copy of the bridge order, which deals with the fees being charged by the bridge lenders. What you have here is a 14-day bridge order. What you have is the lenders charging, and in fact, five percent, or $2,500,000, for the privilege of the 14-day lending relationship. What you also have is -- I'm adding on costs and fees, which I understand, based upon information from counsel, could be as high as $900,000. So, in effect, 3,400,000, approximately, for the privilege of 14 days. And I once again preface my remarks by indicating to the Court that we want the financing. It's needed. Both the ad hoc committee of trade creditors and bond creditors support the financing, and I think a reasonable solution to these charges would be, as we understand it they're working on a 150,000,000 DIP financing facility. In the event that that is brought before the Court and becomes a final order, our position might well be that these are very reasonable fees, and should be approved by the Court. However, whatever happens under this order is they become finalized, and are awarded and approved, and can be taken. What you have is a situation where we're concerned about the liquidity of the debtor here, and you have approximately three-and-a-half million dollars out of 50 coming out in costs, fees, and other expenses.

Our second issue relates to Page 24, which is -- deals with the Chapter 5 causes of action. They have now taken out, in the revision, the right to the proceeds until the final

order. The only problem is, is they still come in through the back door on them. By having a super-priority lien, they still would grab those as part of their collateral bag in the event that the super-priority kicked in. If they would carve those out of the super-priority on this interim bridge order, we can deal with it later, in the final. I think that would satisfy the needs of both the trade and bondholders.

MR. DeNATALE: Your Honor, with respect to the fees, a number of points. One, the fees we actually negotiated at length with the debtors, and I believe they are normal, customary, and market. With respect to the work fee, I would point out, and I'd be curious, actually, to find out from the debtors, myself. I don't know, other than one other party, but they did pay a $750,000 work fee to at least one other party that we're aware of, and that is normal and customary in the market. The fees, the seven-fifty work fee is to devote the time, attention, and resources to see if an actual commitment will issue. And as I understand it in the market, that's normal and customary. Whether or not people earn that fee, whether or not the commitment ever does get issued, Your Honor, and in fact we have one lender here who got a $750,000 fee. I have no idea how many days they worked, and whether a commitment was ever issued. And presumably, based upon the reference before that they spoke to several others, it may have been more. It is not normal, customary, or market, to defer

that fee until a later date. I will --

THE COURT: Well, each of the agents are getting a work fee here?

MR. DeNATALE: Yes, Your Honor. They are.

THE COURT: Is that normal and customary?

MR. DeNATALE: Your Honor, I think, in circumstances, it is. Especially -- I will tell you, in this particular instance, not only are they doing the work, but they stepped up, Your Honor, and actually issued the -- you know, agreed to underwrite the full 50 before they had any indication as to whether any other participants would participate. They did that, candidly, because they felt it was absolutely essential to help the debtor keep operating. And frankly, they did this, Your Honor, based upon no appraisals, no due diligence as to the additional assets that were offered. As Your Honor is aware, the pre-petition lenders had all of the current receivables and inventory, and a pledge of all the operating companies as collateral. And additional collateral is being provided in the form of the property, plant, and equipment. But frankly, since it was not our collateral pre-petition, the lenders really had not done any due diligence as to the values -- conditioned other liens or charges, perhaps environmental issues, and things that would make them less than attractive collateral. And in a rather very short period of time, stepped forward to do this. So, they have a strong view, frankly, and

I think Mr. Wilmont can remember that they were asking for more than that, I think. And after a fair amount of negotiation and arm wrestling, the parties just said, you know, let's -- let's settle at this.

THE COURT: Well, what other fees are there? Such other fees at market --

MR. DeNATALE: The --

THE COURT: -- raised in connection with the syndication of each bridge loan?

MR. DeNATALE: Well, the seven-fifty work fee that I mentioned. There's a two percent --

THE COURT: That's listed.

MR. DeNATALE: -- fee, as I understand, is the typical, customary syndication fee. And that is market, as I understand it. With respect to the other customary fees, Your Honor, when you bring someone in who buys into the loan, they expect to get some fees for that, and it's typically -- we are talking to the debtor about what the market is, but I believe it's somewhere between 50 and 75 basis points additional. And again, that is what the market is. With respect to the two percent fee, Your Honor, there was discussion, actually, as to how mechanically that would work, and the -- I believe the debtor's interpretation prevailed. And that interpretation is two percent for this $50 million. And the people who get that two percent when this turns into the 150, will not get another

fee, because it's already been paid. There is an argument, Your Honor, to be made that, in fact, you're doing the bridge loan, and another fee gets made at the 150, and again, the lenders gave up that argument to the debtors. And I'll let the debtors speak as to their view of whether this is reasonable or customary.

MR. WYNNE: Your Honor, the debtors do believe that it's reasonable and customary in terms of the circumstances. And we do think -- you know, would the debtors like to pay a lower fee? Absolutely. Would the debtors like to have the banks do this for free? We would love to do that. We did, in fact, pay another party a $750,000 work fee. We did work with our investment bankers, who negotiate these fees constantly. Their view was that it was market. I'm sensitive to the concerns of the committee. We'd be happy if the lenders would decide they would cut the fees down. But we do think that the urgency with which we need the funds and the urgency, really, with which the lenders had to step up, and the fact that the two agent banks did the entire commitment basically on their own, without knowing that they could syndicate it, was very important to us, so that we could get the flow of goods back into the pipeline, and move the case forward. So, from our point of view, we signed it. We agreed to it. We negotiated it, and we support that.

MR. DeNATALE: Your Honor, with respect to the two

percent fee, let me just make sure I didn't mis-speak. What the lenders have agreed to is that they will get another two percent on the incremental 100, but the two percent that's paid on the first 50 will not be paid twice, so to speak.

THE COURT: Exactly.

MR. DeNATALE: With respect to the 900 or so thousand dollar fees that are accumulated, they in fact represent legal fees, financial advisor fees, and other fees which technically are also covered, and you know, perhaps could be allocated. They're not all just for this bridge loan, but these are fees that are due and owing in connection with the facility, the existing facility as well as the work done to get to where we are. Frankly, this has been an evolving matter, and fees have not been segregated between pre and post-petition financing here.

With respect to the point about the super-priority lien, Your Honor, I am not at liberty. We had had a discussion earlier today concerning waiver of the lien on the avoidance actions, and I was able to have a discussion with clients, and get a waiver with reservation on that, Your Honor. I have not been able to contact anybody, and in fact I know that this is a -- it's going to be an issue for my client going forward on the final, and we need to bring in some testimony about market practice, because again, the 150 is going to be syndicated. And my understanding is is that as part of that syndication,

this is what the market has, and we'll bring in appropriate evidence, if necessary, at that time. But today I am not authorized to agree to waive the super-priority claim, Your Honor.

THE COURT: Well, let me ask the committee. Is there concern that that's going to be an issue before the final? Or, can we reserve it for the final? Do you think this is -- it's going to be a super-priority? There is going to be any super-priority if we --

MR. HERTZBERG: We can --

THE COURT: -- tank before the final?

MR. HERTZBERG: We can reserve that.

THE COURT: All right.

MR. WYNNE: Thank you, Your Honor. Your Honor, one counsel had wanted to withdraw, I think, a limited objection they had filed.

MR. CROSS: Your Honor, Richard Cross. Earlier this afternoon I had filed a limited objection on behalf of Dole Fresh Fruit Company Inc. and nine other PACA claimants, and we're withdrawing that objection.

THE COURT: All right.

MR. WYNNE: Your Honor, to speak to that, because --

THE COURT: Anybody else wish to be heard?

MR. WYNNE: Your Honor, just to clarify for the Court, the debtor has later on the calendar a motion that we --

two motions, one dealing with reclamation rights, and to set up a procedure, and one dealing with PACA trust claim rights. We've resolved certain issues with parties that were interested in that, the ad hoc committee, on the reclamation rights and the PACA trust claimants, so that later we'll be actually asking the Court for just an interim order on those two matters, setting up a procedure --

THE COURT: I'm not sure how much longer we're going to go. Do we need to do that today, or send it out on notice?

MR. WYNNE: Well, Your Honor, what we were going to ask the Court to do was entertain the limited order, which was going to basically stop people from filing TROs and all of the other things that happen for an interim period of two weeks while we work out the actual procedures on notice. And that's what we had agreed to with the ad hoc committee and other trade vendors on reclamation, and with the PACA trust people. I -- because of their withdrawal of the objection, I just wanted to let the Court know what we were talking about. And that essentially is to set up a procedure similar to --

THE COURT: Yes. I've seen it. But I'm not sure I'm prepared to go ahead with that today. Why do you need any relief today?

MR. WYNNE: Because otherwise, Your Honor, we -- we --

THE COURT: You'll get notices and people will file

pleadings.

MR. WYNNE: Well, they'll be seeking TROs is what will really happen --

THE COURT: Um-hmm.

MR. WYNNE: And we think we'll get fairly well inundated with that, and this procedure, which is similar to what we set up in the AmeriServe case, which was -- also had been pending in this District, a very large distributor, like Fleming, that was really the way to work through those issues with the various interested parties. So, what we actually were going to do is ask the Court to set out that -- those two motions on notice, but to have some very limited interim relief that I think the parties had agreed to. I just wanted to let the Court know that --

THE COURT: All right. Let's finish with the DIP and the cash collateral.

MR. WYNNE: Okay. Thank you, Your Honor.

THE COURT: Or are we done with those issues?

MR. BRANZBURG: Good afternoon, Your Honor. Morton Branzburg on behalf of Hershey Foods Corporation. Your Honor, we believe that the DIP order and reclamation rights are related, and we want to make sure that nothing in the DIP order or in the cash collateral order will adversely effect reclamation rights. Hershey Foods has a claim in excess of $17.5 million, of which approximately $12 million represents a

reclamation claim. Reclamation notice was sent March 28th, 2003, and within ten days prior to that, $12 million of goods were shipped on credit. Now, Hershey has filed a limited objection to the financing order because we want -- because we're concerned that if the financing order were approved as written, it would adversely effect our rights are reclamation claimants. And it -- that may happen in one of two ways. There are situations that -- and arguments that have been made in other cases that we want to make sure are dealt with early in this case -- under 546, whatever the state reclamation rights are are preserved, and the reclamation claimants are entitled to liens or administrative claims if they don't get their goods back. In other cases, lenders and creditors have argued, and some cases have held, that once the goods are sold, the reclamation goods are sold and paid to the creditor, the reclamation claims are eliminated unless the reclamation claimant has received adequate protection early in the case. We're here asking for adequate protection of the reclamation claims that exist today. In other cases, because under state law, 2702(c), the reclamation claim is subject to the floating lien of the pre-petition lender, then that lien -- the subject to language has been used to say that if the pre-petition lender is over secured, then the reclamation claimant may have rights. If they are under secured, then they may not have rights. That's not the way we read 546, Your Honor. But in

any event, today what is happening is that it appears as if the pre-petition lender is well over secured. We haven't heard testimony to that effect, but that's my understanding from the debtor's counsel. And the papers would seem to indicate it in that the pre-petition lender is receiving interest on account of their claim, and fees and costs, which would only happen if they were over secured.

Having said that, that would lead to -- that would lead us to believe that our reclamation claim is good, and should be paid, either through the return of our goods, or lien. However, the pre-petition claim here is now being subordinated to a $50 million bridge loan. And to the extent that that new $50 million bridge loan adversely effects the pre-petition lender's ability to get paid, we think that our claims -- our claim is adversely effected.

THE COURT: Are you subordinating any claims? Are you priming any liens?

MR. DeNATALE: Your Honor, the bridge loan is --

THE COURT: You need to approach the mike.

MR. DeNATALE: I'm sorry. The bridge loan, the $50 million, and ultimately if there's a subsequent facility for the 150, both of those will, essentially, prime the pre-petition lender's liens, and will have the super-priority above the pre-petition lenders. So, in effect, we are -- I guess you would say we are subordinating the pre-petition loans to the

post-petition advances.

MR. WYNNE: But in addition, Your Honor, one factual point. They are, for the bridge facility, are picking up essentially all of the debtor's unencumbered collateral, which includes very large real estate holdings that the debtor has, large distribution center that the debtor has owned for, in many cases, 20, 30-plus years.

THE COURT: But they're not agreeing to any marshaling?

MR. WYNNE: They have not agreed to marshaling.

THE COURT: So --

MR. BRANZBURG: Your Honor, I think that that's my point.

THE COURT: Um-hmm.

MR. BRANZBURG: I think the point is that this facility adversely effects reclamation claimants.

THE COURT: Did you give notice of today's proceeding and the proposed DIP to all potential reclamation creditors?

MR. WYNNE: We gave notice to the 20 largest that we knew about, and the people that we know about. I can't represent to the Court that we gave notice to all potential reclamation creditors.

THE COURT: I don't think the DIP can be entered that -- to the extent it has any effect on the reclamation creditors or parties that were not here.

MR. DeNATALE: Excuse me, Your Honor.

(Pause)

MR. WYNNE: Your Honor, I thought that what we were doing, both with respect to PACA claims and reclamation claims was not effecting, or trying to adversely effect their rights. In fact, I thought there was a provision -- I was just looking through it to find it.

THE COURT: No. There is with respect to PACA.

MR. WYNNE: There is with respect to PACA. And perhaps we need to have, you know, the same statement with respect to reclamation rights. We're not adversely effecting reclamation rights. The rights are what they are. With respect to if -- if we're in an over secured position, then they may have reclamation rights that would rise to that level. If we're not, and I don't think the banks are going to take a position today, a finding position on whether they're over secured or not. The debtor believes they're over secured. Certainly the face amount of the collateral --

THE COURT: Well, you will not argue that the entry of the DIP or the cash collateral stipulation in any way adversely effects the rights of the reclamation claimants as they stood on the petition date?

MR. WYNNE: That's correct. From the debtor's point of view, Your Honor. I will check with counsel for the lenders.

MR. DeNATALE: Your Honor, we agree.

MR. WYNNE: Counsel for the lenders has indicated that they agree, Your Honor, which we think was the intent in any event.

MR. BRANZBURG: Your Honor, I think, mechanically, the reclamation claim is a property interest which would constitute a lien under Section 10137. And in order to effect what -- the statement of both bank and debtor, Hershey would ask for adequate protection in the form of a replacement lien with the same priority, and the same rights that it had post-petition, because what's going to happen here is the property interest that would -- the property that would otherwise get returned to us will be sold. That property will be paid to the pre-petition lender, and we will be left with no property if this happens. So, we would ask that in order to effect a -- the status quo, if you will, that adequate protection be offered to -- be provided to the reclamation claimants, and particularly Hershey Foods, so that it certainly is not impaired.

MR. DeNATALE: Your Honor, I think that that would be bootstrapping and giving an unfair advantage. What we're trying to do, we're trying to deal with an emergency situation where the debtor needs money. I think that Hershey probably would like to see the debtor continue and supply the product. And as I read the code, it seems to me that the remedies

available is that the Court may grant, you know, a priority claim under 503(b), or give them a lien. I don't think that, at the outset of the case, before everybody knows what's going on, that it's appropriate -- just as we're saying, we're not trying to impair his rights, they shouldn't impair our rights and try and get a lien at this early stage.

MR. WYNNE: Your Honor, in addition, the calculation on the reclamation claim will be made as of the petition date in terms of were the banks in an under or over position at that point? I don't think that this is an issue that we -- that the debtor can be in the position where it's going to start giving blanket liens out to reclamation claimants, or needs to.

THE COURT: Well, the debtor is not going to take the position that its use of the product, sale of the product, eliminates the reclamation rights, because they're calculated as of the petition date. Is that what you're saying?

MR. WYNNE: That is what I'm saying, Your Honor. And I think the reservation that we've just put on the record protects their rights, as they should be --

THE COURT: Vis-a-vis the lenders?

MR. WYNNE: Vis-a-vis the lenders. And so, with that, Your Honor, we would ask that the objection be overruled, and that they are properly protected.

MR. COHEN: Bill Cohen, Your Honor. The statement just made by debtor's counsel in the preservation of the rights

of the reclamation creditors to the extent they exist on the date of bankruptcy is acceptable to the ad hoc trade committee.

MR. BRANZBURG: Your Honor, I wasn't trying to bootstrap a lien where -- right through one -- ones didn't exist. What I was saying is, to the extent that reclamation rights exist, they constitute a lien, and for that we would ask for adequate protection. But having -- and I think that's the legal argument. However, as a practical matter, if it is clear that neither the debtor nor any other party will raise a claim that the use of the reclaimed goods somehow impairs the reclamation claim -- impairs it or extinguishes it, or that this new $50 million bridge facility or any rights granted in connection with it impairs or extinguishes it, I'm fine. As long as that's the understanding.

THE COURT: I think you have the lenders and the debtor's agreement to that. I don't know that I can speak for everybody else in the world.

MR. WYNNE: Your Honor, that was one of the points that I was going to make, that obviously the debtors combined, the debtors, in terms of the statement that I made, and the representation that we made, it's the position -- the lenders made a similar statement. Any other party, I especially am hesitant to try to ask for that today, as we've seen with other issues that the lenders have been willing to modify with respect to other parties' rights.

MR. BRANZBURG: Your Honor, I am comfortable with having the lender's aggregate consent and the debtor's consent to that -- to those statements.

THE COURT: All right. And I think that was made generally, in case this is another reclamation creditor coming up. All right.

MR. GREY: No, Your Honor. Joseph Gray from Stevens & Lee. I represent IBM. We have just a point we'd like to clarify in the order. I don't think we need to change language, but if I can just get, perhaps, the debtors and the lenders to agree that -- with our interpretation, then I think we're done. The -- this is the bridge order that I'm talking about, specifically Paragraphs 3 and 4. I think I can paraphrase them, Your Honor, to save everybody some time. There's a parenthetical in both of those paragraphs. It's the second parenthetical in the third paragraph -- in the first one. Your Honor, in paraphrasing it, it provides that priming liens shall be subject to valid perfected enforceable security interests and liens of parties that -- other than the --

THE COURT: Pre-petition.

MR. GREY: -- pre-petition lenders and their agents, and shall be subject also to the carve out. The way I interpreted that, the way IBM interprets that, is that the priming -- the priming liens shall be subject, A, to the third-party liens I'll call them, and also the priming liens shall be

subject to the carve out. That's what I think it means. I do not believe that it means that third-party liens are subject to the carve out.

THE COURT: Oh, I see.

MR. GREY: And I don't believe it means that in order to be exempt from the carve out, third-party liens have to be -- in order to be exempt from priming, third-party liens have to be subject to the carve out.

MR. WYNNE: Your Honor, that's our understanding, as well.

MR. DeNATALE: And on behalf of the lenders, Your Honor, that's our understanding.

THE COURT: All right.

MR. GREY: Thank you, Your Honor.

THE COURT: Thank you. Anybody else?

MR. MONACO: Good afternoon, Your Honor. Frank Monaco for G.E. Capital. Your Honor, my client is approximately a $39 million participant in the pre-petition bank group, and I just wanted to make a statement for the record. We did not receive notice of the motion until I received a copy of the motion from Ms. Jones' office this morning, so my client has not seen the stipulation orders for both cash collateral and DIP financing until a few hours before this hearing. Your Honor, I just wanted to make clear that we have not consented to, or had an opportunity to vote on either

the bridge loan or the cash collateral, and I think it's important, for purposes going forward, that we're provided with notification of what is going on. Our -- it's particularly important with respect to several provisions of the stipulations that provide for consent, to changes to the budget, and to waiver of termination events. So, we are concerned. We do want to have notice going forward, not so much from debtor, but from our agent, as well. We have -- so, we're not here, Your Honor, to object. We understand things are moving at a very fast pace and these are exigent circumstances, but we do want to have the opportunity to see these matters beforehand. And we may very well go along --

THE COURT: All right.

MR. MONACO: -- with all this, but we just want the record to reflect that we didn't receive notice, nor have we consented. And maybe there's one thing that Mr. DeNatale can clear up for the record, that members of the pre-petition bank group can participate in the bridge loan going forward.

MR. DeNATALE: Your Honor, for the record, there are approximately 30 some-odd revolving credit lenders under the facility, pre-petition facility, and there is approximately 30 term loan lenders, or tranche B lenders under the facility, and there's some common members of both groups. But we are probably dealing with about 40 some-odd lenders. There was, just for the record, a duly called conference call of the

lenders on Tuesday morning at 10:00, and this -- though the graphs were in a state of flux, I will say, I think the substantial terms and conditions were described to the lenders, and it was, to my knowledge, and I was participating, I don't recall anybody objecting to the process. And indeed, it was, you know, approved overwhelmingly by the lenders on that call, and to answer --

THE COURT: Well, is it your position that the agents have the authority, based on that --

MR. DeNATALE: Yes --

THE COURT: -- to consent on behalf of the pre-petition lenders to the --

MR. DeNATALE: Yes, Your Honor, and --

THE COURT: -- use of cash collateral and the DIP priming?

MR. DeNATALE: Yes, Your Honor.

THE COURT: All right.

MR. DeNATALE: And just to answer the other question, the agents, I understand, are welcoming anyone who -- from the lender group that wants to participate in either the bridge loan or the larger piece that is under consideration. Thank you.

THE COURT: All right. Thank you.

MR. WYNNE: Thank you, Your Honor.

THE COURT: One more?

MR. CARRIGAN: Your Honor, Daniel Carrigan for Sara Lee. I believe that we can work out with the debtor a way to deal with the question of the collections that are being made by Fleming on behalf of Sara Lee during the post-petition period. The thing that needs to be clarified, however, if you look at the exhibit on the cash collateral forecast, the two-week forecast, presumably the money that's being collected on behalf of Sara Lee and perhaps others, as well, is in the cash receipts that are listed on the cash forecast. They're not broken out separately. They're listed as cash collateral. From our perspective, Your Honor, the money that's being collected for Sara Lee is not cash collateral, is not subject to the post-petition liens or the pre-petition liens for that matter, of the lenders. And if you'll notice, by, I think today is the last day where there's an ending cash balance left over. As we understand it, there was $2.2 million in the pipeline at or about the time of the filing.

THE COURT: Well, let me -- let me ask the debtor to clarify whether their budget includes any cash that is not the debtors.

MR. WYNNE: Your Honor, my understanding is is that there's approximately one percent of the debtor's receipts and disbursements that relate to these types of issues. To the extent that the debtor collects money that is not its property, it can't be giving any rights away, or any liens on that, to

the lenders. To the extent that we didn't have pre-petition -- and what I think we dealt with before, the lender's rights as of the petition date are fixed in terms of what their liens and rights are -- getting additional liens just for the bridge financing with respect to that. But those additional -- none of that would attach to something that's not the debtor's property. So I think in terms of, is -- are those funds in the budget? My belief is they probably are in the budget because we don't have a separate line breaking that out. But it's a direct pass through from one side to the other. It's less -- I believe it's about a one percent issue. And I think we have provided, or are going to propose language in the cash management order that says in the ordinary course, from the petition date forward, we can basically pass those funds through. So, we're not trying, and the lenders are not trying, to take additional rights by including any amounts in the budget that they otherwise would not -- would have.

THE COURT: Okay.

MR. DeNATALE: Your Honor, I will confirm that is the lender's agreement, as well. Whatever the rights were, they were. This is not attempting to get a leg up on anybody. To the extent that the property was not property of the estate, or property of the debtor pre-petition, subject to whatever the UCC requirements are we would respect that here.

THE COURT: All right. Is that sufficient for the

record?

MR. CARRIGAN: Your Honor, I guess the question is this, is that if -- if after the end of today there's going to be no ending cash -- there's $5.5 million apparently in ending cash balance today, including all cash that has come in through the -- to the debtors through the end of today. If that's the case, and 2.2 was in the pipeline on the date of the filing, it strikes me that 2.2 of that is Sara Lee's. And that's not one percent. That's $2.2 million of what's left.

THE COURT: Well, there's no -- you don't know whether they're holding that $2.2 million?

MR. CARRIGAN: I don't think --

THE COURT: You're saying it's in the pipeline. It might not have been received. It might have been received and passed on.

MR. CARRIGAN: It has not been passed on to Sara Lee. If it has been spent by the debtor in operations post-petition, it's been spent. But at least as of right now, there's enough money to pay Sara Lee that which obviously would have been collected. But after today, there isn't going to be, because it's going to be all gone according to their budget.

THE COURT: Their budget does not include the $50 million in DIP loans.

MR. CARRIGAN: I understand that, Your Honor, but we don't have any entitlement to the $50 million. We have an

entitlement to what they collect.

THE COURT: And they say they're going to pay you what they collect that's yours.

MR. CARRIGAN: Very good, Your Honor.

THE COURT: So --

MR. CARRIGAN: And that goes back to the date of the filing?

MR. WYNNE: The date of the filing, Your Honor, I want to be clear. We're not -- we're talking from the date of the filing forward.

THE COURT: You're talking post-petition.

MR. WYNNE: Post-petition only.

THE COURT: All right.

MR. WYNNE: Because there's obviously other issues with whatever happened pre-petition. Your Honor, there was just one point that I did want to clarify. And hopefully -- do we have another? Oh, we have another -- I thought we were done.

THE COURT: Well -- we're going to be done soon, so --

MR. KELLEHER: Good evening, Your Honor. Bill Kelleher, Conoco Philips, Circle K. Hopefully this is a quick issue, very quick. We're not opposed to the emergency motion, but we desire a clarification on one point. We have some property in the distribution centers. We filed a statement

around 2:30 today asking for clarification on this. And the issue is whether that property is covered by the liens. We think there's no intention to do that. But Circle K is -- which is a subsidiary of Conoco Philips, is concerned about the broad and expansive language. We just want, on the record, clarification that no, our property, and proceeds from that property in the distribution centers isn't subject to those liens.

THE COURT: All right. Can the debtor confirm that Circle K's property is, in fact, not the debtor's?

MR. WYNNE: Your Honor, if it's Circle K's property, it's Circle K's property, not the debtor's property.

THE COURT: And no liens are being granted similar to the prior statement?

MR. WYNNE: Same as the prior statements, Your Honor.

THE COURT: All right. Anybody else?

MR. WYNNE: Your Honor, there was two other clarifications I was asked to make. First, there are, I wanted to point out to the Court, on behalf -- several of the landlords have asked, we do have in the budget lease payments for April rent. I think it's budgeted until next Tuesday. I just wanted to confirm that that was what that line item was for, and it is. Hopefully that clarification satisfies.

And with respect to, we had passed on the cash management motion so we could deal with just the one question

about what were the inter-company obligations that we were talking about. And it does relate, a little bit, to all of this, as they are interrelated. The debtors supply, in essence, their own retail stores. So we're supplying them with product, and most of the inter-company obligations relate to that. The inter-company obligations that we're talking about in the cash management motion and application are that sort of ordinary course payables that go back and forth. It's not the debtor seeking to lend money to cover operating losses, or something, on another entity, which I think is what the Court was concerned about.

THE COURT: Yes.

MR. WYNNE: So, with that clarification on the record, factually, that's that. If there are -- if we do think that we need to actually make some sort of operating type loan to one entity or another to cover losses, then we would do that by a separate application.

THE COURT: All right. Does anybody, then -- with that clarification, does anybody have any further questions on the cash management? All right. Let me look at the language of that order.

MR. WYNNE: Your Honor, what we did to take care --

THE COURT: Do you have a revised order on that before I --

MR. WYNNE: We do, Your Honor. And it has

handwritten changes, Your Honor. May I hand that up?

THE COURT: You may.

(Pause)

THE COURT: So, the inter-company credit you're dealing with is just trade terms, if you will?

MR. WYNNE: It's trade terms, Your Honor, largely supplying the retail stores. We own approximately 100 of our own retail stores.

THE COURT: All right.

(Pause)

THE COURT: All right.

(Pause)

MR. WYNNE: Your Honor, Mr. Cohen, one of the counsels for the ad hoc committee, wanted us to confirm if, referring to the Debtor's Exhibit 1, that we're not talking about advancing inter-company funds to the non-debtor entities of the four clear colored entities on the chart, E.A. Morris, FCI Holdings, Fleming Foreign Sales, and Chateau Development LLC, which I think is a real estate entity, and that that's correct.

MR. COHEN: Thank you.

THE COURT: Does anybody have any problem with the cash management system order, then, as modified?

(Pause)

THE COURT: All right. Let's talk -- I'll approve

that. We'll need some further hearing dates. You suggested a further interim on the cash collateral and DIP?

MR. WYNNE: Yes, Your Honor. Your Honor, actually, it would be a final hearing date, is what we would be seeking.

THE COURT: I don't think you have enough time on your budget for 15 days, do you? I only have seven more days on the budget. You gave me a budget through the 13th, ten more days. Do you want a final hearing? Do we have more of a budget? I was told this was the only budget, and that you were looking for an interim.

MR. WYNNE: Your Honor, could we have a further interim, then, on the 10th? Because you're right, Your Honor, the budget does run out.

THE COURT: I don't know that you run out of the -- well --

MR. WYNNE: Well, Your Honor, we were going to ask for a hearing on the 10th for some other matters in any event, so --

THE COURT: What other matters?

MR. WYNNE: We're in the process of trying to negotiate, in addition to the critical trade vendor motion that we have on calendar, we're in the process of trying to negotiate with the ad hoc committee and the bank group a series of other incentives for vendors to continue supplying us with trade terms. So, we're talking about whether or not a junior

lien will be granted to vendors who supply post-petition, and we're hopeful to work that out and seek to have that approved, at least on an interim basis, on the 10th. That was the most critical item that we had, Your Honor.

(Pause)

THE COURT: I can give you an hour only, on the 10th, at 11:30.

MR. WYNNE: Your Honor, we'll take what we can get. The two things that I'd like, Your Honor, and I think that hopefully they'll be much shorter, is to have the -- a further interim on the cash collateral and bridge financing -- well actually, just on the cash collateral. We won't need it on the bridge financing. We can just go to a final on that. And the critical vendor motion, which is Number --

UNIDENTIFIED MALE: 11.

MR. WYNNE: -- 11, Your Honor.

MS. JONES: No, it's Number 13.

MR. WYNNE: Yes. It's Number 13. The order has changed. Number 13, Your Honor, because there are modifications to that. But the ad hoc committee is seeking, and other parties. And while we'd like to get that heard as soon as possible, that's the time that they think it will take to work that out.

THE COURT: All right. Tell me what more we have today.

MR. WYNNE: Your Honor, what I'd like to do today, recognizing that this has gone very late, is deal with the employee pre-petition obligations, the customer programs, ship -- excuse me, yes, the shippers, and the -- grant the administrative expense status to creditors who ship post-petition, but on pre-petition orders, which is Number 10.

THE COURT: All right.

MR. WYNNE: Many vendors have pre-petition purchase orders. They're concerned about actually if the goods arrive.

THE COURT: Let's not get to them. I'm trying to figure out what we can do in the next --

MR. WYNNE: Few minutes.

THE COURT: Yes. The rest will go out on notice? 13 you say we'll put off for the 10th?

MR. WYNNE: 13 for next Thursday. Your Honor, I would ask, because I think that it's going to be not -- not disputed, that Numbers 11 and 12, that we be able to have just the interim orders. The problem, particularly with PACA, would be that a lot of the TROs would go to the District Court, in the event -- if we did not have any relief from this Court, and we really would be spending a significant amount of time dealing with the PACA and reclamation issues. What we have agreed to, and the procedure is that we'll simply have, basically, a standstill period where all the rights are preserved while we work out a longer-term procedure with both

the PACA claimants and the reclamation creditors.

THE COURT: Well, who did you work this out with?

MR. WYNNE: All of the -- well, PACA -- the PACA claimants are highly organized, Your Honor, I think representing --

THE COURT: Are they all represented here?

MR. WYNNE: Are they all represented? I don't know if they're all represented, but largely the ones that we're aware of are represented, and a very substantial group.

THE COURT: And you've worked out a consensual order with respect to the PACA --

MR. WYNNE: Yes, Your Honor. It's a procedural order, only.

THE COURT: Well, let me see it.

MR. WYNNE: Okay. May I approach, Your Honor?

THE COURT: Yes.

MR. WYNNE: Your Honor, I also have the reclamation order.

THE COURT: Well, we're dealing with the PACA order, the PACA motion. This order provides that it's continued, and they're enjoined from filing any action until I hear the motion.

MR. WERB: That's correct, Your Honor. Duane Werb on behalf of several of the PACA claimants, as well as my co-counsel. I would estimate, Your Honor, that basically we

represent approximately 60 to 70 percent of the PACA claimants that are out there. And we have engaged in extensive negotiations with debtor's counsel with regard to moving forward, and giving debtor's counsel an opportunity to have some breathing room, if you will. Approximately two weeks was agreed upon today as being reasonable under the circumstances and in light of the volatility in this matter, and also the accelerated pace which this case has taken. So, we have agreed, informally as an ad hoc group, a committee on behalf of the PACA claimants, to agree to this two-week interim standstill agreement. The question is whether or not Your Honor has time, two weeks from now, to address this issue.

THE COURT: Well, given Passover and Easter, I was going to suggest the -- the week of the 21st. Is that --

MR. WERB: Your Honor, is there anything sooner than that?

(Pause)

MR. WERB: Does Your Honor have anything available on Tuesday? I believe it's the 15th.

THE COURT: No. I have two all-day trials scheduled for the 15th.

MR. WERB: Wednesday morning?

THE COURT: Well, I have a 4:00 that came off. Is that going to cause a problem for anybody?

MR. WERB: 4:00 on Wednesday, the 16th?

THE COURT: On Wednesday. Passover is the problem.

MR. WERB: The 21st you have available?

THE COURT: I could do the 21st at 12:30.

MR. WERB: I believe I'm getting the -- an affirmative nod from most of my colleagues, Your Honor.

THE COURT: The 21st at 12:30.

MR. WERB: Monday, the 21st, at 12:30?

UNIDENTIFIED MALE: 12:30?

MR. WERB: And, Your Honor, how much time would have set aside for that matter on that date?

THE COURT: Well, I have an hour-and-a-half.

MR. WERB: Okay. I believe that would be more than adequate.

THE COURT: Can we do that for the PACA and --

UNIDENTIFIED MALE: And reclamation, Your Honor.

UNIDENTIFIED MALE: As long as the PACA is first.

(Laughter)

THE COURT: Well, I don't know if I can --

MR. WYNNE: As long as PACA is first.

MR. WERB: Your Honor, I'm not in a position to speak freely for the reclamation claimants, and I'd like to defer to Mr. Palacio, who represents certain reclamation claimants.

MR. PALACIO: Good evening, Your Honor. May it please the Court, Ricardo Palacio, of Ashby & Geddes, on behalf of Destination Products International. Your Honor,

conceptually I don't have a problem with a standstill, so to speak. My only concern is, and I know I speak on behalf of my client, and there may be other reclamation claimants out there who have not received notice. The only issue there is, to the extent the debtors want this standstill such that we cannot commence TROs, adversary proceedings, or discovery of this sort, we are in essence being handcuffed from proving our -- establishing our burden under 546(c). If we have to show that the goods are in the debtor's hands, how can we do so?

THE COURT: Well, without consent of all of the -- I understand you have consent of virtually all of the PACA claimants to the continuance into the injunction, but I'm not sure you have consent of the reclamation claimants.

MR. WYNNE: Well, Your Honor, I think we --

THE COURT: And what can they do? File a 546?

MR. WYNNE: They can do that, Your Honor. I actually think this is probably a benefit to them in that we would have the time to start getting information to them informally instead of dealing with -- with what everyone files. If they would prefer that we simply have the motion heard on whatever date the Court can hear it on regular notice, we could do that. I actually think this was a benefit to the reclamation claimants, and would ask counsel to withdraw his objection.

THE COURT: Well, I'm not prepared -- he's one reclamation creditor. I'm not prepared to enter any order

unless it's been consented to. It hasn't gone out on notice.

MR. WYNNE: Your Honor, we'll --

THE COURT: So, let's just send out the reclamation motion --

MR. WYNNE: Okay. Your Honor, we'll just --

THE COURT: -- for April 21st, after the PACA motion is heard.

MR. WYNNE: Thank you, Your Honor.

THE COURT: But I'll enter the PACA order by consent.

MS. JONES: Thank you, Your Honor. May I approach with the cash collateral and the DIP bridge order? I do not think Your Honor has received the originals of those.

THE COURT: I don't have the clean copies.

MS. JONES: If I may approach?

THE COURT: And they contain all the changes? What final hearing date are you looking for on the bridge?

(Pause)

MS. JONES: Your Honor, I'm being told --

THE COURT: I'm going to put --

MS. JONES: -- that we might have handed up the incorrect versions. If I may ask for those back? I apologize.

THE COURT: All right. Get those -- let's --

MS. JONES: Your Honor, if I may approach and just double check it?

THE COURT: No. Why don't you take it and get me the

orders at the end of the hearing, when we're through, rather than wasting Court time. When do you want a final --

MS. JONES: Your Honor, should we -- Your Honor, I think they actually were the right -- the correct versions, but we'll wait, now, to the end of the hearing --

THE COURT: All right.

MS. JONES: -- to hand those up. Your Honor, if we turn to Matter 6, which is the payroll motion, this is the motion from which a lot of things we have agreed either through conversations with Ms. Compton, or with the lenders. There are --

THE COURT: The post --

MS. JONES: -- a number of matters that we would put on notice.

THE COURT: All right. What's going forward today?

MS. JONES: Your Honor, it might be easier for me to tell you what we're not going forward on, and --

THE COURT: No, that won't be easier. Tell me what's left.

MS. JONES: Okay.

THE COURT: What are you going forward on?

MS. JONES: Your Honor, we're going forward on wages, the actual wages, and the commissions, the benefits, that there are a lot of the benefits that we're not going forward on.

THE COURT: Well, which benefits are you?

MS. JONES: Your Honor, we're going forward with health and welfare benefit obligations, not the executive relocation program, not the SERP, not the severance program, not the bonus programs, which were the Aim High program and the incentive programs, not the associate stock purchase plan, not the Core Mart pension plan, and not the Fleming pension plan. As to the 401(k), we would seek authority for the employees to continue to contribute their own money to their 401(k) plan, but to not go forward today as to the employer matching or contributions.

Your Honor may have seen in the motion there were contributions to the 401(k) for the retirees. Your Honor, we do have approximately 20,000 full and part-time personnel. The payroll is approximately $58 million on a monthly basis. As of the petition date, there was approximately $20 million owed to the employees, so on the average, a little less than $1,000 a piece.

Your Honor, there are 35 employees out of the 20,000, less than one twentieth of one percent of the employees, that are owed in excess of $4,680. And that's for about a total of 180,000. I do have a full list of those people, and how much they exceed the amount. And it ranges, Your Honor, from quite a few in the hundreds of dollars to some in the -- in the low one thousands, two thousand, or three thousand.

THE COURT: Well, let me see it.

MS. JONES: If I may approach?

THE COURT: You may. And you shared this with the --

MS. JONES: With Ms. Compton, Your Honor.

THE COURT: Are you proposing to pay employees pre-petition amounts to severed employees?

MS. JONES: Your Honor, we saw one name on here that is a severed employee. It was not our intent to pay severed employees. We'd have to double-check the list, Your Honor. But the, you know, the idea was current --

THE COURT: It looks like the third page --

MS. JONES: -- current employees --

THE COURT: -- of them are all severed employees.

MS. JONES: Your Honor, that's -- that list, Your Honor, should not have been handed to the Court. That was just attached. That is not relevant to what I have before the Court.

THE COURT: You're not paying any severed employees?

MS. JONES: No, Your Honor. Your Honor? Can I have the Court's indulgence one moment?

(Pause)

MS. JONES: Your Honor, it is the agreement with the lenders that we would not be seeking to pay the severed employees as part of this. Your Honor --

THE COURT: Is $20 million the total of all wages, commissions, you're paying? Because I want a cap in the order.

MS. JONES: Your Honor, that does not include the commissions.

THE COURT: How much are the commissions?

MS. JONES: Your Honor, we process approximately 270,000 per month in the commissions. Let me double check what the current amount is owing.

(Pause)

MS. JONES: Your Honor, as we go back through our payroll charts, and again, I apologize, Your Honor, as I think probably about 60 people have said today, this case is moving extremely fast, along with the speed of the information is coming fast, too, Your Honor, I'm being told that the commissions are included in that $20 million number. Your Honor, we do have -- going back to what I was saying about the chart, Your Honor, the amount that's in excess of the $4,650 for most people is a relatively small amount.

If Your Honor looks through the chart, there are number of fairly high numbers relative to those other numbers that I know Ms. Compton has an issue with. Your Honor, if we take all those numbers in, it still, doing the math, comes to about $1,000 per employee that we're going to be paying by this order.

THE COURT: Well, that's not relevant. The relevance is how much is over whatever the priority amount.

MS. JONES: Your Honor, the amounts that are over the

$4,650 are those that we have set forth in this -- in this table. There is one individual I see on here who is actually a severed employee, and we would cross that name out, but --

THE COURT: Who is that?

MS. JONES: Your Honor, the name Hanson. Mark Hanson.

THE COURT: Mark. With respect to all of the amounts, not simply the amounts on this list, with respect to all of the wages and commissions you seek to pay, can you confirm that they are for the current pay period only, and not for any prior?

MS. JONES: Your Honor, I have asked that question a multitude of times, and been told yes. Let me confirm that one more time.

(Pause)

MS. JONES: Your Honor, it is for the latest payroll. And as they're continuing to go through the list, they've actually identified a few more names of severed employees. So, Your Honor, the 35 people was a high number. It's actually less people. It's probably more like 30 people. But this is the current payroll.

THE COURT: All right.

MS. JONES: Your Honor, the only other point I would make about it is, as I understand -- I understand and acknowledge the U.S. Trustee's concern with respect to going

over the statutory cap. At the same time, Your Honor, the type of personnel who is in a position that the current payroll would put them over $4,650 is obviously a very significant person relative to this restructuring. And Your Honor, again, the speed of which this case is moving, if we all had our druthers, we would have not had to bring this issue before the Court, but tried to deal with it as a practical matter before the filing, but we just were not in that position, Your Honor.

MS. COMPTON: Your Honor, all we're asking is that any amounts over the priority go out on notice, and that the -- then the committee has a chance to address it. We're not asking that these people not get paid at all, but asking them to wait 20 days. I don't even think it's that, until the 21st, I don't think is too much of a hardship. And I don't really think there's a chance that if they know they're going to get this amount, or relatively sure they're going to get this amount by the 21st, they're not going to leave the company because of a 17-day interval.

THE COURT: When is the organizational meeting?

MS. COMPTON: Well, right now, we're talking about either the 10th or the 15th. We're hoping to do the 10th, I just haven't been able to confirm that we can on that date. But that's the date we're shooting for.

MR. COHEN: Your Honor, on behalf of the ad hoc trade committee and the bondholder committee, we recognize these

amounts described exceed the priority amount. But we think, in the scheme of things, it's de minimus, and we don't object to it.

MS. JONES: Your Honor, I can tell you, for purposes of the record, we have now gone through the list. There are eight members on this list that were severed, so it would be 27 individuals that we'd be looking at that were over the $4,650 number. If it would be helpful to the Court, I can name those eight.

THE COURT: Well, why don't you cross them out on my list, or provide me with a corrected list?

MS. JONES: We will do that, Your Honor.

THE COURT: And do you know what the number is now?

MS. JONES: It's one-eighty.

(Pause)

MS. JONES: We are quickly adding them, Your Honor.

THE COURT: Do you have a revised form of order for the wage motion?

(Pause)

THE COURT: I would suggest -- I would suggest, since it's an interim order, that it be limited as follows. Number one, put a cap in there.

MS. JONES: We will, Your Honor.

THE COURT: I guess the $20 million. And secondly, with respect to the health and welfare benefits, provide that

only what comes due in the next 30 days shall be paid.

MS. JONES: Your Honor, I need the Court's indulgence for one moment to check on one other question Ms. Compton had.

MR. CASARINO: Your Honor, if I may take that moment. Marc Casarino on behalf of the Ace Insurance entities. We provide workers' compensation insurance, among other coverage, possibly, to these debtors. And we just wanted to confirm with the -- the confusion about maybe what was going forward or not with this order, that the workers' compensation obligations for pre-petition claims would still be honored, but no other pre-petition liability claims are going to be going forward at this time.

THE COURT: Say that again, then?

MR. CASARINO: It's my understanding, from this order, the only -- the pre-petition workers' compensation claims need be honored at this time, and no other pre-petition liability claims are being honored.

THE COURT: I didn't think that was mentioned.

MS. JONES: Your Honor --

THE COURT: Well, it was in the order on the --

MS. JONES: -- we talked about health and welfare, and so forth. So, to the extent that those are pre-petition claims that people are -- where they have a --

THE COURT: Are workers' comp included in the health and welfare?

MS. JONES: Yes. Workers' comp is in here, as well, Your Honor, to continue taking care of our workers' comp claims.

THE COURT: That's why I tried to get you to tell me what was going forward.

MS. JONES: Your Honor, if we look at the -- Your Honor, if we look at Paragraph 22, the debtors administer several health and welfare benefit programs on behalf of their employees and their covered dependents, including medical, dental, vision, long-term disability and life insurance benefits, and to the extent required, COBRA medical continuation coverage. All those are the health benefits, Your Honor. I did say that we would be going forward with the health benefits. Your Honor, we --

THE COURT: I thought the workers' comp were in a different section.

MS. JONES: Your Honor I'm just trying to -- I'm looking to see -- I don't think there's anything in the health and welfare benefit obligations that we are not going forward with, Judge. Which paragraph?

UNIDENTIFIED MALE: Paragraph 46.

MS. JONES: Paragraph 46, Your Honor, references the workers' compensation.

THE COURT: So, we're not going forward with that?

MS. JONES: We would, Your Honor. The debtors

currently use a third-party administrator to administer any workers' comp, in addition to a cost containment company, which manages the medical cases as well as reviewing the bills before payment. Your Honor, we would expect that we would go forward with that.

THE COURT: Anything else in here that you're going forward with?

MS. JONES: Your Honor, let me walk the Court through the motions, so that we make sure we don't miss anything. We said all of the health and welfare benefit obligations on Page 7 and 8.

THE COURT: The wages and the commissions?

MS. JONES: Yes, ma'am. On the other employee benefits, which is -- starts on Page 8, we said on the 401(k), the employee to continue to make their contributions.

THE COURT: But that's not you paying any money?

MS. JONES: Yes, ma'am. With respect to the pension plan, Your Honor, there's the $203,000 payment that is referenced in Paragraph 31 that is due on April 15.

THE COURT: I thought we weren't doing the pension plan.

MS. JONES: Your Honor, except for that -- for that payment, Your Honor. And we had talked to Ms. Compton about that, because it was due on the 15th, Your Honor. If there was a way to deal with it again before we got to the 15th, you

know, at the hearing on the 10th, Your Honor, we can do it there.

THE COURT: I hear you, but you've got to tell me exactly what you're asking for today.

MS. JONES: We're asking for that.

THE COURT: All right.

MS. JONES: Your Honor, with respect to the vacation and other time paid off, we would seek to continue to pay that in the ordinary course as we go forward.

THE COURT: Well, do you pay that, or do you let them take it?

MS. JONES: We let them take it in the ordinary course, Your Honor.

THE COURT: You're not paying any to any laid-off employees?

MS. JONES: Your Honor, the next paragraph deals with the terminated employees. I know Ms. Compton has a concern about that being heard today with respect to the terminated employees, to the extent that they exceed the $4,650 number. Your Honor, while we're hesitant to do it, we understand, or acknowledge her position, and we're only seeking up to 4,650 in connection with those terminated employees.

THE COURT: So, you are seeking that?

MS. JONES: Yes, ma'am. Your Honor, we are seeking the expense reimbursements. But as I mentioned -- and the

relocation costs.

THE COURT: I thought you were not including them?

MS. JONES: We were not doing the executive relocation costs, Your Honor.

THE COURT: What else?

MS. JONES: The associate stock purchase plan, Your Honor, is not going forward. The executive relocation program, not going forward. The severance program not going forward -- I'm sorry. I skipped over the --

THE COURT: Workers' comp --

MS. JONES: -- workers' comp.

THE COURT: -- I know is going forward.

MS. JONES: The bonus program not going forward, Your Honor. We would go forward with our dues and benefits that are paid on behalf of the union employees. And, Your Honor, this catch-all paragraph, Number 53, which says such other benefits we would propose to go forward with them, to the extent that they are denominated in there, Your Honor -- the student loan program, the business travel, the weekly income insurance.

THE COURT: How much are they?

MS. JONES: Your Honor, I'm getting the number. I understand that the student loan program is a limit of $300 per person.

THE COURT: I want a cap for each category. I want you to tell me how much you're going to spend in each category

for the next 30 days. And I'll approve it on an interim basis only for the next 30 days.

MS. JONES: Your Honor, I can tell you with respect to the issue that I was talking about with Ms. Compton, as to the severed employees and the amount that they're owed over $4,650, that chart that we were referring to, when we take out the people -- this was the current employees. When we take out the people that were severed -- remember I mentioned that there were eight people? Your Honor, that actually takes out 130,652 people, so that -- I'm sorry, dollars -- so that brings that, Your Honor, down to about a $55,000, $60,000 cap -- or number.

THE COURT: And that's the amount over the $4,650?

MS. JONES: Yes, ma'am. Where our motion said it was 180, Your Honor, when we look at the list that has now --

THE COURT: Okay.

MS. JONES: -- been provided for us for the current payroll --

THE COURT: Okay.

MS. JONES: -- eight of those people are severed people, and that takes it down $130,652.

THE COURT: All right. All right. Does the U.S. Trustee have any comments on the categories of employee benefits that the debtor now advises that they're going forward with?

MS. COMPTON: No. I think that was consistent with

what we had talked about, just with the understanding -- I wasn't sure if I heard right, for the vacation payments for people who had been terminated, you are going to limit it, the debtor is going to limit it to the priority amount for vacation --

MS. JONES: For today's purposes, Your Honor.

THE COURT: Okay.

MS. COMPTON: That's our understanding, then, although I don't think the order reflects all of this yet. I think it needs to be revised to reflect --

MS. JONES: Your Honor, as to the information you asked on that last paragraph on the omnibus -- the -- kind of the omnibus paragraph, the folks were trying to put those numbers together, and --

THE COURT: Well --

MS. JONES: -- and we would put those in the order.

THE COURT: Well, I'm going to say, with respect to each of the categories, I want you to revise the order to approve each of the categories and give me a cap for each of the categories.

MS. JONES: We can do that, Your Honor.

THE COURT: And with respect, specifically, to the benefits, it's only to pay those that come due in the ordinary course in the next 30 days. And then we'll hear that on the 21st, as well.

MS. JONES: Your Honor, we will modify that order and show it to Ms. Compton, and submit it to the Court in the morning. Your Honor, hopefully our next motion can move a little faster. That's our motion for an order authorizing the debtor to honor customer programs. Your Honor, as we stated in our motion, the -- to stay competitive, the company has several different types of customer programs, including a Facility Standby Agreement Rebate program, a Volume-Based Rebate program, a PCRA program, a Vendor Add Funds program, and a Merchandise On Hands program. All we're seeking to do by the motion, Your Honor, is to continue to honor them in the ordinary course. So, to the extent a customer may have earned the right for rebates or so forth pre-petition, which had not yet been used, or we're entitled to a volume discount or something, that we continue to honor their entitlement for that as we move into the post-petition period.

THE COURT: All right. What amounts do you, in actual cash, rebates or otherwise --

MS. JONES: Your Honor, on the -- on the PCRA program, we said in the motion that the actual amount owing at the time of the petition was 4.6 million. On the Merchandise On Hand program, it was 1.7 million. On the other three categories, we had them listed by what it costs on a yearly basis. So, Your Honor, I've tried to get from the company what we could agree to as a cap for purposes of this motion. And

then, if we needed to come back to the Court for something further, we would. But a number that we seemed relatively comfortable with, and Your Honor, that would be 16 million. Again, Your Honor, most of this is, you know, if it's a fund program, or a volume program, or what have you, some of it may be in cash, some may not. But, Your Honor, our best guess of what was owing on account of all these programs together as of the petition date was roughly 16 million.

THE COURT: Well, do you anticipate that all being expended in the next 30 days?

MS. JONES: Your Honor, the companies tell me yes.

THE COURT: All right. Change it to two things. First put the cap in, the $16 million cap. Make it an interim order only. Notice it for the final hearing. And I think Paragraph 2 has to be changed -- not all customer programs including the following, but the ones that are enunciated in the motion is what I'm approving, not unknowns. So, including without limitation should probably be eliminated.

MR. DeNATALE: Your Honor, if I just might be heard. We had reached an agreement with respect to this particular motion, that they would revise the process to require an acknowledgment from the recipient of any payment to confirm payment, and the waiver of any future setoff or claim with respect to that payment. And I understand that will be implemented as part of the program.

MR. WYNNE: Yes, Your Honor, we've agreed to that.

MS. JONES: Your Honor, we will need to modify that order, show it to Ms. Compton and Mr. DeNatale, and submit that to the Court.

THE COURT: Okay.

MS. JONES: Your Honor, I don't know what our limitation is on time. There's a few matters that are more important than others.

THE COURT: You've passed it, so tell me what --

MS. JONES: Your Honor, the shipping motion is obviously very important.

THE COURT: Well, let's go ahead with that.

MR. WYNNE: Your Honor, we have approximately, in that request, we'd like to pay our shippers and warehouse charges in the ordinary course to prevent them from essentially holding our goods and having to litigate over those, and also, obviously, some of the goods are perishable and time sensitive. The amount that we -- we put a cap in that not to exceed $7.1 million, and --

THE COURT: 6.1 is the cap I have.

MR. WYNNE: We made a million dollar mistake, Your Honor, so we're asking for $7.1 million dollars as the cap, based, I think, on the current information. And I know, because we've been discussing and negotiating with several shippers. There are substantial shipments really awaiting this

order in our payment that we expect, or hope to be able to receive as early as tomorrow.

THE COURT: Have you shared the list of shippers with the U.S. Trustee or any of the other interested parties here?

MR. WYNNE: I don't know if we have shared the specific list of shippers. No, Your Honor. We just had the aggregate number.

THE COURT: Well, I think somebody has to look at them.

MR. WYNNE: The lenders may have. I'm not certain if the lenders have looked at it or not, Your Honor.

MR. DeNATALE: The lenders have not looked at it, but I think we're satisfied that the need was critical, and we'll be monitoring the expenditures.

THE COURT: I'd like a list to be provided, then, to the United States Trustee.

MR. WYNNE: Okay. That's fine, Your Honor. We can provide that. Your Honor, may I hand up the -- you want all the orders at the end, Your Honor?

THE COURT: You can hand up that order.

MR. WYNNE: Thank you, Your Honor.

THE COURT: It has the cap in it, so -- does anybody else wish to be heard on the motion to pay pre-petition shipping claims? All right. I'll enter that order, then.

MR. WYNNE: Thank you, Your Honor.

THE COURT: But it's subject to providing the list to the United States Trustee's Office and a -- obviously in accordance with our local rules, it's an interim order.

MR. WYNNE: Thank you, Your Honor. Your Honor, the last item that we'd like to have heard by the Court is Number 10. We do have many vendors who -- were still operating under basically pre-petition purchase orders, but the goods have not been delivered. And this is to assure those various customers and vendors, and this has become a major issue that we would not try to characterize those as pre-petition receipts, that they would at least have administrative expense priority to the extent that we obtained those goods post-petition.

THE COURT: Does anybody have any objection to that motion? All right. I will enter it.

MR. WYNNE: Thank you, Your Honor. Do you want me to approach with that one?

THE COURT: You may.

(Pause)

THE COURT: All right. I'll enter that order, then. What do we have left?

MR. WYNNE: Your Honor, we do have the clean versions of the bridge and cash -- bridge financing and cash collateral orders. And what we were intending to do, obviously there were changes made on the record. We'd like to have the Court sign and enter the clean copies. And then when we come back, I

think on Thursday, when we come back on the 10th for the further interim hearing I think we will have modified or amended orders to incorporate everything that was said on the record.

MR. HERTZBERG: That is acceptable, Your Honor.

THE COURT: Should we put a recitation in the order that's subject to the agreements reflected on the record? Let's do that just so it's clear.

MR. WYNNE: Okay. We can -- we can have that done, Your Honor.

THE COURT: And you're filling in the 10th on the cash collateral. But is the DIP coming back on the --

MR. WYNNE: The DIP does not -- well, the --

THE COURT: -- 21st?

MR. WYNNE: The 21st. Your Honor, Ms. Jones has a couple of, I think, housekeeping matters to just ask the Court about. But I did want to just let the Court know about one matter that we think we may have to bring on very quickly. The debtor was, post-petition, I guess, an order was issued enjoining the debtor from servicing certain goods. And I think the State of New Jersey are servicing certain stores. An injunction was issued post-petition. Well, we believe that that is a void act under relevant 3rd Circuit law. We think that we may have to come in on an emergency basis, because obviously the debtor does not want to be in the position of

violating a District Court injunction order that was issued post-petition. So, we may have to come back in. While we have been here, we have been preparing papers at my firm, other people, and I just wanted to let the Court know that we may end up actually serving something tomorrow morning, and asking for an emergency hearing on that matter.

THE COURT: You may get the 10th, you may not.

MR. WYNNE: All right.

THE COURT: All right.

MR. WYNNE: I just wanted to let Your Honor know.

MS. JONES: Your Honor, on a couple housekeeping matters. On the financing motion and on the cash collateral, I think we need objection deadlines from the Court for the hearing on the 21st and also the hearing on the 10th.

THE COURT: Well, for the 21st, the objection date will be the 14th. For the hearing on the 10th, let's make it the 9th, at noon.

MS. JONES: That would be 4:00 on the 14th for all the matters that are scheduled for the 21st?

THE COURT: Yes.

MS. JONES: Your Honor, a couple housekeeping matters, if I may. Listed last on our index was a utility motion which we would propose to serve out on notice, Your Honor, and schedule it for the hearing on the 21st. But, Your Honor, we have a bridge order that we would submit to the Court

today just to get us to the hearing on the 21st.

THE COURT: That's fine.

MS. JONES: If I may approach with that, Your Honor?

THE COURT: Yes.

MS. JONES: Your Honor, in looking at that proposed order, the Court might not be satisfied with the last sentence of the first page, where it proposes that a hearing would be held only if there are objections. I know Your Honor's desires in that regard, and we can change that if Your Honor wants to put in that April 21st date. We would plan on sending the utility motion itself, Your Honor, out on notice, which we will provide will be heard on the 21st, with objections on the 14th.

THE COURT: Yes. I'll schedule it for April 21st.

MS. JONES: Thank you, Your Honor.

THE COURT: What is it? 12:30?

MS. JONES: Yes.

THE COURT: All right. I'll enter that bridge order.

MS. JONES: Your Honor, also as a housekeeping matter, we did not include in the binders a series of motions to retain the various professionals in the case on behalf of the debtors. Your Honor, if it would please the Court, we would put those out on notice and ask to have them heard on the 21st, with objections on the 14th, as well.

THE COURT: That's fine.

MS. JONES: Also, there was one matter we did not

attend to on the index, and that was Matter 8, which was our motion for authority to reject certain leases and unexpired contracts. I am mindful of the time, and the -- and the time which Your Honor had hoped to get off the bench. Your Honor, if you do not want us to address that today, we would put that on for hearing.

THE COURT: I'd require that go out on notice.

MS. JONES: Should we put that on the 21st as well, Your Honor?

THE COURT: Let's put that on the 21st, as well.

MS. MELNIK: Sorry, Your Honor. Selinda Melnik for DEC Investments and Shield Investments II, of the lessors. An issue with the rejection motion. We would just like a clarification that there will be no change in status quo at all in the treatment of that property between now and when that motion is heard. This property is under potential harm if utilities are turned off, or anything like that, because it's a sub-zero facility, that if it gets made other than sub-zero quickly, it could have massive repercussions not only for it but for adjacent buildings. So, we want nothing to happen between now and when the rejection motion is considered, because we intend to file an objection.

THE COURT: What is the debtor's position on that?

MS. JONES: Your Honor, we were trying to collectively look at whether people are aware of whether we

have been in that facility now. And my understanding is all these facilities had gone dark. That's why we tried -- we were -- we filed the motion to seek rejection. Your Honor, there's also several people in the courtroom who had told me they were looking for the rejection order today so they could get access to the properties, or feel that they were safe getting access to the properties, being we have left them. Your Honor, our motion was simply to ask Your Honor to give us an order on rejection today, and that we would send out notice of entry of that order, not changing any rights, not shifting the burden, not making it a reconsideration mode, or anything else, but that people -- landlords would have that order so that if they wanted to get in because the lights have been out, they could get in their property.

MS. MELNIK: Your Honor, this issue is a little bit beyond that, and we've confirmed that the lights aren't out. The energy is still on. Utilities are still running. And there are massive violations that the debtor will have made that could have serious -- post-petition environmental impact if all of that is turned off.

MS. JONES: Your Honor, that -- and that's why we would seek the rejection order today, Your Honor. We have obviously --

THE COURT: I'm not prepared to enter a rejection order today, to the extent -- I mean, you need notice. To the

extent that the -- and not just to the affected landlords, but to the creditors. I don't know if any of these leases have value, and the debtor should not be rejecting them. I just don't know that.

MS. JONES: Your Honor, and that was the concept between the procedure of making it what is in essence an interim order so that people can get access. As Your Honor has heard, in a number of situations it's often the landlords that are pursuing that we do get the rejection, so that they can get access --

THE COURT: There's nothing wrong with the debtor allowing the landlord to go in and protect their property in the interim. You can give them access.

MS. JONES: Your Honor, as to Ms. Melnik's point, Your Honor, as we stand here today, we believe there's no benefit to this debtor, and we have filed a motion to reject that property. So, Your Honor -- and from our perspective, we are out of that property.

MS. MELNIK: Excuse me, Your Honor, we did not get notice until two hours before this hearing that this was even an issue. Notice hasn't been given to the client. I was called literally an hour before this hearing, and asked to run in here and bring up this issue, if Your Honor went forward.

THE COURT: Well, I'm not entering -- I'm not entering any order on the debtor's motion, so --

MR. MOORE: Your Honor, just for the record, Robert Moore of Milbank Tweed, on behalf of the bondholder ad hoc committee, and also on this point, the trade committee as well. This matter has evolved, as you know, very rapidly. We have not seen any of the backup data to evaluate any of the situation, and we would agree with the Court's inclination that this should go out on notice and be heard on the 21st.

MS. IORII: Good evening, Your Honor. Regina Iorii, Ashby & Geddes, representing Fleet National Bank. Your Honor, I hate to prolong the agony tonight, and I'll try and make this short. We are the lessor of one of the four aircraft that is included on that lease that the debtor seeks to reject. And while I understand that Your Honor wants this to go out on notice for the landlords of real property, I wonder if that applies to the lessors of the aircraft as well, because quite honestly, Your Honor, my -- my client would like to get its aircraft back. And we'd be willing to work with the debtor in the meantime, you know, getting everything that we need to get to effectuate that. But we would actually like to have the order entered as to our aircraft.

THE COURT: Well, again, I'm not prepared to enter it without notice to the creditor body generally, because I don't know if there's any value in the aircraft.

MS. IORII: Thank you, Your Honor.

THE COURT: But to the extent you can work it out

with the debtor, and if the committee is appointed quickly, the committee, I'll hear you on the 21st.

MS. IORII: Thank you, Your Honor.

MS. JONES: Your Honor, the only other point I would make, and I apologize to the Court at the late hour, Your Honor, obviously the debtor reserves its right. We have filed our motion. We have sought to have a rejection order today. We will seek -- just so no one thinks there's any misrepresentation, we will seek to have that rejection effective as of the petition date. So, Your Honor, we do not want to see the situation where people now who are here and have actually complained about the rejection and did not want it to go forward today, and then come back and try, Your Honor, not to have the rejection effective. We think we need to preserve that for the record.

THE COURT: Well, everybody's rights are preserved.

MS. MELNIK: Yes. Your Honor, in that regard we would really appreciate, also, on the record, that it be made known that the debtor should not take any action until that rejection is granted, even though it may be effective on the petition date, to do anything in the post-petition period that would impair --

THE COURT: I'm not entering any order.

MS. MELNIK: Okay.

THE COURT: Either way. I need the list of the

employees that are over the forty-six fifty. You had a new redacted version of it.

MR. WYNNE: Okay.

THE COURT: And you're going to get me the DIP and the interim --

MR. WYNNE: Yes. We interlineated, Your Honor, subject to the -- at the hearings I'd like to hand that up while we get the other document.

(Pause)

THE COURT: All right. I'm going to require that you serve this interim stip tomorrow.

MS. JONES: The cash collateral, Your Honor?

THE COURT: Yes.

MS. JONES: We'll also serve the DIP tomorrow too, Your Honor.

THE COURT: All right. Did I get all the orders?

MS. JONES: Your Honor, you have received the orders, Your Honor, that were prepared for today. We have a couple that have modifications that we owe you, and we would submit under certificate of counsel tomorrow.

THE COURT: And that's the wage order?

MR. WYNNE: The wage order.

MS. JONES: Your Honor, one thing we didn't discuss, also, from a scheduling perspective, Number 4 on the index, which was the interim comp procedure. I assume, Your Honor,

that could be put on for hearing on the 21st, with the objections on the 24th?

THE COURT: That's fine.

MS. JONES: So, Your Honor, we do owe you the employee motion --

THE COURT: Yes.

MS. JONES: I'm sorry. The employee order. I believe, Your Honor, we did not give you customer --

MR. WYNNE: No. I think we did.

(Pause)

MR. WYNNE: No. We didn't give --

THE COURT: No.

MR. WYNNE: The customer was changed.

MS. JONES: Yes. The customer listing needs to be revised, Your Honor.

(Pause)

MS. JONES: And critical trade we have put to April 10th, Your Honor.

THE COURT: All right. I do need the customers.

MS. JONES: Yes, you do, Your Honor.

THE COURT: All right. Do you have the employee list?

MS. JONES: I do. If I may approach?

THE COURT: You may. All right. Anything else?

MS. JONES: No, Your Honor. Thank you very much for

your attention at the late hour.

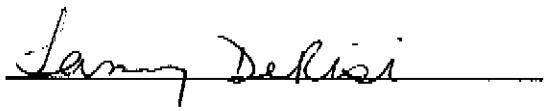
THE COURT: All right. We'll stand adjourned, then.

MR. WYNNE: Thank you, Your Honor.

* * * * *

CERTIFICATION

I, TAMMY DeRISI, certify that the foregoing is a correct transcript to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



Date: April 11, 2003

TAMMY DeRISI

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