

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:) Case No. 06-51847
) Chapter 11
CREATIVE ENGINEERED POLYMER)
PRODUCTS, LLC,)
)
Debtor.)
)
-----)
IN RE:) Case No. 06-51848
) Chapter 11
CEP HOLDINGS, LLC)
)
Debtor.)
)
-----)
IN RE:) Case No. 06-51849
) Chapter 11
)
THERMOPLASTICS ACQUISITIONS,) U.S. Federal Building
LLC,) 455 U.S. Courthouse
) 2 South Main Street
) Akron, Ohio 44308
Debtor.)
) September 22, 2006
) 10:23 A.M.

TRANSCRIPT OF FIRST DAY MOTIONS
BEFORE HONORABLE MARILYN SHEA-STONUM
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Baker & Hostetler LLP
By: JOSEPH HUTCHINSON, ESQ.
THOMAS WEARSCH, ESQ.
ERIC GOODMAN, ESQ.
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

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215-862-1115 (FAX) 215-862-6639

Appearances:
(Continued)

For General Motors:
(via telephone) Honigman Miller Schwartz
and Cohn LLP
By: SARAH HILTZ SEEWER, ESQ.
DONALD F. BATY, JR., ESQ.
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3506

For Alabama Power Co.:
(via telephone) Balch & Bingham LLP
By: W. CLARK WATSON, ESQ.
1710 Sixth Avenue North
P.O. Box 306
Birmingham, Alabama 35201-0306

For Visteon Corporation: Dickinson Wright PLLC,
By: MICHAEL C. HAMMER, ESQ.
KRISTI A. KATZMA, ESQ.
301 E. Liberty Street, Suite 500
Ann Arbor, Michigan 48104-2266

For Delphi Automotive
Systems: Butzel Long
By: THOMAS RADOM, ESQ.
100 Bloomfield Hills Parkway
Suite 200
Bloomfield Hills, Michigan 48304

For Wachovia Capital
Finance Corporation: Benesch, Friedlander, Coplan
& Aronoff LLP,
By: DAVID M. NEUMANN, ESQ.
MARK A. PHILLIPS, ESQ.
2300 BP Tower, 200 Public Square,
Cleveland, Ohio 44114-2378,

Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
By: JEREMY DOWNS, ESQ.
ALAN P. SOLOW, ESQ.
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603

Appearances:
(Continued)

For the United States
Trustee:

United States Trustee's Office
By: MARIA D. GIANNIRAKIS, ESQ.
Howard M. Metzenbaum U.S. Courthouse
201 Superior Ave., East, Suite 441
Cleveland, Ohio 44114

For Pre-petition Trade
Committee:

McGuireWoods
By: MARK FREEDLANDER, ESQ.
SALLY E. EDISON, ESQ.
Dominion Tower
625 Liberty Avenue, 23rd Floor
Pittsburgh, Pennsylvania 15222-3142

1 THE COURT: Please be seated. Good morning.

2 (Pause)

3 MS. ZURN: This is Julie Zurn from Judge Shea-
4 Stonum's chambers. We have folks on the line?

5 MS. SEEWER: Yes. You have Sarah Seewer from
6 Honigman Miller Schwartz and Cohn representing General Motors.

7 MR. WATSON: This is Clark Watson, the law firm of
8 Balch and Bingham, representing Alabama Power Company.

9 MR. BATY: And then finally Donald Baty, also
10 representing G.M.

11 THE COURT: Okay. And as I mentioned to Ms. Seewer
12 yesterday, I'm happy to allow people to audit telephonically.
13 I do ask that unless you are speaking, that you have your
14 phones on mute so that we will not have extraneous noise
15 introduced into the courtroom. Thank you.

16 Good morning, on this Court's docket this morning are
17 newly numbered Case Numbers 06-51847, 06-51848 and 06-51849.
18 The filings for Creative -- Chapter 11 filings for Creative
19 Engineered Polymer Products, LLC, CEP Holdings, LLC, and
20 Thermoplastics Acquisition, LLC, respectively.

21 These cases were filed on the Canton docket
22 yesterday, and probably some people are wondering why they are
23 suddenly on the Akron docket. The venue would -- under Local
24 Rules would have been appropriate in either Court. Judge
25 Kendig apparently -- there had been inquiries made of Judge

1 Kendig concerning his availability, and he had apparently said
2 that he could do it any day this week, except Friday. Given
3 that the matters were -- there was a request for hearings on
4 Friday, the Court has tried to accommodate that and Judge
5 Kendig and I had discussions about the fact that it was
6 appropriate in either -- in either Court, the principal place
7 of business being shown as 3560 West Market Street in Akron,
8 Ohio, and the debtors operating a plant in the Canton area.
9 But Judge Kendig simply did not have time on his docket today,
10 as he apparently had tried to make clear to people.

11 So, the -- there are -- I will start with taking
12 appearances of counsel. There's been a sign-in street. I
13 would ask where there are multiple counsel, only one counsel
14 for a party enter an appearance, and then note other people who
15 are entering that appearance.

16 There are also a number of motions to participate pro
17 hac vice, and I would ask that people requesting pro hac vice
18 status in this case note that as they enter their appearance.
19 And I'll address their pro hac vice as they come forward.

20 MR. HUTCHINSON: Good morning, Your Honor. Joe
21 Hutchinson, Baker and Hostetler. I'm here with my colleagues,
22 Tom Wearsch and Eric Goodman. And we're here on behalf of the
23 three debtors.

24 MR. HAMMER: Your Honor, Michael Hammer from
25 Dickinson Wright, a law firm in Detroit. I represent Visteon

1 Corporation. With me is my partner, Kristi Katsma, she's also
2 appearing on behalf of Visteon Corporation, and we both have
3 filed verified motions for pro hac and have submitted orders
4 along those lines, too, Your Honor.

5 THE COURT: And those motions will be granted.

6 MR. HAMMER: Okay. Thank you.

7 MR. RADOM: Good morning. My name is Thomas Radom
8 from the law firm of Butzel Long in Michigan. I represent
9 Delphi Automotive Systems. And I would move orally this
10 morning to be admitted pro hac vice to appear.

11 THE COURT: I'm sorry. I had a question for the two
12 of you. Have either of you been subject to -- ever been
13 subject to a disciplinary proceeding?

14 MR. HAMMER: No, Your Honor.

15 MS. KATSMA: No, Your Honor.

16 THE COURT: Same question to you.

17 MR. RADOM: Same for me.

18 THE COURT: Okay. The Court is prepared to grant the
19 oral motion. I would ask that you submit a proposed order
20 noting that you've moved orally and that that had been granted.

21 MR. RADOM: Will do. Thank you very much.

22 MR. NEUMANN: Good morning, Your Honor. David
23 Neumann from Benesch Friedlander. Also here is Mark Phillips
24 from Benesch Friedlander on behalf of Wachovia Capital Finance
25 Corporation Central. I've also filed a motion as an attorney

1 in this Court for the admission of Jeremy Downs and Alan Solow
2 from the law firm of Goldberg Kohn, also on behalf of Wachovia.

3 THE COURT: And I would ask those gentlemen whether
4 they have ever been subject to any disciplinary proceedings.

5 MR. DOWNS: I am Jeremy Downs of Goldberg Kohn. Mr.
6 Solow unfortunately couldn't stay due to the holiday. And I
7 have not be subject to any such proceedings.

8 THE COURT: Thank you. And I -- I will, for the
9 moment, assume that neither has he. And if he has --

10 MR. DOWNS: Just --

11 THE COURT: I do -- I mean it's not a disqualifying
12 event, but I want to -- I do want to understand those
13 circumstances.

14 MR. DOWNS: To the very best of my knowledge, Mr.
15 Solow has not been the subject of any such proceedings.

16 THE COURT: And we are going to be addressing the
17 fact that Rosh Hashanah begins at sundown. So, I will be
18 addressing that in a few minutes.

19 MR. NEUMANN: Thank you, Your Honor. I'll submit an
20 order.

21 THE COURT: The motions for protective order hac vice
22 will be admitted.

23 MR. NEUMANN: I'll submit an order.

24 THE COURT: Thank you.

25 MR. FRIEDLANDER: Good morning, Your Honor. I am

1 Mark Freedlander of the law firm of MaguireWoods. With me is
2 my partner, Sally Edison. We represent a pre-petition Trade
3 Committee, Your Honor. We have each filed pro hac motions of
4 record, as of yesterday, with accompanying orders. And I can
5 report to you, Your Honor, that neither myself nor Ms. Edison
6 have been subject to any disciplinary proceedings.

7 THE COURT: Those motions will be granted.

8 MR. FRIEDLANDER: I can, likewise, Your Honor, vouch
9 for Mr. Solow. Although we may be adversaries, he's a very
10 good guy.

11 THE COURT: Thank you.

12 MS. GIANNIRAKIS: Good morning, Your Honor. Maria
13 Giannirakis on behalf of the United States Trustee.

14 THE COURT: And participating telephonically, we'll
15 go over that one more time.

16 MS. SEEWER: You have Sarah Seewer, I'm from the law
17 firm of Honigman Miller Schwartz and Cohn. I represent General
18 Motors. I will be submitting an application for admission pro
19 hac vice. And I have never been the subject of a disciplinary
20 hearing.

21 THE COURT: Thank you.

22 MS. SEEWER: And Donald Baty, from my firm, is also
23 on the line.

24 THE COURT: Okay. And -- and with respect to people
25 who are participating telephonically, when that's occurring on

1 such short notice, I -- it is possible that you may be able to
2 participate telephonically, although generally the telephone
3 privileges are for auditing. But we'll -- so, if you -- if you
4 proceed to participate today, I will address your pro hac. But
5 at this point, I'm assuming that you're just in an auditing
6 status.

7 And the person from Alabama?

8 MR. WATSON: Yes, Your Honor. This is Clark Watson,
9 I'm with the law firm of Balch and Bingham. We represent
10 Alabama Power Company.

11 I had filed with the Court a motion for pro hac vice
12 admission. And I have never been the subject of any
13 disciplinary proceedings.

14 THE COURT: And I believe you've also filed a
15 response to one of the motions today?

16 MR. WATSON: Yes. Yes, we have, Your Honor. We had
17 filed an objection to the Section 366 motion.

18 THE COURT: Okay. Well, your motion pro hac vice
19 will be granted.

20 And there are 20 matters that the debtor has asked
21 that that Court address today. We're good, but we're not that
22 good.

23 MR. WATSON: Thank you, Your Honor.

24 THE COURT: You know, I'm not -- we will be
25 addressing -- we'll be addressing what's a realistic agenda for

1 today in a few minutes. I do have time also early next week.
2 And so we're going to -- we're going to parse out some of this
3 stuff because we have worked hard to get on top of papers that
4 were filed yesterday. But I will tell you, I have not read
5 this entire binder.

6 Okay. I would like first to hear very briefly from
7 debtor's counsel with respect to those matters that you believe
8 as we triage -- how we triage these matters.

9 MR. WEARSCH: Good morning, Your Honor. Tom Wearsch
10 on behalf of the debtors.

11 As a preliminary matter, I'd like to note that after
12 discussions with the U.S. Trustee, I think this will help out
13 with respect to today's hearing. That I'll initially report
14 that there are several applications and motions which we've
15 agreed to adjourn as non-first day hearings.

16 THE COURT: Right. When I looked at your proposed
17 agenda, I give you credit for having -- it looked to me like 11
18 through 20 really needed to ripen more.

19 MR. WEARSCH: That's correct, Your Honor. If you
20 don't mind, I'll -- I will report into you right now those
21 matters which we've agreed to adjourn.

22 THE COURT: That would be very helpful. Thank you.

23 MR. WEARSCH: We have agreed to adjourn all
24 professional applications, which would be the application to
25 retain Baker and Hostetler, the application to retain Glass and

1 Associates, the application to retain BMC Group as claims
2 agent, and the application to retain Giuliani Capital. Those
3 are all going to be heard later at Your Court's direction.

4 We have also agreed to have the reclamation
5 procedures motion heard on regular notice.

6 And we've also agreed that the Committee confidential
7 information motion will be heard on regular notice so that we
8 can confer with the Committee on that motion.

9 With respect to those motions which are extremely
10 important to the debtor, clearly the joint administration, we
11 think, could be dealt with quickly and is important to the
12 debtors.

13 I believe that the -- similarly, the consolidated
14 lists of creditors, given the requirements of the Code and
15 Rules, is something that should be controversial and should be
16 able to be dealt with quickly.

17 The same with the motion on schedules and statements
18 and the waiver of local rules, should Your Honor grant those
19 motions.

20 With respect to substantive motions that are of
21 utter importance for today, the DIP financing motion is
22 clearly absolutely important to the debtors. And we have many,
23 many obligations which are outstanding and need to be taken
24 care of.

25 Similarly, the employee wage and benefits motion is

1 very important to the company that that be entered.

2 We believe that the utilities motion needs to be
3 handled today as, you know, we do have various utilities that
4 are in a state of flux until that gets entered, as well.

5 And finally the bank accounts motion. I don't think
6 that there is too much that is controversial with respect to
7 that. I think it can be dealt with quickly, but would be
8 appropriate to have that handled today so that the bank could
9 start honoring checks, should Your Honor approve the DIP
10 financing.

11 THE COURT: Ms. Giannirakis, is there anything you
12 wish to add to that? Is there anything you wish to add to Mr.
13 Wearsch's --

14 MS. GIANNIRAKIS: No, Your Honor. That was our
15 agreement.

16 THE COURT: Thank you.

17 MR. WEARSCH: Thank you, Your Honor.

18 THE COURT: Okay. With respect to the motion for
19 joint administration, that's obviously also useful to the
20 Court.

21 But let me just note it's my understanding that we
22 have three tiers -- we have three debtors and the -- and it is
23 holding company, intermediate holding company and one of at
24 least two, if not three, operating companies. And so while
25 joint -- I just want to underscore that while joint

1 administration does make -- it makes a lot of sense, that is
2 not a -- it's not a grease slide to substantive consolidation,
3 especially -- now I'm going to -- I'm going to share my general
4 understanding of a few things from reading of papers so that
5 people can tell me that I'm either right or wrong with respect
6 to these starting factual assumptions. And I'm doing this just
7 to try to move things along.

8 It's my understanding -- first of all, Mr.
9 Hutchinson, we -- we're not considering the application of
10 Baker today, but we did note that the CEP Holdings, LLC, the --
11 the -- who are the owners of CEP Holdings, LLC?

12 MR. HUTCHINSON: I believe now it's two individuals
13 from the Akron area.

14 THE COURT: Okay. And their names?

15 MR. HUTCHINSON: Mark Hamlin and Jim Van Tiem.

16 THE COURT: Okay. And your firm has done -- has --
17 has worked for Hamlin-affiliated entities, is that correct?

18 MR. HUTCHINSON: For one of the Hamlin-affiliated
19 companies, yes. But that work was completed.

20 THE COURT: Okay.

21 MR. HUTCHINSON: Totally completed.

22 THE COURT: They are not an ongoing client?

23 MR. HUTCHINSON: Correct.

24 THE COURT: Okay. There's discussion in various of
25 the papers about there being ten operating -- the debtors

1 having ten operating facilities.

2 MR. HUTCHINSON: Correct.

3 THE COURT: But that's really not accurate, correct?

4 It's really eight --

5 MR. HUTCHINSON: It's --

6 THE COURT: -- operating facilities?

7 MR. HUTCHINSON: Exactly.

8 THE COURT: And the Mexican -- the Mexican facility --
9 the Mexican entity operates two --

10 MR. HUTCHINSON: Correct.

11 THE COURT: -- plants in Mexico?

12 MR. HUTCHINSON: Correct. The non-debtor operating
13 Mexican entity operates two of the ten facilities, that's
14 correct.

15 THE COURT: Okay. And there was reference made to
16 eleven hundred and six employees, but that -- and this is in --

17 MR. HUTCHINSON: That's domestic. There's about 400
18 employees in Mexico.

19 THE COURT: Okay.

20 MR. HUTCHINSON: In the two facilities there.

21 THE COURT: And the -- among the eleven hundred and
22 six, are they all direct employees of these debtors? Or are
23 some -- is some portion of the eleven hundred and six actually
24 employees of temporary agencies?

25 MR. HUTCHINSON: No, I believe those are all -- the

1 eleven hundred and six are actual employees of the company.
2 That does not include temporary.

3 THE COURT: It does not include it?

4 MR. HUTCHINSON: We can verify that through
5 testimony.

6 THE COURT: Okay.

7 MR. HUTCHINSON: But that's my understanding.

8 THE COURT: It was unclear to me when I was reading --

9 MR. HUTCHINSON: Yeah, that's my understanding, Your
10 Honor.

11 THE COURT: Okay. It is also my understanding that
12 while there's been a motion filed that is sometimes referred to
13 as a DIP financing order, it's really -- it really is in the
14 nature of a cash collateral usage order.

15 MR. HUTCHINSON: Correct. It's -- it -- it deals
16 with the use of cash collateral and other things.

17 THE COURT: A lot of other things. I mean that's
18 fair.

19 MR. HUTCHINSON: That -- sure. Absolutely. It may --
20 it perhaps should have been handled in two orders or two -- or
21 in an order and an agreement, a DIP and an agreement, but the
22 parties who negotiated it wanted it done this way. And -- so,
23 we agreed to try to do it this way.

24 THE COURT: And who were the parties who negotiated?

25 MR. HUTCHINSON: The parties involved in the

1 negotiation for this DIP facility was Wachovia -- there's one
2 lender, it's not a -- it's not a --

3 THE COURT: Right.

4 MR. HUTCHINSON: -- group of banks, it's just one.
5 It's Wachovia. And then three of the major customers, which
6 make up 55 percent roughly of the -- of customers for the
7 company, which is General Motors, Visteon, and Delphi.

8 THE COURT: Okay. It is also my understanding that
9 these ten plants have come to be operated under this umbrella
10 in the last nine to 13 months. That there was a -- there was a
11 transaction --

12 MR. HUTCHINSON: The purchase was in August of 2005
13 of CEP. And then CEP bought Thermoplastics, which is one of
14 the debtors' subsidiaries, in December of 2005. So, that's
15 correct.

16 THE COURT: Right, okay. And prior to that, there
17 were no -- prior to August of 2005, none of the debtor entities
18 was operating anything, is that correct?

19 MR. HUTCHINSON: Correct.

20 THE COURT: Okay. And these debtor -- these debtor
21 entities come into being within the last, say -- within the
22 last 15 months?

23 MR. HUTCHINSON: Correct.

24 THE COURT: Okay. Is there any opposition to the
25 motion for joint administration, with the understanding that

1 the Court does not view that as any precursor to substantive
2 consolidation, particularly given the relatively recent
3 acquisition of these operating entities?

4 (No audible response heard)

5 THE COURT: Okay. Well, the motion for
6 administration will be granted. And the pleadings should be
7 filed under the 51847 case number.

8 MR. HUTCHINSON: Thank you, Your Honor.

9 THE COURT: You're welcome. Is there any opposition
10 to the motion of the debtors and debtors in possession
11 regarding preparation of a consolidated list of creditors for
12 the purpose --

13 (Pause/Off-the-record colloquy)

14 THE COURT: Going back on the joint administration,
15 is there -- I mean this is -- this is simply -- it's a
16 convenience. And so I was using the first -- the first of the
17 Akron numbers, which was also, I believe, the first of the
18 Canton numbers. Is there any -- is there any reason why
19 anybody would want other than that number to be used for the
20 joint administration?

21 MR. HUTCHINSON: I'm glad Ms. Zurn caught that. I
22 think it would make more sense to have the Creative Engineered
23 Polymer Products, LLC number as the one that -- to be used.
24 That's the --

25 THE COURT: And that is four seven.

1 MR. HUTCHINSON: Oh, that is --

2 THE COURT: That is four seven.

3 MR. HUTCHINSON: That's the operating entity.

4 MR. WEARSCH: The only problem with that, Your Honor,
5 is that every -- all of the pleadings --

6 THE COURT: You want to go --

7 MR. WEARSCH: Oh.

8 THE COURT: I -- it's very important that everybody
9 go to that microphone because that's the way the people are
10 participating telephonically will get the best reception.

11 MR. WEARSCH: Thank you, Your Honor. The only
12 difficulty I see with that is that all of the pleadings --
13 first day pleadings in the CEP Holdings case.

14 So, to the extent that we jointly administer under
15 the Creative Engineered, those pleadings won't have shown up on
16 that docket.

17 THE COURT: Ms. Zurn is very able. We will do it
18 under 48 -- we'll do it under 48. Okay. Thank you.

19 With respect to noticing issues, we're -- we are
20 checking with the Court's IT folks. And that will be, at
21 earliest, an afternoon issue. Because -- but in terms of
22 giving initial notice of this case, the motion of the debtors
23 to use a consolidated list of creditors to -- to send the
24 approved notice of the commencement of the case will be
25 granted.

1 Other aspects of that motion, we're trying to figure
2 out -- one -- this case is going to -- you know, if the debtor
3 has its way, this case -- or the debtors have their way, this
4 case is going to move very, very quickly. And a concern I have
5 is that parties other than the debtor have the ability to also
6 get matters noticed. And I -- and I'm, quite frankly, not
7 clear on -- I believe our Court is pretty far advanced in terms
8 of E-service.

9 So, what, you know, quite frankly, one of the things
10 I'm going to want to look at is whether the most cost effective
11 way of doing a lot of this is through the Court's E-Service.
12 And I simply -- I simply don't have enough information to begin
13 to make that determination right now.

14 Mr. Wearsch, do you have some information with
15 respect to that?

16 MR. WEARSCH: In -- in that respect, Your Honor, a
17 representative of BMC Group had actually arranged to go down to
18 Canton on site and actually sit down with the folks in IT and
19 decide what would be the best for everyone. So, it's merely a
20 proposal -- it's a proposal. And what -- the way we envision
21 it is that a woman named Julia Galyen would come in from BMC
22 and would come into the court here and sit down with your IT
23 folks and they would decide the best way. And the final order
24 could, in fact, reflect that.

25 THE COURT: Okay. Well, in -- in -- we do want to

1 get the initial notice of the commencement of the case out.

2 And in that --

3 MR. WEARSCH: And based on the consolidated list
4 that's maintained at BMC, which has been thoroughly vetted,
5 they're fully prepared to, if not today, tomorrow have that
6 initial notice go out, once approved by the Court.

7 THE COURT: Okay. And if you want to -- you know, if
8 you want to pare down -- and I'll -- I'll partially grant that
9 order as soon as I get that, and then we'll -- we'll wait and
10 see what else happens with respect to the BMC discussion with
11 people in Canton.

12 MR. WEARSCH: So, just to be clear, the ability to
13 maintain the consolidated list at BMC would be approved?

14 THE COURT: Well, the consolidated list for the
15 purpose of giving -- I mean that -- that -- let --

16 MR. WEARSCH: For the purpose of giving --

17 THE COURT: Let me -- let me call out an assumption
18 I'm making and make sure that it's correct. I'm assuming that
19 that consolidated list has already been generated.

20 MR. WEARSCH: It -- it is generated and maintained at
21 BMC. It's the same list that would have gone to this Court,
22 but just not specially formatted.

23 THE COURT: Okay. That -- that list will be used to
24 send out the notice -- the initial notice of the filing of the
25 case.

1 In terms of communications after that -- because
2 that's something we want to get done ASAP.

3 Now, has -- has a 341 meeting been set?

4 MS. GIANNIRAKIS: No. No, Your Honor. We -- we're
5 going through these before talked about the date.

6 THE COURT: Right.

7 MS. GIANNIRAKIS: But we can -- we can do that -- set
8 the date on Monday.

9 THE COURT: Okay. Well, in terms of -- the initial
10 -- the initial notice, I would like to get to use it to
11 communicate as much information as possible.

12 MR. WEARSCH: If we could have the 341 notice date by
13 Monday, then the initial notice could be in the mail on Monday.

14 MS. GIANNIRAKIS: Actually I will correct that. If
15 there is a break at some point today, we can actually get the
16 341 date this after -- today.

17 MR. WEARSCH: In that case, we could start sending
18 the notice out today, I assume.

19 THE COURT: Well, and -- I'd like -- you know, --
20 there are lots of chicken/egg issues in this case. So -- but
21 attention should be given to finalizing the initial notice of
22 the filing of the case and making it work in as many ways as
23 possible.

24 Is the person from BMC meeting with people in Canton
25 today?

1 MR. WEARSCH: No. They had -- they had -- they had
2 offered to come in, but the folks down in Canton said that once
3 we filed the petition, they would -- and filed the first day,
4 they would tell her when to come in.

5 THE COURT: Okay.

6 MR. WEARSCH: So, we will make that same offer to --
7 she can basically be down here in Akron any day that you all
8 would like.

9 THE COURT: Okay. You -- do you want to get the
10 information and start following up and see how much we can get?
11 Cheryl Wear is going to be working on these issues, so -- with
12 -- with -- my Law Clerk is going to be working on these issues.
13 So, if you can give her the information -- the contact
14 information for the woman from BMC --

15 MR. WEARSCH: Can I give it right now?

16 THE COURT: Yeah.

17 MR. WEARSCH: The -- it's Julia Galyen, her direct
18 line is 312-423-1415. And one clarification, Your Honor, is
19 that I believe that the concerns that you have about notice
20 going forward would actually be addressed in the case -- would
21 actually be case management motion issues, and not -- not
22 consolidated list initial notice issues. I believe that -- I
23 believe that you can achieve what you're looking to achieve by
24 approving the full order on the consolidated list initial
25 notice because it's merely those two issues, and anyone can

1 correct me if I'm wrong. But that your issues about service
2 going forward and, you know, our proposal of a master list and
3 E-Service, et cetera, are all on the case management omnibus
4 hearing motion.

5 THE COURT: Okay. Thank you, I appreciate that
6 clarification.

7 With respect to the motion seeking authority to make
8 payment to pre-petition -- pre-petition wages in a post
9 petition time frame, what is the first payday date?

10 MR. WEARSCH: We have actually -- the motion is
11 actually slightly inaccurate from the standpoint that the pre-
12 petition -- the amount of pre-petition wages that are owing is
13 actually zero. The actual wages. We prefunded the payroll
14 last minute. We were able -- we were able to do that. We had
15 availability, and the reason was that the paycheck service
16 comes into the account yesterday. So, we would have had to
17 have come in for a bridge order. And given everything that
18 happened, that would have been very difficult. So, fortunately
19 it was prefunded.

20 So, the actual --

21 THE COURT: So, there are no wages?

22 MR. WEARSCH: There --

23 THE COURT: There are no pre-petition wages, so it's
24 -- it would be benefits and other issues?

25 MR. WEARSCH: It's benefits and other issues.

1 THE COURT: And so that can be -- that can be other
2 than this day consideration, we could take that up perhaps
3 early next week?

4 MR. WEARSCH: Except from the standpoint that we have
5 -- and Mr. -- the CEO of the debtors is prepared to testify,
6 Your Honor.

7 One very important aspect of how the debtors and
8 other automotive tier two suppliers are run is that they use
9 temporary services. And the key to the temporary services are
10 that they give the company maximum flexibility to -- for -- for
11 week-to-week workforce that it needs without having to worry
12 about, you know, union issues, layoffs, et cetera. They can
13 bring in the temp workers when they need them and, you know,
14 not bring them in when they don't need them on a very short
15 basis.

16 With respect to those agencies -- and it shouldn't be
17 considered a -- kind of a typical temp agency. I mean there's
18 some -- I think you were saying there's some people from these
19 temp agencies that have been working back when this was owned
20 by Carlisle. Many, many years these people have been working
21 in this -- they're almost pseudo employees. But the -- what
22 we've seen is that these temp agencies have actually sent over
23 notices that they're pulling all their people if they aren't
24 paid. And we've sent them our proposed motion and our proposed
25 order and they've agreed to wait to today to pull everyone.

1 But it would be absolutely disastrous for the debtors'
2 operations and they really couldn't function without these
3 people because they are so integral to the operation.

4 So, we would -- we would really appreciate and
5 request that the Court would consider that today. And I don't
6 think it will take that much testimony to establish.

7 THE COURT: There is an objection with respect to the
8 payment of those wages -- I'm sorry, I'm looking at the wrong
9 folks. There you go. I'll get my courtroom geography down
10 very quickly.

11 McGuireWoods has filed an objection with respect to
12 this matter. And I'm not -- right now, all I'm trying to do is
13 get frames around issues. But do you wish to comment briefly
14 on what Mr. Wearsch just said about the -- the narrowing of
15 these issues?

16 MS. EDISON: Thank you, Your Honor. Sally Edison,
17 McGuireWoods on behalf of the trade creditors.

18 The issue simply is we're not looking to prevent
19 payment of claims that would be entitled to priority. But in
20 our view, they're asking to pay over a million dollars to
21 claims that are simply not entitled to priority, non-employees.
22 I mean every debtor is going to tell you that they absolutely
23 have to pay these people or their operations are going to stop.
24 But, frankly, this is a wind down. And we're going to pay a
25 million dollars out the gate the first day for claims that are

1 just not entitled to priority.

2 I think it's improper. It's a large amount of money.
3 We're not trying to stop paying the employees, but they're
4 trying to pay quite a bit of money to non-employee ranks.

5 So, just framing the issues, we're really concerned
6 about the independent contractors and the additional workforce.
7 They've assured me that -- we had an issue with the payment of
8 the Mexican employees. But I understand that the motion
9 actually doesn't seek to pay the Mexican employees because
10 they're trying to segregate that, and they're not going to --
11 the Mexican operations are not supposed to be intertwined.

12 So, as far as the issue that we have with the Mexican
13 employees, I think as long as I get assurances from the debtor
14 they're not trying to pay Mexican employees, then we're okay
15 with that.

16 But we're really talking about the independent
17 contractors, the additional workforce, and then payments
18 outside the priority scheme.

19 THE COURT: What is the distinction, if you know,
20 between the independent contractors and, quote, "the additional
21 workforce?"

22 MS. EDISON: I don't know the distinction. I'll let
23 the debtors describe what the distinction is.

24 THE COURT: Okay. Hold those thoughts. Worker's
25 compensation. Mr. Wearsch, you seem to be the stand-up guy.

1 What is -- what is the time sensitivity with respect to the
2 worker's compensation motion?

3 MR. WEARSCH: I -- I do believe that we could kick
4 that to Monday, if we had to. And I'll -- I -- I believe that
5 we could kick that to Monday. While --

6 THE COURT: Second level of triage?

7 MR. WEARSCH: It should be a second level of triage,
8 Your Honor.

9 THE COURT: Okay. With respect to the debtors'
10 motion authorizing the maintenance of bank accounts, and the
11 continued use of cash management. Has the U.S. Trustee had an
12 opportunity to look at that motion?

13 MS. GIANNIRAKIS: Maria Giannirakis on behalf of the
14 United States Trustee.

15 Your Honor, we have looked at the motion and we've
16 talked to debtors' counsel about it. One of the concerns we
17 had was we wanted to make sure that funds were fully traceable.
18 If there was any commingling. We have been assured there is no
19 commingling, there are separate accounts. Everything is fully
20 traceable.

21 With that representation, we have no objection to
22 this motion.

23 THE COURT: And those accounts are at Wachovia, is
24 that correct?

25 MS. GIANNIRAKIS: All accounts -- all debtor in

1 possession accounts are at Wachovia.

2 THE COURT: Okay. And we have people from Wachovia,
3 so can -- is there any way -- and I'm not expecting counsel
4 sitting in the courtroom to know the answer to this. But I
5 would like -- I would like -- I would be prepared to grant
6 this, but I would like to know on the record from Wachovia's
7 counsel, that after consultation with your client you have
8 confirmed the fully traceable asset.

9 MR. DOWNS: Jeremy Downs from Goldberg Kohn. We
10 represent Wachovia Capital Finance Corporation Central, which
11 is the --

12 THE COURT: Lender.

13 MR. DOWNS: -- pre-petition lender at Wachovia Bank,
14 although a parent of my client, we do not represent. So, based
15 -- I can say based on my understanding of the operations of
16 this company pre-petition and how their account management
17 system is set up, that my folks believe, and I do believe that
18 we can trace what's pre and what's post and what belongs to
19 each debtor.

20 I can certainly reach out to folks from Wachovia
21 Bank to help provide the assurances that Your Honor is looking
22 for.

23 THE COURT: Okay. Well -- and we will take a
24 luncheon break, a short one probably, but we will take a
25 luncheon break and we'll circle back.

1 But if you -- oh, well, --

2 MS. EDISON: Your Honor, Sally Edison again on behalf
3 of the Trade Committee.

4 Our issue relates to the CEP Mexico operation. CEO
5 Mexico clearly, as Your Honor said, is not a debtor. Yet the
6 cash management motion proposes to create a separate account at
7 Wachovia for the CEP Mexican operations, and the DIP financing
8 order --

9 THE COURT: Yeah, we -- we're going --

10 MS. EDISON: -- so -- you know, the entry of a --
11 simply the entry of an order on the cash management motion
12 causes a lot of concern.

13 THE COURT: Right.

14 MS. EDISON: And we --

15 THE COURT: That -- the --

16 MS. EDISON: And at the very least, the Mexican
17 operation should be carved out, that should be left for another
18 day because the liens are so extensive under the DIP financing
19 order, you may be creating a lien in those Mexican assets that
20 Wachovia did not have --

21 THE COURT: There's a reason --

22 MS. EDISON: -- pre-petition by simply --

23 THE COURT: There's a reason why I skipped over the
24 -- there's a reason why I skipped over the financing order.
25 But you're right, I mean it just keeps this --

1 MS. EDISON: Yeah, I mean I just wanted to be clear.
2 When you said --

3 THE COURT: It just -- tentacles going all sorts of
4 directions.

5 MS. EDISON: Right. When you said I'm prepared to
6 enter an order, we have an issue.

7 THE COURT: You have -- and your issue has to do
8 particularly with the Mexican --

9 MS. EDISON: With the Mexican facility, right. The
10 Mexican operations, as that is treated under the cash
11 management motion.

12 THE COURT: And the -- and fully traceable, doesn't
13 -- doesn't --

14 MS. EDISON: No, it really --

15 THE COURT: -- doesn't clear it up for you --

16 MS. EDISON: It doesn't help.

17 THE COURT: -- because --

18 MS. EDISON: I mean our understanding, and I'm sure
19 we're going to get into this later, but our understanding is
20 that the operations are so intertwined, it's hard for us to
21 understand how simply opening this account is going to allow us
22 to trace and understand all of these funds, and to monitor it
23 correctly. And we're concerned about the liens issues --

24 THE COURT: Well, it's really not opening the
25 account, it's --

1 MS. EDISON: Yeah.

2 THE COURT: -- continuing the account.

3 MS. EDISON: Right. I mean we're concerned about
4 lien issues on the Mexican assets and things like that. So, I
5 think our issues are much greater than, you know --

6 THE COURT: Well, we'll see what progress can be made
7 on that because -- and I know that you folks filed a motion
8 last night, but that's not timely -- I mean that -- I'm not
9 considering that motion today.

10 And I'm not considering that motion because, you
11 know, the response time hasn't run. The response time hasn't
12 run on a lot of the things that I'm trying to deal with today
13 either. But I'm trying to deal with them in as pragmatic a
14 fashion as I can. I'm not going too far off the reservation of
15 the Code or Rules. Okay.

16 Is there -- I don't want -- does there exist right
17 now a, as of the filing moment, view of who owes what to whom
18 under the cash management system?

19 MR. WEARSCH: There is, Your Honor. That has been
20 prepared by Glass and Associates, the debtors' financial --
21 proposed financial advisor. It has been reviewed by the
22 company.

23 THE COURT: And has that been made available to the
24 representatives of -- right now, your status is that you
25 represent six trade creditors who functioned on an informal

1 pre-petition creditors' committee.

2 MR. WEARSCH: That was -- that was recently created
3 and reviewed within the last week. So, I don't believe it has
4 gone over yet, but we are more than willing to share all that
5 information with them.

6 THE COURT: Okay.

7 MR. WEARSCH: And if I could add just one nugget
8 without trying to sidetrack Your Honor, that may help frame the
9 Mexican asset bank -- bank account issue. I'm not trying to
10 get into the DIP financing motion.

11 Currently, all domestic -- as was represented in the
12 order, all domestic receivables related to the Mexican entity
13 are paid into, I believe, the CEP parent -- operating company
14 lockbox account. So, they are currently going to Wachovia.
15 And what Wachovia had agreed to do was create a separate
16 account at Wachovia for those proceeds.

17 So, it's not that these --

18 THE COURT: Well, I'll tell you what. I'm going to
19 ask you to spare that. I'm going to ask that there be
20 discussions over the lunch hour.

21 MR. WEARSCH: Sure.

22 THE COURT: Because what you're telling me now may,
23 you know, may -- there may be adjustments in -- there's a lot
24 of information to keep straight, let alone, you know, to try to
25 -- than unlearn something that you've learned or that I've

1 learned.

2 Okay. So, I -- I will be looking at that motion
3 after the lunch break. And I'm asking that people talk and
4 figure out whether there are issues that just really can't be
5 -- well, I want it better framed. That's such a convenient
6 phrase, better framed after the luncheon.

7 MR. WEARSCH: We will do what we can, Your Honor.

8 THE COURT: Thank you. The 366 motion. What is the
9 urgency, the time sensitivity with respect to the 366 motion.

10 MR. WEARSCH: I believe that here is a great urgency
11 with respect to the utility motion in that we did have several
12 utilities which, in good faith, even the day before the
13 petition was filed, we sent the proposed form of order to show
14 them what type of relief we are seeking and requesting that
15 they not turn off our utilities and work with us as debtors in
16 possession.

17 Given the statutorily mandated 30-day time frame
18 under the new Code provision, every day that runs here, it
19 would be three days that would run if we at least don't have
20 the interim relief approved. It really hurts the debtors'
21 ability to work with these utilities and try to consensually
22 work out adequate utilities.

23 I think that if you -- if you look at the procedures,
24 it's not onerous for the utilities companies. It's the same
25 procedures that's been approved in that form in most major

1 cases since BAPCPA has been approved, although not yet in this
2 District, we acknowledge that. But it has worked in other
3 cases. It does give the utilities companies a complete opt out
4 procedure.

5 You know, so I mean it doesn't even hem them into the
6 procedure we've set out. It gives them a complete opt out
7 should they so desire, at which point we would have a hearing
8 before the 30th day, as required by the Code.

9 So, I don't think that the relief sought therein is
10 onerous and I think it's justifiable for the Court to review
11 that if you are able, and consider that this afternoon.

12 THE COURT: Okay. And the gentleman from Alabama, do
13 you wish to be heard preliminarily on that matter?

14 MR. WATSON: Yes, Your Honor. Thank you. Our
15 position on this, Your Honor, is that the 366 motion by the
16 debtors is contrary to the changes made in 366 under the new
17 law.

18 In particular, we believe that procedures that are
19 proposed by the debtor inappropriate shift the burden of what
20 is a satisfactory assurance of payment from the -- from the --
21 from the utilities to the debtor.

22 In other words, under the new law, the utilities are
23 entitled to receive within 30 days of the filing date adequate
24 assurance of payment that is satisfactory to the utilities.

25 And once that assurance of payment is received by the

1 utilities, then under the new law, the debtor has the ability
2 to come back to court and request the modification of that
3 amount.

4 What the debtors are proposing in this motion is the
5 converse of that. The debtors have made the determination that
6 a two-week deposit, one size fits all for all utilities, is
7 satisfactory to the debtors. And then it becomes incumbent
8 upon the utilities to come forward and challenge that amount.
9 And we believe under the new law, that is not correct.

10 Now, with respect to counsel's statements that this
11 is not onerous to the utilities, well, notwithstanding whether
12 it is onerous or not, it is not the law. And we believe it is
13 onerous because it requires utilities to have to come forward
14 and come to court and challenge amounts that are proposed by
15 the debtors in order to get the adequate assurance that they
16 deem satisfactory. So, we do believe that it is onerous.

17 We also -- with respect to the statement that these
18 are procedures that have been approved in other cases, as I'm
19 sure the Court can appreciate, these first day orders are
20 seldom -- utilities seldom have the chance to get into court
21 and challenge these orders in a timely manner.

22 So, to the extent that these have been approved in
23 other cases, I would submit that that is predominantly due to
24 the timing of how the orders are -- the motions are presented
25 and ruled upon by the Court.

1 And finally, in terms of the opt out procedure, the
2 -- the opt out procedure and the other procedures proposed by
3 the debtors deny utilities the rights that they have under 366.
4 We are getting opted out of 366(c) from the outset of this
5 case, and we believe that is not the correct procedure.

6 We believe that we should have delivered to us within
7 30 days of the petition the adequate assurance that the
8 utilities deem satisfactory. And then if the debtors wish to
9 modify it, they can do so. And in that regard, we believe that
10 first day motions are really not necessary anymore under 366.

11 THE COURT: Okay. The last -- the last -- you really
12 got my attention with the last assertion.

13 MR. WEARSCH: That they're not required anymore?

14 THE COURT: Right. I mean why -- you know --

15 MR. WEARSCH: Here --

16 THE COURT: -- and --

17 MR. WEARSCH: I -- I'm sorry.

18 THE COURT: Which is -- you know, I was, quite
19 frankly, -- I -- I agree with that characterization of the
20 current 366.

21 On the other hand, you know, I recognize everybody's,
22 you know -- you're trying to get as much clarity as you can as
23 early as you can.

24 MR. WEARSCH: I believe that the procedure is
25 appropriate, Your Honor. Because the -- the method proposed by

1 counsel leads to the following circumstance. If the utility
2 companies are allowed to unilaterally decide what is adequate
3 protection, which I don't believe the Code says -- I don't
4 believe it determines that it's solely in their discretion what
5 is adequate assurance, it should be up to this Court. They
6 could, for example, say we think two years -- this case could
7 go for two years, we want a two-year deposit. If you don't
8 give that to us, we're shutting you off. And --

9 THE COURT: Well, let's not deal with hypotheticals.
10 You suggest that you had sent the form of a -- I'm sorry. You
11 suggested that you gave a coming attractions view of the motion
12 and the order to all of the utilities with which the debtor --

13 MR. WEARSCH: To those utilities which had contacted
14 us prior to the petition date.

15 THE COURT: And how many was --

16 MR. WEARSCH: I believe it was approximately five of
17 the 32.

18 THE COURT: I think it -- it would be fair for me to
19 characterize this as not necessarily a -- something that needs
20 to be sorted out today. You know, we could return to this in
21 the early portion of next week when perhaps you will --
22 utilities say, well, X arrangement is satisfactory to me. Is
23 it the debtors' intention to keep that two-week deposit
24 evergreen?

25 MR. WEARSCH: I -- I believe that it's a one-time

1 two-week deposit, but --

2 THE COURT: And -- and -- but that deposit just sits
3 there. It is not the source of payment. It is just the --

4 MR. WEARSCH: Exactly. All the beauty of the budget
5 that's been put forward is that -- and not to get into the DIP
6 financing, Your Honor, but one thing that the debtor
7 mandatorily required was that all of its potential
8 administrative costs, including the proposed -- the proposed
9 two-week deposit, all administrative costs that we could --
10 that were reasonably foreseeable be budgeted and be allocated
11 by month, and be funded by the bank or the participating
12 customers or any assisting customers, as the case may be, based
13 on percentages, in full on the -- on the date the order's
14 entered -- the date the order is entered and then on every
15 subsequent first day of the month, October, November, December.

16 So, these funds will be available -- guaranteed
17 available, they're budgeted. It's very easy to predict what
18 your utilities are going to be, these plants have been running
19 for many years. The debtors have been able to predict that and
20 build in for adequate payment. So, they will be paid in full,
21 the money's in existence, there's no question assuming the
22 financing is approved. There's no question of whether or not
23 they've been budgeted for, whether or not those funds are
24 available.

25 THE COURT: And what -- what is the -- what is the

1 periodic -- what's the period of the periodic payments to the
2 utilities?

3 MR. WEARSCH: It would be whatever the pre-petition
4 -- I'm assuming it's monthly. I'll be perfectly honest, I
5 don't know what each individual utility requires. I assume
6 it's a monthly payment, perhaps some are biweekly. But they
7 would receive the deposit. It would hold onto the deposit.
8 So, in addition to the deposit, they would be paid in the
9 ordinary course through funds which are guaranteed to be
10 available, are already sitting in an account just waiting to
11 pay these utility costs, they would still have their deposit.
12 And to the extent that we didn't pay them, they could stop
13 services under 366, that's my belief, and they would have the
14 two-week deposit to cover them in that instance plus they would
15 have the ability to apply to the Court for payment of their
16 administrative claim, which has already been budgeted.

17 It seems like there is little downside risk. And we
18 have taken all steps we can as debtors to ensure that there is
19 no downside risk for the utilities.

20 THE COURT: And, you know, one very -- one reading of
21 the amendments to 366 is that the utilities convinced Congress
22 that, you know, there should be more of a conversation with
23 them. And I -- I also -- again, forgive me, I did not write
24 down your name, the gentleman from Alabama, what's your last
25 name?

1 MR. WATSON: It's Clark Watson, Your Honor.

2 THE COURT: Mr. Watson -- or is it -- Clark is your
3 first name and Watson is your last name?

4 MR. WATSON: That is correct.

5 THE COURT: Okay. Because I -- I, in particular,
6 need to pay attention to whether it's one name or two.

7 Okay. Mr. Watson, it seems -- it seems to me that a
8 -- again, I try to focus on pragmatic solutions in the context
9 of the particular case.

10 One, it seems to me until we have set -- until we've
11 figured out the periodic status conferences, which I -- I do
12 intend to set in this case. Until we have figured out the
13 periodic status conferences, there's reason for you to sort of
14 sit and scratch your head.

15 But if, for instance, I were to set up for the first
16 couple of -- I would -- the first couple of months of this case
17 biweekly status conferences, would that be useful in resolving
18 the open issues on the 366 motion?

19 MR. WATSON: Your Honor, I do not believe that it
20 would be. Because counsel's argument in support of this motion
21 really highlights the very reasons that 366 was modified. It
22 first points to the fact --

23 THE COURT: Okay. And, sir, that was basically a yes
24 or no answer. So, your --

25 MR. WATSON: Oh, I apologize. I apologize.

1 THE COURT: Your -- and I appreciate that you're
2 trying to explain why. But the answer's no?

3 MR. WATSON: No.

4 THE COURT: Okay. Well, I believe that I will not be
5 addressing the 366 motion today. I believe that I will be
6 addressing it some time early next week, and I'm letting you
7 know that so that, you know, you're free to stay on the call,
8 but you're also free to excuse yourself from the call if you
9 want to today, but I'm not going to deal with the 366 motion
10 today.

11 MR. WATSON: All right, Your Honor. And would it be
12 fair to say that the Court would be entering an order today
13 advising when it would be rescheduled?

14 THE COURT: It would be fair to say that before the
15 end of the day -- well, actually one of the things I want -- I
16 -- I promised, and I think you've given me good reason to do
17 so. I want to address what else we're going to accomplish
18 today. And particularly given that Rosh Hashanah will begin at
19 sunset, which I think is a little after seven, this area, I --
20 it's my intention today to conclude by probably 4:30. I'm not
21 going to -- I'm not going to do any kind of a marathon today.

22 There is availability on my calendar on Monday and
23 Tuesday of next week. Before saying that we would get started
24 on Monday, it may be that at least Monday morning would be
25 better spent because I think this weekend is going to be a

1 particularly bad weekend for making progress with -- you know,
2 there are -- I may be wrong, but I'm -- I'm assuming that there
3 are people for whom this weekend will be spent in Temple. And
4 I'm not going to get in the way of that.

5 You filed when you filed because presumably that was
6 the first day you could file. And sounds like you folks were,
7 you know, that was a -- I -- just -- I'm simply not going to
8 get in the way of that. So, I'm recognizing that there would
9 be limited ability to make progress over the weekend. Whereas
10 that's not usually my style. I say, you know, you folks make
11 the big bucks and so you can work a few weekends. But this
12 weekend, there -- I recognize there may be some difficulty.

13 So, if I -- you know -- if I'm wrong about that,
14 people can tell me right now that I'm wrong about that.

15 (No audible response heard)

16 THE COURT: Nobody's telling me that I'm wrong about
17 that. So -- I do hope that progress will be made over the
18 weekend, but -- so, I'm basically thinking Tuesday -- Monday
19 afternoon and some time on Tuesday, we'll continue to make
20 progress on things that are not -- that are being -- that are
21 being put off today. And that's about the best I can do, Mr.
22 Watson, at this --

23 MR. WATSON: That's fine, Your Honor. And I will
24 just get back in touch with debtors' counsel later in the day
25 and find out more about when this matter has been rescheduled

1 to.

2 THE COURT: Okay.

3 MR. WATSON: Thank you, Your Honor. And if it's
4 permissible, I'll terminate my participation in the conference
5 at this time.

6 THE COURT: Fine. You're excused.

7 MR. WATSON: Thank you, Your Honor.

8 THE COURT: Okay. Moving right along. We still have
9 the people from G.M.?

10 MS. SEEWER: Yes, I'm still here.

11 THE COURT: Okay.

12 (Pause)

13 THE COURT: The -- Item Number 10 on your proposed
14 agenda, the motion addressing authority to pay pre-petition
15 sales and use tax, is that a today item?

16 MR. WEARSCH: No. I mean it -- it is -- as Mr.
17 Mallack would testify, our quarterly obligations are twenty-
18 five hundred dollars.

19 THE COURT: So, you --

20 MR. WEARSCH: It's very de minimis.

21 THE COURT: Yeah. The number that was set forth in
22 the motion was --

23 MR. WEARSCH: Very de minimis.

24 THE COURT: Okay. So, with respect to the motion for
25 a case management order, it's this Court's practice to try to

1 -- case management, in the first instance, is the
2 responsibility of the Court. And -- so, what we have done in
3 the past is to do a draft case management order that addresses
4 the particular circumstances of the case to put that out there
5 and let the parties who are involved in the case comment, tell
6 us why -- you know, tell us how they think things could be more
7 useful.

8 It would be my hope that we would have generated a
9 draft of a case management order for this case. We should have
10 a draft by Monday afternoon.

11 And is there anything that you would have had
12 addressed in the case management order that would have ripened
13 before Monday afternoon?

14 MR. WEARSCH: I -- I don't believe so, Your Honor.
15 But if it's acceptable to this Court, at the lunch break, I
16 will go back through the motion and make sure that everything
17 is -- can --

18 THE COURT: And we'll -- you know, we'll obviously
19 look at the template that you were suggesting. But there are
20 things that matter to us, too, so --

21 MR. WEARSCH: Absolutely. There are just -- there
22 are just certain -- certain procedures in there which are --
23 would be very useful and would greatly reduce the cost of
24 administration.

25 THE COURT: Yeah, and with -- with respect to the

1 motion on length of briefs and such, let me just say to
2 everyone I am, one, a huge fan of stipulations. I'm not
3 expecting a lot of stipulations in this case, but I am a huge
4 fan of stipulations.

5 I am, likewise, -- I believe that organizing papers
6 in the form of proposed findings of facts and proposed
7 conclusions of law is highly useful, even in a case of this
8 complexity.

9 And then briefs -- the reasons I say that is
10 especially when things are organized in terms of proposed
11 findings of fact and proposed conclusions of law, there can be
12 focus about, okay, what part of this are you not in agreement
13 with? And I just -- and it certainly helps me to focus. To
14 know, okay, proposed findings of fact three and four are fine,
15 and five and six are, you know, you're going to duke it out
16 about that. So, that will -- we will have a predisposition
17 toward proposed findings of facts and conclusions of law.

18 And to the extent that narrative legal argument on
19 any unusual point is deemed useful, I'm not going to get in the
20 way of counsel doing that. But I'm not looking for -- I'm
21 looking for the shorter version, organized in terms of proposed
22 findings of facts and proposed conclusions of law. And the
23 proposed conclusions of law, you are absolutely obligated to
24 call to my attention any cases from the Supreme Court, 6th
25 Circuit that you view to bind my decision. Or if it's a matter

1 MR. WEARSCH: -- I'll turn it over to Mr. Hutchinson.

2 MR. HUTCHINSON: Well, Your Honor, good morning. We
3 -- as you said, we're somewhat surprised to be here because we
4 had filed this -- again, we have two plants in Judge Kendig's
5 District. But we did know he was very busy and --

6 THE COURT: Yeah.

7 MR. HUTCHINSON: -- you know, and we understand that,
8 certainly. But we're happy to be here, and good to see you
9 again.

10 I think what I -- I think what probably makes the
11 most sense for me, it would be to go over -- just kind of the
12 background here and maybe clarify a few things. Your Honor had
13 asked a few questions. And maybe -- I -- I -- I can do this
14 quickly, I think.

15 THE COURT: Fine.

16 MR. HUTCHINSON: CEP Holdings is the -- is the
17 holding company. And Creative Engineered Polymer Products,
18 LLC, which was purchased in August of 2005, as I said earlier,
19 is really the operating company. And then it -- it owns 100
20 percent of Thermoplastics Acquisition, LLC, which is also an
21 operating company, and it also owns Composite Parts Mexico,
22 which is an operating company.

23 THE COURT: I'll tell you what, I'm going to tell you
24 that I've read Mr. Mallack's --

25 MR. HUTCHINSON: You've read all that?

1 THE COURT: I've --

2 MR. HUTCHINSON: So, I --

3 THE COURT: I've read the affidavit.

4 MR. HUTCHINSON: So, I don't need to go through that.

5 THE COURT: I read the affidavit.

6 MR. HUTCHINSON: Okay.

7 THE COURT: Now, I -- I mean I'm not -- you know, at
8 some point, if somebody wants to cross examine Mr. Mallack
9 about any of the matters that are set forth in the affidavit,
10 which --

11 MR. HUTCHINSON: Good, okay.

12 THE COURT: -- read a lot more like a brief in
13 support, but --

14 MR. HUTCHINSON: Well --

15 THE COURT: -- that's okay. But I -- I have read Mr.
16 Mallack's --

17 MR. HUTCHINSON: Yeah.

18 THE COURT: Particularly the --

19 MR. HUTCHINSON: Structure?

20 THE COURT: -- the first 20 pages, which was sort of
21 a, you know, let us introduce --

22 MR. HUTCHINSON: Background and that sort of thing?

23 THE COURT: Yeah.

24 MR. HUTCHINSON: All right.

25 THE COURT: Yeah, let us introduce the --

1 MR. HUTCHINSON: Then I'll --

2 THE COURT: -- situation.

3 MR. HUTCHINSON: Okay. Well, maybe I could just go
4 through it even more quickly.

5 THE COURT: Okay.

6 MR. HUTCHINSON: There's two plants in Mexico, and
7 there's two that Thermoplastics has and six other plants that
8 CEP -- we'll call it Creative Engineered Product -- Polymer
9 Products, CEP. And that operates six facilities.

10 They're in Canton, Crestline, Belleville, Michigan,
11 Lapeer, Michigan, Middlefield, Ohio, and Tuscaloosa, Alabama.

12 THE COURT: Okay. I would like to ask a question
13 about --

14 MR. HUTCHINSON: Sure.

15 THE COURT: -- the acquisition of the Mexican plants
16 and the six non-Thermoplastic plants, --

17 MR. HUTCHINSON: Right.

18 THE COURT: -- did those occur in the same August,
19 2005 --

20 MR. HUTCHINSON: Yes.

21 THE COURT: -- transaction?

22 MR. HUTCHINSON: Yes, it's my understanding they did.
23 The two that were purchased in December were the Thermoplastics
24 Plants, and they're located in Bishopville, South Carolina.
25 And that's -- that's really not an automotive plant. They make

1 the same type of pieces, but for ATV vehicles. So, it's not
2 really part of the automotive industry. And then a plant in
3 Vandalia, Ohio, it's also injection molding.

4 The two facilities that are owned by the Mexican sub
5 are in Chihuahua and Hermosillo.

6 There also is a corporate office in Fairlawn, as I
7 think your Court -- the Court mentioned earlier, and there's a
8 tech center in Livonia, Michigan.

9 The business has eleven hundred employees, and 400 in
10 Mexico, we've already talked about that.

11 THE COURT: And how many temporary employees, on the
12 average?

13 MR. HUTCHINSON: Pardon?

14 THE COURT: How many temporary employees on average?

15 MR. HUTCHINSON: I don't know the answer to that,
16 Your Honor. That will have to come when Mr. Mallack testifies.

17 CEP has one major lender, Wachovia Capital Finance
18 Central. CEP's revolver with -- the total debt is \$24.6
19 million secured. The revolver is 9.9. The Thermoplastics
20 revolver is 3.1. And the CEP term is 10.4. And the
21 Thermoplastics term is 1.2, to give you an idea of what the
22 breakdown is.

23 Plus there is a pre-petition participation loans. I
24 don't know if the Court caught that in the affidavit.

25 THE COURT: I did, yes.

1 MR. HUTCHINSON: There were in there -- and they came
2 from the three customers that I've mentioned, a total of 2.9,
3 it's subordinated -- they thought into the Wachovia loan, but
4 they're subordinated within the loan.

5 THE COURT: Well, and let me just ask a couple of
6 questions about that.

7 MR. HUTCHINSON: Yeah.

8 THE COURT: And, again --

9 MR. HUTCHINSON: Sure.

10 THE COURT: -- I mean these are -- this is not in
11 lieu of evidence. But --

12 MR. HUTCHINSON: Sure.

13 THE COURT: My understanding is that with respect to
14 those -- those three customers, what they did was they didn't
15 advance funds to the debtor, they purchased a portion of the
16 Wachovia facility.

17 MR. HUTCHINSON: Correct. They did it through
18 Wachovia. There's about 25 million in trade. The company has
19 annual revenues. Approximately \$190 million, at least it did,
20 I don't know if it still does. It probably doesn't.

21 All but two of the plants are leased. And the -- and
22 the ones that aren't leased are really leased, but they're
23 financing leases.

24 THE COURT: And what are those two?

25 MR. HUTCHINSON: Let's see. Those are the two --

1 THE COURT: In your judgment.

2 MR. HUTCHINSON: -- Thermoplastics -- I'm not sure, I
3 don't remember. I think Vandalia and Bishopville.

4 THE COURT: The Thermoplastics --

5 MR. HUTCHINSON: I'm almost positive.

6 THE COURT: The Thermoplastics plants --

7 MR. HUTCHINSON: Yes.

8 THE COURT: -- are financed --

9 MR. HUTCHINSON: Right, financed leases. Yeah, I'm
10 almost positive that's right. I could be wrong, I -- you know,
11 disavow at making that comment.

12 What happened to this company in the early part of
13 2006 is that the resin prices, because of the cost of oil --

14 THE COURT: I read Mr. Mallack's affidavit.

15 MR. HUTCHINSON: He'll be -- exactly. He'll be
16 testifying to that. And that's -- but that was basically what
17 happened, plus the Delphi bankruptcy, and some other issues.

18 So, we didn't have any availability as of March of
19 2006. And at that time, all payments to trade were just
20 basically shut off and halted.

21 There's never been any -- I don't know exactly how
22 much is in the affidavit, I don't remember about this. But
23 there's really no quality issues here with this company. This
24 isn't like another one I've been working on recently in the
25 automotive industry. This is one of the top suppliers for

1 these customers as far as products, quality and delivery.

2 THE COURT: Well, and I'm going to --

3 MR. HUTCHINSON: So, that's not a problem.

4 THE COURT: Again, I'm going to exercise -- and at
5 this point, I'm going to -- I'm going to say to anybody -- to
6 all the counsel in the courtroom, if I'm asking a question that
7 you think -- I'm just doing too much of the fast forward on,
8 please stand and say, Your Honor, we'd prefer that that be
9 developed through evidence, and it will. It's my intention to
10 create a good evidentiary record, but I'm just trying to get
11 some grounding.

12 One of the things that -- as I was reading Mr.
13 Mallack's affidavit that caused me to pause and say, ooh, that
14 could be a problem, was that the matters having to do with the
15 G.M. platform, eight hundred versus nine hundred. And you were
16 talking about the quality of, you know, that they're viewed as
17 a quality supplier. But it sound -- you know, that sounded
18 like it was a real gathering storm.

19 MR. HUTCHINSON: Well, I don't know how I'd define
20 it. But it is an issue certainly that G.M. needs its parts for
21 that new program.

22 So, that -- to that extent, yes, it is a -- very much
23 an issue. The -- all these customers -- you'll see that this
24 case is driven, in part, by the fact that these customers
25 desperately need the parts that we make. And so they're going

1 to want to resource out of some of the facilities that we have.
2 And I -- we hope and believe that they're going to want to
3 continue on with some of the facilities have -- that we have
4 with a new owner or owners. That's really what's going on
5 here.

6 And we believe that the financing of that sort of
7 process will have a lot of good because it -- and will maximize
8 the value of the assets in the best interest of the estate.

9 And if you want me to go to that right now, I can,
10 Your Honor. We -- well, I -- maybe the thing to do is go back
11 and say when all this started. We -- when we halted all the
12 payments in March, we went to the -- to these three customers
13 and Wachovia, got a forbearance agreement. This is a lot of
14 wrangling, as you can imagine that goes on in this sort of
15 process. But we have three -- three separate customers with
16 different agendas, different goals, different amount of
17 businesses in each plant. Some have a lot of business in one
18 plant and not very much in another, and it's mixed and matched,
19 and it's really a jigsaw puzzle.

20 But in any event, so we went to them. When -- the
21 aggregate amount of their -- of our business to them is about
22 55 percent for those -- those three customers. And this is
23 pretty typical in the automotive industry workout that you go
24 to the customers and you ask for accommodations, and that's
25 what we did. We entered into a forbearance agreement with

1 Wachovia, this occurred in May of 2006. And we entered into an
2 accommodation agreement with the three customers, and we
3 entered into an access agreement with the three customers. And
4 I believe Wachovia, I don't remember, was a party to those two
5 agreements also.

6 The accommodations were pretty dramatic, frankly. I
7 mean they needed their parts. And we were out of money, simple
8 as that. And Wachovia said no thank you to digging deeper.

9 Wachovia did continue to loan. And under the DIP
10 you'll see will -- agreed to continue the loan post petition in
11 formula. But they're not going to go out of formula.

12 The accommodations included what we call kind of
13 euphemistically as resin relief. It's really price increases
14 or cost reductions or sometimes they allow us to substitute
15 resin. Different kinds of resin that our specs call for, you
16 know, and they'll allow that, it will be cheaper, and we get it
17 cheaper.

18 The problem -- one of the real problems is that we
19 wanted some longer term relief because we have long-term
20 agreements. And so we needed some relief going forward. So,
21 those are some of the issues that we're talking --

22 THE COURT: Long-term agreements with?

23 MR. HUTCHINSON: Long-term -- uh, supply agreements,
24 requirements, contracts that we have with the customer to
25 supply these parts.

1 And they say, well, you can use this kind of resin,
2 and the resin prices went way up, and we couldn't pass that
3 through to the customers right off the bat. So, we go and we
4 basically beg for resin relief of some kind, and we got it from
5 some customers, some we didn't.

6 In addition, in the accommodation agreement, one of
7 the other things that happens in these workouts like this and
8 that's part of the DIP, too, is that there are limitations to
9 the setoff. And this -- what this does is this -- this permits
10 Wachovia to say, okay, I'm going to continue on with this
11 because I -- my receivables aren't going to be subject to some
12 huge setoff. Because if we had stopped production and shutdown
13 General Motors' plant, they'd have a gazillion dollar claim
14 against us, and they would set it off against the receivables.
15 Wachovia's receivables and Wachovia didn't want any part of
16 that. And I don't blame Wachovia for that at all. So, that's
17 part of the process, too, and part of the dynamics.

18 We did get setoff limitations as part of the
19 accommodation agreement.

20 In addition, Your Honor, there's also an inventory
21 buyback where the customers will agree, well, we will -- we
22 will pay you 90 percent for this type of inventory and 100
23 percent for this type of inventory and 80 percent for this,
24 whether it's raw materials or work in process or finished goods
25 or whatever, that agreement was also made. That also kind of

1 bulletproofs the inventory for Wachovia so Wachovia knows that
2 its inventory has value and won't be just left on the shelf and
3 become obsolete and die.

4 In addition, there -- in the accommodation agreement,
5 the customers agreed to purchase -- the option to purchase
6 equipment at 90 percent of appraised value. And that also is
7 very much of interest to Wachovia and to the debtor obviously
8 because that --

9 THE COURT: But that's an option that the customers --

10 MR. HUTCHINSON: Right. But they gave us a list of
11 what they -- what they -- they said they would buy. So, that
12 was a very good thing to help the process along in return for
13 all that stuff that they're giving us. They're also loaning
14 money to us as part of the participation agreement that I
15 mentioned earlier, plus -- but we're -- we're building parts
16 for them.

17 THE COURT: The they that you're now referring to is
18 the --

19 MR. HUTCHINSON: Customers.

20 THE COURT: -- customers.

21 MR. HUTCHINSON: I'm sorry, Your Honor. Right.
22 Customers.

23 THE COURT: Pronouns are the enemy.

24 MR. HUTCHINSON: I -- I don't mean -- yeah, I
25 understand, especially in a record. But, you know, the -- the

1 -- what they got in return from us, of course, was our
2 continuing to build parts and a parts bank, also. Because --
3 and a parts bank is a build up of extra parts beyond their
4 normal purchase orders so that they will have a bank of parts
5 when they ultimately resource. Meaning they go to another
6 supplier, there won't be any gap in the production and they'll
7 have parts to be able to continue to build their engines and
8 what have you.

9 So, we would build the parts and the parts bank.
10 Overtime was needed, and that sort of thing, and they agreed to
11 pay the incremental cost for that in the accommodation
12 agreement.

13 In addition, they agreed to quick pay -- a quick pay
14 program. That's another term that's used, I guess, in this
15 area of workouts. And what that -- what that means, instead of
16 paying in 62 or 64 days, they would pay in 14 days. That gave
17 us an immediate availability of, I think, \$5 million at the
18 time. So, that really helped and allowed us to continue. But
19 that's --

20 THE COURT: But it's gone now?

21 MR. HUTCHINSON: Well, that's right. And it's a one-
22 time thing. You can't -- I don't think they'll want to pay
23 twice.

24 In addition, they agreed not to resource during the
25 forbearance period which, by the way, went from May until

1 September 6th. So, during that time, they agreed -- we agreed
2 -- you can go ahead and look around and try to figure out what
3 you're going to do, but you can't actually take our business
4 from us during that 120 days. And so they did agree with that,
5 and that was a good thing for us.

6 Like I said, Wachovia didn't put any new money in,
7 but did agree to forebear and loaned in formula.

8 We also entered into an access security agreement
9 which is -- which was kind of a partner contract with the --
10 but a separate contract, I think, with the accommodation
11 agreement. And what that did is it gives the -- or it gave the
12 customers the right to come in and actually take over
13 production of their component parts at our facilities.

14 THE COURT: And did they exercise that right?

15 MR. HUTCHINSON: No, and they -- they never would. I
16 mean I've -- they might, but we certainly didn't think they
17 would and they did not.

18 In addition, we gave them a lien on our assets,
19 subordinate to Wachovia if -- to cover any breach of that
20 agreement.

21 So, these agreements, as I said, were entered into in
22 May and then expired in September.

23 The other things that happened during the summer was
24 that we replaced the President of the company with Mr. Mallack,
25 and you've seen that, and Warren Kanipple (phonetic) was hired

1 as a new CFO for the company. This all occurred within the
2 last five months.

3 The company also substantially reduced its cost. It
4 -- it had a RIF, a reduction in force, that was fairly
5 substantial back in March, I believe. And it implemented also
6 certain lean manufacturing techniques and that sort of thing to
7 cut down the cost during this period of time.

8 THE COURT: When you say lean, you mean L-E-A-N.

9 MR. HUTCHINSON: Yes.

10 THE COURT: Okay.

11 MR. HUTCHINSON: Our goal in the early summer, Your
12 Honor, was to try to do an out-of-court workout. And we
13 thought that was possible. The owners were -- had offered to
14 put in a substantial amount of money if the customers would do
15 a deal with us and continue on with us, and not pull their
16 business and resource. And if we could get the trade to agree
17 to accept some kind of distribution, percentage distribution of
18 that \$25 million.

19 There were a lot of meetings and --

20 THE COURT: Of what \$25 million?

21 MR. HUTCHINSON: Twenty-five million dollars is the
22 amount of trade debt, Your Honor, unsecured trade debt.

23 THE COURT: Oh.

24 MR. HUTCHINSON: I'm sorry.

25 THE COURT: Okay.

1 MR. HUTCHINSON: Glass and Associates was retained
2 back in February or March, I believe. As soon as the
3 availability issue hit, upon the recommendation of Wachovia,
4 Glass and Associates was retained. So, Glass has been on the
5 ground since that time.

6 After a lot of hand-wringing and arm flailing and
7 meetings and discussions and -- and -- especially meetings with
8 the customers up in Detroit and elsewhere, it didn't happen.
9 We -- the company needed too much in additional accommodation
10 request, price relief, resin relief going forward and that sort
11 of thing, it just needed more money from the customers than the
12 customers were willing to do with this particular ownership of
13 the company. And they just decided not to -- not to do it.
14 That was their choice.

15 In addition, I -- I, frankly, don't know whether
16 even if the customers had agreed to do what we had asked them
17 to do, which was a substantial accommodation, millions of
18 dollars, whether that would have generated enough to satisfy
19 the trade.

20 And the other thing we did was we thought it best,
21 instead of just to kind of deal with the trade one-on-one and
22 try to do it that way, that we suggested that the larger trade
23 creditors contact counsel, and that we would cover the cost of
24 counsel for the -- and that's -- that's why McGuireWoods is in
25 the -- in the position they're in now.

1 So, we negotiated the DIP with Wachovia and the three
2 main customers. As I said, it was difficult because of the
3 different agendas and different amount of businesses and the
4 different facilities. And our goal now in this Chapter 11 is
5 to sell the company, to sell the assets of the company to
6 maximize the value.

7 We think that some of these facilities probably can't
8 be sold as going concern value. We think that some of the
9 facilities definitely can be.

10 And our goal in the negotiations of the -- of the DIP
11 was to maximize the value and to definitely not leave this
12 estate insolvent. We weren't going to be in a position of
13 filing a case to manufacture parts for customers and end up
14 having the case insolvent.

15 And so that was a -- that's a driving force for us in
16 the negotiation of the DIP, and I think you'll see that
17 throughout this complicated document.

18 We do know that we can't sell any of the facilities
19 as going concern value if the customers bolt and resource and
20 just go somewhere else. If there's no business, nobody's going
21 to buy any of the facilities, it's just not going to happen.

22 So, in short, we I guess we -- we strongly believe
23 that at least four of the plants should and will get the
24 customers' support and be sold for going concern value. When I
25 say support, I mean that they will -- they will cooperate with

1 us in good faith, and that's in the document, too, to find a
2 buyer of those facilities. And we hope it's more than four,
3 but if it's more than four, it's more than four. If it's not,
4 then it's four.

5 But we -- we hope that we will be able to, through an
6 investment banker, find somebody who will come in. And I -- I
7 think it's -- we think, and I'm just a lawyer, I don't really
8 know, but I think that somebody, even under the circumstances
9 of today in the automotive industry, will want some --
10 sometimes they just want to get their foot in the door with
11 some of these bigger customers. And I think -- I think that at
12 least some of these facilities that are viable, standalone
13 facilities will be saleable as going concerns.

14 What we want to do with regard to the facilities that
15 won't survive is to maximize value. And since the customers
16 desperately need us to keep building the parts, while they
17 decide what they're going to do as to each of these facilities,
18 what we're going to do is try to maximize value of the assets
19 and keep people in their -- in jobs for at least some period of
20 time at those facilities.

21 Now, the going concern -- those people hopefully will
22 get jobs with the buyer, I would assume that they would. I
23 don't know why they wouldn't.

24 But as to the other facilities, if we -- if we shut
25 everything down now, they go -- they -- they don't come to work

1 on Monday.

2 But if we're able to get the funding, as to those
3 facilities that will be shutdown, at least they'll have some
4 period of time to continue to work, it might be weeks, might be
5 months. And during that time, of course, they can look for
6 other employment, plus their healthcare is covered and it's
7 funded up-front under the DIP. That was something that we
8 required to be done. And you'll see in the testimony later on
9 today that that's -- that's happening, and it's a substantial
10 number.

11 The customers, in some ways, are under the gun here
12 because they need these parts and just packing up and leaving
13 is not the best option for them to do that quickly. In fact, a
14 shutdown of all of the facilities right now would generate tens
15 of millions, in my view, I don't know, but in my view, it would
16 generate tens of millions of dollars of claims by these
17 customers against the estate which would substantially dilute
18 the pool that exists now.

19 But the customers have also other issues in
20 transitioning to -- and resourcing. There's uncertainties
21 there. And that's why we think that some of these facilities,
22 the customers will want to stay -- leave their business at some
23 of these facilities.

24 In the DIP and the other documents, we've agreed with
25 G.M., Delphi, Visteon and Wachovia to keep building the parts

1 post petition. And the way it's going to be funded post
2 petition under the DIP -- and this is just kind of an outer
3 space, above the trees or whatever statement it is, of this
4 document. But what's happening is that Wachovia will continue
5 to fund in formula. Wachovia feels secure, I believe, in its
6 position with respect to the assets of this company and the
7 amount it's owed.

8 The customers have agreed to fund the cash needs of
9 the company over the next 90 days, which includes these up-
10 front payments. The restructuring cost, which are -- you'll
11 hear testimony, will include the professional fees and includes
12 the payment of employee expenses at the end of the 90 days for
13 anything that's left unpaid, and the healthcare.

14 The cash infusion that's needed in addition -- call
15 it an over advance or out of formula, whatever you want to call
16 it, is \$13 million.

17 And the customers also have agreed to the same
18 accommodations in this document. And that -- that's the --
19 they'll continue to the -- with respect to the inventory
20 buyback, the bulletproofing of the receivables, the equipment
21 purchase options and agree not to resource. Those things
22 enhance the bank collateral. And, of course, if that happens,
23 and the bank gets paid off, that's more for unsecured creditors
24 at the end.

25 The credit -- but -- but we also required the

1 customers -- the customers wanted to do this through a loan,
2 which would increase the debt of the company to the extent that
3 the assets weren't enhanced enough to cover the additional
4 funds loaned by the customers.

5 What we -- what we said was that these had to be cash
6 infusions. The \$13 million right off the bat, starting out, is
7 a cash infusion. It's not a loan. It's not going to be repaid
8 unless something happens. And that is we said, look, we want
9 you to permit us to try to sell some of our facilities as going
10 concerns. And we don't you to just pull and run and resource,
11 and we build parts, in 90 days you're gone. So, they said,
12 okay.

13 But to the extent we designate a sale facility where
14 we will maintain our business, that means that to the -- an
15 allocable share of that \$13 million would be converted to a
16 cash infusion to a loan. And that would be subordinated again
17 to Wachovia, and it would be paid upon the sale, a going
18 concern sale, hopefully, of those facilities that were
19 designated sale facilities.

20 Our view is -- the debtors' view is that that makes
21 sense because we think -- although we don't have any
22 valuations, I admit that, I'll admit that to Mr. Freedlander,
23 I'll admit that to anybody. We don't know. We just believe,
24 based on our experience and based on what Glass has told us and
25 BBK, the professionals for the customers, and Wachovia, we all

1 believe that if there is a going concern sale of these
2 facilities, that it's more likely than not that it would cover
3 by substantial amount whatever loan has to be made that's
4 allocated to those facilities.

5 THE COURT: Glass and Associates has collected \$1.6
6 million since they were engaged? And they have given you no
7 sense of values?

8 MR. HUTCHINSON: Oh, no, they've given us liquidation
9 values. But they -- they -- they haven't given me -- no, we
10 don't -- we don't have any -- we don't have any going concern
11 valuations. And I'll let Mr. DiDonato from Glass explain that.

12 So, under the DIP, again, from 60,000 feet or six
13 miles up or whatever, the Wachovia loans will be in formula.
14 They will get the usual DIP protections. Any collateral, in
15 our view, will be protected. There won't be any -- that
16 ultimately will be liquidated, there won't be any diminution in
17 value. They are getting fees. I think the Court will notice
18 that.

19 They also have the chance that their collateral --
20 some of their collateral anyway will be sold as going concern
21 instead of being liquidated.

22 The customer gets their parts and their parts bank,
23 subject to our ability, we define that as capacity in the
24 document. And the ability to designate plants where they can
25 keep their business, and then not have to run the risk of the

1 transition to resourcing to another supplier. That's a
2 significant benefit to them, in our view.

3 What the company gets under the DIP is -- well,
4 obviously funding. Thirteen million dollars is a lot of money,
5 no matter how you look at it.

6 There won't be an immediate shutdown. There will be
7 time to try to sell, and we think we'll be successful,
8 designated plants which are called sale facilities in the DIP
9 document as going concerns.

10 We think, therefore, and we're going to try to talk
11 to the customers and try to convince them that they're at least
12 a couple more, maybe three more, that would fit that
13 description, that they may have an interest in, designating as
14 a sale facility.

15 THE COURT: Let me ask you. Is -- is -- are the
16 people from McGuireWoods, they're not hearing this for the
17 first time.

18 MR. HUTCHINSON: Hearing what I'm saying for the
19 first time?

20 THE COURT: Yes.

21 MR. HUTCHINSON: No. No, they're not hearing this
22 for the first time.

23 THE COURT: Because --

24 MR. HUTCHINSON: They -- the -- McGuireWoods is --

25 THE COURT: Let me just --

1 MR. HUTCHINSON: Yeah.

2 THE COURT: Let me -- they -- there is an objection --

3 MR. HUTCHINSON: Right.

4 THE COURT: An objection to the cash -- the use of
5 cash collateral --

6 MR. HUTCHINSON: Right.

7 THE COURT: -- with many --

8 MR. HUTCHINSON: Subparts.

9 THE COURT: -- pretty unusual aspects, you know, you
10 would incorporate into that motion. From the -- from the
11 perspective of holders of pre-petition unsecured claims, what's
12 in it for them?

13 MR. HUTCHINSON: Well, I was just kind of -- can I --
14 can I finish my speal and then I'll -- I'd be glad to --

15 THE COURT: Well, you know, this was a --

16 MR. HUTCHINSON: I'll be glad to answer, I'm almost
17 through.

18 THE COURT: You've had 30 minutes.

19 MR. HUTCHINSON: All right.

20 THE COURT: And I'm still waiting --

21 MR. HUTCHINSON: I have -- well, I didn't --

22 THE COURT: -- to hear something about this.

23 MR. HUTCHINSON: I didn't -- I really didn't mean to
24 talk that long.

25 What it does is it maximizes the value of the asset.

1 It pays down the bank. It -- operating --

2 THE COURT: It pays down the bank, yeah.

3 MR. HUTCHINSON: Yeah.

4 THE COURT: Yeah.

5 MR. HUTCHINSON: Right. But if the bank -- if the --
6 if the -- everything is shuttered right now, you'll have \$100
7 million in claims from customers, you'll have customers not
8 paying their payables. You'll have inventory that's worth
9 junk, and you'll have equipment that's worth five percent of
10 the appraisal. Maybe -- maybe more, I don't know. But the
11 company just bought some equipment at five percent of the
12 appraisal.

13 There's a glut of injection molding machines in the
14 automotive industry. All that stuff I just said to you, Your
15 Honor, makes it so that Wachovia may not get paid off. And if
16 Wachovia doesn't get paid off, the trade gets zip.

17 If, on the other hand, we can go through this and do
18 a build out of the inventory, bulletproof the receivables, have
19 this equipment purchased at these high prices, and while we're
20 doing that, the workers still have jobs for some period of
21 time, even in the closed facility. And their healthcare is
22 covered. They have a chance to -- they're creditors, too. And
23 so I think -- I think the creditors -- the unsecured creditors
24 do much better. This is what our goal was. I mean we didn't
25 have to -- we could have shut this down and said, you know, get

1 your parts somewhere else, we don't care how big your claims
2 are.

3 But we thought this was the right thing to do. I
4 still think it's the right thing to do because what it does is,
5 I believe, it maximizes the value of the assets.

6 THE COURT: Okay.

7 MR. HUTCHINSON: And -- and it gives -- and -- and I
8 might say that it also gives the company the chance to try to
9 sell, and I think -- as I said, I think that it will be able to
10 sell some of the facilities as going concerns, which will
11 substantially increase the possibility of recovery.

12 THE COURT: Are you talking about some of the eight
13 facilities? Or are you talking -- in your --

14 MR. HUTCHINSON: I'm talking about two of the eight
15 and the two Mexican. Right. And I'm talking about three that
16 I think will probably have to be shuttered, and then three
17 others of the eight that we think could be sold. But if we
18 don't get funding -- the customers are leaving now, the other
19 customers. And we need to get some stability here and calm the
20 waters and try to get them to stay. And then maybe we can
21 convince these other -- the other customers that why resource,
22 why transition, why go through the risk and expense? We can
23 sell these facilities to somebody else with a strong balance
24 sheet and you're better off that way. That's the plan.

25 THE COURT: Thank you.

1 MR. HUTCHINSON: Thank you, Your Honor.

2 MR. HAMMER: Your Honor, if I may?

3 THE COURT: For the customer?

4 MR. HAMMER: Yes, one of the participating customers,
5 Michael Hammer on behalf of Visteon Corporation.

6 You may not know, Visteon was the former parts
7 division of Ford, and Ford spun it off, and now it's one of the
8 world's largest tier one suppliers. That's how we fit into the
9 equation.

10 The three participating customers have agreed to fund
11 the debtors' cash needs beyond what Wachovia will provide in
12 terms of in formula lending. We do only comprise, the three of
13 us, 50 to 50 percent -- 50 to 55 percent of the total business.
14 But we have agreed to pay 100 percent of the cost.

15 THE COURT: And let me just -- just -- I want to ask
16 you.

17 MR. HAMMER: Okay.

18 THE COURT: The three -- the three: Delphi, G.M. and
19 Visteon, are you -- are you working in a pretty coordinated
20 fashion?

21 MR. HAMMER: Yeah, we are acting as an informal
22 customer group because we -- us three could cooperate together
23 to try to deal with this, but there's a number -- there's --
24 you know, half of -- 50 percent of the other customers that
25 aren't part of this process that are -- we -- you know, have no

1 control over and they, as Mr. Hutchinson said, are basically
2 leaving unless --

3 THE COURT: I mean there was a concept --

4 MR. HAMMER: -- this situation can be stabilized.

5 THE COURT: There was a concept in the -- in some of
6 these papers that suggest that the people could sign up as a --
7 an assisting customer.

8 MR. HAMMER: Yes. The way it's working is we're
9 putting in the funds, and then they have to go to the other
10 customers and basically tell them they have to pay their share
11 if they're going to get parts. If they don't want to --

12 THE COURT: And there's nobody yet signed up in that
13 assisting customer category, or is there?

14 MR. HAMMER: I know they have been contacting them, I
15 don't know if anyone has signed up. Yeah, they have five
16 business days, I believe, after entry of the order to get that
17 done.

18 So, as Mr. Hutchinson alluded to, the debtors and
19 customers operate using a just-in-time inventory method, which
20 means the customers don't maintain large inventory banks back
21 at their own facilities, but they rely on frequent shipments
22 from the debtor.

23 If those shipments don't come, there are no bank of
24 parts from which the customers can draw, and that will
25 interfere with production at their own facilities, and will

1 shut down lines because they're absolutely critically dependent
2 on those parts getting there just in time. And if lines are
3 shut down at, say, Visteon, then that means its customers'
4 lines will eventually be shut down. We're talking lines, and
5 then plants shut down. They'll idol workers. Those will
6 result in large damage claims. That's just the nature of the
7 business, that's what's contemplated under these contracts.

8 And those claims would be huge, hundreds of
9 thousands, to millions of dollars a day in damages. Those
10 would dominate. In the end, if this went on for a long period
11 of time, dwarf the unsecured class.

12 This situation was thrust upon us because CEP
13 basically ran out of money, as Mr. Hutchinson said. They had
14 liquidity issues and they couldn't perform under their
15 contracts, given their current financial condition.

16 So, we loaned them \$2.9 million. Those funds -- it
17 was as a purchase of Wachovia's participation. But those
18 funds were then made available to the company to use and they,
19 in fact, used them. The idea was the company was going to try
20 to right the ship and come up with the restructuring plan that
21 we can all agree to. And they had a four-month period to do
22 that.

23 That -- those funds were used to stabilize the
24 company, but also there were significant pay-downs of the trade
25 debt.

1 Since April, the trade debt has received \$5.6 million
2 of pay-downs from its current level while obviously being
3 maintained current in basically COD or cash in advance
4 payments.

5 So, while the Committee says at some point the trade
6 debt ballooned, it did not balloon while we provided funding to
7 this company.

8 Ultimately, there was no workable plan because the
9 problem was the -- whatever plan there was, there was still a
10 large cash need for the company, which would require the
11 customers to keep funding. But there really was no end game.
12 And so we -- okay, we did this plan. We're going to have to
13 put in more money at some date, how long are we going to have
14 to continue to put in money?

15 So, the parties then embarked on the orderly wind
16 down, orderly sale type process. That -- this -- as you can
17 tell from the order, it was hotly contested, heavily
18 negotiated. The customers have agreed to put in an additional
19 \$13 million.

20 THE COURT: I'm just going to -- I mean -- usually
21 when a case comes and they say we want to do a 363 sale, and it
22 will probably -- there will probably be a liquidating 11, this
23 case is sort of, you know, okay, we're coming and asking for a
24 363 sale. But in some ways, the cash -- the cash collateral
25 usage order is, itself -- it looks a lot like a plan.

1 MR. HAMMER: Well, it definitely establishes the
2 process of -- kind of the use of funds and to set the
3 parameters on a sale process. But they then do have to file a
4 sale process motion --

5 THE COURT: Right. Right.

6 MR. HAMMER: -- and get it approved by the Court --

7 THE COURT: And --

8 MR. HAMMER: -- in that manner. So, you'd have to
9 find that these were appropriate sales, subject to objection.
10 But at least sets the parameter so, from the participating
11 customer's perspective, they're not putting in money again with
12 no end game. Because ultimately, besides parts, which is the
13 number one thing we're getting out of this deal, the second
14 thing we're getting is sort of a end game and closure to how
15 this whole arrangement is going to work.

16 So, we've agreed to put \$13 million in, and the
17 funding's done on a plant-by-plant basis. Approximately ten
18 million of that is going to come in in the next two weeks. So,
19 we're putting in 13 million, we've already put in 2.9, so
20 that's a very significant investment in this case.

21 Now, the deal we made, if the funding comes in and
22 it's related to a sale facility, it comes in as part of the
23 DIP. And there's been a question, well, we haven't designated
24 which ones are sale facilities, and why can we designate which
25 ones are sale facilities? It's ultimate because it's our book

1 of business that's going to allow it to be sold.

2 I can tell you this, Visteon's the largest customer
3 in the Tuscaloosa, Alabama plant, and we do intend to designate
4 that as a sale facility. That will happen.

5 Though the whole issue about why are we getting this
6 treated as part of the DIP, you just have to put it in context?
7 It is only \$1.5 million that is going to be the DIP
8 participation as -- of the 13 million that's coming in.

9 THE COURT: You just lost me.

10 MR. HAMMER: Well, we're putting in --

11 THE COURT: One point five million --

12 MR. HAMMER: -- \$13 million. Of that, only 1.5
13 million of it is going to be part of the DIP, and there will be
14 an expectation that it will be repaid. The rest of it is what
15 Mr. Hutchinson and what the document calls --

16 THE COURT: Okay. So, in other words, 11.5 million
17 is --

18 MR. HAMMER: Is the cash infusion --

19 THE COURT: -- just cash infusion.

20 MR. HAMMER: -- or, from the customer's perspective,
21 it's a gift. I mean this is money that's coming to the
22 company. Yeah, we're getting parts out of it, but we're never
23 going to get repaid, and there's no hope we ever will.

24 THE COURT: Well, if you get parts, that's -- parts
25 are in kind payment.

1 MR. HAMMER: Well, no, we're paying for our parts.
2 This is additional funds beyond the payment of our parts. This
3 is just additional -- so, we have to pay for our parts. We've
4 limited our setoff rights against those, plus we're putting in
5 \$13 million.

6 And for those sale facilities, only one -- one and a
7 half million dollars is part of the debt that will increase the
8 debt of this company. And what we've agreed to do is not
9 resource out of those sale facilities, that will maintain going
10 concern value --

11 THE COURT: And when you say we, do you mean --

12 MR. HAMMER: The -- whoever --

13 THE COURT: Do you mean Visteon? Do you mean the
14 three already participating customers?

15 MR. HAMMER: And that's a good question. And I -- I
16 heard --

17 THE COURT: Pronouns are the enemy.

18 MR. HAMMER: I heard your comment about using the
19 wrong pronoun, and I think I just did. It's -- it's whoever
20 wants that of the participating customer group, whatever
21 customer wants that facility and supports that facility to be
22 sold.

23 The way it works out in these facilities is between
24 the three participating customers, generally one of them is
25 going to be the largest customer in that facility. And usually

1 the rest of the customers have small -- smaller percentages.

2 The only one is Bishopville, which is a Honda -- is
3 -- I think 100 percent of Honda --

4 UNIDENTIFIED ATTORNEY: Eighty.

5 MR. HAMMER: Eighty percent of Honda production. So,
6 that's sort of -- they're dealing with Honda separately.

7 So, for instance, in Tuscaloosa, Visteon is about 55
8 to 60 percent. But most of the other customers -- we're
9 unclear exactly what's happening, but they seem to be leaving.
10 So, we're the ones ultimately who would have that decision
11 because I don't think any of the other participating customers
12 will make any choice to have that as a sale facility. And we
13 will choose that to be a sale facility.

14 So, that will maintain going concern value. That
15 will preserve jobs.

16 If it's related -- if the funding is related to a
17 closing of the facility, it just comes in as this cash infusion
18 or a gift. That's about the \$11.5 million.

19 And let there be no mistake, that is a huge
20 concession by the customers. The Committee's already won,
21 they're a winner. Because what other case can you imagine
22 there's \$13 million coming in to fund a company and 11 and a
23 half million dollars is just given to the company? I'm not
24 saying we're not getting parts out of it, but we're paying the
25 company 11.5 plus our purchase order price to get parts.

1 So -- and the debtor fought us tooth and nail on
2 that, and they won on that point. But now the Committee, they
3 just want more and more because everybody wants the leverage --
4 everybody's an overstatement. The Committee wants to leverage
5 us because we need those parts. But we have given, and we have
6 given some more, and we are -- I'll lay out what we are giving.
7 But besides just the money, we've agreed to accelerate our
8 payment terms.

9 And so for Visteon, they're typically paying on a net
10 55, now they're going to net immediate. And that's a lot of
11 cash coming out of a company. That -- and you've read about
12 the state of the auto industry, cash is king, and we're paying
13 as quickly as we can. We've agreed to limit our setoffs.
14 Normally anything we pay in terms of the other vendors or
15 anything like that could be subject to setoff. We've agreed to
16 limit those. We've agreed not to resource out of the sale
17 facilities. We've agreed to buy back all of our inventory,
18 whatever's left, whatever's merchantable and usable, and I know
19 there was a complaint that those aren't defined, but actually
20 they are defined in the agreement and they have very common
21 typical definitions. I mean ultimately we want the inventory,
22 it's just we want to make sure it is merchantable and usable.

23 We've agreed to fund all the carve outs. We've
24 agreed to fund U.S. Trustee fees. We've agreed to fund an
25 employee incentive plan.

1 Ultimately there's lots of complaining from the
2 Committee, but it's just all an attempt to extract something
3 else, something more from us. But sometimes enough is enough.

4 You know, you have to determine what we're doing is
5 fair and reasonable and equitable. Ultimately you say what
6 benefit or harm is there to the estate? Well, there's really
7 no harm to the estate. We've covering the cash needs. The
8 only thing that comes in as debt is a million and a half
9 dollars.

10 The estate then has the ability to have enhanced
11 values and maintain values. And I think Mr. Hutchinson was
12 exactly right when he said you're maintaining the value of the
13 assets. If it's just a free for all conversion, there's all
14 kind of setoff claims. You're not going to collect
15 receivables. And even the process of dealing with other
16 customers in getting them to pay will be chaotic. And so you
17 avoid all of that by doing this deal.

18 Ultimately, of course, I'm going to tell you this is
19 something that should be approved. But I mean I think it's a
20 great deal because we've covering all the cash needs in a way
21 that we're not expected to get repaid. And that just doesn't
22 happen that often. And, frankly, the participating customers
23 typically don't do that. Normally this money -- if it wasn't
24 for the ability to leverage us on our parts, they would come to
25 you and ask for the DIP to be \$13 million, and that would be

1 the normal type case.

2 This isn't that and we're doing our share, Your
3 Honor.

4 THE COURT: Thank you. Mr. Radom, has Visteon
5 everything that needs to be said about the participating
6 customers?

7 MR. RADOM: Yes, they have, Your Honor.

8 THE COURT: Thank you.

9 MR. RADOM: The only thing I would add is just that
10 Delphi is a major customer in the Mexican facilities. And we
11 have worked very hard to try and keep the Mexican facilities
12 separate from this proceeding, even though there is some
13 reference in the proposed DIP financing order.

14 The idea is that they're not -- you know, that's a
15 separate Mexican subsidiary that will not be part of this
16 bankruptcy.

17 THE COURT: Well, it's pretty tough for that to
18 happen, is it not? Because it is a third tier subsidiary, and
19 the stock of that entity certainly is a asset of this estate.

20 MR. RADOM: The stock is certainly an asset, Your --

21 THE COURT: And there are -- I mean one of the things
22 that -- there is a very broad statement in the proposed order
23 with respect to the use of cash collateral. It's a -- and --
24 and financial accommodations. I'm just -- I -- I'm just
25 calling this out, not as the only question I have about this

1 but rather to -- Paragraph I on Page 5 of the proposed order,
2 it's sort of like -- it's the proverbial having your cake and
3 eating it, too. There -- I'm being asked to make findings and
4 affect relationships with the Mexican entities. And I -- you
5 know, and the -- I'm sort sitting there trying to figure out
6 where, in the Code and in the Rules, I get the authority to do
7 that.

8 MR. RADOM: I'm not so sure --

9 THE COURT: And I'm not asking --

10 MR. RADOM: I'm not so sure that --

11 THE COURT: I'm not -- I'm not --

12 MR. RADOM: I'm not so sure that's a question for --

13 THE COURT: It's not a question for right now because
14 this is basic -- I mean, again, what I'm trying to use this
15 morning to do is -- and it's no longer morning. I -- I don't
16 know how useful anybody else has found this, I'm finding it
17 very useful in terms of just, you know, getting all the issues
18 -- as many -- not all of the issues. I'm -- this is a big
19 onion with many, many layers. But getting the biggest issues
20 out there and trying to -- you know, trying to make progress on
21 those motions which the debtors at least view as central, and I
22 think the participating customers view as central to getting
23 some certainty sooner rather than later.

24 MR. RADOM: Well, to the -- to the extent that I can
25 help clarify the issue on Mexico, we negotiated extensively to

1 ensure that the revenue generated from those facilities stays
2 with those facilities and are used -- and is used to cover the
3 expenses of those facilities.

4 There is a crossover when it comes to corporate
5 overhead. Because, you know, the corporate offices here in the
6 United States is providing corporate overhead to the -- in
7 other words, the Mexican subsidiary does not have separate
8 management. And, therefore, Delphi has agreed to cover its pro
9 rata share of any allocable portion of that corporate overhead,
10 as well as restructuring cost that might be allocable --
11 restructuring cost being generated from this proceeding, but
12 would be allocated to the Mexican facilities. We've agreed to
13 cover our pro rata share of that.

14 But other than that, these -- these two facilities
15 are to operate on their own. To the extent that they have cash
16 shortfalls, Delphi, as well as -- as well as any other customer
17 who decides to stay, will cover those cash shortfalls. So,
18 there's no -- so there'd be -- no diminution in the working
19 capital of those two facilities.

20 THE COURT: Is that -- is that -- is that a
21 significant prospect?

22 MR. RADOM: A significant prospect that they would
23 cash --

24 THE COURT: That there would be cash shortfall?

25 MR. RADOM: -- cash flow --

1 THE COURT: No, cash shortfalls.

2 MR. RADOM: -- negative?

3 THE COURT: Yes, in the Mexican operations.

4 MR. RADOM: Well, the Mexican operations had been
5 viewed as perhaps the better -- the better operating facilities
6 of the overall CEP companies. If they -- if there is a -- I
7 mean they should cash flow positive to cover current operating
8 expenses. It's the -- it's the additional layers of expense
9 being generated by this bankruptcy that may cause a cash
10 shortfall.

11 But to the extent that there is a cash shortfall,
12 Delphi will step up and cover that cash shortfall to the extent
13 of its, you know, pro rata amount.

14 THE COURT: Let me just ask you one other question
15 that -- I'm not necessarily expecting you to answer as you
16 stand there today, but I would like to have an answer by the
17 end of the day. As to Delphi, which, itself, a Chapter 11
18 debtor. Are the matters that are being treated here basically
19 viewed as ordinary course or --

20 MR. RADOM: That's -- that's correct, Your Honor.
21 It's -- it's a combination of ordinary course in Delphi's own
22 bankruptcy proceeding. There was established what we call an
23 essential supplier or vendor rescue program that gives Delphi a
24 considerable amount of latitude to support its vendors. And
25 that's part of this program, as well.

1 THE COURT: That's good to hear that.

2 MR. RADOM: From one debtor to another. Is there
3 anything else I can help you with?

4 THE COURT: I'm sure there is, but we'll keep --
5 we'll --

6 MR. RADOM: But I certainly --

7 THE COURT: Yeah.

8 MR. RADOM: I mean Mr. Hammer, on behalf of Visteon,
9 certainly presented the case for the participating customers,
10 and I concur with all of his statements.

11 THE COURT: And I'm going to -- since General Motors
12 is participating telephonically, unless there's something
13 really central that wasn't said by either Mr. Hammer or Mr.
14 Radom, I would move on to hear from the trade creditors. But
15 does G.M. have anything absolutely essential to add?

16 MS. SEEWER: No, Your Honor.

17 THE COURT: Thank you. Trade creditors -- and I'm
18 not going to -- I'm not going to ask Wachovia at this stage.
19 You're -- everything about this case is a little -- it's a
20 variation on themes, but Wachovia's is less of a variation on
21 themes than most. Let me hear from Mr. Freedlander.

22 MR. FREEDLANDER: Thank you, Your Honor. For the
23 record, I am Mark Freedlander of McGuireWoods, and I do
24 represent -- my firm does represent a pre-petition trade
25 creditor committee.

1 With your indulgence, Your Honor, however, I am going
2 to ask the Court -- you mentioned lunch break on several
3 occasions.

4 THE COURT: Yes.

5 MR. FREEDLANDER: I'm more than happy to make
6 argument today here and now, this moment. I would do much
7 better, however, if I could do so following a brief lunch
8 break.

9 THE COURT: That would be fine.

10 MR. FREEDLANDER: Everyone has an Achilles Heel, mine
11 happens to be diabetes. So --

12 THE COURT: Well, okay. The time is 12:37. What --
13 what's a useful amount of -- what discussions do you envision
14 having, if any, over the lunch hour?

15 MR. HUTCHINSON: Well, Your Honor, I -- I don't --

16 THE COURT: Or lunch break.

17 MR. HUTCHINSON: The lunch whatever. I do have some
18 thoughts in mind to talk to people.

19 THE COURT: Okay.

20 MR. HUTCHINSON: But I -- from both sides. But I
21 don't really know how long.

22 THE COURT: Well, then what I'm going to do, I'm
23 going to -- I'm going to break until 1:30. And --

24 MR. HUTCHINSON: Yeah.

25 THE COURT: And the other thing I would note, when

1 you come back, if -- I do allow people to have bottled water in
2 the courtroom. Some people know that, some people don't. I
3 think everybody should be on an even playing field, at least in
4 that regard.

5 There is a cafeteria downstairs. There are a variety
6 of fast food places within a block. So --

7 MR. FREEDLANDER: Thank you, Your Honor.

8 THE COURT: You're welcome. And I think the other
9 thing is that we -- we've gotten three conference rooms, our
10 two witness rooms and then there is the GSA conference room.
11 Originally we had said -- there had been a suggestion in terms
12 of assignments of those spaces. You're free to renegotiate
13 those assignments.

14 That's about all I can say right now. One thirty.

15 MULTIPLE SPEAKERS: Thank you, Your Honor.

16 THE COURT: We will -- we will either leave the
17 courtroom locked or unlocked at the -- is there anybody who has
18 anything which they feel requires that the courtroom be locked?

19 (No audible response heard)

20 THE COURT: Okay. Then we will leave the courtroom
21 unlocked.

22 MS. SEEWER: Your Honor, should I dial back in at
23 1:30?

24 THE COURT: Yes. Yes. Why don't -- we'll just dial
25 -- we'll dial back to that number at 1:30.

1 MS. SEEWER: Okay.

2 THE COURT: Thank you.

3 (Luncheon Recess 12:39 P.M./Reconvene 1:39 P.M.)

4 THE COURT: Okay. Do we have the people who are
5 participating telephonically?

6 MS. SEEWER: Yes.

7 THE COURT: All right. Were there any -- is there
8 anything that developed over the lunch hour that should be
9 reported on the record?

10 MR. FREEDLANDER: If I may, Your Honor?

11 THE COURT: Yes, Mr. Freedlander.

12 MR. FREEDLANDER: Again for the record, I am Mark
13 Freedlander of McGuireWoods. And the constituency that I
14 represent, again, was an unofficial organized group of trade
15 creditors on a pre-petition basis. Those trade creditors,
16 Your Honor, represent approximately 25 percent, by our
17 estimation, of the aggregate unsecured debt as of the filing
18 date.

19 Your Honor, we have had discussions over the course
20 of lunch. And what we have agree to do, subject to this
21 Court's indulgence, is -- I'm compelled to respond to certain
22 of the comments that were made of record. So, I would first
23 like to do that, and I'll try to keep it as brief as humanly
24 possible.

25 And at the conclusion of my recitation, Your Honor,

1 we will endeavor to mark the order that's proposed in a fashion
2 that would be acceptable to the constituency that we represent.

3 Understanding, Your Honor, again that just like --

4 THE COURT: You're not an official committee, at this
5 point, et cetera, et cetera. I understand.

6 MR. FREEDLANDER: Yeah, which is -- which is
7 something of an anomaly in cases of this nature.

8 With that being said, Your Honor, there are several
9 things that I believe are important for the Court to recognize.
10 It is absolutely, positively true that the customers are going
11 to fund significant operating losses of the debtors through
12 cash infusions. I have to start there. That's absolutely
13 true.

14 And it is atypical for cases of this nature, that is
15 absolutely true, as well.

16 But please understand how it came to pass. It came
17 to pass because the customers, Wachovia and the debtor, were
18 engaged in discussions and negotiations to endeavor to prepare
19 and formulate a out-of-court restructuring. That out-of-court
20 restructuring was destined to fail. It was absolutely,
21 positively destined to fail. It was done at the behest of
22 equity in order to try to retain equity in a situation where
23 equity was completely and totally out of the money.

24 The endeavor to organize a trade committee in an
25 effort to do this out-of-court restructuring which, again, is

1 really quite unusual for cases of this nature. You ordinarily
2 see it with bondholders, but certainly not with unsecured
3 creditors.

4 So, this group of 26, \$27 million worth of nuisance
5 to the customers and to the debtor have the opportunity to
6 organize, unlike any of these types of cases in which I've ever
7 been involved before.

8 The one thing that this group made very clear from
9 the time that it was first organized, which was in July of
10 2006, was:

11 A, that it saw the thing as a straight liquidation;
12 And, B, that if it were to be a straight liquidation,
13 it wasn't going to be done through debt, that the customers
14 would ordinarily put into a company as part of the access and
15 accommodation agreement and the variety of accommodations that
16 customers make in order to have products continue to be
17 produced for their benefit. It wasn't going to happen.

18 It did happen in part before we organized it, and
19 shortly thereafter. There were actually two tranches of
20 customer subordinated debt that went in, totaling \$2.9 million.

21 The customers absolutely positively tried to further
22 fund with debt, but the debtor refused as a result of the
23 debtors' conversations with the constituency that I represent,
24 which made it very clear that we were prepared to file an
25 involuntary, taking them somewhere less pleasant than Ohio.

1 THE COURT: I'm sorry, I didn't get the last phrase?

2 MR. FREEDLANDER: Somewhere less pleasant than Ohio.

3 We were prepared to file an involuntary in Alabama. But it
4 didn't.

5 But that was --

6 THE COURT: I have lots of Bankruptcy Judge friends
7 in Alabama.

8 MR. FREEDLANDER: There are good Bankruptcy Judges in
9 Alabama, it's just --

10 THE COURT: Very good. Excellent.

11 MR. FREEDLANDER: I've been there actually. It's
12 just not necessarily the most convenient forum to arrive.

13 But that aside, understand that the concessions the
14 customers are making, it's not out of the goodness of their
15 hearts. It's out of necessity. Absolute, positive necessity.

16 By the same token, Your Honor, when the customer
17 suggests that the constituency I represent are hostage takers,
18 they made it real easy for me to take hostages. The order that
19 they suggest this Court enter on day one of a bankruptcy case
20 is, frankly, outrageous. And understand, please, Your Honor,
21 that most orders of this nature aren't necessarily about this
22 case. They're about the next case.

23 So, the customers often -- and they haven't said it
24 today, and I give them credit for not saying it. But what
25 you'll most often see, Your Honor, is the customers will come

1 in when parties are objecting to orders of this nature and
2 suggest that it's happened before. Time and time again.

3 So, this order, as much as they'd love to have it
4 entered today in order to provide them these extensive
5 protections, some of which I still don't even understand what
6 exactly they are, it's not just about this case. It's about
7 the next one and the next one and the next one.

8 What trade has seen from day one is, again, a
9 situation where a liquidation is going to occur. Trade has
10 filed a motion to convert because it is concerned about the
11 order, about additional debt coming in, and about other relief
12 from protections that have been afforded to the customers and
13 Wachovia.

14 Liquidation analysis was performed by Glass prior to
15 the bankruptcy filing. Because the Trade Committee was
16 organized, it had the ability to undertake its own liquidation
17 analysis, which wasn't necessarily all that different than that
18 prepared by Glass after we were done reconciling certain
19 numbers and discrepancies in the numbers.

20 But I'll tell the Court that that liquidation
21 analysis was estimated to return to unsecured creditors
22 somewhere in the neighborhood of 25 cents on a dollar. Now,
23 appreciate that it's only a piece of paper that has projections
24 on it.

25 **THE COURT:** The liquidation analysis performed by

1 financial advisors that you've retained --

2 MR. FREEDLANDER: It was --

3 THE COURT: That your Committee retained?

4 MR. FREEDLANDER: The genesis of it was, Your Honor,
5 that on a pre-bankruptcy basis, the debtors' financial analyst,
6 Glass, who, by the way, I like and respect a great deal and I
7 don't mean to cast aspersions upon them at all. But they
8 prepared a liquidation analysis.

9 We reviewed the liquidation analysis, through the
10 efforts of our financial consultant, and reconciled certain
11 numbers that we disagreed with by way of the analysis that they
12 had performed. Largely the discrepancy was what we still
13 believe today to be a double-counting of certain debt. And
14 when we compared side-by-side the analysis that was performed
15 by Glass to that which was undertaken by our financial advisor,
16 we see somewhere in the neighborhood of 25 percent return to
17 unsecured creditors.

18 Now, obviously it's nothing other than a liquidation
19 analysis, and reality could be a whole lot different. That's
20 understood.

21 But with the one thing that is very clear is that if
22 this Court were to enter an order of the nature that's proposed
23 today, that 25 percent is dust. It's not going to happen.
24 There are a multitude of reasons for that. And I don't need to
25 list them item-by-item because I'll tell you that we're going

1 to do our absolute best to take care of them by way of
2 modifying the proposed order.

3 But if you think about what's owed to unsecured
4 creditors today, let's say it's \$30 million, just -- it's
5 probably a little bit less than that, but \$30 million. That
6 means that every \$3 million of money that's spent for a variety
7 of things or \$3 million of liens that are provided for the
8 benefit of the customers who absolutely, positively need
9 product, every \$3 million that's spent in that way, shape or
10 form represents ten percent that would otherwise be, at least
11 in theory, returnable to the constituency that I represent.
12 And hopefully it will become an official committee and you'll
13 see me again in that capacity as opposed to this -- something
14 of a duckbill platypus right now.

15 But -- but that's -- that's our starting point.
16 That's the genesis from which we work and what we view this.
17 So, while the customer suggests that this is hostage taking,
18 they need to appreciate that the remedies that they request in
19 here are fairly extreme. And I'll say it again and again and
20 again, if you consider me to be the lowest bar in terms of
21 intelligence, I don't understand things in here. For the life
22 of me, I've read it again and again and again in the past two
23 days. There are portions and pieces that I, plain and simply,
24 can't understand.

25 But nevertheless, they would suggest to this Court,

1 having 24, 48 hours -- actually 24 hours, if not less, to
2 review this.

3 THE COURT: Yes.

4 MR. FREEDLANDER: That it's wholly appropriate for
5 you to enter this 60-page order that references documents that
6 aren't attached and has definitions upon definitions upon
7 definitions, it doesn't work and it doesn't make sense.

8 This debtor is going to be liquidated. There's no
9 ifs, ands or buts about it.

10 THE COURT: Well, let's -- you know, let's -- let's --

11 MR. FREEDLANDER: Well --

12 THE COURT: I'm used to the three --

13 MR. FREEDLANDER: Yes.

14 THE COURT: To the 363 11. I'm used to that. The
15 problem with this case is that it's -- it -- it doesn't sound
16 like there will be that many surviving operating plants being
17 operated by someone else.

18 MR. FREEDLANDER: And I'd like to address --

19 THE COURT: And that -- and that obviously -- I mean
20 it seems to me that -- I'm used to unsecured creditors doing
21 the analysis, okay, is the -- is the prospect of future
22 business, even though this is not the -- this is not the --
23 your Committee is not supposed to do this analysis. But
24 individual creditors do this analysis.

25 Is the prospect of future business so significant

1 that we'll just take our lumps on whatever claim we had going
2 into the case?

3 MR. FREEDLANDER: Right.

4 THE COURT: And part of the dynamics of this case is
5 it sounds like there's a far more uneven pattern, as creditors
6 would answer that question, in this case than in most cases
7 because there are presumably going to be a couple, quote,
8 "winners" in terms of facilities that would continue to
9 operate.

10 Now, there's no guarantee that whoever continues to
11 operate them would deal with the historical suppliers, but --
12 and I'm just sketching this because I'm trying to understand,
13 not the legal issues, but kind of the dynamics of the case
14 because --

15 MR. FREEDLANDER: Sure.

16 THE COURT: -- sometimes you do this three or four
17 months into the case. The suggestion is there's no three or
18 four months in this case to have that learning curve.

19 MR. FREEDLANDER: Well, let's address those very
20 issues. There are a group of facilities that the debtor
21 recognizes as facilities that just aren't going to make it, and
22 they're going to be liquidated. And you know what, under the
23 circumstances, that's fine. They're going to be funded
24 exclusively through the continued use of cash collateral, as
25 well as -- well, I should say that. They will be funded

1 through revolving credit within the formula.

2 And in addition to that, because facilities lose
3 money, they will, likewise, be funded with an amount to cash
4 advances by the customers that are treated, not as debt, but
5 instead as infusions.

6 There are a group of facilities, however, that the
7 customers and the customers alone can designate as sale
8 facilities. So, first of all, if you think about it, the
9 debtor standing in a fiduciary capacity has essentially
10 deferred its business judgment to the customers in terms of
11 which facilities will generate value.

12 But I will tell you that in one of the Glass reports
13 that we received in our pre-bankruptcy negotiations, there is
14 an analysis that suggests that the facilities are worth more in
15 liquidation than they are as going concern sales. I don't know
16 if that's true or not true.

17 But there's one thing that I certainly know. That as
18 to each and every facility that the customers designate as
19 going concern sale facilities, they are being funded with debt.
20 And there is no assurance whatsoever that funding these going
21 concern facilities that Glass, in a previous analysis, has
22 suggested may be worth less as going concern sales than in
23 liquidation, that these facilities, funded with debt, whether
24 it makes sense or not, they're funded with debt. And that's
25 all there is to it.

1 So, imagine the scenario where the customers
2 designate five facilities that are to be going concern
3 facilities. They designate those five, not because they're
4 trying to maximize value for the bankruptcy estate, but because
5 they can't get out of those facilities fast enough or it's too
6 expensive for them to get out very quickly. So, instead they
7 do their very best to find a going concern purchaser for their
8 very benefit.

9 And to suggest that somehow, some way these
10 facilities are going to generate greater revenue and greater
11 proceeds for the bankruptcy estate, while there's a real
12 dichotomy because, again, it's really and truly being done so
13 that the customers can have a cheaper way to continue to
14 produce product. The only way they would be designated as
15 going concern facilities, if you think about it, why would a
16 customer care? But for the fact that selling it as a going
17 concern somehow, some way benefits them. It either costs them
18 more to get out than it does to find an alternative purchaser,
19 they can't get out quickly enough if it were to be a straight
20 liquidation facility. There's a reason. There's a
21 justification for it. And that justification has nothing
22 whatsoever to do about benefit to the bankruptcy estate.

23 THE COURT: Well, that's a little strong, don't you
24 think, Mr. Freedlander? Because --

25 MR. FREEDLANDER: No.

1 THE COURT: Because to the extent that these debtors
2 don't perform on their long-term supply contracts to these
3 customers, there would be a breach of contract and there would
4 be damages.

5 MR. FREEDLANDER: Well, let's talk about that for a
6 minute. You know, it's one thing to say there would be
7 damages. It's quite another to demonstrate those damages.

8 The three major customers produce for -- for
9 basically the big three in the domestic automobile industry.
10 Read the paper any day of the week. Shutting down facility
11 after facility, they have larger and larger inventory banks of
12 existing cars.

13 Think about this: These customers have known since
14 March that this debtor had real significant problems. But they
15 still haven't been able to resource all their product.

16 So, I -- there's --

17 THE COURT: Well, Mr. Freedlander --

18 MR. FREEDLANDER: There are issues --

19 THE COURT: Mr. Freedlander --

20 MR. FREEDLANDER: Well, there are issues of
21 mitigation.

22 THE COURT: Mr. Freedlander, you know what?

23 MR. FREEDLANDER: Yes?

24 THE COURT: They entered into a -- they entered into
25 a forbearance agreement and they committed for 120 days not to

1 resource. So, let's not --

2 MR. FREEDLANDER: Well --

3 THE COURT: -- punish good deeds.

4 MR. FREEDLANDER: No, Your Honor. But remember, they
5 entered into an agreement where they agreed not to resource.
6 But what they didn't agree to do is not to try to resource.
7 They have been trying, trust me. They have been trying every
8 day. They have been trying.

9 So, it is not a major concession on their part to
10 have agreed not to resource. They're going to have an
11 opportunity very quickly to resource. They need time to ramp
12 up to do so.

13 This accommodation agreement, what it really did was
14 it gave them the opportunity to look for alternative suppliers
15 while they continued to have product made for their benefit.

16 So, it -- it -- this is all about balancing. It's
17 all about give and take. It's no different than any other
18 bankruptcy scenario, but for the fact that you have such an
19 enormous concentration among a very few customers who are
20 extraordinarily strong. So, they have great leverage. They
21 absolutely do.

22 And by virtue of what's occurred in the course of
23 this case, trade creditors, which ordinarily have very little
24 leverage, actually have a drop. And to suggest that that is
25 somehow inappropriate is -- well, it's flat out wrong.

1 It's a balancing act. And I don't know that anything
2 more needs to be said today than -- than -- I think the Court
3 would agree just based on our objection that the order has some
4 fundamental issues. It may have fundamental issues as a final
5 order, but it certainly has fundamental issues as an emergency
6 interim order. It just -- it doesn't work.

7 And rather than go on and on and on about why it
8 doesn't work, it makes a lot more sense for us to endeavor to
9 redline --

10 THE COURT: To make it work.

11 MR. FREEDLANDER: -- the thing.

12 THE COURT: Yeah, to try to make it work.

13 MR. FREEDLANDER: To make changes. And see. And
14 what we have suggested to both Wachovia and the customers is
15 that what we see happening is essentially an order that permits
16 the -- permits the Wachovia facility to continue to revolve.
17 Permits the customers to fund ongoing operation -- operating
18 losses in excess of that which is needed through a revolver.
19 And that's really about it.

20 You know, the concept of rolling up significant
21 Wachovia term debt by way of this order, you're not going to
22 see that in the order that we present to the Court. You're not
23 going to see the assumption of the underlying access and
24 security agreement as is currently provided in this order.

25 There are lots of things -- if we were to reach

1 accommodations in terms of this Court approving an interim
2 order today, that you're plain and simply not going to see.
3 And you certainly will see a significant reservation of rights
4 that isn't afforded to any party by virtue of the existing
5 order.

6 Thank you, Your Honor.

7 THE COURT: Ms. Giannirakis, did you want to say
8 anything on behalf of the United States Trustee on the panoply
9 of issues that we've been talking about this morning?

10 MS. GIANNIRAKIS: I will be very brief with respect
11 to the DIP, Your Honor. I think we are -- I'm sorry. Maria
12 Giannirakis on behalf of the United States Trustee.

13 I think we are probably on the same page with the
14 unofficial committee. We find that this interim order has some
15 serious problems. And after reviewing it, and after reviewing
16 the objections, we share some of the same concerns.

17 So, I'm happy that parties are going to talk and
18 hopefully come to a resolution, at least for the interim.

19 THE COURT: Wachovia has not had a chance -- had its
20 chance at the podium. Would you just as soon pass on that
21 chance right now and go to -- go -- start figuring out whether
22 there are ways in which these differences can be bridged?

23 MR. DOWNS: Jeremy Downs for Wachovia, Your Honor. I
24 think that is a good idea. I think we heard Your Honor say
25 several times that you're trying to be pragmatic today. And we

1 have that firmly placed in our mind. And so I think if we
2 could take some time off-the-record, that would be helpful.

3 THE COURT: Okay. And what period of time would
4 people suggest? Recognize that I -- I want to wrap up -- I
5 want to go out the door at a normal Government employee's time.

6 MR. FREEDLANDER: Your Honor, if we could suggest
7 that -- understanding that the normal employee time today is
8 4:30. I would suggest that we check back to the Court -- with
9 the Court in an hour.

10 THE COURT: Okay.

11 MR. FREEDLANDER: If that's acceptable to Your Honor.

12 THE COURT: That's fine. We'll call it two o'clock
13 now, and we'll be back here at three o'clock.

14 MR. FREEDLANDER: Thank you, again, for your
15 indulgence, Your Honor.

16 THE COURT: All right. Does everybody -- do you have
17 sufficient caucus rooms?

18 MR. FREEDLANDER: We're fine, Your Honor. Thank you.

19 MS. SEEWER: I will dial back I nat three o'clock,
20 Your Honor.

21 THE COURT: Okay. And we will put -- we will call
22 you back when we come back into the courtroom at three o'clock.

23 MS. SEEWER: Okay. Thank you.

24 MR. WEARSCH: Your Honor, you asked me during the
25 break to look through both the case management order and the

1 official notice order to make sure that there were no issues.

2 I can report that in the approving form of additional
3 notice and consolidated list, I don't believe that there's
4 anything that extends out past what needs to be done today.
5 And if you are willing to --

6 THE COURT: I'm going to go back -- we were already
7 starting to review both the sub -- the -- the non-substantive
8 consolidation, administrative order and that initial notice.
9 So, we --

10 MR. WEARSCH: Okay.

11 THE COURT: That will probably go on over the --

12 MR. WEARSCH: Mr. --

13 THE COURT: -- over the break.

14 MR. WEARSCH: Mr. Hutchinson's secretary is
15 submitting orders with the proper case number on them.

16 THE COURT: Oh, okay.

17 MR. WEARSCH: Through your -- through your e-mail
18 address now.

19 THE COURT: Okay.

20 MR. WEARSCH: Thank you.

21 THE COURT: Thank you. Three o'clock.

22 (Recess 1:59 P.M./Reconvene 4:23 P.M.)

23 THE COURT: I understand that it's been a very
24 productive recess. I hope that understanding is correct. All
25 right. There we go. The -- I -- that's a 44-page agreed --

1 MR. HUTCHINSON: Your Honor, it's --

2 THE COURT: -- interlineated --

3 MR. HUTCHINSON: Joe --

4 THE COURT: -- interlineated is that correct?

5 MR. HUTCHINSON: Joe Hutchinson for the record.

6 Actually, Your Honor, including the definitions at the end,
7 it's 56 pages.

8 THE COURT: Right.

9 MR. HUTCHINSON: It's interlineated by hand. Counsel
10 for G.M. was present during the -- during the revisions
11 telephonically.

12 THE COURT: Well, let me suggest the following: You
13 -- there is a -- there is a complete agreement among the
14 parties who have appeared at today's hearing --

15 MR. HUTCHINSON: That --

16 THE COURT: -- with respect to the terms of this
17 order, is that correct?

18 MR. HUTCHINSON: That's correct. That would be
19 counsel for General Motors, Visteon, Delphi, Wachovia, the
20 debtors, the unofficial trade committee, and the U.S. Trustee.

21 THE COURT: And what I -- I am going to want to read
22 this order before I affix my signature. I'm old fashion that
23 way. And I'm not going to expect people to stick around while
24 I do that.

25 What I would suggest is that the debtor enter a

1 notice that during -- as a result of colloquy at this hearing,
2 the parties who entered appearances came to a full agreement
3 with respect to the motion for the use of cash collateral and
4 other financial accommodations post petition.

5 MR. HUTCHINSON: On an interim basis.

6 THE COURT: Right. And that the parties have
7 submitted a proposed interlineated order to the Court that any
8 party in interest may obtain a copy of that proposed
9 interlineated order from debtors' counsel by whatever means you
10 want to make it available. But what I would like is to get --
11 I would like not -- not to put in an imaged interlineated PDF
12 as the order. I would like you folks to get a clean copy of
13 this -- of this agreed order that I could enter on Monday
14 morning, assuming that I have no problems with it.

15 MR. HUTCHINSON: Your Honor, can I just ask one
16 question: We are working this weekend, and I want to make sure
17 that Your Honor has read it and approved it before we have
18 people actually working, building parts this weekend. Will
19 that happen today or -- I'm not sure what Your Honor was
20 saying.

21 (Laughter)

22 MR. HUTCHINSON: With the blank look on your face,
23 I'm thinking that maybe you didn't intend to read it now. I --

24 THE COURT: Well, I -- I guess what I'm saying to you
25 is I am unlikely to get in the way of the parties' agreed

1 order.

2 MR. HUTCHINSON: Okay.

3 THE COURT: However, if I'm reading it and I'm saying
4 I don't know what this means and, therefore -- because
5 ultimately, although it's an agreed order, I'm putting my name
6 on it. I really want to have some -- I want to have --

7 MR. HUTCHINSON: Sure.

8 THE COURT: I want to have -- hopefully not a false
9 sense that I understand what's in the order. So, the -- I
10 don't think that -- I think what you should do is just to
11 proceed to capture what you've agreed to in a document that you
12 can put in -- you can put for the Court's proposed -- you could
13 put into the E orders.

14 And, by the way, please, everybody, if you are
15 submitting pleadings or orders, have them be the most -- have
16 them not be imaged PDFs. Have them be the other kind of PDF,
17 whatever that is.

18 MR. HUTCHINSON: I don't know.

19 THE COURT: You can tell how tech --

20 MR. HUTCHINSON: But I know what you mean.

21 THE COURT: Yeah, because a lot of the pleadings that
22 were submitted as first day motions were submitted as the
23 imaged PDFs and it takes forever to get them printed, et
24 cetera. It was, you know, we were -- it was a mess.

25 MR. HUTCHINSON: Okay. I --

1 THE COURT: So --

2 MR. HUTCHINSON: I --

3 THE COURT: Yeah, so --

4 MR. HUTCHINSON: I apologize to Your Honor. I don't
5 know --

6 THE COURT: That's --

7 MR. HUTCHINSON: I do know what you -- what you
8 mean.

9 THE COURT: Yeah, that's -- you know, just for -- on
10 a going forward basis, let's, you know, give ourselves all a
11 break by, you know, putting in the kind of PDF that will print
12 really quickly rather than one page every two minutes or
13 something.

14 So, prepare this -- why don't you go ahead -- I will
15 take a Xerox copy of what you've interlineated. I'll read it.
16 I hope it's legible.

17 MR. HUTCHINSON: I think it --

18 THE COURT: I don't know who the scribe was.

19 MR. HUTCHINSON: It is.

20 THE COURT: And -- and then if I've got any
21 questions, we have the 363 -- pardon me -- the 366 issue to
22 deal with on Monday. So, if I've got any questions with
23 respect to this, I would raise any questions with respect to
24 the proposed agreed order on Monday.

25 The -- and what time would people like to get started

1 with respect to the 366 issues on Monday?

2 MR. HUTCHINSON: I'm okay at any time.

3 MR. WEARSCH: I believe it's just going to be the
4 debtor and Alabama counsel, Your Honor. So --

5 MR. HUTCHINSON: One -- one of -- somebody -- Tom or
6 I will handle it.

7 THE COURT: Okay. Well, why don't --

8 MR. HUTCHINSON: Whenever --

9 THE COURT: Why don't we -- why don't we plan to do
10 that -- we can either do it at ten or we can do it at two.
11 Which is -- which would be your preference?

12 MR. WEARSCH: I -- I would recommend two P.M. just so
13 that if you do need to --

14 THE COURT: Yeah.

15 MR. WEARSCH: If we you have questions --

16 THE COURT: Right.

17 MR. WEARSCH: -- about the order --

18 THE COURT: So, if I have questions -- if I have any
19 concerns about the order, I'll communicate them on -- in the
20 morning.

21 This is -- as far as I'm concerned, the parties have
22 agreed -- I don't know what all is encompassed in this. But
23 with -- with respect to the use of cash collateral, you don't
24 really need a court order. You simply need the consent of the
25 parties whose cash collateral it is.

1 I know nobody feels very comfortable about going
2 forward on that basis, but this weekend --

3 MR. HUTCHINSON: I think -- I think we can.

4 THE COURT: Yeah.

5 MR. HUTCHINSON: I understand --

6 THE COURT: Yeah.

7 MR. HUTCHINSON: -- what Your Honor is saying.

8 THE COURT: So, -- so, that -- I'm going to enter a
9 number of the orders -- well, I understand now an agreement has
10 been reached with respect to all 20 or just the -- ten of the
11 20 -- nine of the 20? Nine --

12 MR. WEARSCH: I don't have the exact list in front of
13 me, but those -- those orders which we agreed with the U.S.
14 Trustee to put off to, normal hearing, all the fee
15 applications, the committee information, and the reclamation,
16 those would not be submitted.

17 I believe that one thing I had offered to do on
18 Monday was come early and actually discuss with your staff the
19 case management order that you all were preparing so that one
20 would all be off.

21 But then I believe that everything else would -- you
22 -- you would have agreed forms, and we will submit updated
23 forms with the correct case number, formatted correctly, with
24 the minor modifications this weekend.

25 THE COURT: Okay. And does any -- anybody who wishes

1 to be copied on the draft case management order, please give
2 your e-mail to Ms. Napoli, and we'll circulate a draft of that.
3 You can do that at the -- at the conclusion.

4 Yes?

5 MS. EDISON: Your Honor, there's one other first day.
6 We need to work out an issue with the order, that's on the cash
7 management order. The Trade Committee and Wachovia are going
8 to work on language dealing with the Mexico account.

9 THE COURT: Okay.

10 MS. EDISON: And we hope to do that over the weekend,
11 and then submit an order, I guess, on Monday morning under
12 certification of counsel.

13 THE COURT: That's fine.

14 MS. EDISON: Once we've agreed to the language.

15 THE COURT: Thank you very much, Ms. Edison.

16 MS. EDISON: Okay.

17 THE COURT: Okay. So, that -- that's -- that is --
18 that's an open issue. But we still accomplished a lot today.
19 Okay.

20 What time -- what time would you like to report on
21 that on Monday? Do you want to do -- do you want to take that
22 up at two o'clock, if need be? Or is there --

23 MS. EDISON: That's fine.

24 THE COURT: Okay. So, -- we'll take -- we'll take it
25 up after the --

1 MS. EDISON: I guess -- oh, can we do it first thing
2 in the morning?

3 THE COURT: Okay. First -- ten A.M.?

4 MS. EDISON: Ten A.M.

5 THE COURT: Well, it will be -- it will be a status
6 and hearing if necessary with respect to the cash management
7 order at ten A.M. on Monday morning.

8 MS. EDISON: Your Honor, if there's no issue, would
9 it be okay if the Trade Committee participates by phone?

10 THE COURT: Yes. Yes. There is nothing sacred about
11 getting to Akron to just have a status conference.

12 Okay. So, -- so, open are 366 --

13 MR. WEARSCH: Right.

14 THE COURT: -- and cash management. I need -- I --

15 MR. WEARSCH: That you need to review.

16 THE COURT: I need to review that. And then other
17 orders are ready to go on this afternoon, as I understand it, a
18 number of orders have been agreed to. And I will stay and get
19 on as many of those as our -- you know, without controversy.

20 I don't know whether -- and -- and basically what I
21 was trying to suggest is to the extent that there was anybody -
22 - I guess I would ask, Mr. Freedlander, or Ms. Edison, do you
23 think that there will be trade creditors who are going to be
24 checking the docket over the weekend to see what's happened
25 with respect to the post petition financing?

1 MR. FREEDLANDER: Your Honor, for the record, Mark
2 Freedlander.

3 As to those trade creditors that we have been working
4 with, we're in fairly --

5 THE COURT: You'll report --

6 MR. FREEDLANDER: We're in fairly regular contact
7 with them through e-mail and telephone. So, I don't suspect
8 that to be the case. As to others, I just can't speak on their
9 behalf.

10 THE COURT: Mr. Wearsch?

11 MR. WEARSCH: Your Honor, you had asked that a notice
12 be posted on the --

13 THE COURT: Right.

14 MR. WEARSCH: -- on the docket --

15 THE COURT: And that's --

16 MR. WEARSCH: -- and --

17 THE COURT: And -- and --

18 MR. WEARSCH: -- if it pleases the Court, I'll -- I
19 can do that tonight so that it will be both on the docket and
20 we'll have it on the BMC web site --

21 THE COURT: Okay.

22 MR. WEARSCH: -- so that any creditors would see that
23 there was progress today.

24 THE COURT: Yeah, yeah.

25 MR. WEARSCH: And if I could just ask the Court, if

1 it's possible, so that I don't duplicate efforts here, which
2 orders they believe they have final versions of. Do they -- is
3 it -- because I can resend everything. But I think that some
4 were received --

5 THE COURT: Well, why don't we do that off-the-record
6 and --

7 MR. WEARSCH: That's fine.

8 THE COURT: -- we'll, you know --

9 MR. WEARSCH: And --

10 THE COURT: Let's go into the conference room and
11 just work through them.

12 MR. WEARSCH: Thank you. And --

13 THE COURT: We're not going to -- but we told people
14 -- we told people in the Clerk's Office we would enter them,
15 but they -- in terms of their being docketed, we told them to
16 go home.

17 So, -- I -- you could docket, right?

18 MR. WEARSCH: It --

19 THE COURT: Good. Okay. Well, we can get them
20 docketed.

21 MR. WEARSCH: The -- the only -- the only order that
22 we truly care about having docketed tonight is the employee
23 wages and temporary service, because we are going to be asking
24 them to work this weekend and --

25 THE COURT: Right.

1 MR. WEARSCH: -- we would appreciate that.

2 THE COURT: We will do that. We'll get that done.

3 MR. WEARSCH: Thank you, Your Honor.

4 THE COURT: Okay. Anything else right now?

5 MR. HAMMER: Your Honor, Michael Hammer again. We
6 may -- I think we probably needed -- needed a final hearing
7 date for the DIP order.

8 THE COURT: What I am going to do is set essentially
9 biweekly statuses in this case. So, the next status would be
10 -- yeah, it will -- there will be a status on October 10, a
11 status on October 24, a status on November 7th. And there will
12 be three weeks -- status on November 28th. So, you -- probably
13 the October 24 is the right one for the final hearing. But we
14 -- yeah, I think probably October 24 is the right date for a
15 final hearing with respect to -- but -- do you have a different
16 view?

17 MR. HAMMER: Your Honor --

18 MR. HUTCHINSON: I do not. I think -- what time does
19 the Court expect to have those? Would it be like ten o'clock
20 or something or --

21 THE COURT: Nine thirty or ten, yes.

22 MR. HUTCHINSON: Nine thirty. Okay.

23 MR. WEARSCH: I just think we have to put the actual
24 time and date into the order for when we serve it out.

25 THE COURT: Okay. On -- do you want to use October

1 24th?

2 MR. WEARSCH: Yes.

3 THE COURT: Okay.

4 (Pause)

5 THE COURT: Nine-thirty A.M.

6 MR. HUTCHINSON: Thank you, Your Honor.

7 MR. HAMMER: Your Honor, there was one clean-up piece
8 of business, and this is what I discussed with Mr. Freedlander.
9 He has pending a motion to convert. And I don't know that we
10 ever fully agreed on how we were going to handle it, but it was
11 our request that we not have to deal with that, pending a final
12 hearing. I don't know what --

13 THE COURT: Mr. Freedlander --

14 MR. HAMMER: I don't mean to negotiate on the record,
15 but it's something --

16 THE COURT: Yeah.

17 MR. HAMMER: -- that probably is a loose end.

18 THE COURT: Mr. Freedlander, are you going to
19 withdraw that motion or are you going to --

20 MR. FREEDLANDER: Your --

21 THE COURT: Would you like to abate it?

22 MR. FREEDLANDER: Your Honor, I would suggest that it
23 be tied actually to the final hearing on use of cash collateral
24 and debtor in possession financing so that --

25 THE COURT: Well, I will -- I mean I -- I don't want

1 to see wasted effort. So, I will abate it and have a status on
2 it on that date. But I'm not going to hear it on that date.

3 MR. FREEDLANDER: That causes me concern. You -- you
4 obviously control your own docket so I can't tell you how to do
5 things. But to the extent that there is not an adequate -- a
6 form -- an appropriate form of final order --

7 THE COURT: I will -- I will abate it until October
8 10, and we will discuss it on October 10.

9 MR. FREEDLANDER: Thank you, Your Honor.

10 THE COURT: Nobody has any response obligation with
11 respect to that motion prior to October 10. And any response
12 obligations would be addressed -- they would be after October
13 10th.

14 MR. FREEDLANDER: Understood.

15 THE COURT: Okay.

16 MR. FREEDLANDER: Thank you, Your Honor.

17 MR. HAMMER: That's fine, Your Honor. That's fine,
18 Your Honor. Thank you.

19 THE COURT: All right.

20 MR. DOWNS: Your Honor, if I may, very small things
21 to add. Jeremy Downs for Wachovia.

22 Mr. Hutchinson's handing, I think, the interlineated
23 order --

24 THE COURT: We'll make a Xerox -- we'll make -- we'll
25 make a number of Xeroxes.

1 MR. DOWNS: There are only a couple of final points
2 that we were negotiating with Mr. Freedlander, which I think we
3 have an agreement on, but we need to actually --

4 THE COURT: You need to get them in there.

5 MR. DOWNS: -- write in --

6 THE COURT: Okay.

7 MR. DOWNS: But we'll stay --

8 THE COURT: Well --

9 MR. DOWNS: -- and we'll do that.

10 THE COURT: Okay. Mr. Radom?

11 MR. RADOM: Thank you, Your Honor. Only because I'm
12 new to your courtroom. Your status conferences, will they be
13 held at 9:30 on the days that you've identified?

14 THE COURT: They will be held at 9:30 unless
15 otherwise -- unless I -- you know -- well, let's see. On
16 October 10 --

17 (Pause)

18 THE COURT: We'll start at nine o'clock on October
19 10. There are some other matters that are set. If they're --
20 if it's simply a status, we'll have from nine to ten. If there
21 are hearings that get noticed -- this is your typical Chapter
22 11 status, which also allows for parties to set matters for
23 hearing with appropriate notice time.

24 I've got a couple of matters -- I've got a matter at
25 ten A.M., at 10:30, and then the rest of the day is pretty

1 clear. So, if -- but we'll start at nine on the 10th. Start
2 at 9:30 on the 24th. We'll start at -- we'll start at ten on
3 Tuesday the 7th.

4 Let me ask you -- I think -- actually I'm sort of --
5 when do you anticipate filing the 363 motion? I mean given the
6 dates you're talking about --

7 MR. HUTCHINSON: Your Honor --

8 THE COURT: -- I would suggest --

9 MR. HUTCHINSON: -- next week, I mean I -- I -- I --
10 next week. Probably mid week at the latest.

11 THE COURT: Do you --

12 MR. HUTCHINSON: We've got obligations to file them
13 right away, so --

14 THE COURT: Yeah. Duh.

15 (Laughter)

16 MR. HUTCHINSON: So, we will.

17 THE COURT: Because it's very -- uh --

18 MR. HUTCHINSON: And that will be -- that will be
19 some work, but we will do that.

20 THE COURT: Well, because --

21 MR. HUTCHINSON: And we'll get it done.

22 THE COURT: Because -- is -- well, is October 10 soon
23 enough to address --

24 MR. HUTCHINSON: Today's the 22nd.

25 THE COURT: -- the sale procedures? You don't have

1 any --

2 MR. HUTCHINSON: I mean we could -- I would think if
3 we filed a cause for having an expedited hearing, I don't -- I
4 -- if we get it in next week -- today's the 22nd, so the 25th,
5 and then the 10th would be --

6 THE COURT: I mean I --

7 MR. HUTCHINSON: -- and that's about --

8 THE COURT: You know, I would --

9 MR. HUTCHINSON: -- two weeks.

10 THE COURT: On that motion --

11 MR. HUTCHINSON: Yeah, it's about two weeks.

12 THE COURT: Yeah, on that motion, I would like people
13 -- I would like people to have at least ten days, and I would
14 set -- so, I would certainly want to see it served -- well, I
15 would like --

16 MR. HUTCHINSON: I don't recall --

17 THE COURT: I would like to see it served --

18 MR. HUTCHINSON: What's the rules say?

19 THE COURT: -- so that if there were objections, they
20 would be -- they would be due by -- oh, that's Columbus Day,
21 never mind. I would like objections to be due by noon on
22 October 6th. So, that means getting it on file really quickly.

23 MR. HUTCHINSON: You would like objections to the
24 sale motions to be filed by what day, Your Honor? I'm sorry.

25 THE COURT: This -- I'm assuming that you're going to

1 be asking for procedures.

2 MR. HUTCHINSON: Yes.

3 THE COURT: And so --

4 MR. HUTCHINSON: Sale and bid procedures, authority
5 to sell.

6 THE COURT: Right. So, I would want objections to
7 the sale procedures due by noon on October 6th.

8 MR. HUTCHINSON: Oh, I thought you said the 26th --

9 THE COURT: No.

10 MR. HUTCHINSON: -- of September. Okay. That --
11 that's --

12 THE COURT: No, but what I'm saying is that,
13 therefore, parties should -- that would -- there should be ten
14 days prior to that when it would have been served.

15 MR. HUTCHINSON: Okay.

16 MR. RADOM: Your Honor, on the sale procedures
17 motion, the way the DIP order was originally drafted, the
18 participating customers would have ten days from the bankruptcy
19 filing to designate which facilities they would support as a
20 sale facility. And then two -- and then actually within 12
21 days of the bankruptcy filing is when the sale procedures
22 motion would go in. Because then they would know which
23 facilities the participating customers are going to support.

24 THE COURT: Well, it may be that -- that -- I mean
25 what I'm -- the sale --

1 MR. RADOM: All I'm --

2 THE COURT: We can --

3 MR. RADOM: Today is --

4 THE COURT: I'll tell you what, rather than -- rather
5 than try and sort this out today, you folks should talk over
6 the weekend and come to me with a proposal about schedule with
7 respect to that. And we could talk about it on Tuesday --
8 pardon me, on Monday afternoon telephonically.

9 MR. RADOM: That's fine.

10 THE COURT: You know what --

11 MR. RADOM: And then --

12 THE COURT: -- I think -- I think I want to start
13 earlier, therefore, on Monday. I was saying two o'clock.

14 (Pause)

15 THE COURT: We'll start at 1:15 -- at 1:15. Because
16 I -- at three o'clock -- I have to be -- I have another matter
17 at three o'clock. So, we'll start with respect to the 366. At
18 ten o'clock, we're going to address any issues with respect to
19 the cash management. At 1:15, 366 proposed schedule with
20 respect to the sales procedures motion.

21 And, you know, quite frankly, one -- one possibility
22 is they get the 363 sort of basic motion on -- on file, and the
23 designation can occur in accordance with the agreed time with
24 the customers.

25 MR. HUTCHINSON: Your Honor --

1 THE COURT: I'm not saying that's how it has to be.
2 I'm just throwing that out as a suggestion.

3 MR. HUTCHINSON: Well --

4 MR. RADOM: We'll discuss it with the debtors. One
5 other question and then I'll vacate the podium here. Is it
6 okay to participate by telephone in your status conferences?

7 THE COURT: One -- yes. One of the things that I ask
8 the debtor to do is to establish call-in numbers for these
9 status conferences. Parties can -- an audit these calls.
10 There can be minimal -- there can be sort of minimal
11 participation. If you are going to be -- you know, actively
12 arguing something, I want you here in the courtroom.

13 I don't allow -- I don't -- don't allow examination
14 of witnesses by somebody participating telephonically, for
15 instance. So, that's -- that's about as clear as I can be on
16 that line. But I -- you know, I -- I'm happy to have people
17 who just want to get a sense of what's happened in the hearing
18 to participate -- you know, audit. And I will allow some
19 minimal participation. But if it's -- if it's going to -- you
20 know, if you're a major player, then you ought to be -- you
21 ought to have someone here.

22 MR. RADOM: Understood. Thank you very much.

23 MR. HUTCHINSON: Your Honor, the only other thing, if
24 I may -- Joe Hutchinson -- is perhaps everything could be at
25 1:15. I --

1 THE COURT: Well --

2 MR. HUTCHINSON: I mean we have something at ten --

3 THE COURT: The cash -- that's the cash management
4 issue, and that's between the -- Wachovia and the --

5 MR. HUTCHINSON: Right.

6 THE COURT: -- the trade --

7 MR. HUTCHINSON: Could we just --

8 THE COURT: And, quite frankly -- quite frankly, I
9 was --

10 MR. HUTCHINSON: Yeah.

11 THE COURT: -- delighted with the way things came out
12 today. But, you know, I would just as soon not -- I mean any
13 one of those could become a point of real contention. So, I'm
14 going to stick with the --

15 MR. HUTCHINSON: That's fine.

16 THE COURT: -- ten o'clock.

17 MR. HUTCHINSON: That's fine. That's fine.

18 THE COURT: And if -- I mean I don't know that the
19 debtor is a particular player in this. I mean obviously it's
20 debtors' cash management system, so the debtor is going to want
21 to know, but -- but I think it's -- whatever the tension is,
22 the tension is between the trade creditors and Wachovia. And
23 so if you want to audit the ten o'clock call or somebody will
24 audit, you can.

25 MR. HUTCHINSON: Okay. That's fine. Thank you, Your

1 Honor.

2 THE COURT: Anything else?

3 MR. FREEDLANDER: Someone needs to thank you for your
4 indulgence today, Your Honor, and I'll take the first step in
5 doing so. So, thank you, Your Honor.

6 THE COURT: You're welcome. Actually I -- you know,
7 I will tell you, one of the things I really like about
8 bankruptcy is you just -- you know, it's never routine. And
9 this is a far different day than I expected it to be. And,
10 quite frankly, a far better day than I expected it to be. And
11 so I thank all of you.

12 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

13 (Proceedings Adjourn at 4:50 P.M.)

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15

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C E R T I F I C A T I O N

17

18 I, Karen Hartmann, certify that the foregoing is a
19 correct transcript to the best of my ability, from the
20 electronic sound recording of the proceedings in the above-
21 entitled matter.

22

23 /s/ Karen Hartmann

Date: October 13, 2006

24

TRANSCRIPTS PLUS

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