UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
CHI-CHI'S, INC., et al.,	.	Case No. 03-13063(CGC)
	.	Jointly Administered
Debtors.	.	Feb. 17, 2004 (11 a.m.)
	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHARLES G. CASE, II
UNITED STATES BANKRUPTCY COURT JUDGE

2004 FEB 23 AM 10:11
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

Proceedings recorded by electronic sound recording;
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THE CLERK: All rise . . . (microphone not recording).

THE COURT: Good morning, please be seated.

MS. WERKHEISER: Good morning, Your Honor. Rachel Werkheiser from Pachulski, Stang, Ziehl, Young, Jones & Weintraub on behalf of the debtors. With me today, Your Honor, is William Lobel from my co-counsel, Irell & Manella. Your Honor, if we can go through the agenda this morning, and what I propose to do, Your Honor, is hand up proposed forms of order at the end of the hearing, a whole stack of them.

THE COURT: All right, that sounds fine.

MS. WERKHEISER: Thank you, Your Honor. The first item on the agenda is the debtors' emergency motion to settle and pay medical and related expenses dealing with the hepatitis A claims. Your Honor signed an interim order providing that the debtors can pay up to $500,000 to the hepatitis A claimants, and, Your Honor, we did set a final hearing for today's hearing and throughout with the permission in the interim order we've been paying some of those claims. I do have a final order to present to Your Honor which is basically identical to the interim order that Your Honor signed, and I believe that no one has an opposition to that entry.

THE COURT: Anyone wish to be heard in connection with the proposed final order on the hepatitis A claims?

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MR. SPENCE: Your Honor, this is Steve Spence. I represent a number of claimants,and we support the entry of this order.

THE COURT: All right, thank you. Counsel, you can submit it in bulk when you're ready.

MS. WERKHEISER: Thank you, Your Honor. The next item on the agenda is the motion of the debtors for order authorizing the debtors to compensate certain professionals utilizing the ordinary course of the debtors' business. Your Honor, this is for ordinary course professionals that are technically retained by the debtors' parent company per annum but compensated with debtor funds. No objections have been filed to that motion, Your Honor. If, with Your Honor's permission, we'll present an order?

THE COURT: Anybody wish to be heard in connection with this matter? Apparently not.

MS. WERKHEISER: Thank you, Your Honor. And for item number 3, which is the motion of Georgiann Ammon for relief from the stay, I will turn the podium over to Mr. Spence.

MR. SPENCE: Good morning, Your Honor. Again, Stephen Spence on behalf of Georgiann Ammon and a number of other parties who are all scheduled as movants. Your Honor, you know the history. The same time we filed the Ammon motion we had filed a motion for a couple named Miller. Mr.

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Miller had had to have a liver replacement. Your Honor granted an order -- or entered an order, excuse me, granting relief from the automatic stay at the last hearing. It was a telephonic hearing we had, and we continued this matter till today. Since that time, we've worked to try to create a mechanism for an early stage mediation and filing of a bar date motion that would deal with how to get this process moving in some fashion, and I think, and I'll let other people be heard, that we have reached general terms of understanding with regard to a stipulation that included us as well as Mr. Hurford's clients who are a group that have filed another motion for relief from stay that represents over a hundred, hundred thirty-some. But I think the parties reached general agreement last Friday afternoon. I was actually in depositions in another matter and wasn't involved in those conference calls. I was given a final version of the stipulation. One of the signatories to that stipulation is supposed to Arch Specialty Insurance Company who is the carrier who would be involved after the SIR is used up at $4 million, that's the first layer of coverage. And I don't have all the details except that as of sometime five or six o'clock yesterday Eastern time we learned that Arch had not yet agreed to sign the stipulation we had prepared. While I think we have Committee counsel's agreement, debtors' agreement, our agreement, Mr. Hurford's client's agreement to

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this format and this concept, I think we're still waiting for Arch to make its mind up as to whether it's going to sign onto this particular procedure. I can go through the details but I'm not sure that -- I mean if Arch would refuse to sign it, I'm not sure we have an agreement. So I hesitate to do that. There has been some talk about asking whether Your Honor would have any time on your calendar on Thursday, that if we can get Arch's signature, that we would actually present the stipulation, because I think everybody would be in support of it. But that's about as far as I can take it at the moment, because I, again, I wasn't involved in the last set of conference calls on Friday, but -- And I think that Arch, as far as I can tell you, I think Arch will sign it but I don't know that for a fact, and I don't want to represent that's the case. So, again, I could spend some more time giving you a description of what we're planning to do, and it's an interesting procedure we're planning to follow, but I don't know whether I should yet, and I guess I'll turn it over to Mr. Lobel briefly and others. Thank you.

THE COURT: Thank you. Mr. Lobel?

MR. LOBEL: Your Honor, Arch's comments are really non-substantive, so we expect by today or tomorrow to have it done. In an abundance of caution, what we wanted is a trailing date that wouldn't be too far out. We would

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probably just submit it with certification of counsel if Arch signs so we wouldn't have a hearing at all. If we had to have a hearing, it would be a real hearing on the motion for relief.

THE COURT: All right. Is there anybody here representing Arch? Nobody on the telephone? Okay, counsel?

MR. RICE: Good morning, Your Honor, Kevin Rice on behalf of the Committee. The Committee supports the stipulation as drafted in fact we signed off on it last week. And we think that once Arch signs on that we can just submit it by certification of counsel and would be no need for any kind of additional hearing.

THE COURT: Well, let's assume the worst case scenario, which would be that they don't, and we need to have a hearing on the merits of the Ammon motion, I can do that on Thursday if you can do that on Thursday. Oh, we can do it the next time I'm here or we can do it in Arizona sometime. It kind of depends upon you. I think our Thursday is relatively free, so we could schedule something this week to try to get the matter brought to a head.

MR. HURFORD: Your Honor, Mark Hurford of Campbell & Levine on behalf of three law firms. On the phone, just so I can introduce them is James Ross of the firm of Bowers Ross & Fawcett; Scott Melton of the firm of Conti, Melton & Diantonio (phonetical); and Kelly Tocci of the firm of

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McMullen, Urick, Tocci & Faust. Collectively those three firms represent in excess of 135 hepatitis-A claimants for various injuries, some of them more severe including an individual who spent several months in the hospital and two wrongful death claims. We put a lot of work, Your Honor, into the stipulation, and we're prepared to sign on to the stipulation. We're hopeful that Arch will sign on as well in the next day or two. However, if they don't, we would ask that Your Honor set a time on Thursday so that we could proceed with our motion as well. We are listed on the agenda as item number 6 for today. Thank you.

MR. GELLERT: Your Honor, good morning. Ronald Gellert from Hechert Semans (phonetical). We represent a company called Boskovitch (phonetical) Farms which might be one of the defendants in the state court litigation, and I did not intend to rise today except that I'm concerned that the terms of the stipulation may affect people like or companies like mine in some way or another. I just don't know what the terms of the stipulation will be, so I don't know that certification of counsel necessarily gives other parties an opportunity and notice to be heard with respect to the terms that all of these parties will agree upon. So, I don't know that that's the proper procedure for us or anybody who may feel prejudiced by those terms to properly react before this Court.

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THE COURT: Did you sign the appearance sheet, counsel? I don't see your name.

MR. GELLERT: Your Honor, I did not, and as I mentioned I did not expect to speak today except I don't know what the terms of the stipulation is, and that's what caused me to speak. I apologize.

MR. SANDLER: Good morning, Your Honor. Brad Sandler of Adelman, Lavine, Goldman, Levin. Your Honor, this morning I was asked to represent forty-four of the hepatitis-A claimants. I just got a copy of the stipulation this morning, have not had an opportunity to review it in any detail to the extent that my forty-four clients can become a part of the stipulation and to the extent that the stipulation has terms which are acceptable to my forty-four clients, and certainly we would like to go in that direction. To the extent we can't do that, I just want it to be clear that the stipulation will not in any way prejudice the rights of other parties, and we can address that issue on Thursday if necessary.

THE COURT: Well, presumably, since you've just come into the case you haven't filed a motion for relief at this point.

MR. SANDLER: That's correct, Your Honor.

THE COURT: And presumably the stipulation is intended to bind parties who are signatory to the stipulation

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and not other parties; is that correct?

MR. SPENCE: Your Honor, it is -- It has some language in it that says that if other parties consent to the procedure, they can participate in it, but if they don't consent they're free to do whatever they want.

THE COURT: Right, and that makes sense.

MR. SANDLER: Thank you, Your Honor.

THE COURT: Well, why don't we set a time for Thursday which -- where we can have a final hearing on this matter one way or the other, and if the matter is submitted on certification of counsel I want the certification to include the fact that other parties such as represented by counsel have signed off on the procedure. I'm happy to sign it based upon certification of counsel, but I don't want to prejudice the rights of parties who have not actively participated in the process. I take it -- I'm sorry, counsel, tell me your name again.

MR. GELLERT: Ronald Gellert.

THE COURT: Mr. Gellert, I take it you represent a supplier; is that right? One of the potential defendants who may have supplied some of the items that may have lead to the injuries to these claimants.

MR. GELLERT: That is well stated, correct.

THE COURT: All right.

MR. HURFORD: Your Honor, just to make sure I

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understand what you would like in the certification of counsel, assuming Arch does -- again this is Mark Hurford for the record. Assuming Arch does sign off on the stipulation, you said that you would like --

THE COURT: Well, let me ask you this. Does the stipulation, which you haven't disclosed to me which I think is probably a good idea so it wouldn't prejudice anybody if in fact we have to go to the mat on this, affect the rights of people like Mr. Gellert's client, one of the suppliers, or not?

MR. HURFORD: I don't see how it could, Your Honor. I'll give you the real short description of what's to happen. The stipulation provides that a bar date motion will be filed and a bar date will be set. People who have hepatitis claims will file proofs of claim with the required documentation that will be established through the bar date motion. A mediation procedure is required, and there's a -- I think it's a ninety-day time frame for people to go through mediation. If mediation is successful, then -- and the settlement is $35,000 or less, then Arch will complete the settlement, and that case will be resolved. If the mediation is not successful or is not held within the applicable period of time, the stipulation provides for that particular claimant to file a certification and that that particular claimant will have relief from stay to move forward to

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liquidate the claims. So I don't know how a settlement between Chi-Chi's carrier Arch would affect third parties. I just don't see how it could. I guess my concern is --

THE COURT: Is it intended -- I take it if there's a settlement with the Chi-Chi's carrier that is not intended to resolve any claims that may exist against other potential defendants.

MR. HURFORD: That's correct. In fact, I would assume that my clients would want to reserve their right against the other carriers, kind of a joint tort-feasor release if you will. And they're on the phone if they would like to comment, they certainly can.

THE COURT: Well, all I'm really interested in at this point is whether or not there's something here that could conceivably impact upon the rights of these other potential defendants. I mean we have to remember what we have are non-debtor plaintiffs suing non-debtor defendants. So, typically, you know, you're free to sue them, and they're free to defend, and we'll go along whatever the law of the appropriate jurisdiction is with regard to the impact of any settlement from another defendant has upon their rights will be determined in whatever jurisdiction that case if filed in if ever. So, as long as none of those issues are being resolved here, it doesn't seem to me like it affects them, and perhaps under those circumstances we don't need to have

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Mr. Gellert and others sign off on it based upon that representation. Let me put it this way: I mean, once he has a chance to review it and so on, he can request that the Court have a hearing and that way we'll leave it -- kind of put the ball in his court or anybody else who is similarly situated. If they think this does impact upon them somehow and they want to raise that issue, then we'll set a hearing on Thursday. Otherwise, we'll do it on certification of counsel?

MR. HURFORD: Okay, thank you, Your Honor. I just wanted to make sure it was clear assuming we did get Arch's signature that we could move forward.

THE COURT: So we'll just put the burden on them, on the other defendants to ask for a hearing if they think it's necessary once they've reviewed what the deal is. Now, nevertheless, we will set a time for the hearing against the possibility that Arch doesn't sign on and so the movants say there's no deal and we want to get -- you want to ask for direct relief.

MR. HURFORD: Okay. Perhaps if we could maybe set a deadline for these other parties to contact us since they have the stipulation now, if they contact us, for example, by tomorrow at noon, assuming we have Arch's signature we can file the certification of counsel tomorrow afternoon. You'll know ahead of Thursday whether or not we need to have a

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hearing. Everybody will know.

THE COURT: How does that sound, Mr. Gellert?

MR. GELLERT: (Microphone not recording.)

THE COURT: Right.

MR. GELLERT: (Microphone not recording.)

THE COURT: You need to come to the microphone.

MR. GELLERT: I apologize. We're going to try as hard as we can. Like I said, I just received this, so, I guess that's enough time, but I guess what they're angling for is to try and get us to agree to this before they file their certification of counsel.

UNIDENTIFIED SPEAKER: (Microphone not recording.)

MR. GELLERT: Well, we could debate that. I --

THE COURT: I think the question is that they can file their certification of counsel. If you think that you want to have a hearing on it, then by noon tomorrow you need to so notify people.

MR. GELLERT: Okay.

THE COURT: In which case we'll set it for the same date and time as what we have -- we're going to set on Thursday that Ginger will tell us about right now.

MR. GELLERT: Very good, thank you.

THE COURT: Eleven o'clock this Thursday and make sure that any other parties that may be effected know about that date and time.

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MS. WERKHEISER: Thank you, Your Honor. Item number 4 on the motion is a motion filed by Preit-Rubin, Inc., as agent for the PR Beaver Valley Limited Partnership for an order for relief from stay. Your Honor, we've been informed by counsel to Preit-Rubin that they intend to withdraw this motion. I haven't seen the withdrawal come up on the docket yet, but we are anticipating that they are withdrawing that motion.

THE COURT: Anybody on the telephone for Preit-Rubin? Already vacating the hearing.

MS. WERKHEISER: Thank you, Your Honor.

THE COURT: If the motion is not withdrawn for some reason it can be reset by the movant.

MS. WERKHEISER: Thank you, Your Honor. Item number 5 is a 2004 motion filed by Mr. Spence on behalf of his client so I'll turn the podium back over to him.

MR. SPENCE: Steve Spence again, Your Honor, this time on behalf of both the Millers and Georgiann Ammon and various other movants. And, a few weeks ago, we had filed a motion to ask the Court for permission to conduct a Rule 2004 examination of the debtors to obtain information that we have asked for and received part of and the part that we received, those copies of various insurance policies, but there were a number of other items that we had asked for last November -- We've had lots of friendly conversations but we never

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actually had gotten any of the additional material, and so I've been of the view that we ought to ask for the entry of an order. It doesn't really do anything other than set a date for the debtor to designate a person who can bring the records -- what I call is a record custodian deposition that we requested in a letter back in November that we just haven't gotten. I moved out the date from the time of the original motion was filed. The first order I prepared had a February appearance date. I moved that date out to March 2nd, and I have a revised form of order that I would ask the Court to enter.

THE COURT: Anybody wish to be heard?

MR. LOBEL: The debtor has no objection.

THE COURT: All right, I'll sign the order.

MR. SPENCE: I'll just hand it up to the clerk. That's it, Your Honor. I don't have anything else on it.

MS. WERKHEISER: Your Honor, I believe we've dealt with item number 6 already today. Item number 7 is the application of the debtors to employ Commercial Liquidators of America as liquidators for certain of the debtors' personal property. Your Honor, Commercial Liquidators would go into each store and sell the personal property at these stores and then take a percentage of those sales as their fees. No one has objected to this motion and this is the second time that the debtors have sought to employ Commercial

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Liquidators. This is a different type of sale that Commercial Liquidators is doing so we filed a different application as the first set that they were hired for has been completed. No objections have been filed, Your Honor, and the debtors ask that Your Honor grant this application.

THE COURT: Does anyone wish to be heard? Apparently not. I'll sign the order.

MS. WERKHEISER: Thank you, Your Honor. Item number 8 is the debtors' motion for an order authorizing the debtors to sell personal property free and clear of liens and encumbrances. This motion specifically is for nine stores of the debtors, Your Honor, for Commercial Liquidators to come in and do sales of personal property in auction format out of these stores. Your Honor, the debtors received one objection from STD Matrix Properties, Your Honor, and the debtors have agreed to continue this hearing just as to that one landlord. No one else responded and the debtors seek the Court's permission to sell the personal property of these nine stores.

THE COURT: With the exception of that store.

MS. WERKHEISER: That's correct, Your Honor, and we'll continue that to the March 8th hearing which is the next hearing set for in Delaware.

THE COURT: All right.

MS. WERKHEISER: Thank you, Your Honor. I do have

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a revised form of order that provides for that continuance.

THE COURT: Thank you.

MS. WERKHEISER: Thank you, Your Honor. The 9th item on the agenda is the motion of the debtors to establish procedures for a sale, a free and clear of liens and encumbrances of personal property, more of a de minimis asset sale motion, Your Honor. STD Matrix also filed an objection as to this, but they withdrew their -- This motion didn't apply to them, Your Honor, so they withdrew their objection to that motion, and what this does is set procedure so the debtor does not have to continue to come back to the Court to sell small items of personal property whether it's out of a store or however the debtors want to sell like an oven or a mixer or some ladles, and that's what the procedure provides for. Your Honor, the United States Trustee did raise a limited objection informally to this, and we did revise the proposed form of order. It started with a $7,500 -- If it was less than $7,500 the debtors didn't have to do anything else. If it was over $7,500 the debtors had to give notice to other parties to object including the U.S. Trustee. The U.S. Trustee just wants to put an upper level cap where I think it was over $50,000, the debtors would have to come back to Court to do that. The debtors have agreed to do that, and I do have a revised proposed form of order. Thank you, Your Honor. For items number 10 and 11 if I can turn

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the podium over to Mr. Lobel.

THE COURT: All right, with regard to number 9, I'll sign the order when it's submitted.

MS. WERKHEISER: Thank you, Your Honor.

MR. LOBEL: Thank you, Your Honor. Number 10 is a procedure that we will use in the future in the event we close any stores other than the thirty that we have on item number 11 for today. It has drawn a number of objections. The objections really fall into a couple of different categories. The first one is generically that you shouldn't be allowed to have a nunc pro tunc rejection. The second one has to do with disposal of personal property, and they want to make sure that there's no liability for them in disposing of it and that the parties in interest be given notice of the rejection of the lease and, therefore, the right to remove their equipment. Let me deal with that first and also there's an objection stating that they ought to have an administrative claim in the event that they have to clean it up and it costs more than a minimal amount. As to that we agree that they should be allowed to file for an administrative claim if the cost of cleanup is an amount that warrants them filing that type of motion. We'll deal with it when it comes. In terms of giving notice to parties in interest with regard to FF&E, we think that's there, and that we should include in our notice anyone who has an interest in

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furniture, fixtures, and equipment that's either -- that's being abandoned to the landlord. With regard to the rejection on a nunc pro tunc basis, I think perhaps we were somewhat ambitious in our motion because I do think that the law is that you're not going to get a nunc pro tunc rejection where you haven't surrendered the premises. Our concern is more one of if we're a day or two into March, for example, before we turn it over, we don't want to end up with a claim for all of March's rent. There are a number of Third Circuit cases, O'Brien being probably the leading one dealing with the fact that where you're filing effectively what's an administrative claim, your burden is really to establish what the benefit is to the estate and so in that circumstance we had two or three days into March, whatever the benefit was to the estate in those two or three days ought to be the measure of the complaint. If counsel for the landlords with whom unfortunately I haven't personally had an opportunity to talk, would agree to that, then I think we wouldn't have any issues to argue about.

THE COURT: Who do we have here representing the objector landlords?

MR. WALDT: I'll volunteer to go first, Your Honor. Good morning, Your Honor. Dean Waldt for Ballard Spahr Andrews & Ingersoll (phonetical) representing General Growth Management, Kravco Company, and Developers Diversified

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Realty. I guess we're kind of negotiating from the podium this morning, because this is the first opportunity we've heard about these concession on behalf of the debtor and they're appreciated, but there's a little bit more that my clients have placed in their objection, and we think would be appropriate dealing with the issues in the order as the debtors' counsel has addressed them. In terms of the personal property abandonment, we appreciate that the debtor will now include in its rejection notice notice to those who might have a claim of personal property such as lessors or secured creditors to notifying them that they must come and get their property. We would like it to go a step further in a procedure that Judge Walsh has used and we've attached one of his order in the Warehouse case to our objection, that that notice would then further provide that if that personal property is not retrieved by the time the premises is surrendered to the landlord that the landlord can then go ahead and dispose of it without liability either to the debtor or to those third parties, just alleviate the situation that I know my clients have had a number of situations where you'll have some furniture, fixtures, and equipment that would just linger there and someone has a claim to it, and we're not sure, and we have to get UCC-1 searches, so this a -- it's really a drop-date that applies not only to the debtor but also to the recipients of the

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notice that they must come and get their stuff, and if they don't get their stuff then we can get rid of it and as debtors' counsel has indicated if we think that we need to file an administrative claim for that we will, but if it's de minimis then we wouldn't bother to do it.

THE COURT: It sounds like it primarily relates to these third parties and not to the debtor.

MR. WALDT: Correct, you know, because the debtor has said they're going to abandon, and they have no further interest in it. Our primary concern is that that notice be addressed to third parties and that the content of that notice be to the third parties, Come and get your personal property and if you don't, you're going to lose the opportunity to recover it because the landlord's going to dispose of it.

THE COURT: Now, who's going to monitor whether or not the notices have been given to the right people so that before you sell a stack of FF&Es that XYZ Leasing has an interest in, that everybody is sure that XYZ Leasing has received a notice and knows what's going on. Is that an obligation on the debtor? It sounds like the obligation is on the debtor to give the notice, but you're the beneficiary of the notice because --

MR. WALDT: That's true, and there's really a trust relationship here between the landlord and the debtor because

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we're not asking for unknown parties to have their rights to the FF&E waived, but simply those who receive notice. So we really are trusting the debtor that they're going to know who it is that might be out there that might have a claim and barring those entities that receive the notice from showing up later and saying where is our stuff. If there's someone out there that the debtor doesn't notice, then we take that risk and I acknowledge that.

THE COURT: How many days are you talking about in terms of the third parties having to come and pick up their stuff?

MR. WALDT: Well, I think that the debtor's proposing a two-week notice period, and I think if it's just included in the original notice then they have two weeks, and if they notify us that it's there but they can't get there until fifteen days or sixteen days, then I think it's incumbent upon us to let them get their goods out of there, but if they don't notify us then we'd like them to be barred.

THE COURT: So they will -- The notice will also identify the landlord and who at the landlord should be contacted with regard to picking up the stuff or disassembling it or whatever.

MR. WALDT: It can or the debtor can be notified and the debtor can notify us. It doesn't matter to us. I mean we have confidence that the debtor will pass that notice

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along to us.

THE COURT: I would be more comfortable, frankly, if it actually identified if you're able to who the contact person is at the landlord.

MR. WALDT: That's fine, we can certainly provide that, and it would be more comfortable for us as well. You know, we've -- In other cases, we've relied upon the debtor to do that but if notice comes directly to us that's great, that's great. So that would be the procedure that we would ask for on that issue, Your Honor. In terms of the --

THE COURT: Does the debtor have any objection to that?

MR. LOBEL: No, I'm not sure that we really acquire jurisdiction over those third party lienors just by sending them a copy of the notice but if the Court wants us to put it in the order we can. I don't think it gets you there, but we are willing to give a copy of every notice we send to the landlord so they see what we've sent. We have a contact person, the same person for all of these that they know already. We'll put that in the notice, and we will immediately forward anything we get from a party --

THE COURT: Well, the party that is relying upon this is the landlord.

MR. LOBEL: I understand. I just don't think that because we send a notice that says you're barred forever if

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you don't respond to this notice that that's jurisdiction. But that's not my issue.

MR. WALDT: Well, it's a procedure that has been used before and actually is becoming the practice, so to speak, in the large retail cases, and debtors' counsel is correct. I mean ultimately the risk is on us and will --

THE COURT: If you go ahead and sell somebody's stuff and it turns out that they think the order was not effective --

MR. WALDT: They'll be here.

THE COURT: They'll be here or they'll be somewhere else.

MR. WALDT: That's right.

THE COURT: They'll be suing you in state court.

MR. WALDT: That's right, and we will hold up Your Honor's order and ask that it be honored.

THE COURT: Just don't have them call me.

MR. WALDT: Yes, sir.

THE COURT: Anybody else wish to be heard in connection with this proposed procedure? It makes sense to me as a method of trying to bring closure to these kinds of situations because we've all seen them where there is no procedure and property or something lingers on which ends up prejudicing one side or the other who then come back and fight here asking for more claims against the debtor, and

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everybody spends more money than it's worth. So I think it sounds like a sound procedure and I'll adopt that. Anybody on the telephone -- Sorry to ahead.

MR. WALDT: Anyone else?

THE COURT: You're looking around like --

MR. WALDT: All right, all right. Let's go to the first issue then, and that is the retroactive projection. As I understand what's been proposed by debtor's counsel, there's a proposal that as I think the law requires that rejection and surrender go hand in hand and be simultaneous. I'm not sure what the debtor's asking in addition to that, whether they're asking if they slip over into the first of the month, are we going to insist that Montgomery Ward be followed, and that we be paid rent for the month of March. I'm not quite sure how to respond to that. The law in the circuit is clear in terms of the billing date approach. I think that it's incumbent upon the debtor to make a business decision about when it needs to get things rejected in order to avoid the next month's rent if it's going to slip into the next month. Our objection has been and continues to be that the objection period and the surrender need to be simultaneous, that there ought not to be a situation where you have a rejection notice given and an effective date for rejection while there's still outstanding unresolved objections which tie up the property and while there are

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still goods in the location which continue to tie up the property. Rejection and surrender need to go together. And I think the debtor needs to gage business decision and if it needs to -- and really, it's shifting the burden to the debtor, but it's not that great a burden, I don't think, because what you're talking about is the debtor may have to reject on the 29th of February locations that it would really rather reject on the 2nd of March, but it's a couple of days, and for that couple of days the debtor ought to make the business decision and the law ought to be consistently applied.

THE COURT: Well, I don't think it's appropriate for me to fashion some kind of remedy that would excuse the debtor in advance in the absence of a factual predicate from what otherwise are the requirements of the Montgomery Ward case. We went down this path last month in the Famous Day's Barbecue, or whatever it was, the golf --

MR. WALDT: Yes, that was our client, Your Honor.

THE COURT: Yeah -- case, and so I don't think that that's really something that I should do. If the debtor wants to present a certain set of facts saying that in this particular case March 2 is the functional equivalent of February 29th for the following extraordinary reasons and therefore there is some reason to be excused from the strict requirements of Montgomery Ward then I think the debtor

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always has the ability to do that, and also there supports the business decision of whether, you know, it's worth it to you to fight about that or whether or not there's some compromise that can be reached. So, I don't know, Mr. Lobel, the basis upon which you would ask me to come up with some other procedure other than your recognizing what your risk is which means that you need to manage it.

MR. WALDT: Thank you, Your Honor.

MR. LOBEL: I understand, Your Honor. I think probably it's something better left for another day because it will probably never come up --

THE COURT: That's often true of many things, which is why I think it's better not to try to come up with a rule in advance in the absence of some concrete dispute.

MR. LOBEL: So I think we'll just agree that the order will be without prejudice to everybody's rights to argue about what the amount of the claim ought to be and whether it's a contract rate or whether it's a reasonable use and benefit.

THE COURT: That sounds fine. Anybody else wish to be heard in connection with the landlord issues that we've been discussing relative to item number 11? Apparently not, so I'll sign the order submitted in the way that we discussed.

MR. SIMON: Your Honor, Chris Simon on behalf of

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HFL Corporation. I do rise with respect to item number 11, I think these very set of facts that we're looking for at present. I represent a landlord whose lease is subject to rejection nunc pro tunc to January 31st. The debtor is still in the premises. Apparently, there's an auction that is scheduled for the end of February. We don't feel that nunc pro tunc relief is appropriate, and we feel that our rights under 365 ought to govern and not under 503. So, I don't know if we need to elaborate at all. I don't think the facts are in dispute, but I do rise to object to the order, any order entered on number 11 with respect to HFL.

THE COURT: Well, that provides for a rejection date nunc pro tunc to January 31.

MR. SIMON: That's correct, and I'm not sure if rejection if they seek rejection effective today I don't know how that's possible.

THE COURT: I think rejection runs with giving up possession. I think that's fairly clear.

MR. SIMON: Okay. I would ask then that HFL be stricken from that order.

THE COURT: Well, it doesn't sound like Mr. Lobel's actually going to be submitting an order that says that in light of my ruling today; is that correct, Mr. Lobel?

MR. LOBEL: That is correct, Your Honor. We're going to have an auction at HFL's premises on the 24th.

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We'll be gone by the 29th, and we won't have an issue.

THE COURT: I'm not going to sign an order today as to anybody that says that there's a retroactive rejection date in the absence of actual turning over possession of the property. I hope that's clear enough for everybody.

MR. SIMON: That's fine, Your Honor. I just wanted to make sure that nothing had been submitted.

THE COURT: All right, thank you. Okay, number 12.

MS. WERKHEISER: Your Honor, number 12 is the motion to sell potentially all of the assets of the Hamlet Group and those related debtors. Your Honor, the debtors seek to continue that hearing till a hearing before Your Honor in Arizona on March 1st?

THE COURT: All right. I think we've already made that arrangement and have a date and time set.

MS. WERKHEISER: That's correct, Your Honor.

THE COURT: So ordered.

MS. WERKHEISER: Thank you, Your Honor.

MR. LOBEL: Your Honor, just a point of housekeeping, we would be submitting an order on the motion to reject the thirty leases effective as of the end of the month or turning over premises whichever is later. If that's --

THE COURT: Right, as of the end of any particular month or --

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MR. LOBEL: Yeah, as the end of this month. We're going to be out of all -- We hope to be out of all of them by the 29th of February, if not, we'll have that issue, but we'd like to have them deemed rejected as of the end of this month.

THE COURT: Well, that sounds consistent with what we've been saying or the later of --

MR. LOBEL: Or the later of, yes.

THE COURT: -- of the turnover of possession. That will be fine.

MR. LOBEL: Thank you, Your Honor.

THE COURT: Does that complete our agenda for today?

MR. LOBEL: Could we have a moment, Your Honor.

THE COURT: Of course.

MR. LOBEL: Thank you, Your Honor.

THE COURT: We're adjourned.

THE CLERK: All rise.

(Whereupon at 11:42 a.m. the hearing in this matter was concluded for this date.)

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I, Elaine M. Ryan, approved transcriber for the United States Courts, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

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