position to make such a request, it could not do so without offering adequate protection.

24. The Blitz USA and Blitz RE estates have been liquidated, but for any potential causes of action they may have. Therefore these estates cannot offer adequate protection for the use of cash collateral. Only cash equivalent to the Prepetition Lenders remaining exposure would be adequate in these circumstances. A speculative interest in causes of action is simply not adequate and something to which Prepetition Lenders would consent. At some point the cash must be used to pay the Prepetition Lenders' secured claim. There is no reason to incur interest expense to retain the cash in the estate when there is a surplus of funds available after payment of the Prepetition Lenders and payment of all administrative expenses incurred to date.

WHEREFORE, BOKF respectfully requests that the Court (i) deny the Committee's Objection; (ii) allow the payment in full of the Prepetition Lenders and (iii) grant such other and further relief as is just and proper.

Dated: Wilmington, Delaware
September 24, 2012

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EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE
3 Case No. 10-11890-PJW

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5 In the Matter of:

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7 NEC HOLDINGS CORP, ET AL.,

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9 Debtors.

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13 U.S. Bankruptcy Court
14 824 North Market Street
15 Wilmington, Delaware

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17 July 13, 2010

18 9:32 AM

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20 B E F O R E:

21 HON. PETER J. WALSH

22 HON. CHRISTOPHER S. SONTCHI

23 U.S. BANKRUPTCY JUDGES

24

25 ECR OPERATOR: MICHAEL MILLER/LESLIE MURIN

1
2 Debtors' Motion for Order Pursuant to Sections 105 and 363 of
3 the Bankruptcy Code Authorizing and Approving (I) the Agreement
4 with Loughlin Meghji and Company Associates, Inc. to Provide
5 James J. Loughlin, Jr. and Stephen Gawrylewski to Serve as
6 Debtors' Co-Chief Restructuring Officers and the Temporary
7 Staff, Nunc Pro Tunc to the Petition Date

8
9 Motion of the Debtors for an Order Authorizing the Debtors to
10 Retain, Employ and Compensate Certain Professionals Utilized in
11 the Ordinary Course of Business

12
13 Motion of the Debtors for an Order Authorizing Additional Time
14 to File Schedules and Statements of Financial Affairs

15
16 Motion for Order Authorizing Sale of Certain Real Property of
17 the Debtors to Grimsview Properties, LLC

18
19 Debtors' Motion for Order Under 11 U.S.C. Sections 345, 363,
20 364, 503(b)(1), 553 1107, and 1108 and Local Rule 2015-2 (I)
21 Authorizing Continued Use of Existing (A) Bank Accounts, (B)
22 Cash Management System, and (C) Business Forms and Checks; (II)
23 Authorizing the Continuation of Intercompany Transactions Among
24 Debtors and According Superpriority Status to All Intercompany
25 Transactions; and (III) Waiving Investment and Deposit

1 Requirements of 11 U.S.C. Section 345(b)

2
3 Motion of the Debtors for Interim and Final Orders (I)

4 Authorizing, but not Directing, the Debtors to (A) Pay

5 Prepetition Employee Obligations, (B) Continue Employee Benefit

6 Plans and Programs Postpetition, and (C) Honor Workers'

7 Compensation Obligations; (II) Confirming that Debtors are Able

8 to Pay Withholding and Payroll-Related Taxes and (III)

9 Directing All Banks to Honor Prepetition Checks for Payment of

10 Employee Obligations

11
12 Motion of the Debtors for an Order Establishing Procedure for

13 Interim Compensation and Reimbursement of Expenses of

14 Professionals

15
16 Motion of the Debtors for Entry of an Interim and Final Order

17 Pursuant to 11 U.S. C. Sections 105(a) and 366(I) Prohibiting

18 Utility Providers from Discontinuing, Altering or Refusing

19 Utility Services, (II) Deeming Utility Providers Adequately

20 Assured of Future Performance and (III) Establishing Procedures

21 for Determining Adequate Assurance of Payment

22
23 Motion of the Debtors for Interim and Final Orders Under 11

24 U.S.C. Sections 105, 363, 364, 1107, and 1108 Authorizing but

25 not Directing (I) Payment of Prepetition Claims of Essential

1 Suppliers and (II) Financial Institutions to Honor and Process
 2 Related Checks and Transfers
 3
 4 Debtors' Motion for Interim and Final Orders Pursuant to
 5 Sections 361, 362, 363 and 364 of the Bankruptcy Code and Rule
 6 4001 of the Federal Rules of Bankruptcy Procedure (A)
 7 Authorizing the Debtors to (I) Use Cash Collateral of the
 8 Prepetition Lenders; (II) Obtain Postpetition Financing; and
 9 (III) Provide Adequate Protection to the Prepetition Lenders,
 10 and (B) Providing Notice and Scheduling Final Hearing
 11
 12 Debtors' Application for an Order Pursuant to Sections 327(a)
 13 and 328(a) for the Bankruptcy Code Authorizing the Debtors to
 14 Retain and Employ Latham & Watkins LLP as Attorneys for the
 15 Debtors Nunc Pro Tunc to the Petition Date
 16
 17 Debtors' Motion for Entry of Order Authorizing the Debtors to
 18 (I) Reject a Certain Unexpired Lease of Nonresidential Real
 19 Property Nunc Pro Tunc to Petition Date, (II) Reject Certain
 20 Executory Contracts Nunc Pro Tunc to Petition Date and (III)
 21 Abandon Certain Expendable Property
 22
 23 Application of the Debtors for an Order Authorizing the
 24 Retention and Employment of Young Conaway Stargatt & Taylor,
 25 LLP as Attorneys for the Debtors, Nunc Pro Tunc to the Petition

1 Date

2
3 Debtors' Application Pursuant to Sections 327(a) and 328(b) of
4 the Bankruptcy Code for an Order Authorizing the Debtors to
5 Retain and Employ William Blair & Company, LLC as Investment
6 Banker for the Debtors Nunc Pro Tunc to the Petition Date

7
8 Debtors' Application Pursuant to Section 327i of the Bankruptcy
9 Code for an Order Authorizing the Retention and Employment of
10 Fulbright & Jaworski L.L.P. as Special Counsel to the Debtors
11 Nunc Pro Tunc to the Commencement Date

12
13 Motion of Cenveo Corporation for Entry of an Order Under 11
14 U.S.C. Section 105(a) and Federal Rules of Bankruptcy
15 Procedures 2004 (I) Permitting Examination of the Debtors and
16 Their Advisors and (II) Directing the Debtors and Their
17 Advisors to Permit Prospective Purchasers to Participate in the
18 Sale Process

19
20 Notice of Deposition Under Federal Rules of Civil Procedure
21 30(b)(6) and Request for Documents Under Federal Rules of Civil
22 Procedure 30(b)(2)

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25 Transcribed by: Dena Page

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12 ALSO PRESENT:

13 CHRISTOPHER P. CURTI, Loughlin Meghji & Company

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P R O C E E D I N G S

THE CLERK: Please rise.

THE COURT: Please be seated. Yes.

MR. ATHANAS: Good morning, Your Honor. Joe Athanas
on behalf of the debtors, National Envelope.

Your Honor, we're pleased to announce that we've
signed up an asset purchase agreement with the stalking horse
bidder, Gores, the worst-kept secret in the world, and they're
going to purchase substantially all the debtors assets for
total consideration of about 154.5 million dollars including
assumed liabilities. A motion to approve the bid procedures in
that sale, subject to higher and better bids, was filed on July
9th, Your Honor. Both the asset purchase agreement and the
proposed DIP financing amendment that will be heard this
afternoon require that there be a bid procedures hearing by the
22nd of July. I think that's going to require us to short
notice on that hearing by a day or two, and we filed a motion
to shorten. At the end of the hearing day today, Your Honor,
we'd like to discuss if there's a date available.

THE COURT: Okay.

MR. ATHANAS: Turning to the agenda, Your Honor, the
first agenda item is the Loughlin Meghji retention. We're
still working through the issues on that one, and we ask that
that be continued, also, until the next available date, and

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

13 THE COURT: Well, and I --

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

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

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

18 THE COURT: And you're --

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

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

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

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

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

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

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 11-13122 (BLS)

- - - - -x

In the Matter of:

REAL MEX RESTAURANTS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

February 10, 2012
10:40 AM

B E F O R E:

HON. BRENDAN L. SHANNON
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: MICHAEL MILLER

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MOTION for Order Authorizing Rejection of Unexpired Lease of
Non-Residential Real Property Located in Pasadena, California
Effective as of January 19, 2012

APPLICATION of the Debtors for Entry of an Order Pursuant to 11
U.S.C. § 327(a) and Fed. R. Bankr. P. 2014(a), 2016 and 5002
Authorizing the Employment and Retention of Johnson Associates,
Inc. as Compensation Advisor to the Debtors Nunc Pro Tunc to
November 28, 2011

NOTICE of Proposed Cure Amounts to Counterparties to Executory
Contracts and Unexpired Leases That May Be Assumed and Assigned

DEBTOR'S MOTION for Order: (I) Approving Asset Purchase
Agreement and Authorizing Sale of Debtors' Assets Outside
Ordinary Course of Business; (II) Authorizing Sale of Assets
Free and Clear of Liens, Claims, Encumbrances and Interests;
(III) Authorizing Assumption and Assignment of Certain
Executory Contracts and Unexpired Leases; and (IV) Granting
Related Relief

1
2 MOTION of the Official Committee of Unsecured Creditors for
3 Authority to File Under Seal the Unredacted Declaration of
4 Brent C. Williams in Support of Its Objection to the Debtors'
5 Motion for Order (I) Approving Asset Purchase Agreement and
6 Authorizing Sale of Debtors' Assets Outside Ordinary Course of
7 Business, (II) Authorizing Sale of Assets Free and Clear of
8 Liens, Claims, Encumbrances and Interests, (III) Authorizing
9 Assumption and Assignment of Certain Executory Contracts and
10 Unexpired Leases and (IV) Granting Related Relief
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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good morning. Mr.
4 Shinderman.

5 MR. SHINDERMAN: Good morning, Your Honor. Do you
6 want appearances or -- okay.

7 THE COURT: No.

8 MR. SHINDERMAN: Okay. On the calendar today is
9 essentially sale of assets and related motions and objections.
10 In what order would you like to proceed, Your Honor?

11 THE COURT: Why don't you tell me?

12 MR. SHINDERMAN: Why don't we proceed with the sale
13 motion and that'll put in context the assumption and assignment
14 issues?

15 THE COURT: Okay. Well, it's the current -- why don't
16 we start with some context?

17 MR. SHINDERMAN: Okay. That's fine, Your Honor.

18 THE COURT: 'Cause I was ready to start a half an hour
19 ago and then you got my hopes up.

20 MR. SHINDERMAN: I think I got everyone's hopes up,
21 Your Honor. We do not have a deal yet.

22 THE COURT: Okay.

23 MR. SHINDERMAN: Okay. I know the over/under on this
24 for people who are still living the super bowl is five minutes
25 for my opening. And then we can get into testimony. We're

1 alternative.

2 Third, I believe the testimony of each witness
3 reflects that the RM Opco bid is, in fact, the highest and best
4 bid achieved through an auction and solicitation process that
5 the Court has determined was fair and proper.

6 Fourth, I believe that there is no realistic
7 alternative path for this debtor. There is no funding, at
8 least committed or promised, that would allow the debtor to
9 continue to operate in the absence of moving forward with this
10 transaction, and so that brings us, then, to where we are
11 today.

12 As I said, the debtors have stipulated that they are
13 presently in an administrative insolvency, and there is also no
14 dispute that even with approval of this sale there is still a
15 measure of an administrative insolvency in this Chapter 11
16 proceeding, but, again, I believe the unrebutted record does
17 reflect that denial of the proceeding, denial of the sale,
18 would yield only a more substantial administrative insolvency.
19 It is an understatement to say that this is a less than ideal
20 situation, but this Court cannot create or deliver value, and I
21 must take the facts as I find them, and I note that the facts,
22 as I said here, are largely undisputed.

23 The second lien noteholders hold liens on some, but
24 not all, assets. The record reflects that the most significant
25 assets outside that collateral package are leases, some owned

1 would like a different deal, and I'm not willing to call the
2 buyer's bluffs at this stage to try to achieve a different
3 deal.

4 My approach to this issue is informed, in part, by the
5 testimony of Mr. Bilbao and the decision of the board and the
6 debtors' professionals to move forward with this deal, warts
7 and all. I've said before that one of the luxuries that I have
8 is experienced professionals that appear before me that have
9 been through this exercise before. I'm under no illusions that
10 this was the debtors' first choice or that this is an approach
11 that either the committee or the debtor easily embraced or
12 thought would be easy today. But the deal is the deal. And
13 maybe I'm wrong, but I'm guessing that the buyer had numerous
14 opportunities to change or otherwise improve its bid, at a
15 minimum, to avoid the cost and risk of this hearing. And they
16 didn't. So in this case I'm not going to roll those dice,
17 although I am tempted.

18 Finally, while I recognize that there is an
19 administrative insolvency at present in this case, and I have
20 noted my hope and expectation with respect to the, frankly,
21 improvement via a sale in the prospects for all creditors in
22 this case, I believe that it would be much worse, and the
23 administrative insolvency and the circumstances for all
24 creditors would be much worse without this sale. This case
25 will presumably, though, remain open for a substantial, some

1 extended period of time to implement the transaction and the
2 sale, and I will expect that the parties will turn promptly in
3 this court for relief or proper authorization to provide and
4 inform the Court how the case will be funded through this
5 period. While I appreciate Mr. Harris's comments that he
6 understands and your clients understand that they have to pay
7 the freight on a going-forward basis I'm not likely to view
8 with favor a situation where those obligations are being
9 incurred from today going forward and RM Opco has the right,
10 and I don't mean this disparagingly, but, frankly, the right to
11 pick and choose those administrative obligations going forward
12 from today that they would choose to pay or not pay. I don't
13 know if we're talking about a bridge DIP facility, something
14 else along those lines. I don't know. I leave that to you to
15 work out. But I think that it would be a lot to expect of this
16 Court to think that I would permit a debtor to operate under
17 this Court's supervision and authority without --and incurring
18 obligations on a go-forward basis in this situation, post sale
19 hearing, without some demonstration of an appropriate regime
20 for funding these obligations.

21 That much having been said, I am satisfied that the
22 debtors carried their burden, and I will approve the sale as
23 requested. Are there any questions?

24 MR. SHINDERMAN: Your Honor, first of all, thank you.
25 We have one clarification for the LA County tax collector which

EXHIBIT C

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3 IN RE:) Case No. 11-11764 (KJC)
4) Chapter 11
5 ALLEN FAMILY FOODS, INC., et al.,)
6) Courtroom No. 5
7 Debtors.) 824 Market Street
8) Wilmington, DE 19801
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TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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INDEX

	<u>Page</u>
<u>NOTICE OF AGENDA MATTERS:</u>	
For the Debtors, by Mr. Greecher	4
For the Committee, by Mr. Prol	5
For Harim USA, by Mr. Robinson	8
For the Committee, by Mr. Prol	22
For Mid Atlantic Farm Credit, Mr. Mendoza	23
For the Committee, by Mr. Prol	22
For Mid Atlantic Farm Credit, Mr. Mendoza	32
For Harim USA, by Mr. Robinson	35
For DL Peterson Trust and PHH Vehicle Mgmt., by Mr. Demmy	36
For Mountaire, by Mr. Samis	37
For the Committee, by Mr. Prol	39
For Harim USA, by Mr. Robinson	43

1 THE COURT: Good morning everyone.

2 MR. GREECHER: Good morning, Your Honor. For the
3 record, Sean Greecher, Young Conaway on behalf of the
4 Debtors, Allen Family Foods Incorporated. Your Honor, we're
5 here today on a sale hearing. And we're pleased to report
6 that we did have a successful auction on Monday, and we're
7 happy to move forward with our presentation of the results of
8 the auction and request that we move forward with the sale.

9 THE COURT: Well I'd like to hear a brief summary of
10 what happened and then I'd like to know which of the shot gun
11 blasts of the Committee's objection is still applicable, so I
12 can focus myself as I hear the testimony.

13 MR. GREECHER: Yes. Your Honor, I'll give you the
14 brief background. We had the auction on Monday. We had one
15 additional bidder that appeared at the auction which is Harim
16 USA. Harim USA provided a bid that in the Debtors' business
17 judgment and view is the highest and best bid for the assets.
18 It is a bid of \$48 million for what we're defining as the
19 target assets in the Mountaire bid plus a number of
20 additional assets including the company farms and certain
21 unamortized loan amounts. The bid also includes the same
22 provision that Mountaire's bid had for repayment of the
23 inventory values at the closing.

24 THE COURT: You're talking about the grow out farms.

25 MR. GREECHER: The grow out farms that are owned by

1 the company, yeah, those are now included in the Harim bid.

2 THE COURT: Okay.

3 MR. GREECHER: As for the Committee, I believe there
4 are really two issues that are still being dealt with. One
5 is the Committee's view that there are certain 503(b)(9)
6 administrative claims that are not provided for in the DIP
7 budget, that will not be available to the Debtors to
8 distribute to 503(b)(9) creditors. We have calculated that
9 that's roughly \$2.5 million, and I believe there is a
10 secondary issue with respect to certain avoidance actions
11 that have been acquired under the Mountaire bid and then were
12 acquired similarly under the Harim bid that the Committee had
13 some view on. Those are I believe the issues that are
14 remaining.

15 MR. PROL: If I may, Your Honor.

16 THE COURT: You may.

17 MR. PROL: Jeff Prol from Lowenstein Sandler on
18 behalf of the Committee. We did file a rather lengthy
19 objection, the majority of which was either resolved or made
20 moot by the auction or otherwise resolved through discussion
21 with the parties. There are those two issues that Mr.
22 Greecher just identified, but the first issue with regard to
23 administrative expenses is, may be slightly broader. We
24 received in Court this morning for the first time a schedule
25 from the lenders indicating what administrative expenses and

1 resolution, but it seems to be contingent upon resolving the
2 503(b)(9) issue.

3 THE COURT: Well let me ask this, and maybe it's a
4 better question for the Debtor, but what's the post-sale plan
5 here? Wind down and then conversion, wind down then
6 dismissal? I don't smell a plan in the offing here.

7 MR. PROL: I don't think that we smell one that's in
8 the offing either. We believe that consistent with the
9 budget that has been provided, there are sufficient funds
10 being left in the estate to complete all of the tasks that
11 the Debtors would need to complete which would include
12 satisfying the administrative expenses of vendors for ongoing
13 obligations to collect the remaining accounts receivable
14 which are not be required by the Debtor to complete payroll
15 obligations, to complete the 1099 W-2 reporting and to
16 complete the tax, the final tax filings. As to where
17 ultimately that is done and in what vehicle that arrives in
18 Your Honor's hands, we're not sure yet and obviously that
19 would be something we would be discussing with the Committee
20 and with others.

21 THE COURT: What are the buyer's intentions with
22 respect to continued employment of present employees and
23 continued operation of present locations?

24 MR. PROL: Well, not to speak too much for the
25 buyer, but we anticipate that the purchase is a purchase that

1 permit a case to sit in administrative insolvency. We could
2 cut down our filings if that were really the rule here; so
3 many come in in that way. My greatest concern was that you
4 know the cost of conducting at least this phase of the 11 be
5 covered by those who benefit from it. You know, and the
6 503(b)(9) you know fits into this category as a practical
7 matter, forget the statutory location, in a place in which at
8 the time of filing none of the creditors are being asked or
9 do or asked to do anything more than that which they've
10 already done. So unlike other types of administrative
11 expenses, there's no ongoing contribution to the 11. Now you
12 could argue that well look they've delivered their goods
13 within a certain time period and really contributed that way,
14 involuntarily. I understand that argument.

15 MR. PROL: Um-hum. And I think that was Congress'
16 rationale in putting this where they put it, Your Honor. And
17 having put it in that category, these claims are entitled to
18 equal protection and equal rights with other claims that are
19 set forth in that section. And again, Your Honor, what we
20 seek here is not, you know, a contribution and say lenders
21 you know this is something that's on your ticket, rather we
22 seek a reserve to ensure that the case is not
23 administratively insolvent and to the extent that as the
24 claims are liquidated and it there are other assets, and
25 there may well be here, there were some deficiencies, we

1 discussion.

2 MR. PROL: Yes.

3 THE COURT: Sound advice of counsel.

4 MR. PROL: I'm not sure we have the ability to
5 conduct in a very short recess.

6 THE COURT: All right. Then I won't ask that you do
7 it. All right. I am prepared to make my ruling. As I look
8 at the record it demonstrates that while the post-petition
9 marketing activity was arguably brief, it was, seems to me as
10 extensive as it could have been under the circumstances.
11 There were of course prepetition efforts to try to fix
12 things, but they didn't work out, hence the bankruptcy.
13 There was an auction, there were two active bidders. Notice
14 was adequate. Under the circumstances, I determined the
15 price was adequate. The auction was conducted in good faith.
16 The pause that I have relates to the subjects we've been
17 discussing. I think I may have mentioned at the last hearing
18 that I don't think Congress ever really contemplated that
19 section 363 sales would develop in quite the way they have.
20 But they have, and courts have endorsed them, including this
21 one. And under the circumstances, it seems there is no other
22 better course that's available to the Debtor and to other
23 constituents. I am troubled, I am troubled by the fact that
24 all 503(b)(9) expenses are not covered. I also think the
25 record does support the view that to put it plainly, you

1 know, enough pain has been allocated among the various
2 constituents that I'm not compelled to require that as a
3 condition of approval of the APA that they be reserved for.
4 I will say this though. I am unwilling to approve the sale
5 unless the buyer is willing to make the accommodation on the
6 avoidance actions that the Committee has requested. And I'll
7 take a brief moment now to permit the Committee and the buyer
8 and the buyer's counsel to consult his client to see whether
9 he would be willing to press on under those circumstances.
10 Are there any questions? All right. I'll take a brief
11 recess.

12 (recess 12:39 - 12:51)

13 THE CLERK: All rise.

14 MR. ROBINSON: Thank you, Your Honor, for a couple
15 of minutes just to make 100 percent sure that we're all on
16 board. My client is willing to have language in the order
17 that indicates that we will not, even though we're purchasing
18 the claims against non-insiders that we will not commence any
19 actions or whatever the appropriate language is, in that
20 regard, a covenant not to sue, I'm not certain, but certainly
21 language that makes it clear that those claims will not be
22 brought. With regard to the insiders, if we enter into a
23 services agreement with an insider, we also think it's
24 important that there similarly be a covenant not to sue or
25 language to that effect. With regard to anybody we don't

EXHIBIT D

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

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In the Matter of:

TOWNSENDS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

January 21, 2011

1:09 PM

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

ECR OPERATOR: DANA MOORE

HEARING re Motion of Debtors for Orders (A) Authorizing Debtors
(i) to Obtain Post-Petition Financing and Granting Security
Interests and Superpriority Administrative Expense Status
Pursuant to 11 U.S.C. § 364; (ii) to Use Cash Collateral
Pursuant to 11 U.S.C. § 363; (iii) to Provide Adequate
Protection Pursuant to 11 U.S.C. § 361; and (B) Scheduling a
Final Hearing and Establishing Related Notice Requirements

HEARING re Debtors' Motion for Entry of an Order Pursuant to 11
U.S.C. § 521, Fed. R. Bankr. P. 1007(c) and 9006(b) and Del.
Bankr. L.R. 1007-1 For Entry of an Order Granting the Debtors
an Extension of Time to File Schedules of Assets and
Liabilities and Statements of Financial Affairs

HEARING re Debtors' Motion For Entry Of An Order Pursuant To 11
U.S.C. §§ 105(a) And 363(b) Authorizing And Approving
(i) Retention And Employment Of Huron Consulting Group Nunc Pro
Tunc To The Petition Date; and (ii) Debtors Employment Of Dalton
T. Edgecomb As Chief Restructuring Officer

Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Mr. Abbott?

4 MR. ABBOTT: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. ABBOTT: Your Honor, thank you very much for
7 giving us the additional time. I think we put it to good use.
8 The headline is peace has broken out at least among the
9 parties.

10 THE COURT: Okay.

11 MR. ABBOTT: We have three items on the agenda, Your
12 Honor. But there's one off-agenda item that I'd like to
13 address with the Court quickly if I may. Your Honor may recall
14 at the second day hearing, the Court entered a final order
15 regarding utilities. And at the first day hearing, Your Honor
16 had made a comment about a particular aspect of that order
17 setting a deadline by which the respective utilities may need
18 to make noise or forever be barred. You didn't like the
19 barring nature of the initially proposed order.

20 Apparently, we handed up an order that had not been
21 completely struck. And so, your comment hadn't been baked in
22 like we thought we had. So, if I could, Your Honor, I'd like
23 to approach with an amended order and a blackline that shows
24 that fix.

25 THE COURT: All right. Thank you.

1 that at length over the last days and weeks with the lenders,
2 the committee professionals, et cetera.

3 The committee has done -- started some investigation,
4 has spent a lot of time getting familiar with the company.
5 They raised a number of concerns about the financing as you
6 perhaps saw in their objection. At the end of the day, we've
7 agreed on a number of changes that have gotten the committee
8 comfortable with us going forward. It's all predicated, Your
9 Honor, on a DIP budget and, essentially, a sale track that ends
10 basically on February 18th which is soon and sooner than we
11 wanted.

12 There have been a number of concessions by the lenders
13 and changes to the structure. And we're going to have to also,
14 Your Honor, provide you an updated budget, obviously, that
15 shortens that time period up. Critical among the changes, and
16 to address the committee's concern that there was inadequate
17 funding for the payment of potential 503(b)(9) claims, Your
18 Honor -- and we've gone as far as we can to address that issue.
19 And notwithstanding that, there still remains some chance that
20 503(b)(9)s will not be paid in full. But all the adequate
21 protection payments and interest payments that had previously
22 been discussed and were built into the interim order which
23 aggregate in round numbers a million three have now been
24 revised. And the budget's going to be changed. And that
25 amount of money is going to be called the working capital

1 contingency. It's not going to be paid to the banks until the
2 end of the case. It is going to be available in a handful of
3 circumstances to cover either working capital shortfalls or
4 unanticipated unpaid post-petition trade payables. And the
5 lenders have further agreed to either carve out or fund
6 depending on the nature of a sale transaction certain proceeds
7 in the event of a disposition, Your Honor. And there's a
8 sliding scale there. But essentially -- there really are two
9 scenarios. Somebody pays us for assets or the lenders credit
10 bid for assets. We've tried to account for both those
11 scenarios to the committee's satisfaction. And in the context
12 of a third party transaction, which would either be a sale
13 under 363 or -- essentially, only a sale under 363 or
14 potentially a liquidation that could include a sale. But
15 there's more to liquidation than just a 363 sale.

16 But in any event, Your Honor, proceeds derived from
17 either a sale or liquidation in Chapter 11 or Chapter 7, as the
18 case may be, of all or part of the lenders' collateral from the
19 proceeds from zero to fifteen million dollars, the lenders will
20 either carve out or pay if they credit bid -- let me strike
21 that. I'm going to talk about credit bid later. They will pay
22 from those proceeds of cash received between zero and fifteen
23 million dollars 500,000 dollars for the benefit of holders of
24 any unpaid 503(b)(9) claims.

25 The next increment, Your Honor, is between fifteen

1 million and thirty million. And if there are proceeds in that
2 range, there's another 250,000 dollars that goes for that same
3 benefit.

4 Between thirty million and thirty-two million, there's
5 another 250,000 dollars for the benefit of the same group. And
6 then to the extent that there's a sale or the receipt of cash
7 proceeds in excess of thirty-two million, that -- those
8 claimants would receive the first 800,000 dollars.

9 So --

10 THE COURT: What's your --

11 MR. ABBOTT: -- the total is a million eight, Your
12 Honor.

13 THE COURT: What's your estimate of 503(b)(9) claims?

14 MR. ABBOTT: The best estimate we have today is
15 somewhere in the sixteen million dollar range, Your Honor.
16 Some of those --

17 THE COURT: And how high do we get? 1.8 million?

18 MR. ABBOTT: Yes, Your Honor.

19 THE COURT: All right.

20 MR. ABBOTT: Some of those 503(b)(9) claims may be the
21 subject of critical vendor payments. The Court may recall that
22 critical vendor payments we authorized had the dollar for
23 dollar reduced in any 503(b)(9) claim to the extent there was
24 one.

25 That's the proceeds from a sale. If there's a credit

1 bid by the lenders for any of these assets, Your Honor, the
2 lenders have simply agreed to pay that 1.8 million provided
3 that if there's a scenario where there's a sale of part and a
4 credit bid for part, they don't double pay. So they would pay
5 the 1.8 but they would get a credit for any payments under the
6 disposition that I've just discussed. So if there's a sale of
7 ten million, that creates a 500,000 dollar payment obligation.
8 If there's a credit bid for the rest, they'll pay the 1.8 less
9 the five for a total of 1.8. So in no circumstance does the
10 number go beyond that 1.8, Your Honor.

11 The working capital contingency item that had
12 previously been the adequate protection payments -- we're going
13 to add some language to the order that essentially says that is
14 reserved and isn't disbursed except for necessary operational
15 expenditures approved by the lenders in advance. Accrued
16 unpaid post-petition trade payables unpaid as of February 18th
17 as provided in the budget or necessary operational expenditures
18 approved by the lenders to facilitate some later closing beyond
19 February 18th but no later than February 25th as long as the
20 delay is not the fault of a proposed transferee. Meaning, if a
21 buyer delays, the banks aren't obligated to pay that because
22 the buyer should.

23 In addition, Your Honor, because of the concern -- and
24 a legitimate concern, Your Honor, about the administrative
25 solvency of this case and the concern that post-petition

1 payables be satisfied, the debtors have agreed that if there is
2 no closing on or before February 25th, which is the extended
3 date, that the debtors would act to convert the case through a
4 case under Chapter 7 under the Bankruptcy Code as soon as
5 practicable. We are dealing with --

6 THE COURT: Say that part again, please.

7 (Pause)

8 MR. ABBOTT: If there's not a closing of the
9 disposition, by February 18th or the extended date of February
10 25th and we're out of money, which is what our budget shows,
11 the debtors don't intend to continue to run the case beyond
12 where they can pay their post-petition payables. And so
13 they've agreed that if they get to those dates and there's not
14 a closing, they would act to convert the case to Chapter 7 to
15 protect against the accrual of post-petition administrative
16 payables that were not funded.

17 (Pause)

18 MR. ABBOTT: I'm not sure I rephrased that --

19 THE COURT: No. I got it.

20 MR. ABBOTT: -- adequately. Okay.

21 The other important aspect of this deal, Your Honor,
22 because this case is, in fact, so thin, obviously, for trade
23 creditors, is that the committee has agreed to allow the bank
24 to take liens on avoidance actions not for the purpose of
25 collecting them or pursuing them, but that the bank would take

1 those liens and would covenant not to bring those actions
2 against trade payables. Carved out of that, Your Honor, are
3 any avoidance actions against the banks themselves that are
4 preserved under paragraph 29 and part of the committee clawback
5 period and any avoidance actions as to insiders. Those liens
6 would attach only to avoidance actions against trade creditors.

7 That, in broad strokes, Your Honor, is the global
8 resolution of the committee's concerns with the funding and the
9 sale process. Now, as I said, it presupposes a dramatic
10 shortening of the budget and the life of this case, frankly.
11 It also contemplates a sale process that's more accelerated
12 than we had initially anticipated. And I'm not asking the
13 Court to approve anything now, but we will file, tonight over
14 the weekend, or at the latest, Monday, a motion seeking bid
15 procedures. It will likely not include a stalking horse, but
16 we'll reserve or ask the Court to allow us to reserve the right
17 to anoint a stalking horse during the process if one should be
18 appropriate, and it contemplates a closing of that sale by
19 February 18th. And the dates that we will be asking for, Your
20 Honor, just so it's clear and you understand the big picture in
21 the context of this DIP, we would ask to have any bids
22 submitted with all the appropriate financial wherewithal, all
23 the sort of normal materials, by February 11th. We would
24 propose to have an auction on February 15th. Your Honor has
25 already scheduled an omnibus hearing on February 18th, and that

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

10 THE COURT: All right. Anyone else?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Okay.

11 MR. BUECHLER: Thank you.

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

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

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

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

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

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

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

10 MR. ABBOTT: To clarify --

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

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

25 THE COURT: Need help? Go ahead.

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

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

7 MR. ABBOTT: Understand, Your Honor.

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

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

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

7 THE COURT: Yeah, I --

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

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

12 MR. ABBOTT: Understood, Your Honor.

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

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

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

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

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

EXHIBIT E

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
10-11890-PJW

- - - - -x

In the Matter of:

NEC HOLDINGS CORP., et al.,

Debtor.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

July 16, 2010
9:48 AM

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

ECR OPERATOR: LESLIE MURIN

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21 Office of the Unites States Trustee
22

23 BY: DAVID KLAUDER, ESQ.
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25

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good morning.

4 MR. ATHANAS: Good morning, Your Honor. Joe Athanas
5 on behalf of the debtors, Your Honor. We heard what you Your
6 Honor had to say at the last hearing. Your Honor told us that
7 we needed to find a path of satisfaction for 503(b)(9) claims.
8 All the parties -- and I mean all of the parties in this
9 case -- spent the last two days working together to develop
10 that path and we think we have a path that gets us there.

11 The path involves agreements by virtually every major
12 constituent in these cases, the DIP lenders, the Term A
13 lenders, maybe the Term B lenders -- and I'll get to that in a
14 minute -- the creditors committee, our largest unsecured
15 creditor, International Paper and even Gores, the proposed
16 purchaser of the debtors' assets. I'm going to very generally
17 describe the settlement and then Your Honor, I'll describe how
18 it satisfies 503(b)(9) claims. And then if it meets with Your
19 Honor's approval, we'd like to go back, make sure this is all
20 worked into the DIP financing order and then come back in maybe
21 an hour and a half and present that to Your Honor, if Your
22 Honor finds it acceptable.

23 THE COURT: Okay.

24 MR. ATHANAS: First, the creditors committee will,
25 first, withdraw its objections to the DIP financing remaining,

EXHIBIT F

IN RE:) Chapter 11
TOWNSENDS, INC., et al.,) Case No. 10-14092 (CSS)
) Courtroom 6
) 824 Market Street
) Wilmington, Delaware

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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1 WILMINGTON, DELAWARE, TUESDAY, JANUARY 25, 2011, 4:22 P.M.

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good afternoon.

4 MR. ABBOTT: Good afternoon, Your Honor. So, for
5 the second time in this case, I'm feeling a little bit like
6 Groundhog Day, Your Honor.

7 THE COURT: Well, that's the whole point, right, of
8 the movie?

9 MR. ABBOTT: It is. It just keeps going.

10 Your Honor, I believe peace has broken out. There
11 was no deposition taken today or last night. There's been a
12 healthy exchange of views and ideas and discussions, and I
13 think Mr. Prol is going to get up and announce a deal that,
14 again, the parties have all agreed to. I don't think it will
15 end with Your Honor saying there's a problem; at least we hope
16 it won't.

17 And there's one piece of that deal that we need to
18 describe to the Court, Your Honor, that we would ask to have
19 the transcript sealed and the courtroom cleared again. It's
20 just one little piece that'll take about 30 seconds to say, so
21 we're happy to do it before, after, as you wish. I know
22 there's some parties on the phone that wouldn't be in the -- at
23 least Ms. Ehrlich, I thought, was on the phone, and there's
24 some folks in the courtroom, including press. Just one piece
25 of that, Your Honor, and I -- and we're happy to --

1 THE COURT: Well, let's wait and do that when we
2 have to do it. I don't want to do it now, clear the courtroom,
3 I mean.

4 MR. ABBOTT: That's fine, Your Honor. That's why I
5 wanted to bring it up at the front end. So I'll let Mr. Prol
6 describe the deal.

7 THE COURT: All right.

8 MR. PROL: Good afternoon, Your Honor. After having
9 the opportunity to spend the evening in Delaware and most of
10 the day working on a deal, I'm happy to advise the Court that
11 we have reached agreement with the debtors and the lenders that
12 will, we believe, adequately addresses the potential 503(b)(9)
13 claims and could possibly also, depending on where those claims
14 come in, provide for a small dividend to other creditors in the
15 case as well.

16 I believe that the testimony yesterday was that the
17 503(b)(9) claims in the approximate amount of \$15.5 million and
18 the settlement provides value of at least \$15.6 million to
19 cover those claims, and let me just describe the various
20 buckets of value that are being left on the table by the
21 lenders for those claims.

22 First, it was described in testimony yesterday
23 there's a working-capital contribution piece that's built into
24 the budget, which is the interest due on the pre-petition loan.

25 THE COURT: Um-hum.

EXHIBIT G

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3 IN RE:) Case No. 11-11764 (KJC)
4) Chapter 11
5 ALLEN FAMILY FOODS, INC., et al.,)
6) Courtroom No. 5
7 Debtors.) 824 Market Street
8) Wilmington, DE 19801
9)
10)
11) June 30, 2011
12) 1:30 P.M.

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

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INDEXPageNOTICE OF AGENDA MATTERS:

For the Debtors, by Mr. Greecher	4
For the Debtors, by Mr. Brady	9
For Mid Atlantic Farm Credit, Mr. Mendoza	10
For the Committee, Mr. Sherwood	18
For the United States Trustee, by Mr. Klauder	28

1 THE COURT: Good afternoon.

2 MR. GREECHER: Good afternoon Your Honor; for the
3 record, Sean Greecher of Young Conaway on behalf of the
4 debtors. Your Honor, this is the hearing that was set with
5 the, thanks to, the Clerk's office and to the Court for an
6 extended final hearing on the Debtors' final DIP approval.
7 Your Honor, there's one objection. It is an objection of the
8 Creditors' Committee. There have been a number of
9 discussions, telephone calls, emails that have gone back and
10 forth, and a face to face meeting this morning. And
11 thankfully we have resolved a number of the issues and we
12 have, you know, narrowed the matters down somewhat. There
13 are four issues, you know, as I see it that the Committee is
14 still raising in connection with the final DIP approval. The
15 first is that the Committee has requested that there be a
16 carve-out made available for all administrative claims which
17 would include 503(b)(9) claims and potentially WARN claims to
18 the extent that those arise. We have gotten the concession
19 from the lenders that the lenders have committed to lend all
20 amounts for actual administrative expenses that will accrue
21 through the closing of the sale, and those funds will be
22 available. So really the administrative carve-out issue
23 would really center around potential liabilities on 503(b)(9)
24 claims and if they arise, the WARN claims. The second issue
25 is the size of the carve-out for the Committee's professional

1 prejudice that issue now. We - -

2 THE COURT: Well let me, let me just ask you to
3 pause for a moment and - -

4 MR. GREECHER: Sure.

5 THE COURT: - - I guess maybe state the obvious. I
6 know that one or more of my colleagues, Judge Sontchi is
7 quoted liberally in the Committee's objection, and I think as
8 a concept and I've said this many times myself, we agree that
9 he who benefits has to pay the freight for that. The
10 question is is 503(b)(9) part of that. You know I've called
11 503(b)(9) you know in essence a statutory critical vendor.
12 But you know it's not something that parties typically
13 automatically run to pay. But as you point out it can
14 sometimes be resolved as a result of subsequent events in the
15 case. I understand and the Committee doesn't have to tell me
16 this that their concern that if they pass on this now the
17 freight train will be moving just too quickly for the Court
18 to stop it once you come in dancing happily with a successful
19 auction under your belt, hopefully. So I'll hear from the
20 Committee, but just as a general proposition, I understand
21 that that's a concern. I am of the view the freight's got to
22 be paid, and I have no problem standing in front of the
23 train. And the Committee should know that.

24 MR. GREECHER: And we're well aware of that as well
25 Your Honor.