

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 25, 2006  
 ) 1:20 P.M.

TRANSCRIPT OF CONTINUED HEARING 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.  
3200 National City Center  
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Cleveland, Ohio 44114-3485

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Appearances:  
(Continued)

For Pre-petition Trade Committee:	McGuire Woods By: SALLY E. EDISON, ESQ. Dominion Tower 625 Liberty Avenue, 23rd Floor Pittsburgh, Pennsylvania 15222-3142
For General Motors: (via telephone)	Honigman Miller Schwartz and Cohn LLP By: SARAH HILTZ SEEWER, ESQ. 2290 First National Building 660 Woodward Avenue Detroit, Michigan 48226-3506
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,
For Wachovia Capital Finance Corporation: (via telephone)	Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd. By: JEREMY DOWNS, ESQ. SHIRA ISENBERG, ESQ. 55 East Monroe Street, Suite 3700 Chicago, Illinois 60603
For Visteon Corporation: (via telephone)	Dickinson Wright PLLC, By: KRISTI A. KATSMA, ESQ. 301 E. Liberty Street, Suite 500 Ann Arbor, Michigan 48104-2266
For C.H. Raches, Inc., Norris Sales, and Fabnet Associates: (via telephone)	Harter Secrest & Emery LLP By: JOHN R. WEIDER, ESQ. 1600 Bausch & Lomb Place Rochester, New York 14604-2711

Appearances:  
(Continued)

For the United States  
Trustee:  
(via telephone)

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 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

1           CLERK: Case Number 06-51848, CEP Holdings, LLC.  
2 Motion of debtor and debtor in possession for interim final  
3 orders.

4           THE COURT: That's okay. We'll -- we'll take it from  
5 there. I'll take appearances. Do we have anybody  
6 participating telephonically?

7           MS. SEEWER: Yes. You have Sarah Seewer from  
8 Honigman Miller Schwartz and Cohn on behalf of General Motors  
9 Corporation.

10          MS. KATSMA: And Kristi Katsma, Dickinson Wright, on  
11 behalf of Visteon Corporation.

12          THE COURT: On behalf of which corporation?

13          MS. KATSMA: Visteon Corporation.

14          THE COURT: One more time?

15          MS. KATSMA: Visteon.

16          THE COURT: Oh, Visteon. Thank you.

17          MR. DOWNS: Good afternoon, Your Honor. You also  
18 have Jeremy Downs and Shira Isenberg of Goldberg Kohn in  
19 Chicago on behalf of Wachovia Capital Finance Corporation.

20          MR. WEIDER: If it pleases the Court, this is John  
21 Weider of Harter Secrest and Emery in Rochester, New York on  
22 behalf of C.H. Raches, Inc., Norris Sales and Fabnet  
23 Associates.

24                 Your Honor, I'm admitted in the Western and North  
25 Districts of New York, I will be filing to become admitted pro

1 hac vice, and are in the process of arranging for local  
2 counsel, but did want to, at least, listen in by telephone  
3 today.

4 THE COURT: That's fine. And one more time, sir, on  
5 your name?

6 MR. WEIDER: John R. Weider, W-E-I-D-E-R.

7 THE COURT: W-E-I-D-E-R.

8 MR. WEIDER: Correct.

9 THE COURT: Okay. All right. Thank you.

10 MS. GIANNIRAKIS: Good afternoon, Your Honor. Maria  
11 Giannirakis on behalf of the United States Trustee.

12 THE COURT: And does that complete the phone call  
13 participants?

14 (No audible response heard)

15 THE COURT: Okay. And appearing in the courtroom?  
16 Mr. Solow unfortunately couldn't stay due to the holiday. And  
17 I have not be subject to any such proceedings.

18 MR. WEARSCH: Good afternoon, Your Honor. Tom  
19 Wearsch and Joe Hutchinson on behalf of the debtors.

20 MR. NEUMANN: Your Honor, David Neumann from Benesch,  
21 Friedlander, co-counsel for Wachovia Capital Finance  
22 Corporation Central.

23 MS. EDISON: Good afternoon, Your Honor. Sally  
24 Edison, McGuireWoods, on behalf of the unofficial Trade  
25 Committee.

1 THE COURT: We were going to deal -- did things get  
2 sorted out with the utilities?

3 MR. WEARSCH: We have -- we have made an offer to the  
4 utility companies. I've given them my cell phone to try to  
5 call back. Unfortunately, Mr. -- I think it was Clark Watson  
6 was out of the office this morning.

7 THE COURT: Okay.

8 MR. WEARSCH: And --

9 THE COURT: So -- well --

10 MR. WEARSCH: We may still be on at two o'clock, but  
11 we may ask for a short recess to see if we could still work  
12 that out, Your Honor.

13 THE COURT: Okay. Let me just say over the weekend I  
14 was reading the fairly lengthy order that had been marked up --  
15 proposed order that had been marked up by the parties. I will  
16 tell you that that order does not clear the hurdle that I have.  
17 Which is if somebody asks me what does this order mean, at lots  
18 of different points in that order, I would be absolutely  
19 clueless. I cannot follow the order.

20 Moreover, rapped up in the order are -- I mean it has  
21 the Court findings and things that are totally without support  
22 in the record right now. Or, if there's anything in the  
23 record, it's at odds with them.

24 For instance, there's a finding with respect to  
25 collateral value or a minimal finding without -- with respect

1 to collateral value. And in Friday's court proceedings, while  
2 there was no testimony, there was a representation on the  
3 record that there hadn't been valuation of collateral.

4           So, what I -- and -- and I recognize that what this  
5 order is is a distillation of some of the agreements that  
6 parties have reached. And I don't want to get in the way of  
7 those agreements. I'm not interested in getting in the way of  
8 those agreements.

9           And I don't want to get in the way of those  
10 agreements. I'm not interested in getting in the way of those  
11 agreements.

12           But I do not make findings of fact without something  
13 in the record to support it. And I don't make findings that  
14 would be binding on people who haven't yet had a chance to  
15 become engaged in the case.

16           I mean I -- I'm perfectly willing to enter early  
17 orders. But -- and if -- and if somebody makes a showing that  
18 is really indisputable with respect to facts, I'll make factual  
19 findings.

20           But I'm -- on the issue of the valuation of the  
21 collateral, I don't see how I am in a position to make a  
22 finding of fact. Parties can agree between themselves that  
23 they will -- that they view that to be the baseline collateral  
24 value. And they can agree they will not dispute such  
25 valuations. I don't have a problem with that. And, in fact,

1 I'm -- you know, I -- I welcome the open candor so that people  
2 looking at the record will understand the debtor, for instance,  
3 is not going to fight that collateral value. That's fine.

4 But I'm not -- I -- I -- the fact that the debtor is  
5 not going to dispute it is not, in and of itself, evidence for  
6 me to base a finding of fact.

7 So, what I'm proposing to do is to enter a fairly  
8 simple order authorizing the debtor to use cash collateral in  
9 agreement with the -- as the -- as the lien holder who has the  
10 position in the cash collateral or the lien holders, have  
11 consented.

12 And in addition, authorizing the debtor to utilize  
13 the additional post petition sources of cash, the cash infusion  
14 from the participating customers.

15 And if there's anything else -- and -- and to  
16 indicate -- and to attach the proposed order saying that the  
17 Court understands this to represent an agreement among these  
18 fairly crucial players. But I am not -- I -- I'll tell you, I  
19 was reading it. I mean at various points it was, like. I'm  
20 sure this means a lot to the people who were at the bargaining  
21 table, but I don't -- I really could not explain to somebody  
22 what it means. And -- and that really -- that is my baseline.  
23 I have to know if it -- if it's an order going on -- over my  
24 signature, I need to have some illusion that I know what it  
25 means. I mean I may be wrong, but I need to know what it





1 THE COURT: But all I'm saying to you is I -- I am  
2 doing what's needed in terms of court authorization. The  
3 parties have their various agreements, that's fine.

4 I wasn't part of those negotiations. It's not  
5 appropriate that I should be. But the point of bankruptcy is  
6 that there are a lot of -- there are a lot of other people who  
7 weren't parties --

8 MR. HUTCHINSON: Right.

9 THE COURT: -- to those negotiations, as well. And  
10 they're not going to be bound by, quote, "the Court finding  
11 various factual items." The parties -- the parties can estop  
12 themselves from arguing to the contrary in these proceedings,  
13 that is fine.

14 And, again, I think it's very good. I think it's  
15 consistent with your obligations to make it clear where you've  
16 already -- where the debtor has already bound itself to  
17 particular positions. That's fine.

18 So, what -- but what I -- what I intend to do is to  
19 reference the proposed order that has been submitted and say it  
20 is the Court's understanding that this -- this represents the  
21 agreement of a number of parties. And there are various  
22 provisions in this order which will guide the behavior or  
23 control the behavior of a number of parties in the case.

24 The Court's -- the Court's -- the need for Court  
25 approval is with respect to 364. And I'll give you that

1 approval. But I'm not -- you know, I can give that to you  
2 probably in two pages. I don't need over 50. That I don't  
3 really -- that I could not -- I could not -- if somebody  
4 started to say, well, Judge, what does this mean? Which, of  
5 course, I would say, well, you -- that's not the way the  
6 question flow is supposed to go.

7 (Laughter)

8 THE COURT: But in all honesty, I mean I don't -- you  
9 know, I really try hard not -- you know, I don't put my name on  
10 orders if I -- if I, in good conscience, can't say I understand  
11 what they mean.

12 And it's pretty clear -- I mean this case is -- this  
13 case has a series of very complex agreements. And, quite  
14 frankly, at the point that we get to the final hearing, and we  
15 enter a final order, I'm hoping that there -- the final order  
16 will -- that -- that -- that you will have the kind of --

17 MR. HUTCHINSON: Clarity?

18 (Laughter)

19 MR. HUTCHINSON: I understand. Your Honor, might I  
20 suggest that I talk with the people who are here today and who  
21 are on the phone and get their reaction to Your Honor's  
22 reaction over the weekend --

23 THE COURT: Right.

24 MR. HUTCHINSON: -- of the order?

25 THE COURT: Well, and really, truly, I am not trying

1 to undo any agreements. I'm glad you folks are agreeing. But  
2 I don't think that the Court needs to be a signatory to a  
3 series of agreements as to which the -- the record before the  
4 Court is baron, especially to the extent that it would purport  
5 to bind people who have not had a chance to be at that  
6 negotiating table. I don't know --

7 MR. HUTCHINSON: Well, one of the things we did, Your  
8 Honor, that was unusual --

9 THE COURT: One second, please.

10 MR. HUTCHINSON: Yeah, there's some feedback or  
11 something.

12 (Pause)

13 THE COURT: I don't know why we're getting feedback,  
14 but go ahead --

15 MR. HUTCHINSON: Maybe it's me. I'll stand a little  
16 further back.

17 THE COURT: And maybe it's --

18 MR. HUTCHINSON: Your Honor, I -- you know, one of  
19 the things that was very unusual about this is that we did have  
20 Mr. Freedlander here on behalf of an unofficial committee of  
21 trade creditors. And I -- and we did that for a reason,  
22 because this -- we knew this would be a -- but they had been  
23 retained a couple of months ago, and we knew that in order to  
24 have any kind of hope of having a process that would proceed  
25 somewhat smoothly, either in or outside of bankruptcy.

1 Remember, we were trying to do this outside.

2 THE COURT: Right.

3 MR. HUTCHINSON: And so we did have Mr. Freedlander  
4 here, and Sally Edison is here today, and she was here also on  
5 Friday. So, we do have that protection, plus the U.S. Trustee  
6 was here.

7 But I understand the Court's position --

8 THE COURT: Well, and I think --

9 MR. HUTCHINSON: -- on making findings --

10 THE COURT: The U.S. Trustee -- you know, Ms.  
11 Giannirakis, I know you're not shy, and I know that you're --  
12 you know, you're able to speak for yourself. I recognize that  
13 there is -- there's a snowball that's rolling down the hill.  
14 And one hopes that, you know, it -- it becomes -- that it picks  
15 up lots of adherence.

16 MR. HUTCHINSON: I think it will.

17 THE COURT: The snowball's -- the snowball is not a  
18 good analogy.

19 MR. HUTCHINSON: Yeah, no, I --

20 THE COURT: Because that works into an avalanche.

21 MR. HUTCHINSON: I have a -- I think it will.

22 THE COURT: But --

23 MR. HUTCHINSON: And --

24 THE COURT: And -- and --

25 MR. HUTCHINSON: -- we intend to file the procedures

1 motion --

2 THE COURT: Right.

3 MR. HUTCHINSON: -- very soon.

4 THE COURT: Right.

5 MR. HUTCHINSON: Yeah.

6 THE COURT: But, for instance, that order could be  
7 interpreted as me -- as me directing that you will do -- that  
8 you will have this -- this such and such an order by December  
9 1, and that there will be a closing by December 19th.

10 I -- you know, that's your agreement. That's the  
11 debtors' agreement with various parties. I will undertake  
12 certainly to make hearing dates available.

13 But, for instance, I think it's -- you know, I'm not  
14 directing that that happen. I'm not directing that it not  
15 happen. It's -- it's --

16 MR. HUTCHINSON: But, Your Honor, I guess -- if I  
17 may, Your Honor, I think it -- certainly it would be subject to  
18 the Court's docket, and --

19 THE COURT: Well, no --

20 MR. HUTCHINSON: -- I think we could add --

21 THE COURT: -- I mean I'm going to reserve --

22 MR. HUTCHINSON: -- that, yeah.

23 THE COURT: I'm going to reserve hearing dates for  
24 you --

25 MR. HUTCHINSON: Yeah.

1 THE COURT: -- as soon as I get a motion. As soon as  
2 I get a motion on file, and I've read it, I will be reserving  
3 hearing dates. I hope that that will happen at the October 10  
4 status conference.

5 MR. HUTCHINSON: And I know Your Honor holds parties  
6 to agreements. I've been in this court many times and heard  
7 Your Honor say that.

8 THE COURT: That's --

9 MR. HUTCHINSON: And so --

10 THE COURT: And that's --

11 MR. HUTCHINSON: Right.

12 THE COURT: And -- and when -- you know, when it's in  
13 an agreed order, I hold parties to the agreed order.

14 MR. HUTCHINSON: Right.

15 THE COURT: And -- and -- and to the extent that you  
16 folks have agreed, for instance, not to argue that the  
17 collateral value is, you know, less than 32 million, I -- you  
18 know, I understand that you have so agreed.

19 I just don't -- I mean I -- you know, I first started  
20 reading papers with respect to this matter at about 4:30 on  
21 Thursday afternoon. And I hadn't read -- I hadn't read the  
22 proposed order. I had started to read it on Friday morning,  
23 and I just --

24 MR. HUTCHINSON: Right.

25 THE COURT: -- you know. And had I realized that it

1 had a collateral value in it, I would have raised a red flag.

2 MR. HUTCHINSON: What --

3 THE COURT: Or a minimal -- a minimum --

4 MR. HUTCHINSON: You would have inquired, certainly.

5 And we could have addressed -- but I think that what might make  
6 sense is for us to talk a little bit, and talk over Your

7 Honor's reaction. And --

8 THE COURT: Right. Well, and I think -- you know, my  
9 view is -- my view of this is you're going to have a final  
10 hearing pretty quickly.

11 MR. HUTCHINSON: Right.

12 THE COURT: And the -- you know, a lot of what you're  
13 trying to address in this order, you know, presumably you will  
14 have some evidentiary base for it.

15 MR. HUTCHINSON: At the final.

16 THE COURT: Right.

17 MR. HUTCHINSON: Right.

18 THE COURT: You know, you may have -- or -- or you'll  
19 have broader agreement.

20 Ms. Giannirakis, what's happening in terms of the  
21 appointment of a committee?

22 MS. GIANNIRAKIS: Your Honor, I'm hoping to have a  
23 committee formed by tomorrow. We sent out notices on Thursday,  
24 and parties were given three business days to respond, which  
25 would be tomorrow.



1 THE COURT: Okay.

2 MS. GIANNIRAKIS: So, hopefully by late tomorrow or  
3 early Wednesday morning, we will, in all likelihood, have a  
4 committee formed.

5 THE COURT: Okay. And one of the things that I'm  
6 hoping is that very shortly I'll have a very simple form of  
7 order that I think accomplishes what needs to be accomplished  
8 under 364 and respects the agreement that has occurred among a  
9 number of parties to this case.

10 MR. HUTCHINSON: Do you have an ETA on that, Your  
11 Honor? Maybe we could --

12 THE COURT: Yeah, when it gets here.

13 (Laughter)

14 THE COURT: We're working on it.

15 MR. HUTCHINSON: That was a -- okay.

16 THE COURT: Sometime this afternoon.

17 MR. HUTCHINSON: Okay. Well, that may make some  
18 sense for us to talk.

19 THE COURT: Yes.

20 MR. HUTCHINSON: And while everybody's on the phone  
21 and --

22 THE COURT: Yeah, and I'm -- and, you know -- and I  
23 don't mean for this to be any kind of a thunderbolt. Because I  
24 -- as I say, as to the -- to the extent that parties reached  
25 that agreement, they've reached that agreement. And, you know,

1 -- and -- and particularly -- as you well know, I know that  
2 debtors will often be asked to agree to things early on in the  
3 case. And -- and that's the price of --

4 MR. HUTCHINSON: Getting your funding.

5 THE COURT: -- getting money to do business.

6 MR. HUTCHINSON: Yeah.

7 THE COURT: Yeah.

8 MR. HUTCHINSON: Yeah.

9 THE COURT: But particularly -- you know, in a case  
10 where it's just so completely evident that we'll -- you know, I  
11 mean, again, that sort of, you know, stop me in my tracks was  
12 when I got to the thing about the court finds. You know, if it  
13 had just said the parties to this -- the parties who have, you  
14 know, who have submitted this order agree, that -- I probably  
15 could have lived with that.

16 MR. HUTCHINSON: Well, let me ask you, Your Honor --

17 THE COURT: But when it said the Court finds --

18 MR. HUTCHINSON: -- could you live with that? That  
19 was one of the things that I was going to talk with the other  
20 parties about.

21 THE COURT: Yeah, I mean, to the --

22 MR. HUTCHINSON: I mean if this said --

23 THE COURT: To the extent --

24 MR. HUTCHINSON: -- the parties consent to --

25 THE COURT: I mean to the --

1 MR. HUTCHINSON: -- instead of --

2 THE COURT: Well, to the extent that you folks want  
3 to come up with stipulations that will bind the people who are  
4 -- who have already arrived in the case, that's fine. You  
5 know? I mean if you -- you know -- unless somebody wants to  
6 argue that it's not fine to me. There might -- there may be  
7 people who would say, well, no, there -- for X or Y or Z  
8 reason, that is not fine.

9 But generally, you know, I'm a realist. And I  
10 recognize that, you know, the debtor is asked, you know, to say  
11 -- to commit not to argue a contrary position or, indeed, to  
12 support --

13 MR. HUTCHINSON: It happens all the time.

14 THE COURT: Right.

15 MR. HUTCHINSON: Right.

16 THE COURT: Right.

17 MR. HUTCHINSON: So --

18 THE COURT: I recognize that.

19 MR. HUTCHINSON: Yeah.

20 THE COURT: And it -- and -- and presumably your  
21 client has its -- you know, has its own access to -- or the  
22 management of your client, they have all sorts of information  
23 that cause them to be very comfortable in making that  
24 agreement.

25 MR. HUTCHINSON: Correct.

1 THE COURT: You know, it -- I -- and as I say, all --  
2 all -- all that you need from me is the authorization -- the  
3 authorizations necessary --

4 MR. HUTCHINSON: To borrow.

5 THE COURT: -- you know, I mean you -- you really  
6 don't need my -- my approval to use cash collateral.

7 MR. HUTCHINSON: Correct.

8 THE COURT: To the extent that Wachovia consents.  
9 But you've asked for -- you know, you've asked for  
10 authorization with respect to that, and I'm happy to give you  
11 that. And I'm happy -- but -- but -- you know, I recognize  
12 beyond that with respect to the cash infusion, there -- that  
13 does require Court authorization.

14 MR. HUTCHINSON: What we really want -- don't want to  
15 do is renegotiate carve outs and that sort of stuff.

16 THE COURT: And --

17 MR. HUTCHINSON: And that --

18 THE COURT: But -- and --

19 MR. HUTCHINSON: -- you know --

20 THE COURT: And, again, I mean, you've reached  
21 whatever agreement you've reached on it. But if somebody asked  
22 me to describe the carve out agreement, I couldn't, you know, I  
23 could not -- I couldn't figure it out. I mean it is what --  
24 you know, you folks know what it is. But -- and -- and there  
25 is that agreement. And I -- you know, the parties are moving

1 forward on that.

2           And everybody seems to think that there's some magic  
3 in, you know, getting a judge to append his or her signature to  
4 your agreement. And I suppose there is some oomph that you get  
5 from that. But only -- only if the judge really means it. And  
6 until --

7           MR. HUTCHINSON: Right.

8           THE COURT: -- I know what it means, I can't really  
9 mean it.

10          MR. HUTCHINSON: But the Court could approve an entry  
11 like this if there was -- if there were no findings of fact,  
12 but stipulations as to the facts. And no finding --

13          THE COURT: The parties --

14          MR. HUTCHINSON: -- that this is the order, but only  
15 that the parties have agreed to these things.

16          THE COURT: If the part -- you know, if your client,  
17 in good faith, can stipulate that it will not argue other than  
18 this set of facts, your client can do that. And -- and as  
19 people heard me say, I think, on Friday, I'm a big fan of  
20 stipulations.

21          MR. HUTCHINSON: Yeah.

22          THE COURT: You know, I mean especially well laid  
23 stipulations, well founded stipulations make the Court's job a  
24 lot easier.

25          But the fact that, you know, you and I get together

1 and we agree that the Pope is still Polish doesn't make the  
2 Pope Polish.

3           So, you know, there -- if there are people who have  
4 not agreed whose agreement is needed for whatever reason, or  
5 who have the right to be active to say, well, the Pope's now  
6 German, they will not be foreclosed from doing so. You've  
7 gotten -- it appears to me, you've gotten a lot of people to  
8 the negotiating table. You went through several months of  
9 trying to work -- do something out of court. And for that  
10 reason, you know, I do respect what's emerged. But I just --  
11 you know, as I say, when I was reading this, one, it was asking  
12 me to make factual findings that would presumably say, well,  
13 that's the final word. I mean I think that was the intention.  
14 Say, well, the Court -- the Court has already found.

15           And I -- you know, in the long run -- and of course  
16 this case -- this case's long run is going -- sounds like it's  
17 going to be pretty short. But in the long run, I think it, you  
18 know, it serves everybody. And it serves the interest of  
19 efficiency for the Court to only make well founded findings of  
20 fact.

21           Now, if you start -- if I start purporting to make  
22 findings of fact that don't have a basis in the record or a  
23 unanimous agreement among the parties -- and the problem is  
24 while there were a lot of people here on Friday, I suspect  
25 there were people who will be interested in this case who may

1 not have been here on Friday.

2           So, -- so, I will give you a chance to talk about  
3 that. We'll come back and see what's happening in terms of the  
4 366 issues.

5           And there's one other item I'd like to see you in  
6 chambers about. And all --

7           MR. HUTCHINSON: Right.

8           THE COURT: All the people who are present in the  
9 courtroom can come back to chambers.

10          MR. HUTCHINSON: Me personally?

11          THE COURT: All four of you.

12          MR. HUTCHINSON: Oh, okay.

13          THE COURT: So --

14          MR. HUTCHINSON: Thank you.

15          THE COURT: We can leave this line open or -- this --  
16 did G.M., again, make this arrangement? Or did the debtor make  
17 this arrangement?

18          MR. WEARSCH: We made the arrangements, Your Honor.

19          THE COURT: Okay. Should we leave it open until two  
20 o'clock? That's only 13 minutes. Okay. We're going to leave  
21 this line open and we'll be back at about two o'clock.

22          Thanks.

23                         (Recess 1:47 P.M./Reconvene 2:16 P.M.)

24          MR. HUTCHINSON: We're back on the record after the  
25 -- after the short recess.

1           Everyone is still on the phone. And we discussed --  
2 and I read Your Honor's proposed emergency order to the  
3 assembled group. And there was some reaction to it, and I  
4 think it's probably -- but it's not -- there are a few points  
5 that I think Your Honor should hear from others instead of me.

6           There are several points that Wachovia would like to  
7 make to Your Honor, and at least one point I know that the  
8 customers and Sarah Seewer would like to speak to Your Honor.  
9 Sarah -- no, I think it might make sense for Jeremy to go first  
10 for -- Jeremy Downs from Goldberg Kohn, Your Honor, in Chicago,  
11 who represents Wachovia.

12           Jeremy, are you still there? I hope.

13           MR. DOWNS: I am. And if Your -- I'm happy to take  
14 the laboring oar. If Your Honor would prefer to hear from  
15 someone in the courtroom, I'm sure Mr. Neumann is more than  
16 capable.

17           THE COURT: Well --

18           MR. DOWNS: Otherwise, I'm willing to proceed.

19           THE COURT: Yeah. Mr. -- he is definitely signaling  
20 that you should go forward.

21           MR. DOWNS: Okay. Thank you for that. Your Honor --  
22 when we heard Your Honor describing your concerns with the  
23 order, our first reaction was one that -- particularly with  
24 respect to the findings. That's an issue that we can resolve  
25 quickly by understanding that they are just representations of



1 the debtor at this point basically.

2           And we think that the form of order -- at least we  
3 heard the form of order that Mr. Hutchinson read during the  
4 break to basically accomplish just that.

5           And the remaining concerns that we have from a  
6 lending perspective that I'm not sure if were necessarily  
7 contemplated by the terms of the shorter order, were certain  
8 relief that we would need, I think, from the Court. Not just  
9 from the debtor, in respect of the post petition debt that we  
10 would be advancing.

11           Because this -- this order does speak to and address  
12 the use of what cash the debtor will collect post petition.  
13 But for the most part, it regards, from Wachovia's perspective,  
14 the terms of its going forward advances of post petition debt.  
15 And on top of the loans that we're making, then there will be  
16 these cash infusions coming from the customers.

17           So, when we heard the terms of the shortened order,  
18 really our only -- our thoughts turned to how to extend the 364  
19 relief, and perhaps maybe slightly the 363 relief to those  
20 specific things that we needed to approve our replacement  
21 liens, our post petition liens, you know, the cash application  
22 that's in the order, and -- and I think -- I think actually I  
23 need -- we need to have some provision for Your Honor, I think,  
24 to approve the fee that's associated with our post petition  
25 loan.

1           And those were our concerns. Trying to narrow it  
2 down to just those things. Because I think Your Honor is  
3 telling us just that, to just those things where we need relief  
4 from the Court and not just an agreement among the parties.

5           THE COURT: Yes. And Mr. Neumann wants to add  
6 something apparently.

7           MR. NEUMANN: Thank you, Your Honor.

8           MR. DOWNS: And we can do it in, I think, fairly  
9 short language because Your Honor has already incorporated the  
10 definitions which are in the stipulation.

11           MR. NEUMANN: And, Your Honor, what I was going to  
12 add was, for instance, with the fee issue, it's -- it's the --  
13 only the \$80,000 that we've agreed to. It's not the extended  
14 piece which we'll deal with in the final.

15           I believe the changes to protect the post petition  
16 piece and the replacement liens, and then there's a -- there's  
17 a couple of other issues we'll talk about in a second. We can  
18 be done in probably another half page. So, --

19           THE COURT: Yeah, and that's fine. I mean the reason  
20 -- the reason I didn't just enter this, and the reason that I  
21 shared -- I shared it with counsel was that I really am not  
22 trying to get in the way of any of the parties' agreements.  
23 And I want people to have the comfort that is necessary at the  
24 beginning of a case.

25           So, why don't you folks take your hand at whatever

1 additions you believe are essential and let's try to get it on  
2 this afternoon.

3 MR. NEUMANN: Correct. And then -- Your -- and I  
4 think -- perhaps that was because there -- it's really not cash  
5 collateral post petition. The funding in formula, that's what  
6 he's talking about. That's really new -- a new loan. New  
7 funding.

8 So, that -- and that's -- that's what these issues  
9 that -- where they're replacement liens on the pre-petition,  
10 but the -- but the post petition liens to cover the post  
11 petition in formula funding. That's -- that's what they're  
12 talking about.

13 THE COURT: And let me ask you one question. In  
14 terms of the post petition funding, is part -- is part of the  
15 replacement liens -- those are not avoidance actions, are  
16 they?

17 MR. NEUMANN: No. The -- the -- the avoidance  
18 actions, I believe, were taken out of the interim order. Or  
19 were they left to --

20 MR. DOWNS: Your --

21 MR. NEUMANN: I -- I --

22 MR. DOWNS: Your Honor, this is Jeremy. If I may, I  
23 could confirm that the definition of post petition collateral  
24 in which both the replacement lien and the post petition liens  
25 would apply does not include avoidance actions now or in the

1 future.

2 MR. NEUMANN: All right.

3 THE COURT: Thank you, Mr. Downs.

4 MR. NEUMANN: There was an issue on that earlier, and  
5 I forgot how it was resolved.

6 Then I know that Ms. Seewer from Honigman on behalf  
7 -- she represents General Motors would speak to you on -- I  
8 think one issue with respect to this proposed order.

9 THE COURT: Okay. Ms. Seewer?

10 MS. SEEWER: Your Honor, one of the terms of the  
11 proposed order is that the company -- the debtor will only be  
12 authorized to continue to ship to non-participating customers  
13 in the event that those customers provide certain  
14 accommodations to the debtor.

15 These accommodations include expedited payment terms;  
16 A limitation of their rights to setoff;  
17 And a provision for them to purchase inventory that  
18 remains at the company after they leave.

19 We believe that these -- these accommodations are  
20 necessary in order to give the company enough funding to  
21 continue to make those parts. And that without those  
22 accommodations, the participating customers will be footing  
23 the bills for these customers to get their production. It's  
24 set forth in Paragraph 11 of the DIP order that's been  
25 proposed.

1           And we feel that -- it's at least my -- General  
2 Motors' opinion that without Court authority, and without the  
3 Court's blessing on this provision, that the debtor is going to  
4 have a difficult time implementing this part of the order.  
5 Because, in essence, it's telling --

6           THE COURT: Well, okay. And let me interrupt for  
7 just a second.

8           MS. SEEWER: Sure.

9           THE COURT: Mr. Hutchinson, this -- this particular  
10 provision was one that concerned me in terms of who was -- who  
11 was at -- you know, to use the vernacular, who was at the  
12 party. And just as the participating customers need their flow  
13 of parts, so presumably do the people who haven't risen to the  
14 ranks of participating customers.

15           MR. HUTCHINSON: Some do -- some do, some don't.

16           THE COURT: Right.

17           MR. HUTCHINSON: Some can resource quickly. Others  
18 might take a little time.

19           THE COURT: Well, but how many of them have been any  
20 part of this discussion?

21           MR. HUTCHINSON: They have not been part of the  
22 discussion. But I believe -- Tom, help me on this -- I believe  
23 that our client has contacted all of them, or virtually all of  
24 them, and some of them are making their decisions already by  
25 resourcing.

1 THE COURT: Well --

2 MR. HUTCHINSON: So, it's --

3 THE COURT: I mean that part is truly -- to me, it  
4 was an extraordinary provision.

5 MR. HUTCHINSON: But if --

6 THE COURT: And --

7 MR. HUTCHINSON: If I --

8 THE COURT: And --

9 MR. HUTCHINSON: Yeah.

10 THE COURT: And quite frankly, as a -- you know, the  
11 debtor has the right to choose how it's going to do business.  
12 The debtor has the right presumably to say we will only do  
13 business with these customers if they meet these requirements.

14 MR. HUTCHINSON: Right.

15 THE COURT: Where, in the Bankruptcy Code, does -- am  
16 I authorized to say, debtor in possession, you can only do  
17 business with this category of customers?

18 MR. HUTCHINSON: Well, I don't --

19 THE COURT: I mean I think that's --

20 MR. HUTCHINSON: I think you have to look --

21 THE COURT: I think that --

22 MR. HUTCHINSON: -- at it from the other side of the  
23 mirror or --

24 THE COURT: Well --

25 MR. HUTCHINSON: -- some other analogy.

1 THE COURT: But it --

2 MR. HUTCHINSON: Because --

3 THE COURT: But the debtor in possession has -- has  
4 the right to exercise its business judgment.

5 MR. HUTCHINSON: Yes. Yes, but it has to have  
6 funding. And that's really the issue here, Your Honor.

7 Look, we didn't like this provision. We would have  
8 as soon having the three customers that represent 55 percent of  
9 the business fund the business. Their position was, well, wait  
10 a minute, we're funding 100 percent of the business, and all  
11 these other customers, some of whom are suppliers to us, but  
12 some of whom are suppliers to competitors and what have you,  
13 are not.

14 And so we're funding the losses, which are  
15 substantial, going forward to get across the goal line 90 days  
16 from now, and we're funding that. And we're not getting  
17 anything for it except for our parts.

18 We fought that. But this was a condition to get the  
19 \$13 million of cash infusions to go forward. And I -- I -- if  
20 anybody has a different or a better way of explaining it, I  
21 think they should say so. But that's -- that's the way we  
22 viewed it. We viewed it as something that was a requirement of  
23 the three major customers in order to continue to go forward  
24 with the cash infusions.

25 Basically they're saying to the other customers,

1 look, you have an option: You participate and help us fund  
2 this debtor -- debtors' losses post petition, or you take your  
3 business elsewhere.

4 THE COURT: Yeah.

5 MR. HUTCHINSON: And --

6 THE COURT: You --

7 MR. HUTCHINSON: -- our position was, well, if we  
8 don't have --

9 THE COURT: Participate means --

10 MR. HUTCHINSON: If we don't have the funding to  
11 build their parts, what choice do we have.

12 THE COURT: All right. Ms. Edison, I'd like to hear  
13 the views of your client, the unofficial, as of now, committee.

14 MS. EDISON: Hopefully official in a couple of days.

15 The unofficial committee does not take issue with the  
16 order that's proposed by the Court. I'd like to see the  
17 additional language that's going to be proposed by the  
18 participating customers, obviously. Take a look a look at  
19 that.

20 With respect to the latest emergency order or  
21 proposed emergency order that was circulated, there was one  
22 piece that negotiated last Friday that was left off. Paragraph  
23 16(a), I think, Page 43. We just need to recapture that in any  
24 emergency order.

25 And basically what the Trade Committee negotiated



1 last Friday is a reservation of rights with respect to most of  
2 the provisions within the order.

3           So, I think that the Court and the Trade Committee  
4 view the order, to a certain extent, in the same way. So, we  
5 are -- we would agree with the entry of the order that's  
6 proposed. And we'd like to see the additional language.

7           THE COURT: And, Ms. Giannirakis?

8           MS. GIANNIRAKIS: Yes, Your Honor. I think I have to  
9 agree with what Ms. Edison said. We agree with the Court's  
10 order and/or the language that was inserted last week reserving  
11 rights for the official committee to review the order and  
12 comment, if necessary.

13           THE COURT: And, Ms. Seewer, -- am I saying your name  
14 correct?

15           MS. SEEWER: It's Seewer.

16           THE COURT: I'm sorry. Seewer.

17           MS. SEEWER: Okay.

18           THE COURT: Okay. Ms. -- did I get it right this  
19 time?

20           MS. SEEWER: Yeah, you got it right that time.

21           THE COURT: Okay. Ms. Seewer, why is the fact that  
22 the debtor is agreeing with you -- with -- the debtor is  
23 agreeing with your client and the other -- now I've -- I've --  
24 participating -- no, not participating -- what's the --

25           MS. SEEWER: Assisting customers?

1 THE COURT: Pardon?

2 MS. SEEWER: Assisting customers?

3 MR. HUTCHINSON: The participating are the three big  
4 ones.

5 THE COURT: Okay.

6 MR. HUTCHINSON: G.M., Delphi and Visteon. And then  
7 the assisting are the other ones.

8 THE COURT: Okay.

9 MR. HUTCHINSON: Okay.

10 THE COURT: What is it -- why is it that it needs to  
11 be in this Court's order, rather than in -- simply in the  
12 agreement between the participating customers and the debtor?

13 MS. SEEWER: Well, Your Honor, I think that the  
14 debtor, without a court order behind it, is going to have a  
15 difficult time getting these assisting customers to sign up.

16 And I think that the -- ultimately, if these  
17 assisting customers don't sign up, they won't get production.  
18 But I -- I'm anticipating that there might be some motions  
19 filed, or legal challenges to what the debtor is attempting to  
20 do without a court order.

21 THE COURT: And it is, quite frankly, it is my due  
22 process concern about entering an order as to which -- that's  
23 why I was asking Mr. Hutchinson, basically is this going to be  
24 a surprise to those who are being invited to become assisting  
25 customers?

1 MS. SEEWER: Well --

2 THE COURT: And invited --

3 MS. SEEWER: -- I believe that they were all served  
4 with copies of the DIP motion and copies of the proposed order.  
5 And --

6 MR. HUTCHINSON: We contact --

7 MS. SEEWER: -- it's --

8 MR. HUTCHINSON: We contacted --

9 MS. SEEWER: I suppose one way we could do it, Your  
10 Honor, is provide in the agreement that gets incorporated into  
11 your order that the debtor will not use any of its funding to  
12 fund production for those customers.

13 THE COURT: That is fine. I have no problem with  
14 that. I have no problem recognizing that G.M. does not want to  
15 fund other people's production.

16 MS. SEEWER: Right. So, I suppose then if -- if  
17 it's --

18 THE COURT: And I -- and the other way to go is to  
19 put this provision with respect to the assisting customers in  
20 the Court's order. But, quite frankly, I would not do that  
21 without allowing some modest period for anybody affected by the  
22 order to ask for a hearing. Because the fact that they were  
23 served -- what, they were served on Thursday --

24 MR. HUTCHINSON: Yes.

25 THE COURT: -- with -- with the -- and we had a

1 hearing on Friday morning. I'm sorry, you know -- and they got  
2 served -- they presumably got served with all of the papers,  
3 not just this. Although if they're well advised, this was the  
4 first one they went to.

5           You know, to pretend that somehow or another there  
6 was enough notice and ability to participate -- my husband is  
7 an English professor, he deals with the fictions in the family.  
8 So, you know, I'm happy to -- I'm happy to incorporate it as a  
9 limitation on the use of the funds that the participating  
10 customers are providing --

11           MS. SEEWER: In the order?

12           THE COURT: Well, we'll -- please find a way to make  
13 it -- you can -- you can propose language in the short order  
14 that I've -- you can propose language for that and I'll take a  
15 look at it.

16           MS. SEEWER: Okay. Thank you, Your Honor.

17           THE COURT: And -- and then in addition, to the  
18 extent that it goes beyond a limitation on the use of cash  
19 infusion from the participating customers. I think there has  
20 got to be some window of time for the people who are being  
21 given this, quote, "invitation," closed quote, to become  
22 assisting customers to have -- to seek -- to seek to be heard  
23 with respect to the provisions.

24           MR. HUTCHINSON: To seek what, Your Honor? I didn't  
25 hear you.

1 THE COURT: Seek to be heard --

2 MR. HUTCHINSON: Oh.

3 THE COURT: -- with respect to the provisions. And  
4 they may decide that rather than spending money on lawyers,  
5 let's just sign up and enlist.

6 MR. HUTCHINSON: Or resource.

7 THE COURT: Or -- or -- you know, and you say some of  
8 them already are.

9 MR. HUTCHINSON: Yes.

10 THE COURT: Yup. So, I'll let you folks work on  
11 that.

12 We need to get to the three -- well, is there  
13 anything more with respect to the 363, 364 --

14 MR. HUTCHINSON: The only thing I can -- I would  
15 add, Your Honor, we need to get this on and so we're going to  
16 have -- I'm thinking mechanics now.

17 THE COURT: Well, don't think mechanics. The  
18 mechanics -- I don't want to spend time on the record with  
19 respect --

20 MR. HUTCHINSON: Okay.

21 THE COURT: -- to the mechanics.

22 MR. HUTCHINSON: I -- I --

23 THE COURT: You know, you just -- you get -- you get  
24 -- it's going to be short. You're going to get it to me. I  
25 will be here until five o'clock this evening, at least. I'll

1 be here first thing in the morning.

2 MR. HUTCHINSON: Okay. Thank you, Your Honor.

3 THE COURT: And --

4 MR. HUTCHINSON: We can talk about it at -- because  
5 we need to kind of figure out how we're going to get language.  
6 But --

7 THE COURT: Right.

8 MR. HUTCHINSON: -- we'll draft --

9 THE COURT: Right. Well -

10 MR. HUTCHINSON: -- it and then maybe call them and --

11 THE COURT: Right. And I want to get -- I want to  
12 move on to the 366 --

13 MR. HUTCHINSON: Sure.

14 THE COURT: -- matters. And if -- you know, if you  
15 want -- if -- you're welcome to go, you know, go someplace  
16 where you can talk with -- of course, people can choose where  
17 -- people can choose which phone conversation they want to be  
18 on.

19 MR. HUTCHINSON: Thank you, Your Honor.

20 THE COURT: And I take no offense if they decide that  
21 they don't want to be on this one.

22 And moving on to the 366 matters. Mr. Wearsch?

23 MR. WEARSCH: I had discussed an offer with Mr.  
24 Watson, which I believe was mutually acceptable to the debtors  
25 and to Alabama Power. I had not had a chance to step out and

1 confirm that, in fact, it would be acceptable to all parties if  
2 we could have --

3 THE COURT: Sure.

4 MR. WEARSCH: -- ten minutes? I think that would be  
5 sufficient.

6 THE COURT: That's fine.

7 MR. WEARSCH: And then I could also get him on the  
8 line --

9 THE COURT: Well, actually --

10 MR. WEARSCH: -- at that time.

11 THE COURT: -- you know what? You can have ten  
12 minutes, and then you can have an additional five or ten to  
13 talk about the mechanics that Mr. Hutchinson wanted to discuss.

14 MR. WEARSCH: Thank you, Your Honor.

15 THE COURT: Okay. So, it's about 2:35 now. I'll be  
16 back -- I'm going to be back here about 2:50, 2:55.

17 Thanks.

18 (Recess 2:36 P.M./Reconvene 3:02 P.M.)

19 THE COURT: Okay. What's the -- what's happening in  
20 terms of the --

21 MR. HUTCHINSON: Well --

22 THE COURT: -- the 366?

23 MR. HUTCHINSON: Oh.

24 MR. WEARSCH: Thank you, Your Honor. Tom Wearsch on  
25 behalf of the debtors.

1           Mr. Watson, who is on the line, we had a chance to  
2 speak. And we have, in fact, reached agreement on treatment of  
3 Alabama Power, his client.

4           THE COURT: Okay. And is that different than what  
5 had been -- the motion had provided for?

6           MR. WEARSCH: It is -- it is different. Alabama  
7 Power has -- we've agreed to stipulate that they will be  
8 treated as an -- as opting out of the procedures -- under the  
9 procedures, but opting out on the grounds that they disagree  
10 with both the adequate protection amount and the procedures.  
11 And we have agreed to separate adequate protection. That's  
12 agreeable to their party and the debtors. And the customer  
13 with respect to that facility is Visteon, who had indicated by  
14 e-mail earlier in the day that they consented to the proposed  
15 treatment.

16           THE COURT: And remind me with respect to the balance  
17 of the utilities. Is -- this is -- this would not be on the  
18 status docket unless one of the utilities asked that it be --

19           MR. WEARSCH: It --

20           THE COURT: -- correct?

21           MR. WEARSCH: It wouldn't -- it would not, Your  
22 Honor. The way that we felt we've complied with with -- with  
23 new 366 is that similar to Alabama Power, a -- a utility  
24 company has a period of time, 15 days, to both reject our  
25 adequate protection offer and our procedures. In which case,



1 we've merely asked the Court to set a hearing within the 30  
2 days.

3 THE COURT: Okay. And so the October 24 --

4 MR. WEARSCH: I --

5 THE COURT: -- doesn't quite do it, but it's close.

6 MR. WEARSCH: It's close. And I -- I would hope that  
7 that would be sufficient for any part.

8 THE COURT: Okay. Well, you know, if you have any  
9 discussions with other utility companies who want to be heard  
10 directly by the Court, October 24 would be available.

11 MR. WEARSCH: What I would request is that if we find  
12 a stipulation where a utility company opts out, and is adamant  
13 that they will cut off within 30 days, we don't have a hearing  
14 that's within the 30 days, that we be able to come in on an  
15 emergency basis. But we'll try to provide as much notice as  
16 possible.

17 THE COURT: And October 17, there's -- there's a lot  
18 of availability on October 17th, that's -- at least right now,  
19 but that's the situation, so -- okay.

20 MR. WEARSCH: Thank you, Your Honor.

21 THE COURT: You're welcome. And we -- we're getting  
22 the first draft of the case management order which will  
23 incorporate hearing -- the hearing dates. And I assume that  
24 that -- well, one of the things that's wonderful about the  
25 whole ECF system is that it's pretty easy to serve those sorts

1 of things. And I understand that there was a very good  
2 conversation between RDCC and the proposed service agent that  
3 the debtor would like to use. I understand that's -- that as  
4 soon as we get past the notice period, I'll address that. And  
5 it looks like that's going to be a good order.

6 So, I -- I -- and it sounds like they're already  
7 really getting to work and there is quantum meruit. If -- if  
8 the worse case happens.

9 MR. WEARSCH: Quickly, Your Honor, with respect to  
10 the case management order and timing, just because we had tried  
11 to heed Your Honor's request that we include as much as  
12 possible in the initial notice.

13 THE COURT: Um-hum.

14 MR. WEARSCH: But one of the things we had included  
15 in there, we wanted to give notice of that case management  
16 order so that parties would know what to look for.

17 THE COURT: Okay. Well, we'll -- we'll -- I want to  
18 -- we will be -- what I had said we would do was make it  
19 available to the people who had been here on Friday for  
20 comment. And I expect we'll be doing that before the end of  
21 the day today. And then -- so, it should be entered tomorrow.

22 MR. WEARSCH: Okay. Fantastic. Thank you, Your  
23 Honor.

24 THE COURT: At least I hope it will be entered  
25 tomorrow. We'll see.

1 (Pause)

2 MR. WEARSCH: And --

3 THE COURT: We'll do our best.

4 MR. WEARSCH: One further housecleaning, Your Honor.

5 I -- I submitted a whole host of new orders this weekend and  
6 this morning with the proper -- the proper case number that we  
7 were given on Friday. Of those, I understand several have been  
8 entered. One of them was the cash management order, which had  
9 the proviso which Wachovia and the Committee had worked out. I  
10 think I included a black line when I submitted it to the in  
11 box.

12 To the extent that the Court could take a look at  
13 that today, and enter that today, assuming that the interim  
14 financing goes on, I think those two have to go hand-in-hand,  
15 and the company would greatly appreciate it, Your Honor.

16 THE COURT: Right.

17 MR. WEARSCH: Thank you.

18 THE COURT: We will -- we'll work to accommodate  
19 that.

20 MR. HUTCHINSON: Your Honor, Joe Hutchinson for the  
21 record.

22 I have the language here that is short and sweet, and  
23 I could read it, that came -- one set of paragraphs or short  
24 paragraphs -- sentences actually -- came from Mr. Downs at  
25 Wachovia that we agreed to. And I think everybody's in

1 agreement with.

2           And then one short paragraph came from Sarah Seewer  
3 of Honigman on behalf of General Motors and the other  
4 customers.

5           THE COURT: I'll tell you what, something even better  
6 than your reading it. If they could send it to the -- send it  
7 to us -- send it to the Court's chambers, we'll print it out  
8 right now. That way we'll --

9           MR. HUTCHINSON: I can --

10          THE COURT: -- be able to read along --

11          MR. HUTCHINSON: I can send it right now here.

12          THE COURT: Okay.

13          MR. HUTCHINSON: So, everyone on the phone, I am  
14 sending Jeremy's second e-mail, and Sarah's e-mail. Okay?

15          THE COURT: Okay. So, we'll --

16          MS. SEEWER: Okay.

17          THE COURT: And so -- we're going to take about four  
18 or five minutes so we'll have copies of that in our hands and  
19 we'll be right back out.

20                       (Recess 3:09 P.M./Reconvene 3:38 P.M.)

21          THE COURT: Proposed order. Your -- the proposed  
22 order which I would make an exhibit to my order --

23          MR. HUTCHINSON: Right.

24          THE COURT: -- needs to settle down. It's apparently  
25 still in flux. It's apparently -- no -- well, I can tell from

1 these e-mails. For instance, as I -- remember when I asked  
2 about --

3 MR. HUTCHINSON: It's --

4 THE COURT: -- avoidance actions?

5 MR. HUTCHINSON: It's like -- that was a --

6 THE COURT: Well, you know what? I don't care if  
7 it's like this, I want it to settle down.

8 MR. HUTCHINSON: I understand, Your Honor. But --  
9 but the -- the avoidance action, that was just a typo mistake  
10 over --

11 THE COURT: Well --

12 MR. HUTCHINSON: -- the weekend.

13 THE COURT: Mr. --

14 MR. HUTCHINSON: That's all that was.

15 THE COURT: Mr. Hutchinson, all I'm saying is you  
16 folks need to -- you know, it's -- it can't be like Zeno's  
17 Paradox.

18 MR. HUTCHINSON: I know.

19 THE COURT: You've got to get me --

20 MR. HUTCHINSON: We'll have it --

21 THE COURT: -- something that's --

22 MR. HUTCHINSON: We'll have it in 20 minutes.

23 THE COURT: Great.

24 MR. HUTCHINSON: Promise.

25 THE COURT: Okay.

1 MR. HUTCHINSON: Promise.

2 THE COURT: Well, you'll have it when you have it.

3 MR. HUTCHINSON: Won't we?

4 MR. WEARSCH: Yes.

5 MR. HUTCHINSON: We will.

6 THE COURT: You'll have it when you it. And -- and  
7 so I'm going to -- I'm just going to give you folks the  
8 opportunity to work on that. I'm going to go back to my  
9 conference call. And -- but I just -- you know, I mean I --  
10 and I don't mean to get sharp, I just -- you know --

11 MR. HUTCHINSON: That's all right.

12 THE COURT: I -- I -- it's not horseshoes.

13 MR. HUTCHINSON: No.

14 THE COURT: You know, there is some document that  
15 becomes --

16 MR. HUTCHINSON: What I meant was what timing?

17 THE COURT: -- the exhibit.

18 MR. HUTCHINSON: I'm -- I'm literally talking a few  
19 minutes.

20 THE COURT: Yeah, yeah.

21 MR. HUTCHINSON: We just have that last little thing.

22 THE COURT: Well, just remember Zeno's Paradox,  
23 that's not our model.

24 MR. HUTCHINSON: All right.

25 THE COURT: That's not our model.

1 MR. HUTCHINSON: Thank you, Your Honor. Appreciate  
2 it.

3 THE COURT: Thanks.

4 (Recess 3:39 P.M./Reconvene 4:39 P.M.)

5 THE COURT: Have you -- is there agreement now on the  
6 proposed -- on what had been the proposed order? The long  
7 order? Is that -- has that settled down?

8 MS. EDISON: Your Honor, we have one issue with  
9 respect to the commencement of the adversary by the Committee  
10 to challenge the bank's liens.

11 THE COURT: Right. And let me just say, with respect  
12 to that -- and it's something that Mr. Hutchinson knows well,  
13 the history of that. That 75-day period from -- and this is  
14 from the Court's perspective, that 75-day period is that the  
15 Committee gives notice that either it intends to try to pursue  
16 or that it will not try to pursue. It is not about commencing,  
17 and it is not about getting the -- getting whatever  
18 authorization is needed.

19 Mr. Hutchinson can tell you a long tale about the  
20 Grand Eagle case. And I will be quite frank, I am -- this --  
21 this is -- the 75 days runs over Thanksgiving and the Christmas  
22 holidays. And in terms of my capacity to have hearings that  
23 would assure the -- there's -- there are a series of issues  
24 that need to be addressed under 6th Circuit case law, and I am  
25 not giving myself the 75-day deadline to have concluded those

1 hearings in this time frame. I am simply not.

2 So, everybody should understand that 75 days is  
3 simply that the Committee would give notice that it intends to  
4 do whatever is necessary to commence. Not that it has  
5 commenced and not that somebody is saying, oh, you didn't have  
6 the authority to commence. I am not doing that again. Period.  
7 Period. Exclamation point.

8 MS. EDISON: Okay.

9 THE COURT: And Mr. Hutchinson will be your  
10 sympathetic ally on that one.

11 MR. HUTCHINSON: Very.

12 THE COURT: And -- and for that reason -- I mean  
13 whatever else about the 75 days, the 75 days is not to  
14 commence. The 75 days is to give notice one way or the other  
15 of --

16 MS. EDISON: Of an intention.

17 THE COURT: -- an intention.

18 MS. EDISON: Okay.

19 THE COURT: And then you take whatever actions you  
20 need to take and you do them with due diligence and in, you  
21 know, you -- you proceed. If you're going to proceed, you  
22 proceed diligently. But there's no 75-day to commence with all  
23 the bells and whistles in the 6th Circuit. Or in the 6th  
24 Circuit as some --

25 MR. HUTCHINSON: As some people view it.



1 THE COURT: Right.

2 MS. EDISON: Okay. Okay. Your Honor, in light of  
3 your comments, I think the -- the way the parties discussed it  
4 last Friday is it was 75 days to commence the adversary. But  
5 now understand the issue a lot more fully, the Committee is  
6 prepared, and I think the bank is prepared to agreed, that the  
7 Committee will provide notice of it intention within 60 days.  
8 And then we'll worry about on the back end --

9 THE COURT: I am not -- I'm not -- I mean everybody  
10 needs to be as clear on this as -- I mean I am not giving  
11 myself a 75-day deadline --

12 MS. EDISON: And we're not --

13 THE COURT: -- to deal with that.

14 MS. EDISON: We're simply not asking --

15 THE COURT: Yeah.

16 MS. EDISON: We're not asking the Court to do that.

17 THE COURT: Yeah. Yeah, I mean --

18 MS. EDISON: All -- right --

19 THE COURT: And --

20 MS. EDISON: We -- we obviously will do what we need  
21 to do --

22 THE COURT: Yeah.

23 MS. EDISON: -- in order to bring this action. But  
24 the Committee is willing to notice -- give notice of its  
25 intention to either commence or not commence, and jump through

1 all the right hoops and have the right hearings in front of the  
2 Court within 60 days from the date of formation.

3 THE COURT: Well, you're giving notice that that's  
4 the start.

5 MS. EDISON: We're giving notice, right.

6 THE COURT: But -- but -- but -- I mean, again --

7 MS. EDISON: And that is the start of the process.

8 THE COURT: Right.

9 MS. EDISON: Right.

10 THE COURT: But in terms of obtaining the standing  
11 necessary --

12 MS. EDISON: Understood that it will not happen  
13 within 60 days of the formation of the Committee.

14 THE COURT: And it is not to be read --

15 MS. EDISON: We're just giving --

16 THE COURT: -- as having to have happened within the  
17 -- you know --

18 MS. EDISON: Under --

19 THE COURT: Yeah.

20 MS. EDISON: Understood.

21 THE COURT: Yeah. Within 60 or 75 days because --

22 MS. EDISON: So --

23 THE COURT: A lot of ink has been spilt on that in  
24 another case.

25 (Laughter)

1 MS. EDISON: In that regard then, we could perhaps  
2 add language that says the Committee to commence a challenge or  
3 give notice of its intention to commence --

4 THE COURT: It's to --

5 MS. EDISON: -- a challenge within 60 days.

6 THE COURT: Right.

7 MS. EDISON: Okay.

8 THE COURT: But people need to understand that that's  
9 not -- that's not some kind of shortened Statute of  
10 Limitations. And, again, I -- you know, I don't -- I don't  
11 have a horse in that race other than I am not -- I am not  
12 committing during the holiday season --

13 MS. EDISON: To have the hearings relating --

14 THE COURT: -- to have the hearings and -- and to  
15 have the decision, et cetera. See Grand Eagle.

16 (Pause)

17 THE COURT: I mean it's -- again, read the Grand  
18 Eagle cases, some of which are reported, some of which I think  
19 are not. But what -- what is important to me is that the  
20 standing of the Committee need not have been litigated --

21 MS. EDISON: By the 60th day.

22 THE COURT: -- within -- by the 60 days. And that  
23 needs to be clearly understood. I mean simply, you know, you  
24 give notice, either we have determined there's no problem, so  
25 we will not be pursuing, or there's a problem, but we decided,

1 you know, the candle's not worth the game -- the game's not  
2 worth the candle, whatever. Or -- or we intend to pursue and  
3 then you would need --

4 MS. EDISON: And then we'll commence the Gibson type  
5 proceedings.

6 THE COURT: Right.

7 MS. EDISON: Okay.

8 THE COURT: Right. Which --

9 (Attorneys conferring off-the-record)

10 MR. NEUMANN: If I just may see if I -- my co-  
11 counsel's on the line.

12 THE COURT: Yeah.

13 MR. NEUMANN: Jeremy, Shira?

14 THE COURT: I'm going to --

15 MR. DOWNS: Yes, we're here.

16 THE COURT: I'm going to -- and have you passed this  
17 out to them?

18 MR. NEUMANN: Okay. We had some proposed language to  
19 address that issue. I'll e-mail it to you.

20 MR. DOWNS: Okay. And, I'm sorry, not to belabor the  
21 point. This is Jeremy Downs for Wachovia Capital.

22 (Recess 4:47 P.M./Reconvene 5:14 P.M.)

23 THE COURT: I'm signing that. So, you've got your  
24 order and we'll get it docketed.

25 MR. HUTCHINSON: Great. Thank you.

1 THE COURT: Anything else we need to address this  
2 afternoon?

3 MR. HUTCHINSON: The cash management?

4 THE COURT: The cash management.

5 MR. HUTCHINSON: Is there anything else?

6 (Recess 5:14 P.M./Reconvene 5:16 P.M.)

7 MR. WEARSCH: While we're waiting, Your Honor, with  
8 respect to the case management proposal, I've had one -- filled  
9 in a couple of the blanks, added one provision that says that  
10 we, the debtor, through BMC on their web site, will maintain  
11 the 2002 list, so anyone can get it there, and they know where  
12 to get a copy.

13 Other than that, I think it looks great. Would you  
14 like me to circulate a copy of this to everyone tonight for  
15 further comment?

16 THE COURT: That would be -- that would be good. And  
17 they should get their comments -- they can -- people who  
18 participated in the Friday hearing, and anybody who's asked for  
19 notices since then -- is that a long list?

20 MR. WEARSCH: Actually, I'll be perfectly honest --

21 THE COURT: Okay.

22 MR. WEARSCH: -- I don't --

23 THE COURT: Okay. Well, then --

24 MR. WEARSCH: I don't think it is. I think it's only  
25 two additional parties.

1 THE COURT: Oh, it's only two additional parties?

2 MR. WEARSCH: From -- as of 12 when I left and came  
3 down today.

4 THE COURT: I mean, you know, it should be reasonably  
5 non-controversial. Actually, no, just -- I guess it would be  
6 the U.S. Trustee, the not yet official committee, the lenders,  
7 the participating customers, and the debtor.

8 MR. WEARSCH: Okay.

9 THE COURT: And people can take a look at that. And  
10 if they've got any other suggestions, I mean -- we -- you know,  
11 what we're trying to do is to get as much clarity and how  
12 things work. And, you know, to have that be the first point of  
13 reference.

14 MR. WEARSCH: Okay.

15 THE COURT: And so if anybody's got other ideas, we  
16 welcome them. And then I'd like to get it on tomorrow.

17 MR. WEARSCH: Sure, it's -- it's very  
18 straightforward.

19 THE COURT: Okay. The only change to the case  
20 management order was reservation of rights?

21 MR. WEARSCH: The reservation of rights on the  
22 Mexican account.

23 THE COURT: That was the only change?

24 MR. WEARSCH: Yes, that's it.

25 MS. ISENBERG: Actually I haven't -- we haven't --

1 this is Shira for Wachovia. We haven't seen the revised cash  
2 management order.

3 MR. WEARSCH: Actually, Shira, that went to you in  
4 one of the e-mails that I sent over to you earlier today.

5 MS. ISENBERG: I didn't get it then. Because I -- I  
6 printed all those out and cash management wasn't there.

7 MR. WEARSCH: Well, I apologize for that.

8 MS. ISENBERG: I mean if you'd -- if you let me know  
9 that all of our changes that we requested were put in, then --

10 THE COURT: You know what, I want to get it on today.  
11 If there are any issues, you can -- you can seek to have it  
12 amended. But it seems like, you know, getting it on today --  
13 and I'm going to turn into a pumpkin very shortly. Oh, you  
14 think you can forward it? Okay.

15 (Off-the-record colloquy)

16 THE COURT: In 30 seconds, could you call our your e-  
17 mail?

18 MS. ISENBERG: Sure.

19 MR. WEARSCH: Shira.

20 THE COURT: Shira. Okay. Now, your e-mail?

21 MS. ISENBERG: Actually -- well, I'm not -- I'm  
22 actually in Jeremy Downs' office, if you can send it to  
23 [Jeremy.Downs@goldbergkohn.com](mailto:Jeremy.Downs@goldbergkohn.com), G-O-L-D-B-E-R-G-K-O-H-N dot com.

24 THE COURT: Okay. And Jeremy is regular spelling of  
25 Jeremy?

1 MS. ISENBERG: Yes.

2 THE COURT: And Downs is --

3 MS. ISENBERG: D-O -- D-O-W-N-S.

4 THE COURT: Jeremy dot D-O-W-N-S? Okay. It will be  
5 coming momentarily.

6 MS. ISENBERG: Thanks.

7 THE COURT: Okay. Is there anything else that needs  
8 attention right now or are we --

9 MR. HUTCHINSON: I don't -- Your Honor, I don't  
10 think so.

11 THE COURT: Okay. And with respect --

12 MR. HUTCHINSON: I don't think so.

13 THE COURT: -- to that October 2 -- if anybody -- if  
14 any of the people -- the 22 other customers who are being  
15 invited to be assisting customers --

16 (Laughter)

17 THE COURT: I have -- why do I have images of the  
18 Godfather?

19 MR. HUTCHINSON: I'm not sure, Your Honor. But --

20 THE COURT: But if any of those -- if any of those  
21 creditors file objections, then I would have -- I would  
22 probably have a status conference the following day.

23 MR. HUTCHINSON: Sure.

24 THE COURT: So, it would be telephonic.

25 MR. HUTCHINSON: Sure. Thank you, Your Honor. I



1 don't -- is there anything else? I -- I --

2 MR. WEARSCH: There's nothing else. And just -- just  
3 for clarity which would hopefully ease your concerns a little  
4 bit. Each of these -- it's been well over a week since each of  
5 these 22 customers were informed, and given the general terms  
6 of the deals, and provided with copies of the proposal. So,  
7 they're well aware of it, but they will use the additional time  
8 to try to get them on board.

9 THE COURT: Right. Okay.

10 MR. HUTCHINSON: Thank you very much.

11 THE COURT: You're welcome.

12 (Recess 5:22 P.M./Reconvene 5:23 P.M.)

13 THE COURT: All right.

14 MS. ISENBERG: Well, once I get it, I should be able  
15 to -- in fact, it should only take me a minute to check.

16 THE COURT: Okay.

17 MS. ISENBERG: I just haven't gotten the e-mail yet.

18 THE COURT: You're -- you represent Wachovia?

19 MS. ISENBERG: Yes.

20 THE COURT: Okay. And have you spoken with Mr.  
21 Neumann? I mean he's seen it, so he's -- and he's here.  
22 Perhaps he can give you some comfort.

23 MR. NEUMANN: I'll address that right now, Your  
24 Honor.

25 THE COURT: Okay.

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MR. NEUMANN: Thank you.

THE COURT: Thank you.

(Proceedings Adjourn at 5:23 P.M.)

C E R T I F I C A T I O N

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

/s/ Karen Hartmann

Date: October 13, 2006

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