UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

ZIFF DAVIS MEDIA, INC., et al.

Debtors.

Case No. 08-10768

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March 27, 2008

United States Custom House
One Bowling Green
New York, New York 10004

Hearing In re Amended First Proposed Agenda of Winston and Strawn for Matters Scheduled for Hearing on March 27, 2008.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

A P P E A R A N C E S:

WINSTON & STRAWN LLP

Attorneys for the Debtors
200 Park Avenue
New York, New York 10166

BY: DANIEL J. MCGUIRE, ESQ.,
MARK K. THOMAS, ESQ.

PAUL WEISS RIFKIND WHARTON & GARRISON LLP

Attorneys for the Unofficial Group of
Senior Secured Noteholders
1285 Avenue of the Americas
New York, New York 10019

BY: BRIAN S. HERMANN, ESQ.,
JEREMY GLADSTONE, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Holders of MHR - New Notes
590 Madison Avenue
New York, New York 10022

BY: MARY REIDY MASELLA, ESQ.

O'MELVENY & MYERS LLP

Attorneys for Official Committee of
Unsecured Creditors
Seven Times Square
New York, New York 10036

BY: MICHAEL J. SAGE, ESQ.

A P P E A R A N C E S (Continued):

FAEGRE & BENSON LLP

Attorneys for U.S. Bank National Association as Indentured Trustee
90 South Seventh Street
Minneapolis, Minnesota 55402

BY: MICHAEL B. FISCO, ESQ.

KELLEY DRYE & WARREN LLP

Co-Counsel for U.S. Bank National Association as Indentured Trustee
101 Park Avenue
New York, New York 10178

BY: JENNIFER A. CHRISTIAN, ESQ.

BLANK ROME LLP

Attorneys for 63 Madison Associates
405 Lexington Avenue
New York, New York 10174

BY: EDWARD J. LOBELLO, ESQ.

DIANA G. ADAMS Acting United States Trustee
Region 2

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
New York, New York 10004

BY: BRIAN MASUMOTO, ESQ.,

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

MR. MCGUIRE: Good morning, your Honor. Your Honor, Dan McGuire and Mark Thomas for the debtors.

MR. SAGE: Michael Sage for the committee.

MR. HERMANN: Good morning, your Honor. Brian Hermann from Paul, Weiss, Rifkind, Wharton and Garrison for the senior secured noteholders.

MR. FISCO: Good morning, your Honor. Michael Fisco from Faegre and Benson on behalf of U.S. Bank.

MR. MASUMOTO: Good morning, your Honor. Brian Masumoto for the Office of the United States Trustee.

MR. MCGUIRE: Your Honor, we have 13 matters on our agenda today, 12 of which we would like to proceed with. One of the matters, I believe chambers has been informed, is a critical vendor motion, item D 2 on our revised agenda, docket number 68. We are requesting that that be matter be continued to the April 29th hearing in this case, your Honor; however, we would like to proceed with the other 12 matters, ten of which I believe are uncontested, your Honor, and two of which I don't think there will be any argument regarding, and those are our ordinary course professionals motion and our cash collateral motion.

And with that, with your Honor's

permission, I would like to walk through the items on our amended first proposed agenda.

THE COURT: Go ahead.

MR. MCGUIRE: The first item up, C 1, is our cash management motion. This was granted in an interim hearing at the first in the case and it was continued to today for the debtor's request that Merrill Lynch, who holds our main account, consider complying with the requirements of Section 345 of the Bankruptcy Code.

The bad news is that they are unwilling or unable to do that. The good news is that, as the U.S. Trustee frankly had suggested might be the case, that Merrill Lynch doesn't use their depository bank for these accounts, they are kept at another bank, and they are kept at JPMorgan Chase, our two accounts with substantial funds in them. JPMorgan Chase is on the U.S. Trustee's list of approved depository institutions.

All other accounts, we will monitor to keep the balances of them and endeavor to keep them below one hundred thousand dollars at all time so that they will either be within the FDIC insurance or be at the two accounts at JPMorgan Chase which are on the approved list.

And with that I believe the U.S. Trustee no longer has any objection and we would like to just submit a final order on our cash management motion.

THE COURT: Does anyone want to be heard?

The application is granted.

MR. MCGUIRE: Thank you, your Honor.

The next matter on the agenda is our utilities motion. And, your Honor, there is really nothing to do on this. We received no objections. We've had one informal objection and we resolved that. And by the terms of your Honor's interim order, that now becomes the final order on the utilities matter and there is really nothing more to do on that matter.

THE COURT: Since that was a self-executing order, the application is approved.

MR. MCGUIRE: Thank you, your Honor.

The next item up is the application to employ Winston and Strawn as counsel. And, your Honor, we have filed a supplemental declaration in connection with this application clarifying a few items that the U.S. Trustee had requested. Specifically that Willis Stein and Partners, one of the equity owners of the company, they are a less than one percent client of Winston and Strawn, and we do have a waiver letter that was attached to our application from Willis Stein; and secondly clarifying that Winston and Strawn received no other payments from the debtors prepetition. And with those two issues resolved, I believe that we have no objections or other issues with

respect to the Winston and Strawn retention and would request that the retention be approved nunc pro tunc the petition date.

THE COURT: Does anyone want to be heard?

The application is granted.

MR. MCGUIRE: Thank you, your Honor.

Next up is our ordinary course professionals motion. In this motion we have made a few modifications of the proposed order at the request of the U.S. Trustee, and I would like to highlight what those changes are for your Honor, if I may.

The original application had proposed a 20 thousand dollar cap for each professionals except for Grant-Thornton and a proposed 50 thousand dollars a month cap for Grant-Thornton. We've modified it so that the 20 thousand dollars per month cap applies to all professional who would be retained as ordinary course professionals pursuant to order.

We have also added to the proposed order a 500 thousand dollars case cap for any one of these professionals individually so they cannot exceed the amount pursuant to relief granted herein.

We have not made two modifications requested by the U.S. Trustee, which I will let Mr. Masumoto address; one is that we take out the concept of

the monthly cap being a rolling three month cap. We believe that that's appropriate in this case. We don't think it's going to come up often, but we think since it's possible that someone might do 10 thousand dollars of work in one month and 25 thousand the next month we think that that's appropriate that there be a three month rolling provision in here for the 20 thousand dollar a month cap.

We also included on our list four parties who are not attorneys. Ernst and Young, who provides tax advice and services to the debtors. They help us with our state tax returns, our Federal tax returns and our sales tax returns. We have Grant Thornton who had previously been our auditors and who may in fact ultimately perform audit services for the debtor, but we have agreed that we are not seeking permission to retain them to do those services at this time pursuant to this application. We are only seeking to be able to use them; they have great historical financial knowledge of finances of the company based on the work they have done in the past. So we still want to be able to retain them and use their services, but we will seek further relief from this court if we seek to have them retained to do our audit.

The other two parties that are not attorneys are Joel Frank, that's the corporate public relations firm retained by the debtors to assist them, they

were retained not in contemplation of the bankruptcy but several months beforehand when the restructuring efforts with the company commenced when they realized that they were not going to be able to make interest payments under certain of their bond issuances. And the only other party is BIA who provides once a year valuation services for the company and whose work is traditionally done around February and March of the year, it's 25 thousand dollar a year. The work is nearing completion now.

Those four parties are the only four of the 12 that are included that not attorneys. And based on these facts, your Honor, the debtors request that the ordinary course motion be granted.

THE COURT: Does anyone want to be heard?

MR. MASUMOTO: Yes, your Honor. Brian Masumoto for the Office of the United States Trustee.

Your Honor, as indicated we've had some ongoing negotiations with the doctor, and up until this morning there was no movement. This morning there was the concession eliminating the 50 thousand cap that applied to Grant-Thornton after explanation that the auditing services listed in the Exhibit B were technically not contemplated for purposes of retention, that in fact they would be doing ongoing advice to the debtor with respect to any accounting issues based on their historical basis.

Your Honor, I'm sorry, again, the two issues here are essentially the rolling cap as counsel indicated, and the nature of the professionals that are being included on here. As far as the rolling cap goes, your Honor, I think virtually every ordinary course profession order that's entered in the Southern District does not have a rolling cap.

THE COURT: I don't see the need for it either. If you are going to exceed on an incremental basis it's very simple to come in and ask for some latitude.

MR. MASUMOTO: Thank you, your Honor. If I may, may I proceed to the issue regarding the nature of the professionals.

Historically, as your Honor knows, when the ordinary course professional motions first began they only applied to counsel, essentially special counsel. There has been some movement to expand it, and frankly even our office has experimented with allowing different kinds of professionals to be on. And admittedly, your Honor, in the past we have again experimented with the idea of allowing accountants on.

We have discovered that accountants in particular present a problem under the ordinary course. One is that the ordinary course order provides for the retention even before any disclosures are made, so you

don't know what conflicts exist with respect to accountants, and accountants typically have extraordinary conflicts and those don't arise.

In addition, technically accountants are to be retained under 327(a); they cannot be retained under 327(e), which is where mostly special counsel are designed to be retained. And the order, in fact, if you look at the ordinary course order, the forms of the order itself as well as the disclosures, the intent in fact in the discloses indicated that ordinary course special counsel would disclose what fees they were owed, because under 327(e) special counsels were not permitted from being creditors of the estate.

Accountants are routinely and historically, and I believe under the statute and case law are required to be retained under 327(a), they cannot be prepetition creditors. All this information regarding their potential conflicts, the amount of their claims, none of that is extent at the time of an ordinary course order that's entered at the beginning of the case. Subsequently the affidavits of disinterested are provided, but it has become very difficult and very cumbersome to after the fact at an unforeseen time in the future have to determine the problems that may arise based upon conflicts, prepetition creditor status and so forth.

So quite frankly, your Honor, the preference and the goal of the U.S. Trustee's Office has been to try to narrow the scope of the professionals who are retained as ordinary course professionals to what it was historically, essentially special counsel who are hired for particular purposes. Here, with respect to valuation services after discussion with I believe Mark Moyer, the CFO or the CEO, I'm sorry, the indication is that the valuation services are typically done year end, in fact they should virtually be complete, and historically it's been about 25 thousand dollars.

This valuation service apparently values intangibles including good will, customer lists and so forth. Frankly we don't even see the need for them to be included. The representation made to our office is that in some ways this is a form of a comfort order, they feel more comfortable included under some sort of umbrella granted by the court, but we don't see valuation services as even being necessary to be included on this list.

THE COURT: Your argument being it's ordinary course?

MR. MCGUIRE: I'm sorry?

THE COURT: Your argument being it's ordinary course?

MR. MASUMOTO: Essentially, your Honor,

yes.

THE COURT: Well, that gives the debtor some comfort.

MR. MASUMOTO: And that's fine, your Honor, because frankly it does not appear to have been specifically related to this case.

With respect to their corporate public relation services, again, that seems to have been a service that was retained, according to the information provided, in August of last year, after the sale of the enterprise assets and after apparently the default by the debtor upon their loan obligations.

So, your Honor, again, I will leave to your Honor's discretion as to whether or not they are appropriate. It seems to me that's sort of an ongoing public relation service. In fact, I think they advised me that they currently also have a public relations firm that does product marketing public relations. So again, I'm not sure of the need to have those particular consultants on, but that's, you know, to your Honor's discretion.

With respect to Grant-Thornton, again, the attached exhibit as provided originally indicated they were going to do audit services. Last night and this morning it was disclosed to me that in fact the audit services will not be required of Grant-Thornton, and in fact that

accounted for the elimination of the separate tier that was attempted for Grant-Thornton.

Grant-Thornton apparently historically bills about 500 thousand dollars for audit services, for the annual audit as well as for quarterly reports. In this case, since no annual report is required, there is no anticipation that audit services will be required.

What the debtor intends is to have Grant-Thornton available to provide any historical information advice that may come up during the course of the case. That seems not to be not the ordinary course, in fact that seems to be the kind of accounting services that one would indicate that's somewhat central to the bankruptcy process and as clearly Grant-Thornton should be retained.

Part of the problem of having ordinary course professionals, particularly with accountants, another problem that we've found is that based upon the itemization of the respective services, specialization for tax accounting, for audit services and so forth, the accounting function has been separated among many different firms. And now we have Grant-Thornton who will be providing accounting advice which will not be subject to any scrutiny since they won't be filing any fee application. Some of those services may overlap and

duplicate other professionals, the financial advisor, the investment banker, who may be maintained in this case who presumably would have some accounting background and/or knowledge that may in fact duplicate the services that are being rendered. That's one of the other reasons that we are not inclined to allow accountants to be used as ordinary course.

We find sometimes that because the services have been sort of split up among different accounting firms and different functions, that if there is a potential for duplication, all the ordinary course professionals come in under their own.

THE COURT: Isn't that covered, to some extent, by putting a cap on it?

MR. MASUMOTO: Yes, your Honor. But even under the cap, if the services are duplicated, arguably that should not be compensated or borne by the estate. But there's no way to even determine the extent of duplication, although there's a cap in there, the cap currently is 20 thousand dollars, and a 20 thousand dollars duplication of services would be significant I think even for this debtor.

Accordingly, as I indicated, based upon the problems that we've encountered with accountants as ordinary course professionals and the inherent difficulty of tracking after the fact statuses with respect to

conflicts and/or creditors status, it is our preference and our request that the accountants not be included as ordinary course professionals and be required to be retained under 327(a) as they have historically in the past.

MR. MCGUIRE: Your Honor, very briefly. I think that any savings that might possibly be achieved by having these people have to file separate monthly fee statements, et cetera, the cost of that would probably outweigh any savings of the unlikely risk of duplication. People the at the debtors know what they are doing. We are not looking at professionals duplicating services, they are keeping an eye on who does what, and we think that that's just not a real risk in this case.

Some of the parties such as the valuation expert and the P.R. firm, if the court wants to determine that they do not need to be retained under 327 or 328 but can be compensated in the ordinary course of business, we would be happy to take them off the list, but we need the services of these core people.

THE COURT: Well, back in ancient history I've written about this, and very frankly I'm not in a position to make a determination as to what's ordinary course and what's not ordinary for a particular enterprise. There are horizontal and vertical enterprises that have

different requirements, some traditionally maintain these kinds of services, others do it because of some situation that they are thrust into, so it may be an unusual situation. I can't tell that here. I'm not prepared to say --

MR. MCGUIRE: Understood, your Honor.

THE COURT: -- that it's ordinary course therefore it doesn't have to be part of your motion.

Do you have anything else?

MR. MCGUIRE: No, your Honor.

THE COURT: Well, I don't necessarily agree with my colleagues in the District of Connecticut who have taken, at least one who has taken a very narrow view of ordinary course retentions and limited them to attorneys. I think a more practical approach that's been utilized here and that is contemplated here is the appropriate way to go.

I do have some sensitivity to Mr. Masumoto's concern about retaining accountants on an ordinary course basis, it does not seem to me to be a real problem as long as there is an appropriate cap so it's something that doesn't balloon into something inordinate. And in that regard, and certainly these ordinary course expenses will be coming under the scrutiny of the creditors' committee, so I don't have an overly deep concern about the Grant-Thornton retention.

The rolling request we've already dealt with. The public relations as to whether or not that's ordinary course, I don't know what the cap is that would be included there. If there's a general cap for ordinary course and the public relations are under that general cap, I may have some difficulty with that. I don't know what's appropriate, what's not.

And I'm also sensitive to Mr. Masumoto's concern that ordinary course, non attorneys for example, being retained have not come in with an appropriate affidavit of disinterestedness at the earliest stages here. And perhaps some way can be devised to have them fall into the category of ordinary course only upon filing the appropriate affidavit of disinterestedness so that one doesn't have to go chase after that or find that after there's been a substantial incurrance of expenses that the disinterestedness would have been a preclusive factor here.

If you can modify this request to accommodate those concerns, the last point being that you are not on the list of ordinary course until you've filed a disclosure for disinterestedness, I will not have a real problem with that.

MR. MASUMOTO: Your Honor, one more thing that we had sort of traditionally asked. We did ask that if a professional exceeds the case cap that they separately

come in with a separate order of retention just so that they can be monitored on a more careful basis. I don't think that's been a problem, but the idea is that if a professional exceeded the case cap they are required to file fee applications.

THE COURT: What's the amount of case cap?

MR. MASUMOTO: Actually in this case it's 500 thousand, which quite frankly has been targeted based upon the Grant-Thornton. Frankly I think 500 thousand is a little high given the size of this case. I think your Honor in the Calpine case the case cap was 500 thousand. But again, since Grant-Thornton was allegedly -- the intent was to bill at 50 thousand, that would have been five months at 50 thousand. Originally I did say 500 thousand, but now that the cap is back at 20 thousand, perhaps 500 thousand is a little high for this particular case.

MR. MCGUIRE: Your Honor, we are more than amenable, if someone exceeds to the cap, they need to come in and file applications, that's perfectly fine. Frankly we agreed on the 500 thousand dollar number, and I haven't done any analyses of whether there is a possibility of it being a problem. If that --

THE COURT: Well, make it 250 thousand at this point, and if there's a need to raise it then there will be an application before the court.

MR. MCGUIRE: Okay.

MR. MASUMOTO: Thank you, your Honor.

MR. MCGUIRE: Thank you, your Honor.

We will prepare a revised order then, your Honor, consistent with these matters for your consideration and submit it later today.

THE COURT: Very well.

MR. MCGUIRE: Thank you, your Honor.

MR. MASUMOTO: Thank you, your Honor.

MR. MCGUIRE: Moving on to the next item on the agenda, item C 5 is our motion for interim compensation of professionals.

Your Honor, this motion, we believe, provides a fairly standard 80 percent on a monthly basis compensation procedure, 100 percent of expenses with quarterly true ups of those amounts. The procedures that we've put forth are consistent with those that have been approved by this court in the past.

We've received no objections to this motion and would request that your Honor grant that application.

THE COURT: Does anyone want to be heard?

I have no knowledge or information as to what's fueling this debtor other than the request for use of collateral. I don't know that the debtor's ongoing business is supportive of paying out fees on a monthly

basis. Perhaps it's too early to consider this motion.

MR. MCGUIRE: Well, your Honor, the money that we are using, in addition to the cash that's generated by the business operations, is --

THE COURT: Exactly, and I have no knowledge as to what those business operations are.

MR. MCGUIRE: Well, in addition --

THE COURT: Is it cash flow negative, positive?

MR. MCGUIRE: Mr. Thomas will go over those details in greater detail during the cash collateral motion hearing. But I can say that in addition the cash collateral that we are using is the cash of our secured creditors. It's not DIP financing, we are adding on, we are using cash that would otherwise go to these creditors who in the end are going to take cash and equity in this company, and therefore it's much like an SPM carveout in that it's just reducing their cash to the extent that these amounts are paid, and they have no objection to our use of their cash to do so.

THE COURT: So you are anticipating drawing down through all of these administration expenses on the money that's coming in under the cash collateral, or are you anticipating fueling this Chapter 11 essentially on its regular business operations?

MR. MCGUIRE: Well, it's both, your Honor. It's not like any of the payments are made specifically from one pot versus another; obviously our total expenses here in the case will well exceed the cash collateral order.

THE COURT: You are asking me to make a business judgment to whether or not there's going to be money available to pour down on a monthly basis. I'm not in a position to do that at this point.

Let me hear from the creditors' committee. Do you care?

MR. SAGE: Your Honor, we do care. But we understood exact what Mr. McGuire just said, that the combination of the cash collateral monies and the ongoing operations would be sufficient to fuel the case.

THE COURT: Fine. I'm not been made privy to what those things are that you have or I assume you have or will have, and that's why I say maybe it's a little premature because I don't know about the nuts and bolts here.

MR. THOMAS: Good morning, your Honor. Mark Thomas, Winston and Strawn on behalf of the debtors.

Perhaps we should put this off until the end of the call. I think, your Honor, one of the exhibits to the cash collateral motion which is later on in the call

is our cash collateral budget, and it's Exhibit C to the original motion.

THE COURT: I and happen to agree. It may be more informative to go through that before I deal with the interim compensation, which is always a favorite of the professionals but not necessarily anybody else.

MR. THOMAS: Why don't we put this to --

MR. MCGUIRE: Your Honor, let's move this then, with your permission, until after the cash collateral matter. If we move this to the end of the call, will that work?

THE COURT: Sure.

MR. MCGUIRE: Moving onto the next item on our agenda, item C 6 is our bar date motion. Because, your Honor, as was explained at the first hearing in this case, we are looking to move this case to confirmation in a fairly tight timeframe, we would like to, shortly after our schedules are filed in mid April, set a bar date and get the claims in so that we can move to confirmation of our plan.

We have agreed with the U.S. Trustee that in no event will the bar date be set prior to the time that the 341 meeting is scheduled to occur. And we currently anticipate filing our schedules on or around April 11th. We are requesting that this court set the bar date 40 days

after our schedules are filed. And you will probably and certainly within five days of filing of our schedules serve on all the parties by regular mail the notice of bar date.

As I said, we are looking to get to plan confirmation in this case in the first half of this year, and to do that we need to have a claims bar date and we need to know who the creditor are, otherwise our form is modified slightly pursuant to some comments from the clerk's office clarifying where the proofs of claims should go and other what I'll call minor details such as that.

We've received no objection to this motion, and pending any questions of your Honor we would ask that the application be granted.

THE COURT: Does anyone want to be heard?

There are some moving dates with respect to filing that are built into the Code, for example rejection of executory contracts and separate orders that will deal with that. I suggest that you work with chambers on that issue so that any bar date order is quite clear and does not work to confuse or sandbag any party with respect to its particular right to file a claim based upon something other than the bar date that you've got here. Language can be inserted that way. And you can confer with chambers on that, because as I understand it your proposition could leave some confusion with respect to potential filers of

claims.

MR. MCGUIRE: Your Honor, I think that we discussed that with chambers this morning. I think we have a remedy for that. I think it mostly comes up on the next matter on the agenda, frankly, just to clarify the people with rejected contracts that they have until the later of 30 days after the order is entered approving the rejection, or 45 days --

THE COURT: As long as it comes out clear and not in a confusing way. In certain cases in other jurisdictions I've known about creditors who are were lulled into a false sense of security as to their ability to file claims based upon different orders that were entered by the court. And here you have a bar date order and you may have rejection orders, and I am very sensitive that a party is very clear as to its rights to file on or before a certain date.

MR. MCGUIRE: Understood, your Honor. And in fact we had agreed, in the next item, that we will be modifying the order relative to contract rejections, if your Honor grants the application, to make it abundantly clear that they have until the later of that date or the date 30 days after the contracts are rejected so there's no confusion. We are not trying to lull them into comfort on a later date and then hold them to an earlier date. We are

letting them have the later of the two dates so there's no confusion that they are confused that they think that they need to file by a later date when we are trying to --

THE COURT: Very well. We'll scrutinize the order that you submit.

MR. SAGE: Your Honor, we haven't seen these changes and we would like to see them before they get submitted to the court.

THE COURT: Well, these will be changes that should make you happy because they clarify the rights of people not to be sandbagged --

MR. SAGE: I understand, but I will like to see them.

THE COURT: -- by s a confusing order.

MR. SAGE: Great. But he would like to see them also.

MR. MCGUIRE: We would be happy to share the changes with counsel for the committee, your Honor.

THE COURT: Go ahead.

MR. MCGUIRE: All right. Your Honor, next up is our item C 7 on the agenda, our motion to reject certain prepetition executory contracts.

Your Honor, this is what I consider mostly to be a cleanup motion. These are some contracts that do note provide any value to the debtors on a postpetition

basis. And to make sure there's no argument if there's administrative claim or anything of that nature arising under these contracts with the professionals, we seek to have them rejected as of the petition date.

We've received no objections to this motion, your Honor. And, as I said, we will be clarifying this order to make sure that there's no doubt that these people have until the later of the date after the order is entered or the general bar date, whichever is later. So there's no chance that these people think there's a later deadline to file than what was in the proposal, they would have the later of any of the two deadlines that are out there.

As I said, we received no objections to this motion, your Honor. So unless your Honor has any questions, we would request that the application be granted.

THE COURT: The list is an exhibit to the motion.

MR. MCGUIRE: Yes, your Honor, the four contracts.

THE COURT: This essentially is a business judgment motion. Your application is granted.

MR. MCGUIRE: Thank you, your Honor.

And with that, your Honor, I would like to

turn it over to Mr. Thomas to handle the remaining matters on the agenda.

MR. THOMAS: Good morning, your Honor. Mark Thomas.

The next matter, your Honor, is a contested matter, it's the motion of the debtors for interim and final orders authorizing the use of cash collateral and granting adequate protection docket number 12. And, your Honor, there was an objection filed by the official committee of unsecured creditors through their proposed counsel, Mr. Sage at O'Melveny, docket number 80.

There were three replies filed, your Honor, in support of the cash collateral motion; a reply of the unofficial group of secured note holders at docket number 87, a reply of the debtors at docket number 89, reply of US Bank, the collateral trustee, we received last night is docket number 98, and a proposed final order authorizing the use of cash collateral, your Honor, was filed as docket number 77.

And I think, your Honor, before we get into the actual objection, and in furtherance of some of the questions you raised in connection with the interim compensation motion, your Honor, I would like to give you a little bit of background about the company.

I direct your attention to Exhibit C to our

motion, which is actually the cash collateral budget that has been agreed upon between the debtors and the senior secured note holders, as well as the collateral trustee, US Bank. And, your Honor, in the courtroom today is Mr. Mark Moyer, the chief restructuring officer of the debtor. And his affidavit was filed as part of the first day pleadings as docket number 3 which sets forth facts in support of this cash collateral motion.

And, your Honor, I don't know if you have Exhibit C, in the upper left hand corner it says, Ziff Davis Media cash collateral motion - six month budget. It's a one page budget.

I have an extra clean copy that I could tender.

THE COURT: Please.

(Handing)

MR. THOMAS: And, your Honor, the cash collateral budget, which is Exhibit C, was attached to the original motion, it was also attached as an exhibit to the interim cash collateral order entered.

And before I get into the actual line items, your Honor, by way of background, and Mr. Moyer has reflected it in his affidavit, in 2007 Ziff Davis Media and its affiliated debtors had approximately 75 to 77 million dollars of total revenue and had positive EBITDA earnings

before interest, taxes, depreciation and amortization in an approximate amount of 10 million dollars. But those numbers are subject, your Honor, to final audit because there was a discontinued operation called the enterprise division that was sold in July of 2007.

But even the continuing operations, in other words the Ziff Davis Media that is here before your Honor today, without taking into account discontinued operations, had positive EBITDA. And the positive EBITDA means that our earnings before paying interest were positive. Our revenue was sufficient to cover our cash expenses, our payroll, our employee wages, our rent, our overhead, et cetera.

We do come in before your Honor with 10, 15 million dollars of unsecured trade debt, your Honor. But most of that debt was debt that was occurred, incurred and due and payable in the ordinary course of business. It wasn't debt that accrued through cash losing operations over the last several months. The biggest claim, representing almost a third of the claim, is R.H. Donnelley, who is on the committee, who publishes our magazines.

Our revenues are driven from circulation. Subscribers are paying for magazines that we print, actual print media, we also get advertising revenues from that

actual print media from people that run ads in the magazines. And we also get revenue from online and digital advertising, and that is the bulk of our 75 million dollars of continuing operational revenue.

And what the budget shows, your Honor, is that the top line of this budget is our projected EBITDA. And we have projected positive EBITDA for this six month budget period of 4 million dollars; however, there is a lot of expenses that come below the EBITDA line in terms of this bankruptcy case, which leads us to seek use of cash collateral of the debtors.

And those expenses that are paid out of EBITDA include capital expenditures in terms of software, hardware and computer equipment, it includes working capital, which is the positive and negative flow of our operational working capital. We real don't pay taxes in terms of income taxes because we have generated losses from a tax standpoint over the years.

We have some other line items here that are unique to the bankruptcy case like professional fees, utilities, which are adequate assurance, our budgeted assurance payments for utilities, we also have Chapter 11 and U.S. Trustee fees. Those are unique to the case, but we are projecting positive earnings before interest, taxes, depreciation and amortization. Depreciation and

amortization are non cash items, those are accounting items. The interest actually, as part of our cash collateral order, we are not paying interest on our senior secured debt. So our adequate protection does not require us to pay interest on our senior secured debt.

And what we've done, your Honor, in this budget is come up with what we've called the low draw scenario, which is about a third of the way down the budget on the left hand column. And then another third of the way below that is the high draw scenario. And under each scenario there is a line item halfway down called ending available cash balance. And what that ending available cash balance line shows in the low draw scenario and in the high draw scenario, your Honor, is that our projected operating EBITDA plus the cash that we are seeking use of through the use of cash collateral, leads to positive ending available cash balances, even after paying professional fees, trustee fees, utilities and adequate assurance payments, capital expenditures and the like.

For example, your Honor, the first column, the March '08 column, the first vertical column, the first month in bankruptcy shows the total cash flow preliminarily being negative, 5.7 million dollars. It then shows under the low draw scenario a line item called funds from (to) of 5 million dollars, and that was a draw that we were

authorized to make pursuant to the interim cash collateral order where we drew five million dollars of the secured lender's collateral and put that into our operating account so we could fund operations.

And then immediately to the right of that in the April '08 column, your Honor, we are showing a funds from the segregated account in the amount of 12 million dollars, which if your Honor grants the debtor's motion to use cash collateral and enters a final cash collateral order, we will draw another 12 million dollars from the secured lender's collateral, the segregated account, and have that available to fund the expenses set forth in this budget. And in the low draw scenario, it shows that from April 8th through August 8th our ending available cash is well in excess of, at all times, 3 million dollars.

And, your Honor, the low draw scenario assumes, for purposes of budgeting, that the impact of this bankruptcy case is negative on our ability to generate revenue. So we took our base case, projected 2008 business plan, in a low draw scenario we assumed that a certain amount of our revenue would be lost based upon the filing of bankruptcy, therefore we lowered our base case, and this cash budget shows what we would need to operate.

And with respect to the high draw scenario, your Honor, again, we took our 2008 base case budget, and

in the high draw scenario we assumed even a worsening impact on our ability to generate revenues in bankruptcy, we in effect assumed that we would lose more revenues than in the low draw scenario case, and therefore our revenue dropped. And both of these scenarios lead to another piece of our cash collateral motion, your Honor, and that is in addition to drawing 17 million dollars to operate during this case, the cash collateral motion also provides that 7 and a half million dollars would be reserved and not paid to the senior secured note holders.

And that 7 and a half million dollars would be available to the debtors upon emergence to have cash to fund post Chapter 11 operations in the event that the capital markets had not loosened up and we were not able to obtain an exit facility. So we bargained and negotiated for, in effect, a holdback of 7 and a half million dollars, your Honor. And that actually is reflected in the August '08 column, which is the second vertical column from the right hand side of this budget. And it's reflected in the high draw scenario. The fourth line below the words high draw scenario says funds from segregated account, and it shows in August '08, in effect, a draw of 7.5 million dollars to on provide cash upon emergence, and then the cash balance would be 4.8 million dollars.

So, your Honor, I think the story of this

debtor is that it does operate with positive earnings before interest, taxes, depreciation and amortization. It has in the past and it is projecting through 2008 to again generate positive EBITDA. With respect to the monies that come out of EBITDA, there will be no payment of interest to the secured lenders as adequate protection during this case. There's no anticipated tax payments with respect to income taxes and the like. And the depreciation and amortization are non cash charges. And the debtors believe, with their financial adviser Alvarez and Marsal, that we have negotiated a cash collateral order and budget that gives us substantial a cushion to get through this Chapter 11 bankruptcy case even if the high draw scenario where we are projecting a rather serious potential impairment of revenue.

And it's sort of an art, not a science in terms of trying to anticipate what revenue we might lose based on the Chapter 11 filing. And what we did before we filed this case is we sat down and sort of came up with what we thought was the absolute worst case scenario would be, and the debtors negotiated with the secured note holders to have enough cash left behind to fund us through that worst case scenario, including what we are calling a holdback of 7 and a half million dollars which will sit in the account available on exit, but arguably is, you know,

an emergency source of funds if they were needed and if we obtain the consent of the senior lends. So we think we have an adequate cash budget with adequate cushion to proceed through this bankruptcy case.

Your Honor, further, later on the agenda we are actually going to be asking your Honor for some dates. We filed a proposed plan and disclosure statement yesterday. The plan and disclosure statement embody the agreement that has been reached between the debtors and the senior secured note holders. And we are going to try to proceed expeditiously to a confirmation hearing in a shorter period of time than set forth in this six month budget.

So I will be happy, your Honor, to try to answer any questions or walk you through any of the line items of this budget. I would add that the senior secured note holders represented by Paul, Weiss in this case, also have the financial advisory firm of Houlihan Lokey Howard and Zukin representing them, and that firm negotiated it with our financial advisors on all of the terms and the voluminous detail that backs up this one page budget that we are seeing approval of.

THE COURT: Since I triggered this discussion with respect to my concern about the timing for an order on interim compensation and expenses, does anyone

want to be heard with respect to that aspect based upon these assertions made by counsel?

Well, based upon the exhibit given to the court and the explanation, it does appear that authorization for interim compensation will not be disruptive to the debtors operations and cash flow. There does seem to be a sufficient justifying of those procedures. Accordingly, at this point in time, I will authorize it.

However, if things change and this debtor finds itself strangling because of the out go of monthly compensation to all the professionals, I will revisit the proposal.

MR. THOMAS: Thank you, your Honor. And that would be something the debtor would also bring to your Honor's attention.

As I stated on the first day of this case, this is not a big company, and the professional fees that were incurred in prepetition stage of attempting to get to a consensual out of court restructure were very large. We want to get in and get out and we cannot really afford, notwithstanding this budget, we have to keep an eye on the professionals. We have to move forward in a economical and expedient fashion to exit this case.

With that, your Honor, if I could I would

then like to briefly address or speak in favor of the granting of the cash collateral motion over the objection of the creditors' committee. And, your Honor, I will be relatively brief here. And it actually is or the sort of reflected in the budget.

Basically, when we filed bankruptcy, your Honor, we had 118 million dollars of cash that was sitting in a segregated account of Merrill Lynch. That cash were the proceeds of the sale by the debtor in July 2007 of one of its operating divisions called the Enterprise Group. The debtors' position, after due diligence, is that the cash that was in that account were the perfected proceeds of the liens held by the collateral trustee on behalf of the senior secured note holders. The debtors had no ability to access that segregated account absent court order or the consent of the senior secured note holders.

And, your Honor, the view of the debtors has been that with a company that has 75 million dollars of annual revenue, has positive EBITDA and therefore its revenue is sufficient to pay its operating expenses before interest, taxes, et cetera, to have that money sitting there when we don't have access to it and when it's subject to the perfected liens of the collateral trustee, is something that is not in the benefit of the estate. We have a negotiated cash collateral order that provides for

adequate protection to the senior secured note holders.

One of the important parts is that we are not paying postpetition interest to the senior secured note holders; but one of the negotiated terms of that 118 million dollars of beginning cash, the cash that was not needed to fund operations through the use of cash collateral and the additional 7 and a half million dollar cushion of cash that would be available to provide in essence exit financing, would be paid down to reduce the claims of the senior secured note holders.

Your Honor, as of the petition date the claims of the senior secured note holders were approximately 245 million dollars, and we are projecting that, if your Honor enters and approves the final cash collateral order, approximately 95 million dollars will be paid down to the senior secured lenders which would leave them with secured claims of about 150 million dollars.

And the principal objection, one of the principal objections of the committee is that it's premature to make that 95 million dollar payment, that it's not in keeping with the doctrine of necessity, it's not in keeping with the debtors' business judgment, that the challenge period to investigate validity, priority, and extent of liens should run before any payments are made on account of the asserted secured claim, and that the payment

would violate the priorities of the Bankruptcy Code.

Your Honor, the replies have set forth the essence of the response to that. I think the essence of the responses is as follows: With respect to the challenge period, your Honor, many of the members of the committee were members of the ad hoc committee pre-filing, represented by the same counsel who they have chosen to represent them in this proceeding. And when I say the debtors believe that an investigation was commenced pre-filing, we don't say that from personal knowledge, but we say that because we can't imagine a circumstances where in a four to six month prebankruptcy workout process, that the unsecured creditors did not undertake an investigation into the validity, priority and extent of the liens asserted by the secured parties.

Next, your Honor, with respect to the priority issue, and as attached as an exhibit to the reply of the group, the capital structure of the debtors is relatively simple. 245 million dollars of senior secured notes, approximately 183 million dollars of unsecured notes issued under two different indentures. And those notes, those unsecured notes both are issued with subordination provisions in the indenture. And those subordination provisions, and it's article 10 of the indenture that was submitted as an exhibit to the reply, those subordination

provisions provide very plainly, clearly and unambiguously, that no payments shall be made to the unsecured subordinated note holders unless and until the senior secured note holders are paid in full in cash.

So in essence, your Honor, under the indenture that governs the unsecured notes, even if the secured lenders did not have a perfected lien on the cash, that cash could not be distributed to the unsecured note holders unless the senior secured note holders were paid in full in cash, which really means in terms of priority, vis a vis the secured and the unsecured note holders, it wouldn't matter if there was a lien on that cash or not.

The unsecured trade creditors, though, do come into the picture, your Honor, and those claims are probably 10 to 15 million dollars, it depends on rejection damage claims and some unliquidated claims. And arguably, if the collateral trustee for the benefit of the secured note holders did not have a perfected lien on this cash, this cash would be available for pro rata pari passu distribution to the trade creditors and the senior secured note holders first before anything went to the unsecured subordinated note holders.

And if we do the math, your Honor, the secured claims are owed 245 million dollars without application of the 95 million in cash. We think the

unsecured trade claims are ten to fifteen, but if we are completely wrong and they are 24 million dollars, which there is no way that it's going to be that high, the pro rata pari passu distribution of this the 95 million dollar cash would go 90 percent or greater to the secured note holders 10 percent pursuant to the unsecured trade, zero to the subordinated unsecured notes.

And I do note, your Honor, that the note holders in footnote four of their reply did state that if it was appropriate or necessary they would in effect reserve and hold back from the 95 million dollars that would otherwise be distributed to them an amount sufficient to provide for a pro rata distribution in the event it's subsequently determined that they are not truly secured creditors.

With that, your Honor, I think the balance of the objection is, for example, that the professional fees of the secured note holders and the collateral trustee should not be paid as part of adequate protection. Those fees are part of the budget, your Honor. And again, and this is set forth in the note holder group's reply, if it is subsequently determined that the senior secured note holders are under collateralized, then any payments of these professional fees will be deemed, you know, satisfaction of a secured claim. However, if the senior

secured note holders are over collateralized, which was what was being contended prior to the filing of the case, then payment of the professional fees is appropriate under 506 as part of their secured claim.

There's an objection, your Honor, to the granting of a lien on the avoidance actions as part of adequate protection. And, your Honor, this is really, in essence, a new money type of situation, and we think 361 authorizes the grant of the lien on otherwise unencumbered assets.

The final thing, your Honor, is what this cash collateral order motion does is it does resolve a dispute between the debtors and the secured note holders, and frankly we think it resolves it favorably. Prior to the filing of the case, your Honor, while that 118 million dollars was in the Merrill Lynch segregated account the debtors contended that that cash was property of the debtors' estate subject to the secured lenders lien, therefore we contend that that cash is cash collateral subject to use under Section 363.

The secured note holders, however, contended that based on provisions in their indenture and based upon our prepetition defaults, that the cash in the Merrill Lynch account was truly their property and that we had no interest in that cash, and that the cash was being

held by Merrill Lynch as a trustee for the benefit of the secured note holders as owner, and in fact they demanded that Merrill Lynch transfer the name of that account into the name of the secured note holders prior to the filing of the petition. Rather than litigating whether or not the cash that's being proposed to be paid out is the debtors' property subject to a lien and cash collateral or whether it is truly the secured lenders property and we have no interest in it, the cash collateral order really gives the debtors the benefit of prevailing our argument without having to litigate it and the money is treated as cash collateral.

Your Honor, based on all of that we think this is an appropriate cash collateral order. The debtors and their advisors, if we thought that paying out over the 95 million dollars of collateral would impair our ability to operate and emerge, would have negotiated for more than we negotiated as part of this budget. We think this is more than adequate to get us through the Chapter 11, and we would request that your Honor grant our motion.

Thank you.

MR. SAGE: Thank you, your Honor. Michael Sage on behalf of the committee.

Your Honor, I'm going to start with the thing that I care about the most, and that's the payment of

the 95 million dollars during the challenge period. We have briefed it, they have briefed it, your Honor has read it. And Mr. Thomas made a very good presentation, but I think I he glossed over somewhat what the challenge period is about. He described it, and I didn't write it word for word, as a time to investigate the liens of the secured. That's not what paragraph 18 says, though. 18 is much broader, it talks about the validity, perfection, priority or enforceability of the obligations and the liens.

We have 60 days to -- and it also references, excuse me, your Honor, the subordination of their claims. We have 60 days to analyze more than just what their liens are about. Their claims may be unenforceable, their claims may not have the priority they say they have. Mr. Thomas talked the about the indenture, for example, and said that, you know, it's very simple, very clear that the subordinated bonds are subordinated to the payment in full in cash.

If you look -- you don't need to do it right now, I'll read it to you, your Honor. At article 10 of one of the indentures it says in full in cash or cash equivalence, and then it has a phrase or such payment duly provided for to the satisfaction of the holders of senior indemnities. That might mean, they would probably say it means that if they consent to something other than cash

that's what they get. But the indenture uses words for consent like consent elsewhere. There may be an issue, there may be an argument that the subordinated's might make in the future that if they get paid one hundred cents in bankruptcy dollars, whatever package of dollars that is, that that's a hundred cents and that the subordination doesn't apply.

I'm not here to litigate that today, all I am saying is that their comments about it being crystal clear in that indenture or that it's crystal clear that the only thing for our committee to do is analyze the liens and once the liens are valid they're home free is not true. It's not what it says in their cash collateral order, and it's not the purpose of the challenge period. The purpose of the challenge period is to determine that their claims are valid in all respects, not just the liens.

As a consequence, it's our view that paying the 95 million dollars of funds that will not necessarily escrow the money and have it sitting there in case their claims are not valid is inappropriate. There's nothing in the record about whether these funds have the ability to repay the money if necessary. We are in an area right now where institutions disappear over night or get bought out over night; I'm not casting any dispersions on any of their clients or their abilities, but we just don't know. And

it's our view that paying that money during this period is inappropriate.

Now if your Honor were to rule that paying the money after the challenge period is what has to happen, and I'll get to whether that's appropriate or not, but if that's what your Honor were to rule, we are not looking at 60 days as an outside period that we have to use every minute of, it could be that we would be done with our investigation in 30 says or less even.

Now, I want to address one point that Mr. Thomas made, and that is O'Melveny and Myers represented the ad hoc committee and they must have done an investigation and they represent the official committee so shouldn't this have all been done. A couple of things: One, we do have different clients now. We represent the estate, the creditors of the estate, all the unsecured creditors. We have an obligation to the trade to do a job. Not just the bondholders who we represented before, and even before it was only a subset of the bondholders, it wasn't all of them. That's one.

Number two, we did not do this thorough going lien and claim investigation that a committee would do. We were actually involved in what we thought was potential out of court, consensual restructuring. There was valuation exercises going on, there were negotiations,

there were formulations of proposals and those kinds of things. We were not an official committee and were not acting as one and didn't do exactly what we would have had done had we been one. That having been said, we did look at some aspects, besides that we know nothing about the liens and about the claims of the secureds, but we didn't do what would we have done had we been a committee.

Also, my firm, as disclosed in our application for retention presents MHR in various matters. MHR is one of the secured lenders here. Because of that, we think it's inappropriate for O'Melveny to do the lien analysis. We will be applying -- the committee will be applying to have Cohen Tauber, another law firm in the city, do that job because of the fact that we are in a conflict position regarding the lien review, or potential conflicts issue regarding the lien review. We don't represent MHR in this case anymore of course, but we do represent them, and my prior firm Stroock, Stroock and Lavan did represent MHR in connection with the 20 million dollars loan that's at issue here or might be at issue here. As a consequence we are not going to do that work, we are going to Cohen Tauber hit the ground running and give them all the information that we have, but it's going to get done by somebody else.

The bottom line is that during the 60 days

we think it's inappropriate for the money to go out because we don't know if the liens and claims are valid and we don't know that the debt should be subordinated for whatever reason. I'm not saying it should be, but we've been granted a period to do that analyses and we should be able to do that before they blow the money out the door to people who may or may not be able to pay it. That's the most important to us.

The second most important thing or the related point is the --

THE COURT: Mr. Save, have you revealed all these conflicts to the U.S. Trustee --

MR. SAGE: Yes.

THE COURT: -- and the --

MR. SAGE: They are in our application.

THE COURT: And put them in your application to be retained?

MR. SAGE: Yes. And we mentioned it to them orally on the day that we were selected as well.

THE COURT: In your prior iteration, were you compensated by individuals or by a group?

MR. SAGE: We were compensated by the company for most of what we did.

THE COURT: The debtor?

MR. SAGE: Yes, yes. It was not the

overwhelming amount that has been referred to previously, but we were compensated by the company, as is customary post default that they retain advisors for both sides.

THE COURT: Well, that's a lot of the argument that goes back and forth with the papers; it's customary, customary and so forth. I don't know what's customary or not when it comes to conflicts, but go ahead.

MR. SAGE: Okay. We were paid by the company. We have an amount that was not paid that we are waiving.

The other objection that we made a parallel objection is one that I know is unpopular in a since, because we would like -- we said that the 95 million should be delayed until confirmation and paid with all the rest of the creditors. We know all the comebacks. The comebacks are why would you want the negative arbitrage, why wouldn't you want the money to go out the door right away, isn't that better for you, and aren't you just using leverage.

And our response to that is we come to this case and we see a motion to pay critical trade 2.2 million dollars, we see an application to pay management 140 thousand dollars for 2007. We see a case that's on a very fast track where everything is agreed except paying the unsecured creditors very much. I note from the last hearing the court mentioned the importance of unsecured

creditors and the good result in Lionel that they get one hundred cents. In this case it's going to be nothing close to that. And in that environment we look at what they propose to pay the secureds early, pre-confirmation, before the claims have been allowed, before the confirmation process has gone on, and say that doesn't seem fair to us.

We understand the economic arguments, and frankly we acknowledge that there's some appeal to them. But in the context of a case where they are proposing to give all unsecureds 500 thousand dollars, they are proposing to pay the preferred unsecureds 2.2 without, in our view, sufficient evidence as to why that should have happened. And we have resolved that temporally, parenthetically we just put it off to another date.

We look at the overall context and say paying 95 million dollars to folks early just doesn't seem fair. I admit we are most concerned about doing it during the challenge period, but it just seems wrong to us to pay it early. Certainly I understand the subordination point. I pointed out a provision of the indenture that might bear on that. I also note that trade doesn't care about the subordination point, and the trade views themselves as creditors who would like to paid early also, and it was being offered pennies on the dollar. And it says to me and to the professionals why should they get a 95 million

dollar payment early when I'm getting very little. That's that issue.

With respect to the 506(c) issue that we raised, and with respect to the avoidance lien, we know that these things are given for granted to secured lenders frequently. We note that the court's guidelines require an extraordinary showing and rationale why they should be granted in this case. We don't think the papers that they filed did that. We think they were very perfunctory in their papers, and our view was if they are going to get what this court deems extraordinary they should tell us why they should get it. Maybe they this morning they have gone some of the way of doing that, but they certainly haven't prevailed in our view.

Our last point is under 1129(a)(4), our reading of that section is that the court cannot confirm a plan if professional fees have been paid without court supervision. We recognized, as I said, in the first day hearing the case, that it's not uncommon for courts to approve that the secured lenders, either as adequate protection or on some other basis, preconfirmation and without the application, but it doesn't seem to be -- it's not consistent with our view of the Code. The Code does not refer to court retained profession, it doesn't refer to debtor's professionals, and it doesn't make any exception

to 1129(a)(4) for professionals that work for the banks. The consequence is we think that Congress had something in mind, and that was to force them to file applications also.

Again, we are certainly experienced, we know people do this all the time, maybe with a wink and a nod, I don't know. But we recognize that it happens a lot. But that having been said, the Code doesn't seem to allow it, and therefore we object on that basis.

THE COURT: Thank you.

MR. HERMANN: Your Honor, if I may. Brian Hermann from Paul, Weiss on behalf of the group of senior secured note holders. I just want to he respond briefly because we did file a reply.

I think this objection is largely an objection for objecting sake. I do think that the credibility of the objection is somewhat lacking, as well as some of the inconsistencies that have come out today, and I just want to point those out.

First, these proceeds should have been distributed to us in July of 2007. This it's not about a short 60 day delay to get proceeds. The proceeds, pursuant to our documents and pursuant to the subordinated note holder's documents very clearly provide that the proceeds should have been distributed to the secured note holders. They weren't. And the reason they weren't, we suspect, is

because the company didn't know at that time what shape the restructuring was going to take and wanted to hold onto the proceeds, which is a very logical thing for the company want to do. And so throughout the course of the summer of 2007 and the fall we agreed with the company on a protocol through a forbearance agreement as to how the funds would be held, they would be segregated, because the company, which had done its own independent lien review and concluded that our lien was perfected, not only in the assets but in the proceed sitting in the segregated account and concluded and presumably advised, through counsel, was presumably advised that they couldn't use those funds without the collateral trustee's consent.

And we tried to work with the company. And forebeared from exercising remedies and we did work with the company for a period of time, and in fact funded the company's operations for a period of time through some of the cash in that segregated account. However, it was always contemplated that two things were going to happen in this case; either the company was going to file a free fall bankruptcy, in which case cash collateral was going to be contested, or the company was going to reach agreement, at least with the senior secured note holders, which they've done, and maybe with the subordinated note holders, which hadn't proved possible, and we'd come to some agreement as

to how much cash the company needed to fund its operations, we would agree on a plan for reorganization, which was done, and then we would agree to distribute the rest, because frankly it's always been the understanding that the rest of the money belonged to us and they were just holding it until there was some certainty as to what this case was going to look like.

The company came to us and said we need 5 million dollars to operate during the interim period. We gave that to them. The company said we need 12 million additional to operate for the remainder of the case. We said no problem. The company then came to us and said we need an additional 5 million to operate post effective date just in case the capital markets are closed to us. We said no problem. And then to be conservative they said maybe 7 and a half million. We said, again, no problem. That's all the company needs. They don't need the 95 million dollars.

Now why does the creditors' committee oppose the distribution of the 95 million dollars? Well originally it was because the liens may be invalid. I think based on our papers they rightly concluded, because they don't say anything in their papers about the enforceability, it's all about the liens, I think they rightly concluded that they are stuck on that point because

they are subordinated, or at least most of the creditors are subordinated.

And so they look at us and they say well they're right, whether their lien is perfected or not it doesn't really matter versus, as, you know, vis a vis 95 percent of the creditors in this case because they are subordinated anyway. And the language Mr. Sage pointed to is meaningless because we are not accepting anything other than payment in cash in full before they get anything. That's number one.

As to the enforceability, presumably, and I understand Mr. Sage said he didn't do an exhaustive lien review prepetition, but if our obligations were unenforceable, surely that would have benefitted the subordinated note holders. But they had plenty of time to do that analysis. I don't think anybody can question the enforceability of the obligation. We loaned the money to the company. The company received the money. They've used the money. I don't think anybody in their right mind questions that the obligations are enforceable. It's all about the liens, and the liens are irrelevant.

Now with respect to the trade creditors, I do some have some sympathy there, and we do say in our papers that whatever dollar amount it completes to, 3 million, 4 million, 5 million, we are prepared to set that

aside so that if it turns out that our liens are invalid, vis a vis the unsecureds, we have to share pro rata, but vis a vis the subordinated noteholders, they don't get anything. So if it has to be 90 million that goes out the door or whatever number is, that's fine with us.

THE COURT: Well, one of the notes I made with respect to reviewing all the papers is, and I have it on page five in connection with your footnote 4, I scribbled the word amount question mark. And now for the first time I'm hearing something in the way of an amount, but that still didn't satisfy me as to what the amount is. Perhaps it should err on the higher side.

MR. HERMANN: We put in our papers 10 to 15 million for the precise reason that we understand the debtors' estimate to be 10 but we recognize the amount could be higher.

THE COURT: I'm not talking about the amount of the claims, I'm talking about the amount to be set aside.

MR. HERMANN: Yes, and I'm going to get there.

THE COURT: And now you are talking about 5 million and I'm just wondering if that's an appropriate number. It's a guesstimate; isn't it?

MR. HERMANN: It's a guesstimate. And I

think between the two of us we would be able to work that out.

THE COURT: The two of who?

MR. HERMANN: Between the creditors, well maybe more; the creditors' committee, the debtors, our group and the collateral trustee, we can work that out. That's now.

THE COURT: Well, Mr. Sage may still have some conflict there with some portion of the group he represents.

MR. HERMANN: That's true. Let me speak to that for a second on the conflict issue.

I think Mr. Thomas hit the nail right on the head when he said Mr. Sage's firm has been involved in this case. And many of the members of the creditors' committee have been involved in this case for a long, long time --

THE COURT: But how is Mr. Sage going to negotiate for Rubin Donnelley at the same time he's negotiating for the other members of the subordinated bond holders?

MR. HERMANN: I think that's --

THE COURT: Is it your proposition that some other law firm is going to come in and negotiate this separate item with respect to representation of the general

unsecured creditors, which is essentially Rubin Donnelley?

MR. SAGE: We don't view our "conflict" as disabling in anyway except for the narrow tasks --

THE COURT: Well, it sound to me like I'm the one negotiating, in the event I approve, the amount that's going to be set aside for those people that you don't have that much concern about.

MR. SAGE: Well, your Honor, I couldn't disagree more with that, respectfully. We have great concern for them. The fact that the objections we filed on critical venders was all about the trade. We are not -- every committee counsel --

THE COURT: Well, I'm trying to pin counsel down to what he starts off as saying is a gratuitous reservations of funds for some portion of the group that you represent.

MR. SAGE: If your Honor rules that the only holdback is for the trade portion, we can adequately represent our trade members and our trade constituency --

THE COURT: It sounds like I'm doing more of a job for that than you have. I've gotten them all the way up now to something north of 5 million dollars. I haven't finished negotiating for you, but let's see if this colloquy produces some more reasonable number.

MR. SAGE: We asked for 95, and I think

that was subsumed, the five was subsumed --

THE COURT: 95 million?

MR. SAGE: Yes, to be held back until the 60 day period.

THE COURT: I'm talking about the specifics for this particular group.

MR. HERMANN: We are prepared, your Honor, based on the math, and I defer to the esteemed row of financial advisers sitting behind me, to do it correctly; that whatever the distribution may turn out to be, based on a conservative estimate of what the general unsecured non subordinated claims are anticipated to be in this case, how much they would get to share pro rata, assuming our 245 million dollars of claims are entirely unsecured, we are prepared to set that aside and leave it behind and await the conclusion of --

THE COURT: I understand that. That's why when I read your papers at footnote 4 on page 5 I put down amount question mark. And I'm trying to see if I can get an answer to that today.

MR. HERMANN: Our rough calculation I was three to four million dollars.

THE COURT: Well I thought maybe they were in the ballpark of 5 or 6 or 7 or something like that.

MR. THOMAS: Your Honor, I would, on behalf

of the trade creditors I'll negotiate on their behalf, your Honor.

MR. SAGE: Mark, you don't need to it on behalf of the trade. We can do that and we will do that.

MR. THOMAS: I'm sorry, I didn't mean to offend.

MR. SAGE: That is offensive.

MR. THOMAS: I'm sorry.

Your Honor, I think the math we have is we believe that the unsecured non subordinated trade creditors will, worse case, largest amount be 15 million dollars. We think it's about 10. If it is 15 million dollars, the note holders are owed about 245 million dollars now, I mean 15 as to 245 is --

MR. HERMANN: 260; 15 as to 260; it's both.

MR. THOMAS: It's still --

MR. MCGUIRE: It's four and a half percent.

MR. THOMAS: Yes. It's five percent. And if we say instead of turning over 95 million dollars we holdback five percent, that seems to be probably a reasonable holdback, assuming for the sake of discussions that the note holders are completely unsecured creditors and that they have to share pari passu in that pot of cash.

MR. SAGE: Your Honor, can I address one aspect of Mr. Hermann's presentation?

THE COURT: Well, I thought maybe I would get the answer to the --

MR. HERMANN: I'm not done.

THE COURT: -- note I made when I read all the papers. If this was a gratuitous offer on the part of the senior secured note holders, and I'm trying to see if I can get a real number out of them instead of just some concept. Does five million sound --

MR. HERMANN: Five million dollars is fine.

MR. SAGE: Well, it's not fine with the committee. If that's what the court rules, that it's only going to be the 5 of the 95, then we would like to actually understand the math and spend a little time making sure that is it's the right number. It may be a low number or it may be a high number.

THE COURT: Well he's given us the math and I think it's a little higher than their calculation of the math, not by much.

MR. HERMANN: Yes. I think it enures to their benefit but we're fine with five million dollars.

MR. SAGE: I don't know if Mr. Hermann is finished.

MR. HERMANN: I'm finished on the 95 million, but you have raised other issues.

MR. SAGE: Yes. I would like to respond,

if I can, to an aspect of that.

THE COURT: Sure.

MR. SAGE: Mr. Hermann implied that we were being disingenuous or inconsistent, which we are not.

If you look at our response, your Honor, in paragraph 2 and in paragraph 10 we talk about the challenge period in connection with or in respect of the opportunity to determine whether the liens are perfected or that we are otherwise entitled to receive the proceeds. We say in paragraph 10 describing the challenge period paragraph, that paragraph 18, however, the proposed order provides parties in interest a 60 day challenge period to investigate the lenders claims and liens. We didn't quote the entire section, but we wrote this. And the import was not just the liens.

He thinks that we've done a fast and loose change today and now we are seeing that we are wrong and therefore we're gravitating towards the claims. That isn't the case. We looked at paragraph 18 as an opportunity to do what it says, and that is to analyze the claims and liens. He assumes that his claims are all valid. They may be, but paragraph 18 gives us, the unsecured creditors' committee body, the opportunity to analyze claims, liens, subordination, a lot of other things besides just liens. And we therefore think we did our job for the trade because

we were asking for 95 which subsumed, the whole 95, not just the percent that would be held back for just the trade.

But I just want to make clear that we don't as all view ourselves as somehow changing course today. We had in mind the whole time that this was a period during which we could analyze the claims and liens and everything to do with their claimed amounts owed.

THE COURT: Well, why don't you let him finish his presentation.

MR. HERMANN: Thank you, your Honor.

MR. SAGE: I thought it was thank you, your Honor.

MR. HERMANN: The only other thing I would like to say about the 95 million is, I was going to say earlier that Mr. Thomas hit it on the head when he said earlier that the professionals and some of the members of the creditors' committee have been involved at this for quite some time and should have done a lien review.

I guess what I would say is if they haven't that's pretty telling, because I think that they probably concluded a long time ago that a lien review was irrelevant, otherwise, in their capacity as counsel for the subordinated note holders they would have done it. And they either concluded that the obligations were enforceable

or concluded that that was irrelevant also, because I can't imagine entering into a negotiation on a restructuring and taking for granted the other guy's liens and claims.

As for the other aspects of the objection, you know, we are not getting a whole lot here in the way of adequate protection. Frankly, I think Mr. Thomas', you know, walk through the budget shows that while the company is generating positive EBITDA, honestly, it's using our cash and there is real diminution of value, and we took whatever we could get. There's not a lot here in way of unencumbered assets.

As far as the fees go, I think 1129(a)(4) is a complete red herring. If we are under secured, that's basically our lender just giving us their collateral and paying their lawyers, and if we are over secured we are entitled to the fees, and 506(b) says that they have to be reasonable, so you are going to get to the reasonableness review anyway. And we are providing notice to the committee of our fees even though we didn't have to do it. They have an opportunity, no doubt, to object if they think the fees are unreasonable.

That's all I have, your Honor. Thank you.

MR. FISCO: Very briefly, your Honor. I have two little points.

There is no suggestion or allegation in the

committee's response as to how they would attack the validity of any of the claims that they are suggesting they need 60 days to attack.

There's also no allegation as to how they would attack the validity of the liens. They have had time, even in the case, and these are all public documents, they are publically traded debt securities. I think that's notable. They couldn't even come up with a basis to suggest what objection there might be. And we join in the debtors' response and the note holder group's response.

THE COURT: Thank you all.

Just a couple of comments. I'm going to grant the main thrust of the request, and that is that the principal amount, something less than the 95 million, be permitted to be turned over. There's a holdback that's been sort of consented to of 5 million. Looking at the percentages up and down, I would say that the more appropriate holdback would be 5.5 million; that puts a more rounded percent on that. And because the claims resolution process is never an exact one, the debtors always have a lowball figure and the claimant always have a highball figure. I think this is, if I was going to accept that behind kind of holdback, that's what I would find acceptable.

I also agree with Mr. Sage that there isn't

anything that says that you folks have to have a lien on trustees avoiding actions, it's like a give away or a throw in. If you can get it you take it, but I don't even think that any lender ascribes much value to that, and I think that to the system it's somewhat offensive to turn that over gratuitously to a lender. If it's a form of adequate protection I don't think it's much of an adequate protection, and I would agree with Mr. Sage that there's no need to include that in the boiler plate here.

And also while I'm on the lesser elements of the request, the request here for compensation and attorney's fees of the secured lender group, Mr. Sage seems to say that that's sort of a tradition or that's been found acceptable. I only find it acceptable in the context of it being a form of adequate protection given that the case is not so healthy and the monies being utilized are somewhat less than the potential for a full recovery. But even then I condition that payment of those kinds of fees based upon their being subject to a reasonableness standard, and that is clear that will always be the case, and certainly Mr. Sage is going to come in if the fees are somewhat out of line. And in that regard I assume there's going to be a circulation of the fees as they are drawn down to all parties in interest. So there's an opportunity to exercise the concept of reasonableness, and that too should be built

into the cash collateral order.

With respect to the request that the payment not be made for a period of 60 days, I find very little currency to sustain that request. Number one, 10.1 of the notes clearly indicates the subordinated nature, and that even if the liens were to be set aside, the subordinated notes will still be, by their very terms, subordinated. Mr. Sage is quite speculative as to the infirmities of the subordination provisions, but I think that I've seen and heard nothing from him that puts some hard substance to those speculative assertion. It is clear by its very terms that his group is subordinated to the secured group, and even if the liens should be found wanting, that they would still be subordinated. So there isn't any real reason why we should await the 60 day period.

This is also a case where he's had a bite at the apple, to some extent, to review this issue. And even with the benefit of that hindsight, there is nothing really shown that the liens are so infirmative that they should be subject to further scrutiny. Furthermore, there is very little shown in any of the papers to buttress the debtors' position that collateral is partially their collateral. It's been in the name of the collateral trustee for some period of time. Ownership of the

collateral may be an issue and maybe it can be challenged, but that matter is being resolved in a way that prevents this estate from being burdened additionally by the prospect of negative arbitrage. So the payment over now does stop some rather expensive ongoing challenge or charge to the estate. In short, there's very little shown that the secured group is not entitled to that which they are willing to accept under the circumstances here.

With that said, I am going to sustain the argument that the cash collateral order should be approved subject to the comments made by the Court and the changes. And the objections to the motion for the cash collateral are overruled.

MR. SAGE: Your Honor, just briefly. We, before today asked for two minor changes to the order, and we were told they would be made but never saw if they were. Before we go too far I wanted to find out if that was done.

Paragraph 18 we wanted a preferred standing on the committee, if you recall.

MR. THOMAS: We'll make that change, your Honor, as part of the other changes. I'm sorry.

MR. SAGE: And paragraph 29 as well.

MR. THOMAS: Okay.

MR. HERMANN: Before you consent, I'm not sure I've even been asked about the change.

MR. THOMAS: Let me state it for the record so it's clear. The committee has requested that within the challenge period paragraph where they have the 60 day challenge period, that they be granted standing to bring any claims on behalf of the debtors' estate if they discover any claims. We, the debtors, think that's an appropriate grant. So in the event they find anything there's not an issue about whether they have standing to bring them because we've already waived those claims as stipulated.

MR. HERMANN: That's perfectly fine.

MR. SAGE: And the other minor change in paragraph 29, intercreditor, there's a provision that says no effect on intercreditor rights. And we thought that the last three words, which include the debtors in that, seem to be unnecessary inasmuch as there is, in effect, the right against the debtors.

MR. THOMAS: That's fine, too, your Honor. I'm sorry we didn't do this outside of court.

MR. SAGE: I'm sorry, too.

MR. THOMAS: I neglected to get back to Mr. Sage on those issues.

Your Honor, if I may though, can I raise one issue of clarification on your ruling, that the fees of secured creditors would be subject to a reasonableness

standard and that they would be circulated to parties in interest. I'm wondering whether we could provide in the cash collateral order that they are circulated, in essence, your Honor, to the same group that receive the monthly interim statements under the --

THE COURT: Yes, that's what I intended.

MR. THOMAS: Thank you, your Honor.

THE COURT: And there is just one item that I haven't heard, although the counsel for the secured group used a head shake when I imposed a 5.5 million dollar addition.

MR. HERMANN: You are a tough negotiator. 5.5 is fine, thank you.

MR. MASUMOTO: Your Honor, if I may, two points for clarification of the record.

One is that prior to this hearing we -- the creditors' committee proposed counsel had submitted a draft of their retention application to our office. And due to the press of the examination of other documents we haven't had a chance to respond to them. I believe they just filed the application online over the past two days. So from the standpoint of the U.S. Trustee, we have yet not communicated or opined regarding their representation or any conflicts that they have. And I just wanted to make it clear that our office has not pre-cleared or made a

determination regarding their representation.

THE COURT: When you say their, who are you referring to, the debtor as well as the creditors' committee?

MR. MASUMOTO: No, I'm sorry, your Honor. I was talking specifically about O'Melveny and Myers. They had provided us at one point, I think about a week ago, with a draft, and they recently, I believe within the past two days, filed their application online.

Our office hasn't had a chance to have any discussions regarding their representation. I just didn't want any comments that were made regarding their potential conflicts to be read as our endorsement of their representation, notwithstanding we have not yet had a communication with them.

THE COURT: Were what are you suggesting then, that their retention, which hasn't been approved by the court in any event as of today, be considered an interim retention?

MR. MASUMOTO: No, your Honor. I just wanted to indicate that at this point --

THE COURT: I'm perfectly prepared to accept Mr. Sage for purposes of this hearing as representing the parties he says he represents.

MR. MASUMOTO: As are we, your Honor. But

just as an indication that we have not yet discussed or even evaluated any potential conflicts with respect that counsel may.

THE COURT: Well, that's not before me at this point.

MR. MASUMOTO: I understand. I just wanted to make it clear that we haven't decided that.

THE COURT: All right.

MR. MASUMOTO: The second matter that I did want to clarify for the record, which is clearly not an issue for today, but based upon comments made by the secured creditor and certain comments made by your Honor regarding the nature of the 95 million dollars, we had raised this issue previously with both the secured creditor and the debtor, but that has an impact, obviously, on whether or not U.S. Trustee fees apply to a potential disbursement.

So the character of that 95 million dollars has not been adjudicated. They have obviously sought to eliminate any adjudication of that matter, which is fine with us. But for our purposes in that determination, it's our understanding that this motion doesn't dispose of that characterization by virtue of this order.

THE COURT: That may be the U.S. Trustee's understanding.

MR. THOMAS: Thank you.

THE COURT: The court takes no position.

MR. MASUMOTO: Thank you, your Honor.

MR. SAGE: Your Honor, the only issue that I didn't hear your Honor address, and maybe it was impregnated within something else, was the 506(c) objection that we raised. I didn't hear the court say anything about that either way.

THE COURT: Specifically I don't recall.

MR. SAGE: We made the same objection that we he made regarding the avoidance liens, i.e. that it requires an extraordinary showing under the court's rules and they haven't made it; that was our objection.

THE COURT: Well, it made no difference because I think I slipped it in under the guise of adequate protection in any event.

MR. THOMAS: Thank you, your Honor.

May we proceed with the next item on our agenda?

THE COURT: Yes.

MR. THOMAS: The next item on our agenda, matter number 2, it's docket number 68, the motion of the debtors for an order authorizing but not directing the debtors to enter into agreements with critical vendors.

Your Honor, we've agreed, based on

discussions with committee's counsel to adjourn that hearing.

THE COURT: Very well.

MR. THOMAS: We believe our next omnibus hearing date will be April 29th at 10 a.m.

Your Honor, next is contested item 3, which is the motion of the debtors for entry of order authorizing assumption of certain executory contracts, docket number 67.

Your Honor, if I could, the committee filed an objection. We engaged in discussions with the committee. And after we filed our amended agenda letter we were able to inform your chambers of what we had resolved. And if I could, I would like to tender to your Honor a black lined order.

Your Honor, in essence this motion sought assumption of executory contracts that were set forth on Exhibit A, and also those set forth on Exhibit B. The committee filed an objection. We engaged in discussion and have agreed to adjourn the motion to the next hearing with respect to the contracts set forth on Exhibit A. And they will withdraw their objection and have no objection to the assumption of the contracts set forth on Exhibit B. Your Honor, on Exhibit B are freelancers. The total aggregate payment is approximately 221 thousand dollars. Many of

them are in very small amounts, these are people that actually provide editorial content on our website and in our publication. And as I stated with Mr. Sage, their consent, the committee's consent to authorizing assumption of the contracts set forth on Exhibit B is completely without prejudice to their continuing objection to the assumption of the contracts set forth on Exhibit A, which contracts assumption would be continued to the next omnibus hearing.

MR. SAGE: Excuse me. It's also, your Honor, without prejudice to our objection on the critical vendor motion, which is the prior motion. Since they are related concepts we wanted to get on the record that our consent to the freelancer assumption has no bearing on either the other contracts to be assumed or that would be assumed, or the critical vendor motion that we've filed.

THE COURT: Very well.

MR. THOMAS: That's correct, your Honor.

THE COURT: The motion is approved with that caveat.

MR. THOMAS: Thank you, your Honor.

Your Honor, next on our agenda is our motion of the debtors for entry of an order scheduling a disclosure statement hearing and approving form and manner of notice thereof, scheduling the confirmation hearing and

establishing discovery procedures with respect thereto, docket number 66. And, your Honor, the committee filed an objection, which is docket number 81. The debtors have filed the disclosure statement and a Chapter 11 plan dated as of March 26th. Those are reflected as docket numbers 97 and 100.

And in discussions with the committee counsel, your Honor, what we proposed is that we would just proceed today to set the hearing on the disclosure statement, approve the form of notice thereof, sort of block a proposed hearing date for confirmation, and then adjourn the hearing with respect to discovery scheduling. And what is actually happened in the last 48 hours or so is the parties have gotten very, very close to an agreed stipulation on discovery scheduling. And if it's not actually agreed by now we suspect that we will have an agreed scheduling stipulation within the next 24 or 48 hours.

I'm not so sure how we should proceed, whether we should continue this for status for a week or two, and in the event we have an agreement on the discovery schedule we will just submit a stipulation, and we can take the matter off status. But with respect to what we would like to proceed with, your Honor, we would request, if it's convenient, and we did check with chambers, a hearing date

on the disclosure statement of April 29th, our next omnibus hearing, at 10 o'clock a.m.; that objections to the disclosure statement be filed and served on the 25th of April, and that we block off June 25th for a confirmation hearing, assuming we can get an approved disclosure statement on April 29th.

THE COURT: Do those dates work for you?

THE CLERK: Yes.

THE COURT: That's acceptable.

With respect to your scheduling and in the event you are not able to reach some agreement, I suggest that we have a chambers conference.

MR. THOMAS: Thank you, your Honor; that's fine.

MR. SAGE: Your Honor, only one minor point, and that is the scheduling might effect -- there may not be an agreement as to confirmation date. And I don't think there is any reason to think that that will happen, but we would just like to reserve, as part of that status conference, we could raise that issue as to whether June 25 is the right date. Again, I don't have any reason to think it's not going to be the right date right now, but it might not be.

MR. THOMAS: Thank you, your Honor.

Next on our agenda is the application of

the debtors for an order authorizing the employment and retention of Alvarez and Marsal North America LLC as restructuring advisor and financial advisor to the debtors nunc pro tunc to the petition date, it's docket number 15.

Your Honor, we filed a revised order, which is docket number 74. The U.S. Trustee requested an additional change, and if I could, your Honor, I would just like to tender to you the order without the attachment just so I can show you the black line additional change that the U.S. Trustee requested and that we agreed to make.

MR. SAGE: Can we see that too, please.

MR. THOMAS: Yes.

(Handing)

MR. THOMAS: Your Honor, the black line change requested by the U.S. Trustee is on page 4 of the order in effect limiting Alvarez and Marsal with respect to seeking reimbursement for attorneys fees only to reimbursement for relating to request for payment of an indemnity under the indemnification provisions of the engagement. Otherwise there was extensive discussion between the U.S. Trustee's Office, our office, your Honor, and Alvarez and Marsal to reach an agreement on the form of a retention order that follows the Blackstone protocol that the U.S. Trustee wanted followed in this proceeding.

THE COURT: Does anyone want to be heard?

MR. THOMAS: Your Honor, the U.S. Trustee reminded me. There was one provision, and I think we are going to have to modify the order and submit it in chambers. Notice of this application and the principal terms of the engagement were sent to all everyone on the creditor matrix. And the U.S. Trustee wanted that to be a 20 day notice period, and actually everyone got 10 day's notice. So what they have requested is that the order really not be effective for another ten days in the event that someone who received that notice files an objection.

And I think we can work with the U.S. Trustee to put in some language to the effect that in the event somebody objects within the next ten days to the entry of the order, that we will seek a hearing before your Honor to resolve the objection.

MR. MASUMOTO: And that would be fine, your Honor. I just wanted to indicate as your Honor knows, our office has been in the process of revisiting the Blackstone protocol. I just wanted to indicate that some of the features that are, I guess, appearing in this order are not necessarily what's the final outcome.

As a general rule we will not -- we certainly don't prefer and we'll certainly object to self-executing orders, but we contemplate that once we have the modified procedure in place that will not be an issue.

Under the circumstances the of the case, since we did have a prior agreement, we decided to live up to the agreement based on the 10 day deferral from today's hearing.

THE COURT: I don't have a real problem with that, but I just wanted to take this opportunity to mention that the court is not party to the so-called Blackstone protocol, nor the other protocols that the U.S. Trustee has put out there. And it may very well be that those protocols give some comfort to an applicant when the U.S. Trustee endorses an approval or no objection; however, that should not be understood to pay away from the court the right to make its own review and not necessarily agree with particular terms of retention and so forth.

MR. MASUMOTO: That's understood, your Honor. Again, a lot of these features were designed to, I think, originally protect the financial advisers, some of them have become disagreeable, I think, to some of the advisors, and certainly the impact of the Rule 6003 has changed the landscape of the typical procedures that have occurred.

THE COURT: Well, let's hope that 6003 gets revised, because in some respects it just doesn't work.

MR. MASUMOTO: Well, until it does, your Honor, I guess we are attempting to accommodate the

requirements under that rule.

THE COURT: Very well.

MR. THOMAS: And, your Honor, we have so informed the applicant of what we have anticipated in terms of your view on protocols and whether or not they are necessarily binding on the bench. So that's innocuous.

Your Honor, the next item on our agenda, and the final item is docket number 13, and it's the motion of the debtors for an order authorizing the debtors to pay certain prepetition wages, et cetera.

Your Honor, the wage motion and interim order was entered granting the wage motion. And one of the things -- there were two things that sort of were withheld from approval at the interim order. The first, your Honor was the 2007 management bonus plan as it related to the three insiders covered by that management incentive plan or management bonus plan, and that was withheld from the interim order pending the appointment of the committee and review by the committee.

We have provided the committee with information and discussed this issue with them, and the committee has agreed not to object to the portion of the wage order authorizing the 2007 management incentive plan payments to three insiders.

Your Honor, this is not, you know, these

are reasonable amounts. We are talking about approximately 140 thousand dollars to the insiders under a management bonus plan that has been in effect for over seven years at this company. It's an ordinary course plan that was not adopted in conjunction with or in anticipation of these Chapter 11 proceedings. And based on that discussion with the committee we are going to proceed.

And what we've done also is we've agreed with the committee that we will not make any payments under the 2008 management incentive program without either the written consent of counsel to the committee or further order of the court.

So I have a black lined order, your Honor, that I can tender to you which, in effect, would resolve this motion as is. And the only remaining relief requested in this motion that hasn't been resolved is the authority to proceed with the 2008 management incentive program, which we will either do with the consent of the committee or further order of court.

Arguably, just for the record, the 2008 management bonus program is an ordinary course program that doesn't need to be brought before your Honor under 363, however, because potentially two months of the right to a bonus accrued prepetition, January and February of '08, we thought we would provide it as part of the wage motion.

THE COURT: Does anyone want to be heard?

MR. THOMAS: I would just like to show you the black line order, your Honor.

THE COURT: Yes.

(Handing)

MR. THOMAS: And it's really the third page of the order, your Honor.

THE COURT: I see the 2008 limitation.

MR. THOMAS: And again, the committee has requested that we make it clear that their non objection to the payment of the approximately 140 thousand dollars on account of prepetition bonuses that were earned is without prejudice to their objections to any other motions that may come before the court or are presently pending and adjourned regarding payment of prepetition claims.

THE COURT: That's understood.

MR. THOMAS: Thank you, your Honor. With that we are concluded.

What we would do is propose to submit later in chambers disks and clean copies of the orders.

THE COURT: Submit orders consistent with this record.

MR. THOMAS: Thank you, your Honor.

THE COURT: Thank you all.

MR. MASUMOTO: Thank you, your Honor.

C E R T I F I C A T E.

STATE OF NEW YORK }
} ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2008.

Denise Nowak

Digitally signed by Denise Nowak
DN: cn=Denise Nowak, c=US
Reason: I am the author of this document
Date: 2008.04.07 14:58:28 -04'00'

DENISE NOWAK