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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
iGPS COMPANY, LLC, .  
Debtor. . Case No. 13-11459 (KG)  
. .  
. Courtroom No. 3  
. 824 Market Street  
. Wilmington, Delaware 19801  
. .  
. . . . . Thursday, June 6, 2013

TRANSCRIPT OF FIRST-DAY HEARING  
BEFORE THE HONORABLE KEVIN GROSS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

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	<u>INDEX</u>	
		<u>Page</u>
1		
2		
3		
4	<u>EMERGENCY MOTION RE: BELACON</u>	6
5	<u>UTILITIES MOTION</u>	21
6	<u>APPLICATION TO RETAIN ALIXPARTNERS</u>	25
7	<u>WAGE MOTION</u>	26
8	<u>CASH MANAGEMENT MOTION</u>	30
9	<u>MOTION RE: TRUST FUND TAXES</u>	32
10	<u>INSURANCE MOTION</u>	34
11	<u>MOTION TO APPROVE CUSTOMER REBATE PROGRAMS</u>	35
12	<u>MOTION TO ENFORCE TURNOVER, ETC.</u>	40
13	<u>MOTION TO PAY POST-PETITION EXPENSES, ETC.</u>	50
14	<u>DIP MOTION</u>	66
15		
16		
17	<u>Exhibit</u>	<u>Evid.</u>
18	Myers Declaration	22
19		
20		
21		
22		
23		
24		
25		

1 (Proceedings commence at 2:33 p.m.)

2 (Call to order of the Court.)

3 THE COURT: Good afternoon, everyone. Thank you.  
4 Please be seated.

5 Mr. Schlerf, good afternoon.

6 MR. SCHLERF: Good afternoon, Your Honor. Hello  
7 again.

8 THE COURT: Yes.

9 MR. SCHLERF: Jeffrey Schlerf, proposed counsel to the  
10 debtor, Your Honor. I guess this is part two of our first-day  
11 hearing, Your Honor. Hopefully, it's the final part for today.

12 THE COURT: Sure.

13 MR. SCHLERF: Your Honor, we filed an amended agenda;  
14 hopefully, you have a copy of that.

15 THE COURT: I do. I do.

16 MR. SCHLERF: We just added the regular budget and the  
17 carve-out budget, as well as a copy of the emergency motion,  
18 which was carried from this morning.

19 THE COURT: Yes.

20 MR. SCHLERF: So, with that, Your Honor, I'd like to  
21 turn the podium over to John Cunningham again --

22 THE COURT: Mr. Cunningham.

23 MR. SCHLERF: -- who will give you a more fulsome  
24 background of the debtors in the case.

25 THE COURT: Wonderful. Thank you.

1 MR. SCHLERF: Thank you.

2 THE COURT: Thank you, Mr. Schlerf.

3 Mr. Cunningham, hello again, and I just --

4 MR. CUNNINGHAM: Hello, Your Honor.

5 THE COURT: I've been sitting there, waiting to hear  
6 if you've resolved the issue that brought us into court in the  
7 morning.

8 MR. CUNNINGHAM: I am pleased to report, Your Honor,  
9 that we made significant progress since this morning.  
10 Immediately after the hearing this morning, I was able to get  
11 in contact with Belacon's counsel, reported the comments from  
12 this morning's hearing. And I'm pleased to report that we are  
13 back on line.

14 THE COURT: Oh, good. Okay.

15 MR. CUNNINGHAM: So, as a result, Your Honor, the  
16 debtors would like to withdraw the emergency motion related to  
17 Belacon; it's Docket No. 28, without prejudice.

18 THE COURT: Exactly. Without prejudice. I'm pleased  
19 -- I'm please to hear that.

20 MR. ALTMAN: (Via telephone) Your Honor, if I --

21 THE COURT: Yes.

22 MR. ALTMAN: If I may, Evan Altman on behalf of  
23 Belacon.

24 THE COURT: Yes. Good afternoon, sir.

25 MR. ALTMAN: And myself, as well as Mr. Larry White,

1 who is the Chairman of Belacon, is on the line, as well. And  
2 we do agree. We have turned it back on.

3 We received notification of this after hours last  
4 night, and have been working feverish to just assess what's  
5 going on. I've only been retained recently. But we are in  
6 agreement that we do have something, at least temporarily, you  
7 know, put to bed, as far as what the -- related to the motion.

8 THE COURT: All right. Thank you, Mr. Altman. I  
9 appreciate that. Very well.

10 MR. CUNNINGHAM: Thank you, Your Honor.

11 So with that, I'd like to start the first-day hearing.

12 THE COURT: Yes, sir.

13 MR. CUNNINGHAM: And with that, give the Court a  
14 little more background than what I gave Your Honor this morning  
15 regarding the company and how we got to where we are today.

16 Your Honor, iGPS is an acronym for Intelligent Global  
17 Pooling Systems. As we discussed this morning, it relates to a  
18 plastic pallet that is the driver of the company's business.  
19 As we discussed, the pallet, in the industry, is the workhorse  
20 of -- or the "essential cog," so to speak, of the  
21 transportation and logistics industry.

22 And as Your Honor pointed out this morning, it is a  
23 fact that over ninety percent of pallets are wood pallets.  
24 It's a market that is overwhelmingly dominated by a competitor  
25 of the debtor, an international logistics company called CHEP.

1 CHEP USA, like the debtor, is located in Orlando. And that's  
2 also where the story of iGPS starts, because the former CEO of  
3 CHEP, and also the former CEO of the debtor, Bob Moore, founded  
4 iGPS in 2006, also in Orlando.

5 The debtor's business model and vision was simple.  
6 The wood pallet industry was outdated, given the fragility and  
7 inherent weaknesses of the wood pallet. The view of the  
8 company was they would have an innovative, cutting edge, state-  
9 of-the-art platform made out of plastic, and that would form  
10 the basis of the iGPS platform. So with that, the company was  
11 started with equity financial from New York based private  
12 equity firms Kelso and Pegasus, attaining, in an aggregate  
13 amount of equity financing, in excess of \$500 million. An  
14 asset-based loan facility with Bank of America as agent was  
15 also obtained in an aggregate amount of \$250 million, of which  
16 approximately, today, Your Honor, outstanding under that  
17 facility is, I believe \$144 million.

18 You know, clearly, coming out of the gate, this  
19 company, as a start-up, was well financed and capitalized.

20 THE COURT: Yes.

21 MR. CUNNINGHAM: Mr. Moore and the company secured a  
22 Netherlands-based manufacturer, Schoeller Arca, to build the  
23 iGPS platform. And essentially, as I viewed it, the goal was  
24 to make the everlasting gobstopper of pallets; a pallet that  
25 would have a number of competitive advantages to wood pallets.



1 It would be lighter; our pallets are thirty-five percent  
2 lighter than wood pallets, which saves a lot in transportation  
3 costs when you factor that in. They were stronger, they are  
4 stronger, with a universal plastic resin frame. They're a  
5 hundred percent recyclable, and they are also nonflammable,  
6 because included in the plastic resin during the manufacturing  
7 process was a flame-retardant called deca-bromine.

8 The pallets in the iGPS platform also contained an  
9 innovative RFID tag system, for purposes of scanning and  
10 tracking throughout the life cycle in the logistics industry;  
11 so it had a competitive advantage over wood pallets, in having  
12 that RFID tag.

13 Approximately 10 million of the pallets, Your Honor,  
14 were produced and put into service. Major customer accounts  
15 were obtained pretty early on with Pepsi and General Mills.  
16 However, Your Honor, what appeared so promising at the  
17 beginning of iGPS's start-up ultimately failed, and that was  
18 for several reasons:

19 First of all, the largest customer contracts I just  
20 described, Pepsi and General Mills, were never profitable.

21 The company was hit with a much higher than expected  
22 loss of the pallets, so the attrition rate was much higher than  
23 expected.

24 As well as the company realized a much higher rate of  
25 defective pallets that were coming back; so that, today, in

1 2013, of the 10 million pallets, the debtor today has  
2 approximately 7 million; and, of those, one-third of them are  
3 defective.

4           So this -- also, the high rate of defective pallets  
5 led to a dispute with our pallet manufacturer Schoeller Arca.  
6 This led to an arbitration, a very contentious one, between the  
7 debtor and SAS. The company ultimately prevailed on that  
8 arbitration on liability, earlier this year. The arbitrators  
9 had set a -- set a -- pretty much a schedule to decide the  
10 damages aspect of that, but -- that was a big victory for the  
11 company, but it came at a time where the company's financial  
12 circumstances are what they are.

13           Another item, Your Honor, that led to the company's  
14 demise is the fact that we had -- when I touted at the  
15 beginning a very advantageous aspect to our pallets, which is  
16 the flame retardant, it also turned out that that flame  
17 retardant, deca-bromine, was targeted by the EPA afterwards as  
18 a potentially hazardous chemical, which has led the company to  
19 have to defend and deal with lobbying efforts in various states  
20 that had attempted to restrict products that contained deca-  
21 bromine. That was an additional headache and constant effort  
22 to defend those allegations that were made, particularly made  
23 by the competitors of the debtor, in terms of its operations.

24           So with all of that bad news coming in, after the good  
25 news from the start, the Bank of America lenders -- and I will

1 refer to them as that, Your Honor, because I will describe how  
2 Bank of America has since sold their loans. But the Bank of  
3 America lenders, early last year, began to restrict the  
4 company's access to its cash and put the company in cash  
5 dominion and control early on last year. They required  
6 substantial pay-downs of the bank debt from the company's bank  
7 reserves. Their arguments were that they high rate of lost  
8 pallets were beyond what the company had committed, in terms of  
9 a lost pallet reserve.

10 We had a series of forbearances beginning in October  
11 of last year. That -- you know, at or around that time, the  
12 company then brought in Shaun Martin, the company's chief  
13 restructuring officer, and his firm, Winter Harbor.

14 In December, the company interviewed investment  
15 bankers to locate potential investors and buyers. We ultimate  
16 hired Houlihan Lokey in January, to commence an M&A process,  
17 which they did. They had a very extensive M&A process, and  
18 targeted virtually everybody who could have possibly be deemed  
19 to be interested in this company.

20 That led to approximately seven letters of intent that  
21 were -- that had come in, in the February/March time frame,  
22 Your Honor, of this year. Ultimately, of those seven, one  
23 particular entity was targeted to be a stalking horse, and that  
24 was iGPS Logistics, LLC, which is the current stalking horse.  
25 But at that time, iGPS Logistics, LLC, Your Honor -- and I'm

1 referring now probably to the end of March/April time frame --  
2 was an entity controlled by the Balmoral, out of -- an equity  
3 fund in -- hedge fund in Los Angeles.

4 As we were trying to negotiate with the Bank of  
5 America lenders over the form of asset purchase agreement with,  
6 at that time, iGPS Logistics, LLC, controlled by Balmoral, at  
7 that time, SAS -- again, the entity with whom we have the  
8 arbitral award against came in.

9 THE COURT: Yes.

10 MR. CUNNINGHAM: And they entered into an option  
11 agreement with the Bank of America lenders to conduct diligence  
12 to purchase the Bank of America debt, which at that time was  
13 approximately 150 million. Right now, it's -- you know, it's  
14 in the hundred-and-forty-four-plus million range. So we had a  
15 period of time in which the debtors switched their focus away  
16 from the Balmoral-run iGPS Logistics, LLC, to the SAS parties,  
17 because they were about to acquire the bank debt.

18 During that time, Balmoral and their entity, iGPS  
19 Logistics, LLC, got together with SAS and SAS's owner, which is  
20 One Equity Partners, and the two of them essentially formed a  
21 joint venture. Ultimately, the joint venture, as it stands  
22 today, Your Honor, is between the Balmoral Funds, One Equity --  
23 not Schoeller Arca, but One Equity, the parent -- and also some  
24 individuals of a -- who are investors and principals of a  
25 logistics company called Palogix. That is the current joint

1 venture.

2           What I can only describe, Your Honor, as incredibly  
3 comprehensive, extensive and, many times, heated negotiations  
4 that we've had in -- over the course of the last weekend, and  
5 leading up to the filing. The goal was to get to a deal,  
6 whereby the entity -- and that entity is still called iGPS  
7 Logistics, LLC; so the original stalking horse to the current  
8 stalking horse remains the same. It's just now backed by a  
9 joint venture between the parties I've just described.

10           And we landed on a negotiated asset purchase agreement  
11 with iGPS Logistics, LLC. We landed on the DIP financing.  
12 They had brought in an outside DIP lender, Crystal, who you  
13 will hear when we get to the DIP motion. And literally, Judge,  
14 from the timing of what occurred, it's late in the day or mid-  
15 afternoon on Tuesday, iGPS Logistics, LLC close on the purchase  
16 of the Bank of America loans, so they became our, and still are  
17 our largest secured creditors. And we then, also, executed the  
18 asset purchase agreement with iGPS Logistics, LLC, which  
19 contemplated this Chapter 11 filing and a 363 sale. And we  
20 also entered into the DIP financing for approximately a little  
21 more than \$11 million with Crystal, to fund these Chapter 11  
22 cases.

23           I can tell you, Your Honor, the terms of the APA,  
24 principally, are that iGPS Logistics, LLC, will serve as the  
25 stalking horse in a 363 sale process in this Chapter 11 case.

1 They will credit bid 36 million of the hundred-and-forty-plus  
2 million of the bank debt that has been acquired; so they  
3 reserve their right to further increase their credit bid  
4 rights, but their initial credit bid is 36 million.

5 iGPS Logistics has also agreed to leave behind with  
6 the estate at the closing \$1 million of cash, plus various  
7 estate causes of actions: D&O claims, avoidance actions,  
8 claims against certain professionals that might exist,  
9 including accounting firms, claims against recyclers -- and  
10 I'll get into who recyclers are, they are another element of  
11 our transportation mechanism -- and also claims against Bob  
12 Moore.

13 Bob Moore, the founder of the company, who left the  
14 company. He is involved with litigation with the company,  
15 which has now been stayed. But that has been an ongoing  
16 litigation, in which he's claimed wrongful termination by the  
17 company, and the company has claimed damages against him. He  
18 has various intercompany notes. That is being left behind for  
19 the estate.

20 So it is the debtor's intent that the cash left  
21 behind, plus the causes of action, as the excluded assets, will  
22 be -- and sitting here today, Judge, the view is that that is  
23 what's going to fund the liquidating Chapter 11 plan in this  
24 case.

25 THE COURT: All right.

1 MR. CUNNINGHAM: Getting to the employees, Judge, as I  
2 mentioned this morning, we did have before Friday approximately  
3 140 employees. Last Friday, given our liquidity issues at the  
4 time, the debtor reduced significantly its work force, and now  
5 employs approximately fifty-four employees.

6 All of the employees let go last Friday were paid  
7 current upon termination. And I'm pleased to report, upon  
8 reaching agreement on the APA with our stalking horse buyer,  
9 the debtor now presently intends to reinstate thirty-five of  
10 the employees let go last Friday. And we are feverishly in the  
11 process of getting that up and running and doing that, Your  
12 Honor.

13 So that's kind of the story of iGPS, how we got from  
14 an incredibly well-financed start-up --

15 THE COURT: Yes.

16 MR. CUNNINGHAM: -- to we're here today --

17 THE COURT: It would seem like an outstanding product.

18 MR. CUNNINGHAM: The product is an outstanding  
19 product. Clearly, the -- I think the one thing that has hit  
20 home a lot has been the lost pallets. People have commented,  
21 you know, your -- the name of your company is "iGPS," how are  
22 you losing your products.

23 (Laughter.)

24 MR. CUNNINGHAM: The problem is, they don't have, like  
25 our iPhones, the "find my pallet" app.

1 THE COURT: Okay.

2 MR. CUNNINGHAM: They are just an RFID tag. So if you  
3 think like FedEx, if you are able to scan it, we're able to  
4 track and locate it. However, if it's not scanned, and we  
5 don't know otherwise where they are because they're in so many  
6 various locations; whether it's the manufacturers, the  
7 retailers, the transporters, so many people touch these pallets  
8 that the attrition rate, unfortunately, was much higher than  
9 expected.

10 You know, clearly, the company needs to do a better  
11 job of managing that loss of pallets. The view is that the  
12 buyer -- you know, that's an essential element of its business  
13 plan going forward, is to have a much more closed-loop  
14 business, to be able to track and monitor that attrition rate.  
15 You know, that's -- you know, since this is a rental business,  
16 we rent the pallets out, as opposed to selling them.

17 THE COURT: Right.

18 MR. CUNNINGHAM: There's a much higher manufacturing  
19 cost than wood pallets, to make these --

20 THE COURT: I assumed -- I was going to ask that next.

21 MR. CUNNINGHAM: Yes. It's substantially higher, in  
22 multiples, to make the plastic pallet. But the view is the  
23 plastic pallet is reusable. And you know, if working properly,  
24 it will come back and have many, many more turns throughout the  
25 transportation and logistics; as opposed to the wood pallets,



1 which only last, you know, maybe, at most, two or three turns  
2 that they go out and come back. You know, once the forklifts  
3 are hitting them constantly, they -- you know, they have to be  
4 disposed of. That was the strategic, competitive advantage of  
5 having the plastic pallet: The ability for these things to be  
6 reused over and over and over again.

7 Just to give you an example, Judge, the SAS contract  
8 we had, and what we went into arbitration with, had a sixty-  
9 turn warranty on those pallets. So, whereas I just said --

10 THE COURT: Wow.

11 MR. CUNNINGHAM: -- that a wood pallet could have two  
12 to three turns out there, we had a sixty-turn warranty with  
13 respect to the pallets.

14 So it is a good product. There's no question about  
15 it. It has a lot of those competitive advantages I just  
16 described. You know, I think -- you know, in some ways, you  
17 know, we learn from rolling out 10 million pallets. If you  
18 want to call it "beta testing," it was certainly a very  
19 expensive beta test, but --

20 THE COURT: And you're out -- you've lost around a  
21 million. Is that correct?

22 MR. CUNNINGHAM: We've lost approximately 3 million of  
23 the 10 million pallets.

24 THE COURT: Three million. Okay.

25 MR. CUNNINGHAM: We cannot account for 3 million of

1 the pallets.

2 And to be clear, the buyer will be buying all the  
3 pallets. So if it is able to locate pallets, you know, from  
4 people, you know, they can recover more.

5 THE COURT: Okay.

6 MR. CUNNINGHAM: But we -- the management believes  
7 that, you know, serviceable, we have approximately 7 million.  
8 And again, one-third of that 7 million are defective. So we  
9 really only have two-thirds of that amount that's truly  
10 serviceable.

11 So that's the story, Judge, of iGPS. And if Your  
12 Honor has any questions -- you know, obviously, we have the  
13 usual first-day motions, which we will go through. I'm pleased  
14 to report on those, I think substantially -- most of them are -  
15 - as you would expect, we got comments from Mr. Buchbinder.

16 THE COURT: Yes.

17 MR. CUNNINGHAM: We've worked with him on that. I  
18 think -- I think, possibly, only the DIP may be outstanding  
19 with him, but we can go -- we'll go through each motion. I  
20 don't want to cut Mr. Buchbinder off. Whatever comments he  
21 had, we have tried to address, as well as others that we have  
22 received. Like Ryder has made comments, et cetera.

23 THE COURT: Right.

24 MR. CUNNINGHAM: And we can get to that. That's  
25 primarily on the motion that affects Ryder.

1 THE COURT: Okay.

2 MR. CUNNINGHAM: And I think, as I indicated, you  
3 know, this morning, we did have the significant motion to  
4 reject, which is the Belacon contract. That's not being heard  
5 today. Obviously, it was just put on file and, you know, that  
6 will be set for a hearing in due course.

7 THE COURT: Very well. And likewise, the bid  
8 procedures are -- we still have to talk about those.

9 MR. CUNNINGHAM: We do need to talk about that --

10 THE COURT: Okay.

11 MR. CUNNINGHAM: -- in terms of scheduling --

12 THE COURT: Excellent.

13 MR. CUNNINGHAM: -- and when that will be heard.

14 THE COURT: All right. All right. Thank you, Mr.  
15 Cunningham; that was very helpful.

16 MR. CUNNINGHAM: Thank you, Your Honor.

17 So with that, I'll turn it over to Mr. Schlerf.

18 THE COURT: First, Mr. Buchbinder. Mr. Buchbinder,  
19 good afternoon.

20 MR. BUCHBINDER: Yes, Your Honor. Good afternoon,  
21 Your Honor. Dave Buchbinder on behalf of the United States  
22 Trustee.

23 I'm pleased to report to the Court that, as Mr.  
24 Cunningham just represented, but for the DIP, I believe we have  
25 resolved every issue with respect to every other motion.

1           This would also be a good time, since we're going to  
2 contemplate a bid procedures hearing, there has been a  
3 formation meeting already noticed out for Friday, June 14th, at  
4 10 a.m., at our offices in Room 2112.

5           THE COURT: All right. Thank you, Mr. Buchbinder.  
6 That will certainly be helpful down the road here.

7           Mr. Schlerf.

8           MR. SCHLERF: Hello again, Your Honor. Your Honor,  
9 I'd like to introduce the Court to Richard Kebrdle, who's a  
10 partner in White & Case's Miami Office. I believe he's  
11 appeared before you before.

12          THE COURT: Yes.

13          MR. SCHLERF: He's going to run through the -- all but  
14 the DIP financing first-day motions.

15          And Your Honor, what we thought we would do is hand up  
16 red-lined orders --

17          THE COURT: Good.

18          MR. SCHLERF: -- as we go back and forth, and just  
19 wait until the end to hand up the clean orders.

20          THE COURT: That would be fine.

21          MR. SCHLERF: Okay.

22          THE COURT: That's a good idea, Mr. Schlerf. Thank  
23 you.

24          (Pause in proceedings.)

25          THE COURT: Good afternoon. Good to see you again.

1 MR. KEBRDLE: Good afternoon, Judge. Richard Kebrdle  
2 with White & Case.

3 THE COURT: Yes, sir.

4 MR. KEBRDLE: Proposed counsel for the debtor.

5 Just one correction from what Mr. Schlerf just said.  
6 I'm actually going to be presenting Items 1 through 7 on the  
7 agenda, and then my partner John Cunningham will be picking it  
8 up from there.

9 THE COURT: Very well. Okay.

10 MR. KEBRDLE: So I'll start with the first one, which  
11 is the utilities motion.

12 THE COURT: Yes.

13 MR. KEBRDLE: Again, this is a relatively standard  
14 request for relief on the first day. The debtors were seeking  
15 entry of an interim order prohibiting its utilities companies  
16 from altering -- excuse me -- altering, refusing, or  
17 discontinuing any service to the debtor.

18 THE COURT: Let me ask you a question, Mr. Kebrdle,  
19 because I sometimes find it helpful --

20 MR. KEBRDLE: Uh-huh.

21 THE COURT: -- if we have the first-day declaration  
22 admitted into evidence, which is then sort of the factual  
23 support for many of the other motions.

24 MR. KEBRDLE: That's fine.

25 THE COURT: Would you like to move for the admission -

1 -

2 MR. KEBRDLE: Yeah. Why don't we move to admit that,  
3 Your Honor.

4 THE COURT: Yes. Yes, Mr. Kebrdle. Why don't we --  
5 and this is, of course, the declaration of Mr. Myers?

6 MR. KEBRDLE: Correct.

7 THE COURT: And Mr. Myers is in the courtroom, I'm  
8 sure.

9 MR. KEBRDLE: He's present.

10 THE COURT: All right. He's obviously here --

11 MR. KEBRDLE: Yes.

12 THE COURT: -- in case anyone wishes to cross-examine  
13 him with respect to any of these motions. But I am pleased to  
14 admit his declaration into evidence.

15 MR. KEBRDLE: Thank you, Your Honor.

16 THE COURT: Yes.

17 (Myers Declaration received in evidence.)

18 MR. KEBRDLE: Yes. So maybe I'll just start from the  
19 beginning on the utilities motion, back to the beginning.

20 THE COURT: Good.

21 MR. KEBRDLE: Okay. So, as I was saying, the debtor  
22 seeks entry of an interim order prohibiting the utilities  
23 companies from altering, refusing, or discontinuing any service  
24 for the debtor.

25 THE COURT: Yes.

1 MR. KEBRDLE: We wanted to deem the utilities  
2 companies adequately assured of the future payment of the  
3 amounts that they're owed. And also, the debtor seeks to  
4 establish procedures for determining requests for additional --  
5 additional adequate assurances that the utilities companies  
6 might have.

7 The debtor's utility services are approximately  
8 \$76,000 per month, and the debtor proposes to put on -- to  
9 deposit to adequately assure the utilities companies fifty  
10 percent of that estimated amount, which would come out to  
11 \$38,000 per month.

12 As my partner Mr. Cunningham mentioned, we did receive  
13 comments from the U.S. Trustee, and we have prepared a red-line  
14 -- we've taken his comments and prepared a red-line of the  
15 order, which I have here, which if I might approach, I can give  
16 you a copy.

17 THE COURT: Yes. And why don't you bring all of them  
18 up at the same time, and that way we'll --

19 MR. KEBRDLE: That's a good idea.

20 THE COURT: -- be able to proceed more smoothly.

21 MR. KEBRDLE: If you'll give me just one moment, I'm  
22 going to separate them out.

23 THE COURT: All right.

24 (Pause in proceedings.)

25 THE COURT: Thank you, Mr. Kebrdle.

1 MR. KEBRDLE: Thank you, Your Honor.

2 THE COURT: You bet.

3 (Pause in proceedings.)

4 MR. KEBRDLE: So the utilities motion, the U.S.  
5 Trustee had some minor requests, changes -- in particular, just  
6 a very small change; requested that the debtor promptly file a  
7 motion setting for a hearing, scheduled at the next omnibus  
8 hearing, if any utility company made an additional request for  
9 adequate assurances the debtors believed to be unreasonable. I  
10 think that's the only substantive change in the motion -- in  
11 the order.

12 (Participants confer.)

13 MR. KEBRDLE: Oh, I apologize. I missed this one.  
14 Also, on Page 4 --

15 THE COURT: Yes.

16 MR. KEBRDLE: -- the second decretal paragraph deleted  
17 the sentence that reads:

18 "In the event that the debtor terminates the services  
19 of any utility company, such utility company must  
20 immediately refund, without exercising any purported  
21 right of set-off or recoupment, the entire amount of  
22 the liability" -- sorry -- "the entire amount of its  
23 utility deposit to the debtor."

24 That's been removed from the order.

25 THE COURT: All right. And does anyone else wish to



1 be heard on this motion?

2 (No verbal response.)

3 THE COURT: All right. I will be pleased to grant it.  
4 And I'll note it's an interim order. We'll still have to fill  
5 in a date for the final hearing, which we can discuss in a  
6 little but. But this is keeping in the practice which this  
7 Court has found to be very useful and, generally, not attached.  
8 And I'll be pleased to grant the motion and sign the order in  
9 the form proposed.

10 MR. KEBRDLE: Thank you, Your Honor.

11 THE COURT: And as revised, I should add.

12 MR. KEBRDLE: Okay. The second item on the agenda is  
13 the application to retain AlixPartners as claims agent,  
14 balloting agent, and noticing agent.

15 Again, we believe this is fairly customary relief for  
16 a first-day request. And we believe that the company's  
17 arrangement with AlixPartners is -- should be considered  
18 standard, and there's no unusual terms or provisions in the  
19 application.

20 We do know, as the U.S. Trustee pointed out, that we -  
21 - and when we initially submitted the request, Your Honor, we  
22 unintentionally submitted an outdated form of the order for  
23 AlixPartners. It did not comply with the Court's claims agent  
24 protocol. So, accordingly, we worked with AlixPartners, we've  
25 revised -- excuse me -- revised the proposed order; so that it

1 now conforms with the Court's claims agent protocol.

2 THE COURT: All right. I see there are a lot of  
3 changes, obviously, on the black-line, and I'm -- I'll assume  
4 that -- without reading them all, that this is now in the  
5 appropriate form of order. Is that right, Mr. Buchbinder?

6 MR. BUCHBINDER: Your Honor, Dave Buchbinder for the  
7 record.

8 Yes, Your Honor. I compared the revised order to the  
9 protocol form on the Court's website, and it does conform.

10 THE COURT: Thank you, Mr. Buchbinder.

11 All right. I will be pleased to, as well, grant that  
12 motion.

13 MR. KEBRDLE: Thank you, Your Honor.

14 The third item on the agenda is the wage motion.

15 THE COURT: Yes.

16 MR. KEBRDLE: This is, again, a very standard request,  
17 but very important request for first-day relief. It goes  
18 without saying that it's very important to keep the morale of  
19 the debtor's employees up; that they receive payments and allow  
20 the debtor to continue operating and preserve its going-concern  
21 value.

22 Here, the debtor is seeking to pay the employees'  
23 accrued, but unpaid wages, which are a small portion -- are  
24 still -- are out there, that were accrued prepetition, which  
25 I'll mention here in a second, as well as the benefits, and to

1 continue making post-petition payments of such wages and  
2 benefits.

3 As my partner Mr. Cunningham mentioned, at the end of  
4 May -- the debtor is current through the end of May, including  
5 some employees that were let go. And so all that really -- all  
6 of the prepetition amounts that are owing to employees are for  
7 the couple of days in June, leading up just prior to the  
8 petition date. The debtor estimates that that's approximately  
9 \$50,000 --

10 THE COURT: Okay.

11 MR. KEBRDLE: -- of prepetition -- unpaid prepetition  
12 wages.

13 Additionally, there's no single employee that -- we  
14 understand that -- the debtor submits that there's no single  
15 employee that is owed more than the twelve-thousand-four-  
16 hundred-and-seventy-five-dollar cap under Section 5074 of the  
17 Bankruptcy Code.

18 As far as the debtor's -- the estimated monthly -- I'm  
19 sorry. Pardon me.

20 Prior to the petition, the debtor's aggregate biweekly  
21 payroll obligations were averaging approximately \$550,000;  
22 however, this is prior to the reduction in work force. And  
23 after the reduction in work force, and taking into account the  
24 employees that we are hopeful to reinstate shortly, that  
25 biweekly amount should be approximately \$375,000.

1           Additionally, the debtor's employees have average  
2 monthly reimbursable expenses of approximately \$300,000. The  
3 debtor believes that it's current through the petition date.  
4 That number is -- may seem somewhat high, but it covers -- a  
5 lot of -- the debtors have employees that are out in the field,  
6 traveling and making sales calls, and things like that.

7           Additionally, the debtor's average monthly employee  
8 benefits prior to the reduction was approximately \$138,300.  
9 And again, the debtor believes that it's current as of the  
10 petition date. And with the reduction in work force, it should  
11 be approximately \$100,000.

12           THE COURT: Okay.

13           MR. KEBRDLE: Further, the debtor also has a limited  
14 401(k) contribution program, where it contributes three percent  
15 of gross pay. Prior to the reduction in the work force, the  
16 average monthly amount of that contribution was about \$35,000.  
17 And again, we believe that it's going to be somewhat lower now  
18 that the work force has been reduced.

19           And currently, the debtor estimates that no more than  
20 \$5,000 in contributions have accrued prior to the petition  
21 date.

22           Again, we did receive comments from the U.S. Trustee.  
23 We believe that we've accepted them, and that we've resolved  
24 his concerns. In particular, we included a statement making  
25 clear that nothing in the order approving the employee wages

1 motion approves any payment to any person that may implicate  
2 the provisions of 503(c) of the Bankruptcy Code.

3 THE COURT: Yes. Good.

4 MR. KEBRDLE: Additionally, we received another  
5 comment, I believe, from Bank of America, and we inserted a  
6 statement -- or a commitment by the debtor to limit the  
7 balances outstanding under its corporate cards with Bank of  
8 America to the prepaid credits that are held by Bank of America  
9 in respect of such cards; and also to close and pay off all of  
10 those corporate cards by no later than August 5th of 2013,  
11 unless the debtor and Bank of America can reach a mutually  
12 acceptable agreement.

13 THE COURT: Very well. All right. Thank you, Mr.  
14 Kebrdle.

15 Anyone else?

16 (No verbal response.)

17 THE COURT: I am certainly satisfied that there is,  
18 indeed, the necessity for this relief that's been requested,  
19 based upon the immediate and irreparable harm that would  
20 result, of course, if the Court did not grant the relief. And  
21 that is supported by the Myers declaration, and I will be  
22 pleased to grant the motion and sign the order in the revised  
23 form.

24 MR. KEBRDLE: Thank you, Your Honor.

25 THE COURT: Sure.

1 MR. KEBRDLE: Okay. The fourth item on the agenda is  
2 the debtor's cash management motion.

3 The debtor seeks authority to continue to use its  
4 existing cash management system, to use its existing bank  
5 accounts, use its existing business forms without having to  
6 include the stamp on it that it's a debtor-in-possession. And  
7 also, it's also seeking -- the debtor is also seeking waiver of  
8 the investment and deposit requirements.

9 With respect to its cash management system, debtor  
10 requests that it be permitted to continue operating that in the  
11 ordinary course of business. The debtor is a large enterprise,  
12 it has complex operations, and any disruption in their cash  
13 management procedures could hamper their efforts to preserve  
14 and enhance the value of the estate, which would be detrimental  
15 to creditors.

16 With respect to the bank accounts, debtor also  
17 requests that it not be required to open new accounts. Its  
18 current bank accounts are included as Exhibit A to the cash  
19 management motion. Those consist of a lock box account, in  
20 which -- into which it receives its accounts receivable. It  
21 also has a checking account for general operating purposes and  
22 disbursements that it makes, and it also has a checking account  
23 for payroll expenses.

24 As I mentioned, the debtors are seeking to be able to  
25 use up the remainder of their business forms, and not be

1 required to replace those with ones that have a designation of  
2 "debtor-in-possession," as it would cost a significant amount  
3 of money, and they do not produce their own forms.

4 And finally, the debtor requests a waiver of the  
5 strict application of the investment and deposit requirements  
6 under Section 345(b) of the Bankruptcy Code. The debtor  
7 submits that the banks where it maintains its accounts are  
8 financially stable institutions, and the debtor's deposits are  
9 proven and should be permitted to continue.

10 THE COURT: All right.

11 MR. KEBRDLE: Okay. And then, again, we've received  
12 some comments from the U.S. Trustee, which we've accepted.

13 THE COURT: And I see that they are underlined in the  
14 black-line.

15 One question I have for you, Mr. Kebrdle.

16 MR. KEBRDLE: Yes, sir.

17 THE COURT: There's a reference to intercompany  
18 transfers.

19 MR. KEBRDLE: There are -- yes.

20 THE COURT: Are there --

21 MR. KEBRDLE: And --

22 THE COURT: -- other subsidiaries or related -- you  
23 know, affiliated entities?

24 MR. KEBRDLE: Your Honor, there are two other  
25 affiliates that -- they have no business operations, and that's

1 the reason why there's only one debtor that's before you today.

2 THE COURT: Okay.

3 MR. KEBRDLE: The U.S. Trustee requested that we  
4 include the language, and so we did include it.

5 THE COURT: Very well. That's fine. In an abundance  
6 of caution, why not?

7 Anyone else?

8 (No verbal response.)

9 THE COURT: All right. I'll be pleased here, too, to  
10 grant this motion as revised and -- sign the order as revised,  
11 I should say.

12 MR. KEBRDLE: Thank you, Your Honor.

13 Okay. The fifth item on the agenda is the debtor's  
14 motion to pay trust fund taxes.

15 THE COURT: Right.

16 MR. KEBRDLE: Another relatively standard request on  
17 the first day.

18 The debtor seeks authority only to pay the actual  
19 trust fund taxes that it has, including sales, use, and other  
20 similar-type trust fund taxes where the money that it's holding  
21 is actually not property of the debtor.

22 The debtor estimates that the total amount of  
23 prepetition trust fund taxes that it owes to various taxing  
24 authorities will not exceed \$350,000 at this point.

25 THE COURT: Right.



1 MR. KEBRDLE: The debtor proposes that it continue its  
2 ordinary course of business practice of paying these taxes as  
3 they come due, and to the extent that there's adequate funds  
4 available to make those payments.

5 And again, we received -- I think we received very  
6 minor -- an incredibly minor comment to the order from the U.S.  
7 Trustee, which we did include.

8 THE COURT: Very well.

9 Yes, Mr. Buchbinder.

10 MR. BUCHBINDER: Your Honor, Dave Buchbinder. Just to  
11 complete the record --

12 THE COURT: Yes.

13 MR. BUCHBINDER: -- what we had requested from the  
14 debtor in connection with this motion was simply some backup  
15 itemization of the amount of taxes alleged due, because the  
16 amount in the trust fund motion was significantly different  
17 from the amount represented in the employee wage motion.

18 THE COURT: Right.

19 MR. BUCHBINDER: And we wanted to confirm that the tax  
20 deposits were current and what they were. They are  
21 substantially current, and the difference -- or the difference  
22 in amounts is at a significant amount of the trust fund taxes,  
23 on sales-type taxes owed to various jurisdictions.

24 THE COURT: Very well.

25 MR. KEBRDLE: That's correct.

1 THE COURT: Thank you for that clarification, Mr.  
2 Buchbinder.

3 I am pleased to grant the motion, sign the order in  
4 the form revised and submitted to the Court. You know, this,  
5 again, is a matter whereby there would be immediate and  
6 irreparable harm in the absence of granting the relief, so the  
7 relief will be granted.

8 MR. KEBRDLE: Thank you, Your Honor.

9 The sixth item on the agenda is the debtor's insurance  
10 motion.

11 THE COURT: Yes.

12 MR. KEBRDLE: Again, a standard request on the first  
13 day and, again, important for the debtor's business, and so  
14 that it can preserve its estate and continue operating as a  
15 going concern.

16 The debtor seeks authorization under this motion to  
17 maintain insurance coverage levels required under its corporate  
18 risk program, including authority to revise, extend,  
19 supplement, renew, or change the coverage as needed; and also,  
20 to pay prepetition and post-petition obligations that are  
21 associated with those insurance policies.

22 Additionally, the debtor requests that the Court  
23 prevent its current insurance carriers from giving any notices  
24 of termination or otherwise modifying or canceling those  
25 policies without first obtaining relief from the automatic

1 stay.

2 The total annual premiums under the debtor's 2013  
3 insurance policies is equal to \$573,000, four hundred -- sorry  
4 -- \$573,481. Debtor estimates that premiums of approximately  
5 \$112,000 are owing under its corporate risk program for the  
6 remainder of its current policy period.

7 Let's see. Again, we received comments from the U.S.  
8 Trustee, which we accepted. The original form of order was  
9 changed, so that the debtor is authorized to pay the  
10 prepetition amount related to its insurance policies, in the  
11 amount of a cap of \$50,000.

12 THE COURT: Yes. All right. Anyone else wish to be  
13 heard?

14 (No verbal response.)

15 THE COURT: Well, you've got to have insurance, and  
16 the U.S. Trustee would make you have insurance if you didn't  
17 want to, and I'll be pleased to grant this relief, as  
18 requested.

19 MR. KEBRDLE: Thank you, Your Honor.

20 The seventh item on the agenda is the debtor's request  
21 to preserve and continue to honor its customer rebate program.

22 THE COURT: Yes.

23 MR. KEBRDLE: The debtor has a customer rebate  
24 program, under which its participating customers receive  
25 periodic cash rebates in exchange for remaining loyal to the

1 debtor and giving the debtor its business -- their business.  
2 On average, approximately \$30,000 accrues per month on account  
3 of the customer rebate program. The debtor estimates that its  
4 outstanding amount in obligations under its customer rebate  
5 program are \$221,000, as of the petition date.

6 The debtor believes that the program is proven to be  
7 very successful and is responsible for generating a lot of good  
8 will, repeat business, and increasing its net revenues.  
9 Accordingly, the debtor submits that it should be permitted to  
10 continue honoring that rebate program.

11 And in this, we did submit this to the U.S. Trustee,  
12 the proposed form of order, and did not receive comments back.  
13 But we did have one change, Your Honor, where we had a typo,  
14 where we had requested the cap to be \$105,000, when it should  
15 have been the \$221,000.

16 THE COURT: Exactly. All right. That change has been  
17 made.

18 Anyone wish to be heard?

19 (No verbal response.)

20 THE COURT: I will be pleased to grant the motion.

21 MR. KEBRDLE: Great. Thank you, Your Honor.

22 THE COURT: You bet.

23 MR. KEBRDLE: With that, my partner, John Cunningham,  
24 is going to do the remainder of the items on the agenda.

25 THE COURT: All right. Thank you, Mr. Kebrdle.

1 MR. KEBRDLE: Thank you.

2 (Participants confer.)

3 THE COURT: I think we're on Number 8 now, Mr.  
4 Cunningham, and --

5 MR. CUNNINGHAM: Yes. Before we get to Number 8, I  
6 didn't know whether I should interrupt Mr. Kebrdle or not. I  
7 did want to make -- and maybe I should have made it in the  
8 opening. One thing I wanted to disclose to the Court that the  
9 debtors are aware of is that the debtor's current CEO, Richard  
10 DiStasio, he has -- he's been, well, for almost two years, our  
11 CEO. He, himself, has a -- I would call it a severance  
12 arrangement with the current equity holders Kelso and Pegasus,  
13 that would provide he would be paid \$500,000 on termination of  
14 his employment with the debtors.

15 The debtors did not negotiate that agreement. That is  
16 strictly his agreement with them; that is not an obligation of  
17 the estate. But I wanted the Court and other parties to be  
18 aware of it. Quite frankly, we didn't know if we -- when we  
19 were putting the pleadings together, where that disclosure  
20 would be made. I know we were aware of it, we wanted to put it  
21 out there.

22 I don't -- my personal view is I don't think it  
23 affects anything. It's just a matter of disclosure that we  
24 have a severance arrangement that is between the equity  
25 sponsors and Mr. DiStasio.

1 THE COURT: I don't know if Mr. Buchbinder was aware  
2 of that fact, and --

3 MR. BUCHBINDER: Your Honor, I was not. And I will  
4 just simply say that it's not before the Court this afternoon.

5 THE COURT: That's true.

6 (Participants confer.)

7 THE COURT: All right. Thank you, Mr. Buchbinder.

8 MR. CUNNINGHAM: We would agree with that.

9 THE COURT: Thank you.

10 You know, I have a question for you on these lost  
11 pallets, Mr. Cunningham.

12 MR. CUNNINGHAM: Yes.

13 THE COURT: Is there a deposit that parties make in  
14 order to use the -- to rent the pallets, or anything of the  
15 like?

16 MR. CUNNINGHAM: I have asked the same issue, and  
17 we've asked the same points, as to whether or not, like when  
18 you're renting any items --

19 THE COURT: Right.

20 MR. CUNNINGHAM: -- like Blockbuster rents videos, if  
21 you don't return them, you got to pay for them.

22 There is a lot of questions that have been raised by  
23 our various customers, when these lost pallet issues arise, as  
24 to whether or not they are obligated for lost pallets; whether  
25 or not their sole obligation is to pay the rental income

1 derived when they control the pallets; and then, once it leaves  
2 their dominion and control, it's out there, and the risk of  
3 loss transfers.

4           You know, clearly, we've had -- we were -- we've been  
5 aware of a number of customers who we've had that we believe  
6 have our pallets and have not returned them. We've sent  
7 invoices to them, for the full replacement value of these  
8 pallets. That has engaged in, you know, a lot of dialogue.  
9 There have been numerous settlements prepetition that have been  
10 made with those customers, cash settlements, that would resolve  
11 those lost pallet issues.

12           We've had certain of our transport -- transportation  
13 orders; non-Ryder transportation providers, that we believe  
14 have lost our pallets, or have taken our pallets. And we've  
15 actually commenced one litigation against them, to recover  
16 them, basically for converting our pallets.

17           So there's no question the loss of 3 million pallets  
18 is a staggering number and an incredible issue for us to deal  
19 with. We have been thinking of ways in this bankruptcy case to  
20 use the power of the Court to effectuate a possible program  
21 that would be far more effective than what we've done  
22 prepetition.

23           That probably gets us to Item No. 8, because I can say  
24 we are not -- we have made amendments to that motion. We are  
25 only seeking the automatic stay provisions. We've received

1 comments from Mr. Buchbinder. We've agreed to strip out, so to  
2 speak, any mention of turnover with respect to that comfort  
3 order. So this is Agenda Item No. 8.

4 It's simply an order that repeats the provisions of  
5 the automatic stay. We do think it's important, though, Your  
6 Honor, to have that order. As Your Honor saw this morning, you  
7 know, we think parties -- since our pallets touch the hands of  
8 so many people, it is, from our point of view, very important  
9 that they get this order and we get a signature from Your Honor  
10 on it. And again, it's strictly a comfort order; it repeats  
11 Section 362 of the code. And you know, by tailoring it  
12 strictly to the automatic stay, Mr. Buchbinder has indicated  
13 we've resolved his concerns.

14 THE COURT: Very well. Do you have black-line  
15 versions of the orders that you're presenting, by any chance,  
16 Mr. Cunningham.

17 MR. CUNNINGHAM: We do. Hang on, Your Honor.

18 (Participants confer.)

19 MR. CUNNINGHAM: Your Honor, may I approach?

20 THE COURT: Of course. You sure may. Thank you.  
21 Thank you, sir. All right. I see. Very well. Okay.

22 MR. CUNNINGHAM: Thank you, Your Honor.

23 THE COURT: Anything further for -- I saw Mr.  
24 Buchbinder start to rise.

25 MR. BUCHBINDER: Your Honor, I simply wanted to note



1 that, in the order that was originally proposed, the order  
2 sought relief that would have required in at least two  
3 instances an adversary proceeding. Our discussions with  
4 counsel led me to conclude that what they were really looking  
5 for was a comfort order --

6 THE COURT: Right.

7 MR. BUCHBINDER: -- which this now is.

8 And I would point out to the Court one provision that  
9 goes slightly beyond simply mouthing most of the provisions of  
10 Section 362(a), and that is the paragraph on Page 3 that:

11 "Any entity that receives a copy of this order shall  
12 be deemed to have received actual notice of the  
13 automatic stay."

14 And under the facts and circumstances that have been  
15 represented, that does not appear to be inappropriate in this  
16 instance, as it will serve as a record as to who may or may not  
17 have received actual notice.

18 THE COURT: Very well. Okay. Thank you. Thank you,  
19 Mr. Buchbinder. And I agree with your comments, certainly, and  
20 the revisions. And I'll be pleased to sign the order, Mr.  
21 Cunningham.

22 MR. SIDHU: (Via telephone) Your Honor?

23 THE COURT: Yes.

24 MR. SIDHU: We wish to be heard on Item No. 8. My  
25 name is Sunny Sidhu --

1 THE COURT: Yes, sir.

2 MR. SIDHU: -- I'm from the Akerman Senterfitt law  
3 firm, and we represent CHEP USA and Pallet Companies, Inc,  
4 doing business as IFCO Systems.

5 THE COURT: All right.

6 MR. SIDHU: We don't -- we had one concern with the  
7 motion and the order as they were originally drafted. We  
8 believe that the revisions that were made afterwards have  
9 probably resolved that. We did talk to debtor's counsel about  
10 it a few hours ago. But I did want to bring out the issue in  
11 front of you, just to make sure it's noted. Let me give you  
12 some quick background.

13 CHEP and IFCO Systems are a little bit like iGPS, in  
14 that, you know, we're in the pallet industry and commerce. And  
15 the pallets make their way through distribution chains, and  
16 they eventually come back into the possession of CHEP and IFCO.  
17 And now some of those pallets do belong to iGPS. And I suspect  
18 that, of course, brings up the issue about lost pallets come  
19 into other companies.

20 But we want to make sure we get your pallets back.  
21 And basically, what's going on is we have various  
22 understandings with iGPS, where iGPS will get their pallets  
23 back from us. But what they do is they send, you know, their  
24 own delivery, you know, shipment people; I think Ryder and some  
25 other companies, and they pay for delivery and shipping

1 charges. And we have an agreement where, basically, IFCO and  
2 CHEP will receive a certain sum of money from iGPS based on the  
3 pallets that are returned.

4 You know, we obviously take no issue with returning  
5 the pallets back to iGPS, but we just wanted to make sure that  
6 nothing in this order affected our ability to, you know,  
7 perform in the ordinary course of business, you know, between  
8 the parties' actual receipt and return of pallets.

9 THE COURT: I certainly don't think anything comes  
10 close to that. I appreciate your position, of course.

11 Is there a written agreement between the two  
12 companies, Mr. Cunningham?

13 MR. CUNNINGHAM: There is, but I -- it's not before  
14 you, Your Honor.

15 THE COURT: Right. All right. I certainly think your  
16 comments are now part of the record, and I will be pleased to  
17 sign the order in the form presented.

18 MR. CUNNINGHAM: Thank you, Your Honor.

19 MR. WHITE: (Via telephone) Excuse me, Your Honor.  
20 Could I be heard?

21 THE COURT: And this is? I'm sorry.

22 MR. WHITE: My name is Larry White, I'm general  
23 counsel for Belacon.

24 THE COURT: Yes, Mr. White.

25 MR. WHITE: Yes. Thank you. Just (indiscernible)

1 Belacon has provided services to iGPS (indiscernible)  
2 acknowledge they owe us about \$4.5 million (indiscernible)  
3 provided through Belacon, that probably is in excess of  
4 (indiscernible) million dollars, which probably puts us as the  
5 party to have the most (indiscernible) iGPS. And we were not  
6 (indiscernible) of the bankruptcy from -- we've never received  
7 any pleadings. The first thing we received was this morning,  
8 some kind of notice that there was a hearing.

9           And unfortunately, what you're talking about now, as  
10 far as the terms of an automatic stay, we've not seen. So we  
11 aren't in a position to say -- there's no way to tell you  
12 whether we have an objection or not to the terms of what  
13 they've put in front of you.

14           And I will tell you what they have told us, which came  
15 to us as kind of -- didn't seem appropriate. And so we really  
16 can't say whether we -- we just need an opportunity to look at  
17 this. And here's what was told to us this morning:

18           First, the first thing this morning, at eight o'clock,  
19 I was on a conference call. They didn't tell me that there was  
20 a call with the Court at 9:15. They said make a conference  
21 call (indiscernible). And they told me that the Belacon  
22 contract had been terminated. I didn't find out until later,  
23 when I contacted our bankruptcy counsel -- he's on the line;  
24 Evan Altman -- that that wasn't true. And they told me our  
25 contract had been terminated. They wanted to renegotiate, you

1 know, all the terms of what -- of what we were doing. And  
2 then, you know, the terms of what they had filed started coming  
3 out.

4 Now our company utilizes somewhere between fifty to  
5 150 warehouses throughout (indiscernible). And sir, these are  
6 not people (indiscernible). These are guys that have gone out,  
7 put everything on the line, at least these warehouses  
8 (indiscernible). And they have put -- signed personal  
9 guarantees. These guys are all about ready to go down the  
10 tubes [sic]. And these guys, quite frankly, have been asking  
11 iGPS to get their pallets out of the warehouse, these  
12 warehouses, for now almost a year.

13 These people (indiscernible) services by iGPS, have to  
14 do the following:

15 They have to maintain somebody that can book loads.  
16 So their policy, a load is coming in, you got to ship a load  
17 out. They have to do that. That's (indiscernible).

18 They have to maintain somebody that will go to the  
19 dock (indiscernible) unload it with a forklift. Then they have  
20 to maintain somebody who will scan in those pallets  
21 individually. So these are all separate people.

22 Then when they come in physically, to sort them. They  
23 call it sortation [sic] criteria. You have to take each of  
24 these stacks of pallets, which are eighteen high, and go  
25 through them individually. It takes two guys. And when we

1 first started -- because we heard one of the guys say -- and I  
2 apologize (indiscernible) we just found this out. These  
3 laborers are in a very intensive labor process. And they  
4 (indiscernible). This is very intense for these guys. It's a  
5 lot of labor. And now we were told this morning that, if these  
6 guys didn't continue to do that, they were in breach of the  
7 bankruptcy  
8 court order.

9           You know, I don't know what to tell these -- all these  
10 warehouses. I can't tell them they're going to be paid. I  
11 can't -- and I'm not -- and all I want to do is be able to  
12 speak the truth to them, Your Honor. So that's what I'm -- you  
13 know, so if there is an order, I think I should be able to see  
14 it, and my counsel should be able to see it. We haven't had  
15 that opportunity. And I want to be able to speak the truth to  
16 my warehousemen; these guys, who have their life on the line  
17 for iGPS, everything on the line. And it's not just as simple  
18 as what has been represented.

19           There's parties that are here today (indiscernible)  
20 represented to you, they're very knowledgeable. But they don't  
21 know what I don't know. I've got a history of five years with  
22 this, Your Honor. And I can tell you things that are a lot  
23 different than what they said, but I don't want to. All I want  
24 to be able to do is tell you I want to have the ability to have  
25 my counsel see what this order is, and to determine whether or

1 not, you know, this is something that would impact -- will  
2 impact on these guys that are out there (indiscernible) have to  
3 pay money they don't have, they have not received for three  
4 months. And so I can't say at this juncture that  
5 (indiscernible) and I want to object (indiscernible) get an  
6 opportunity to.

7 And I apologize if I've gone on, and I would like to  
8 answer any questions you have, Your Honor.

9 THE COURT: All right. Mr. Altman?

10 MR. ALTMAN: Yes, Your Honor.

11 THE COURT: Did you -- have you seen the form of order  
12 that's before me?

13 MR. ALTMAN: I have not, Your Honor. And I would  
14 concur with Mr. White. We would like an opportunity to review  
15 it --

16 THE COURT: Mr. Cunningham.

17 MR. ALTMAN: -- prior to signing.

18 MR. CUNNINGHAM: I have no problem, Your Honor. In  
19 fact, as counsel, Mr. Schlerf, reminded me, all first-day  
20 orders here in Delaware are, technically, an interim order,  
21 subject to reconsideration by the Court.

22 THE COURT: Right.

23 MR. CUNNINGHAM: It is now simply an automatic stay  
24 comfort order --

25 THE COURT: That's right.

1 MR. CUNNINGHAM: -- just repeats the automatic stay  
2 and says nothing about Belacon. If they want to read that and  
3 line it up against the statute, I have no problem with that,  
4 Your Honor.

5 THE COURT: All right.

6 MR. CUNNINGHAM: But it is important that they not sit  
7 on that too long because we want to get it out into our  
8 network, and get it into the hands of people, the --

9 MR. ALTMAN: No, we're not interested in sitting on  
10 it. If we had a little bit of opportunity to do it, which we  
11 haven't -- and as long as it says what's being represented, I  
12 don't think there should be a problem.

13 THE COURT: All right. Let me set -- let me do this.  
14 I will enter this order, because I do think it is an  
15 appropriate order, unless there's something that I'm not  
16 understanding, that's different in this case than other cases.  
17 But I'll sign this order tomorrow morning at -- let's say at  
18 ten o'clock, unless I hear from someone that there is an  
19 objection.

20 MR. CUNNINGHAM: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. ALTMAN: Thank you, Your Honor. I think that it  
23 just -- final say. The concern is that we just want to make  
24 sure, by the order being entered, that there's nothing that is  
25 prejudicing my client on that --



1 THE COURT: All right.

2 MR. ALTMAN: -- in particular.

3 THE COURT: I appreciate that.

4 Now, for the future, I think -- you know, Mr. White is  
5 general counsel for the company. He really ought to leave it  
6 to his counsel to make argument. You know, I certainly  
7 understood his speaking, and this is a first-day matter, and a  
8 matter of great importance to Mr. White's company. But  
9 technically speaking, I don't believe that Mr. White is  
10 authorized to represent the corporation in a proceeding such as  
11 this, I think, having -- you know, having counsel.

12 MR. ALTMAN: Yes. Fair enough, Your Honor.  
13 Understood.

14 THE COURT: Okay.

15 MR. CUNNINGHAM: Thank you, Your Honor. I was going  
16 to raise the same point, because I knew Mr. White was  
17 represented by counsel. I had conversations with counsel.

18 THE COURT: Right.

19 MR. CUNNINGHAM: So it was going to be difficult to  
20 respond to the client's comments.

21 I would say, with respect to his comments, they  
22 probably go more to the rejection motion --

23 THE COURT: Yes.

24 MR. CUNNINGHAM: -- and other issues that are not  
25 before Your Honor.

1 I do know that counsel can -- when we get to the next  
2 motion, it's my understanding that we do have certain  
3 agreements with Belacon on the language in the form of that  
4 motion, so --

5 THE COURT: Okay.

6 MR. CUNNINGHAM: -- and order. So I'd like to go into  
7 that, and then counsel from Belacon can address issues with  
8 respect to that, and say whether I accurately reflect the  
9 agreements that my clients say they have reached with Mr. White  
10 and Belacon.

11 THE COURT: Very well.

12 MR. ALTMAN: But once again, Your Honor -- Evan Altman  
13 -- we have not had a chance to review that order. If there's  
14 an order ready to be proposed, we'd like to be able to review  
15 it.

16 MR. CUNNINGHAM: That's fine. I haven't even  
17 described yet to Your Honor what the --

18 MR. ALTMAN: No, understood. But I thought all the  
19 orders were being submitted. If they're not, that's fine.

20 THE COURT: All right.

21 MR. CUNNINGHAM: Okay. So Your Honor --

22 THE COURT: Yes.

23 MR. CUNNINGHAM: -- if I may.

24 THE COURT: Please.

25 MR. CUNNINGHAM: Agenda Item No. 9 is debtor's motion

1 for entry of an order authorizing payment of post-petition  
2 administrative expense priority claims of certain essential  
3 service providers.

4 THE COURT: Yes.

5 MR. CUNNINGHAM: Critically, Your Honor, this is not a  
6 critical vendor prepetition order.

7 THE COURT: Correct.

8 MR. CUNNINGHAM: We are not seeking payments of any  
9 prepetition claims whatsoever with respect to this motion.  
10 Instead, we are seeking relief with respect to the ability to  
11 pay early, to pay up -- "prepay," so to speak, which is outside  
12 the normal ordinary course of the terms that we have with these  
13 service providers. But it is critical that we have the ability  
14 to prepay. It's been agreed to by our DIP lender, it's in the  
15 budget, we have the amounts to pay it. But we need the ability  
16 to immediately prepay, to keep our network moving. And I can  
17 describe what that network is, Your Honor.

18 THE COURT: Sure. Please do.

19 MR. CUNNINGHAM: It generally falls into two  
20 categories: Transportation and storage.

21 On transportation, our principal transportation  
22 provider is Ryder --

23 THE COURT: Uh-huh.

24 MR. CUNNINGHAM: -- or I should say Ryder acts as the  
25 agent for the debtor. And among other things, they hire and

1 manage the transportation through third-party carriers, which  
2 we call in our motion "network carriers," that they contract,  
3 as our agent, on the debtor's behalf. And those network  
4 carriers invoice Ryder. Ryder then audits those invoices, and  
5 then it bills the debtor on a weekly basis.

6 Typically, Your Honor, for services, are four to six  
7 weeks in arrears. The debtors pay Ryder's invoice  
8 approximately twenty-one days after receipt. The weekly  
9 payment that we make to Ryder prepetition had been  
10 approximately five hundred to \$700,000 a week for the network  
11 carrier fees. And then we would also be -- pay a monthly  
12 management fee to Ryder on a per-pallet basis of approximately  
13 two hundred to \$250,000 per month, is my understanding.

14 We also have certain other transportation providers  
15 who are outside of the Ryder network. We have eight to ten, we  
16 call the "recyclers." We have eight to ten master agreements  
17 with recyclers, who then sell, then have arrangements with  
18 approximately another hundred carriers, who also provide --  
19 mostly it's pickup and return by those recyclers, that they  
20 perform. Those recyclers are independent carriers, and I  
21 believe their payment was approximately -- I have here \$80,000.  
22 I believe that's per month. Let me check with my client.

23 (Participants confer.)

24 MR. CUNNINGHAM: Yes, it's 80,000 per month. So  
25 that's the transportation side of iGPS.

1           The storage side, again, the biggest storage provider  
2 we have is Belacon. As I mentioned this morning, what they --  
3 what Belacon does is they -- we have a contract with Belacon,  
4 and Belacon then subcontracts with third-party depots, and  
5 those are the depots that have our pallets when they come in.  
6 They store them, they inspect them. They manage and service  
7 our pallets on both outbound and inbound. And so that  
8 comprises an exclusive network arrangement that we have, other  
9 than what I'll refer to as the "I-depots" [sic].

10           But sticking with the Belacon arrangement, the monthly  
11 payment that we have been making to Belacon has been  
12 approximately 1.7 million a month, and that's inclusive of the  
13 third-party depot fees, as well as Belacon's fee. Again, that  
14 contract is subject to a rejection motion. It has not yet been  
15 set for hearing.

16           As we discussed this morning, you know, that is still  
17 an executory contract. Performance is due. We recognize we  
18 have performance obligations, in terms of payment. That's what  
19 we're hoping with this motion, to satisfy payment of the post-  
20 petition amounts.

21           The storage arrangements that we have that are outside  
22 of Belacon are really the I-depots. And the I-depots are  
23 arrangements and agreements with customers that we have, and  
24 other retailers, who, to save costs, rather than for us to have  
25 to immediately, when the pallets are unloaded and they're

1 empty, that we always have to come and pick it up, they -- we  
2 have arrangements, innovative arrangements out there. It's  
3 with approximately fifty of these third-party retailers,  
4 manufacturers, et cetera, who will hold our pallets and store  
5 them for us. So as opposed to having to be picked up and sent  
6 to a Belacon storage center --

7 THE COURT: Uh-huh.

8 MR. CUNNINGHAM: -- they allow them to stay there.  
9 It's far more cost efficient, rather than always having to move  
10 them. And depending on location, it's all part of our network,  
11 to be able to redeploy pallets, and to be able to essentially  
12 use our own customer base and their customers, the retailers,  
13 as an additional source of storage of our pallets. It's very  
14 cost efficient.

15 THE COURT: Given the missing pallets, maybe it's not  
16 such a good idea. I don't know.

17 (Laughter.)

18 MR. CUNNINGHAM: Well, we typically kick them out of  
19 the I-depot program if they lose too many pallets, but ...

20 THE COURT: Okay.

21 (Laughter.)

22 MR. CUNNINGHAM: That cost to iGPS is approximately  
23 three hundred fifty to 400,000 a month, for the I-depots.

24 So Your Honor, we filed the motion seeking authority  
25 to have permission to pay or prepay the -- what we call the

1 "essential service providers" I just described. That would be  
2 on the transportation end, it would be Ryder and the recyclers;  
3 and on the storage end, it would be Belacon and the I-depots.

4 We had a provision in our motion and proposed order,  
5 which we have stricken. We are not requiring, in accepting  
6 payment, that any waivers of prepetition claims or liens or  
7 anything else be done. This is simply an advanced payment,  
8 strictly for post-petition services to be provided.

9 Obviously, from our concern, Your Honor, the debtor's  
10 risk is, we prepay for something, and we have to make sure we  
11 get it.

12 THE COURT: Sure.

13 MR. CUNNINGHAM: So there are elements of a critical  
14 vendor type of agreement that we have in here that requires  
15 them to perform upon receiving a payment, on no less favorable  
16 terms than we had prior to the petition date. And similar to  
17 what a critical vendor agreement would look like, if they don't  
18 perform and they take our money and, you know, there is a  
19 disgorgement obligation, then we can come back to Your Honor.  
20 Because Your Honor is approving payments in advance for  
21 services. If we don't get the services, that can be, you know,  
22 subject to us challenging the payments as an unauthorized  
23 payment, subject to disgorgement. So those provisions are put  
24 in there. It gives the debtor the ability to frame an  
25 appropriate arrangement and agreement.

1           We put in aggregate caps here, Your Honor, on a  
2 monthly basis, for each of the categories I just described.

3           THE COURT: Yes.

4           MR. CUNNINGHAM: Just so I can walk through it.

5           On the amended order, the first category is Ryder. We  
6 propose that the payments or prepayments that we make would not  
7 exceed for Ryder the amount of \$4,300,000, in the aggregate,  
8 per month to Ryder, including Ryder's management fee; again,  
9 solely with respect to post-petition services.

10           We would not exceed the amount of 2,400,000, in the  
11 aggregate, per month to Belacon, on account of, again, post-  
12 petition services.

13           We would not exceed 125,000 in the aggregate per month  
14 to recyclers on account of post-petition services.

15           And lastly, we would not exceed 400,000 in the  
16 aggregate per month to the I-depots; again, on account of post-  
17 petition services.

18           Again, that is the basis of this order, Your Honor,  
19 which kind of sets the framework, again, for the debtor to  
20 enter into agreements that are within the terms of this order.  
21 We would go out and negotiate appropriate terms in a separate  
22 agreement that Your Honor would authorize, but not direct us to  
23 do --

24           THE COURT: Right.

25           MR. CUNNINGHAM: -- in terms of making these payments.



1 THE COURT: Okay.

2 MR. CUNNINGHAM: But it allows -- it arms the debtor  
3 with the ability to go to our essential service providers and  
4 say, we've got the cash, we basically have the authority to  
5 prepay you, and continue to perform post-petition.

6 Now I can say that, coming into this hearing, my  
7 client advised me that they had been in negotiations with Mr.  
8 White and Belacon, and the -- and they had asked me to put on  
9 the record a summary of proposed terms that had not been signed  
10 yet. So going to Mr. White's comments, he's going to want to  
11 see the order black-lined that Your Honor has in front of you.

12 THE COURT: Yes.

13 MR. CUNNINGHAM: We recognize that he will need to see  
14 that. Mr. Buchbinder has seen it.

15 The proposed terms of the agreement, nobody has seen,  
16 and I'm just reading through them because my client negotiated  
17 this. Obviously, it's subject to documentation, as well. But  
18 I did want to read it, because it looks like, notwithstanding  
19 what happened this morning and the fact that we're back on, and  
20 it also looks like we have an interim agreement, at least with  
21 Belacon. And let me describe and read to Your Honor what my  
22 client has said is an agreement. And this agreement would fit  
23 within the parameters of the order I just walked the Court  
24 through.

25 THE COURT: All right. In other words, this will be

1 an additional provision that is not in here now?

2 MR. CUNNINGHAM: Yeah. This will not be an order.  
3 The order would authorize the debtors to enter into an  
4 agreement, as long as they're consistent with Your Honor's  
5 order.

6 THE COURT: I'm sorry. I understand.

7 MR. CUNNINGHAM: This is the outlines of what that  
8 agreement --

9 THE COURT: Right.

10 MR. CUNNINGHAM: -- would look like.

11 THE COURT: Sure.

12 MR. CUNNINGHAM: And again, meeting the requirements  
13 of the order.

14 Debtors propose to wire advance payments to Belacon to  
15 cover post-petition services by Belacon and the third-party  
16 depots for the month of June. My understanding is we would --  
17 as soon as we document this, we would be making that wire.

18 Belacon would secure written confirmation from the  
19 third-party depots that, if they receive payments, they will  
20 continue to perform post-petition through June 30th. So that's  
21 consistent with the --

22 THE COURT: Uh-huh.

23 MR. CUNNINGHAM: -- you know, the payment for the  
24 month of June. The third-party depots also are going to  
25 receive a substantial portion of that payment because we pay it

1 to Belacon and then -- because they're like the general  
2 contractor, and then they pay it out to the subcontractors.

3 THE COURT: Right.

4 MR. CUNNINGHAM: So, at the month-end, we will true-up  
5 the payments versus the services actually performed post-  
6 petition, and the -- let's see.

7 (Participants confer.)

8 MR. CUNNINGHAM: Okay. It says here the order  
9 provides -- and clearly, since we just got this, I don't think  
10 it's reflected in the order I just handed out. It looks like  
11 an additional provision I need to add to that order, Your  
12 Honor. It says:

13 "The order will provide that the portion of advanced  
14 payments owed to the depots will be held in trust by  
15 Belacon for the period from which Belacon receives the  
16 funds until Belacon pays the depots."

17 And what I interpret that -- and I know what that's  
18 referring to, Your Honor. Basically, that means that, if we  
19 give money to Belacon --

20 THE COURT: You bet.

21 MR. CUNNINGHAM: -- we recognize that a large portion  
22 of that money is for the benefit of the third-party depots. So  
23 they are agreeing that those advance payments that we make to  
24 Belacon that are supposed to go to the third-party depots are  
25 being held in trust, basically, by Belacon for those depots,

1 essentially.

2 THE COURT: Sure.

3 MR. CUNNINGHAM: It's not their property, that amount;  
4 only what's owed to Belacon is their amount. We're paying  
5 them, and they're agreeing that they're holding that money in  
6 trust for the subcontracted third-party depots.

7 THE COURT: Okay.

8 MR. CUNNINGHAM: So we will have to add that  
9 provision, Your Honor, into the order.

10 THE COURT: And I assume the depots are what Mr. White  
11 was referring to as the "guys," essentially?

12 MR. CUNNINGHAM: That's correct.

13 THE COURT: Okay.

14 MR. ALTMAN: Well, I -- Your Honor, Evan Altman. I  
15 believe what he was referring to was the, you know, individuals  
16 or people, kind of mom-and-pop operations, related to this.

17 THE COURT: Okay. Thank you. You're certainly going  
18 to be given an opportunity, Mr. Altman, as well as Mr. White,  
19 to review this.

20 MR. ALTMAN: Well, that was -- Your Honor, that was  
21 our next concern. We just want to make sure because, as I  
22 said, I'm new into this, haven't had a chance, and I'm not  
23 going to confer with my client on the line here, obviously.  
24 But he's the one who had discussions with general counsel and  
25 principals of the debtor. I just want to make sure that we're

1 all on the same page, and have a chance to review it.

2 MR. CUNNINGHAM: Yes.

3 THE COURT: That's right.

4 MR. CUNNINGHAM: And also, Your Honor, where we were  
5 given an authority to pay on a monthly basis, it's also my  
6 understanding that the business deal with Belacon is that  
7 payments would be made in two parts. It would be the initial  
8 payment of a million and a half now, with a second payment of  
9 approximately five to \$700,000 by June 14th, which is  
10 consistent, again, with the total amounts Your Honor was  
11 authorizing us --

12 THE COURT: Uh-huh.

13 MR. CUNNINGHAM: -- up to 2.4 million in the aggregate  
14 to Belacon, to the extent we needed it. This would be 1.5  
15 million now, and approximately five to 700,000, you know, on or  
16 around the week of June 14th.

17 THE COURT: All right.

18 MR. CUNNINGHAM: That's going to be the payment terms.

19 The other provisions for the proposed Belacon deal to  
20 be documented, the agreement to be documented, they wanted that  
21 our proposed order would remove any reference to waiving  
22 prepetition claims. That's already been removed, as I  
23 described to Your Honor.

24 Provider that, if the depot performs post-petition for  
25 the entire month for which advanced payment is made, it keeps

1 those payments. Certainly, that's the case. No problem with  
2 that.

3           They must disgorge any advance payments made for post-  
4 petition month in which the depot services are not performed.  
5 Again, the order already provides for that, Your Honor. Again,  
6 if the depots don't perform, there is a disgorgement right;  
7 that the debtors have to come before Your Honor and ask Your  
8 Honor to enter an order disgorging --

9           THE COURT: Right.

10           MR. CUNNINGHAM: -- the payments that were made.

11           So let's see. The last point, Your Honor, that my  
12 client handed up to me is we have agreed to negotiate with  
13 Belacon regarding any services post-June. We have no way, yet,  
14 of knowing how that works out because we also have the pending  
15 motion to reject, so -- which has not yet been set for a  
16 hearing.

17           THE COURT: Okay.

18           MR. CUNNINGHAM: But I think there's been at least an  
19 agreement to try to agree on terms post-June, to see if we can  
20 negotiate something. So there's been an agreement to  
21 negotiate.

22           So those are the terms with -- proposed terms in an  
23 agreement with Belacon. We do need to make one change with  
24 respect to the order. As I indicated at the top, Your Honor,  
25 we recognize that Belacon would like to see the revised order.

1 I'm sure Ryder and its counsel would like to see the revised  
2 order. Of course, Mr. Buchbinder has to see the revised order.  
3 So I would propose --

4 THE COURT: I wouldn't even mind seeing it.

5 MR. CUNNINGHAM: I think Your Honor --

6 (Laughter.)

7 MR. CUNNINGHAM: Your Honor has to see it. And if you  
8 don't accept it, we're all in trouble.

9 THE COURT: All right.

10 MR. CUNNINGHAM: So we would then propose, Your Honor,  
11 with respect to this order, to submit it on certification.

12 THE COURT: That would be fine -- Mr. Carroll, I think  
13 you're here on behalf of Ryder. Is that correct?

14 MR. CARROLL: I am, Your Honor. Good afternoon.

15 THE COURT: Good afternoon. Mr. Jonathan Carroll.

16 MR. CARROLL: Yes. Your Honor, I think Mr. Cunningham  
17 did an excellent job in describing this last motion, but my  
18 client wanted to make a few points.

19 We did raise some informal objections, principally  
20 with respect to what were defined as the "claim payment  
21 conditions" within the motion. Those, by and large, have been  
22 removed. The principal one was the waiver of the prepetition  
23 claim --

24 THE COURT: Oh.

25 MR. CARROLL: -- that was contained in there. And in

1 the last iteration that I saw of the order, that had been  
2 removed.

3 THE COURT: Yes.

4 MR. CARROLL: But Ryder wanted to make some things  
5 clear for the record at the outset, so there's no confusion  
6 down the road. And this was referenced by Mr. Cunningham, but  
7 I just want to stress it.

8 Ryder acts as an agent for the debtor.

9 THE COURT: Uh-huh.

10 MR. CARROLL: The carriers are, in fact, the creditors  
11 of the debtor. We cannot compel the carriers to accept the  
12 cargo of the debtor. You know, we will use our efforts to  
13 comply with our contractual arrangements, but we want to make  
14 it clear that nothing in this order shall be deemed or  
15 construed to be an affirmative obligation on the part of Ryder  
16 to cause those carriers to accept that cargo. And I believe  
17 the debtor understands that, and I think Mr. Cunningham made  
18 reference to it several times. But I just want to make that  
19 abundantly clear for the record, Your Honor.

20 THE COURT: All right. Mr. Cunningham, any thoughts  
21 on that point? Thank you, Mr. Carroll.

22 MR. CUNNINGHAM: We agree with that position, Your  
23 Honor.

24 THE COURT: All right. Very well. Okay. Then it  
25 sounds like I will await a certification and proposed form of



1 order tomorrow or whenever; and, assuming there's agreement, I  
2 would be certainly prepared to sign that order.

3 MR. CUNNINGHAM: Yes, Your Honor. Thank you very  
4 much.

5 THE COURT: Of course.

6 MR. CUNNINGHAM: So the next item --

7 MR. ALTMAN: Thank you, Your Honor. We'll look  
8 forward to receiving that.

9 THE COURT: All right. Very well. Thank you, Mr.  
10 Altman.

11 MR. CUNNINGHAM: And Your Honor, the next item is the  
12 DIP financing.

13 THE COURT: Why don't we take a short break here.

14 MR. CUNNINGHAM: Yes.

15 THE COURT: I think it would be a good time to do that  
16 and -- maybe a ten-minute break, and then we'll resume.

17 MR. CUNNINGHAM: Very well. Thank you, Judge.

18 THE COURT: All right. Thank you. We'll stand in  
19 recess ten minutes.

20 (Recess taken at 5:36 p.m.)

21 (Proceedings resume at 4:12 p.m.)

22 (Call to order of the Court.)

23 THE COURT: Good afternoon again, and please be  
24 seated. Almost evening now.

25 Mr. Cunningham.

1 MR. CUNNINGHAM: Your Honor, the next agenda item is  
2 Number 10, and that is the DIP motion. And with respect to  
3 that motion, Your Honor, I'd like to cede the podium to my  
4 partner Scott Greissman.

5 THE COURT: All right. Thank you. There you are.  
6 I'm sorry. Good to see you again.

7 MR. GREISSMAN: Nice to see you, Judge. Scott  
8 Greissman, White & Case --

9 THE COURT: Yes, sir.

10 MR. GREISSMAN: -- proposed counsel to the debtors.

11 Your Honor, if you don't mind, I think that the best  
12 way to proceed would be for me to very briefly go through the  
13 terms of the DIP facility, or at least the main terms -- it's  
14 actually pretty straightforward -- mention a few of the  
15 extraordinary provisions, which we've identified clearly in the  
16 motion, as well.

17 THE COURT: Yes. Yes.

18 MR. GREISSMAN: Then perhaps, I think the best way to  
19 proceed is to cede the podium to Mr. Buchbinder, who raised a  
20 number of issues with respect to the facility.

21 THE COURT: Right.

22 MR. GREISSMAN: And the -- and then thereafter, most  
23 likely, the DIP lender, and perhaps the prepetition lender's  
24 counsel, who will probably respond. Is it okay to proceed that  
25 way?

1 THE COURT: That's fine.

2 MR. GREISSMAN: Okay.

3 THE COURT: I think that makes a lot of sense.

4 MR. GREISSMAN: Thank you, Your Honor.

5 So it is a straightforward DIP facility that the  
6 debtors are proposing -- that the debtor is proposing. Excuse  
7 me. The DIP lender is Crystal Financial.

8 THE COURT: Right.

9 MR. GREISSMAN: It is a twelve-million-dollar DIP  
10 facility; 6 million will be available today, if Your Honor  
11 signs the interim order.

12 The maturity date is August 30th, 2013. It's a short  
13 facility, and the reason essentially is to finance the case  
14 through a sale, as Mr. Cunningham explained.

15 There are a number of potential acceleration events  
16 and milestones. And if Your Honor would like, you can refer to  
17 Section 6.21, which addresses the various milestones relating  
18 to a sale, at 6.21 of the credit agreement. And effectively,  
19 there's a bunch of milestones; filing of motions, which have  
20 occurred today --

21 THE COURT: Bid procedures and the like.

22 MR. GREISSMAN: Bid procedures --

23 THE COURT: Yes.

24 MR. GREISSMAN: -- stalking horse, et cetera, et  
25 cetera.

1 THE COURT: Yes.

2 MR. GREISSMAN: And culminating, hopefully, on a sale  
3 on or before July 9th, 2013. So the idea is that this is a  
4 short case. And I think that a number of the terms are as a  
5 result of the limited nature, the limited tenor of the  
6 agreement, and the limited purpose of the facility are fairly  
7 strict. One of the -- you know, that's the overall theme, I  
8 think, that Mr. Buchbinder is going to raise with respect to  
9 these various objections. We think they're properly so, given  
10 the limited nature of the case here, but we'll leave that to  
11 the other parties to address. But I wanted Your Honor to  
12 understand our view of how this came about and how this should  
13 proceed.

14 The interest rate is LIBOR plus eight percent.

15 THE COURT: Yes.

16 MR. GREISSMAN: There is a fee of \$775,000. That  
17 actually is an interesting -- it's formulated in an interesting  
18 way. A portion of that is payable today, but is subject to  
19 being refunded if a sale occurs. So it's \$465,000 today; three  
20 hundred and ten will be returned if there's a sale. There's a  
21 second installment fee of another 310,000, but again, that is  
22 waived if a sale occurs. So, if everything goes according to  
23 plan, the fee actually will be -- will be quite limited.

24 There's a --

25 THE COURT: And it doesn't require the sale to be to

1 the stalking horse.

2 MR. GREISSMAN: No.

3 THE COURT: Is that correct?

4 MR. GREISSMAN: No. It has to be --

5 THE COURT: In other words, any --

6 MR. GREISSMAN: -- a permitted -- a permitted sale --

7 THE COURT: Correct.

8 MR. GREISSMAN: -- such as the --

9 THE COURT: That's right.

10 MR. GREISSMAN: The unused line fee is *de minimis*, .75  
11 percent, which, over the course of the term of the facility,  
12 comes out to something like \$12,000.

13 THE COURT: And I assume -- let me asked -- you  
14 shopped the financing?

15 MR. GREISSMAN: I think that we had limited options.  
16 Effectively, it was B of A, the existing -- the existing  
17 lender, and the purchaser, and those were the two options that  
18 were very heavily negotiated. Mr. Cunningham alluded to the  
19 heated and probably, for him, fairly painful nature of the  
20 negotiations over the last couple of weeks. I think both  
21 transactions were negotiated.

22 So, in a sense, the answer is yes, there were two  
23 options that were considered, almost until the very last  
24 moment, when the company and the banks, prepetition lenders,  
25 settled on the winter -- the --

1 THE COURT: Crystal.

2 MR. GREISSMAN: The Crystal facility.

3 THE COURT: Okay.

4 MR. GREISSMAN: So there is a carve-out, Your Honor,  
5 for the U.S. Trustee, for the debtor's professionals, for  
6 Houlihan Lokey separately. And there are DIP liens covering  
7 all the assets, including avoidance actions. We've highlighted  
8 that. Adequate protection liens for diminution in value with  
9 respect to the 150 million of prepetition debt, although the  
10 asset coverage, collateral coverage for that amount, is quite  
11 low. So we don't anticipate extensive diminution of value  
12 claims, notwithstanding that they are granted liens and  
13 superpriority claims under the facility.

14 With respect to the extraordinary items, we've talked  
15 about a bunch. But there are, obviously, senior priming liens  
16 granted on property of the estate. There are adequate  
17 protection claims and liens with respect to the diminution of  
18 value of the prepetition collateral. There are determinations  
19 regarding the validity, enforceability, et cetera, of the  
20 prepetition debt. There is a challenge period, so there is an  
21 opportunity for creditors and parties-in-interest to look at  
22 the prepetition liens and take whatever action is appropriate.

23 There is -- there are waivers of applicable non-  
24 bankruptcy law relating to perfection of the liens, of course.  
25 The order provides for the automatic perfection of liens.

1 I bring Your Honor's attention to Paragraph 23 of the  
2 order, which addresses certain landlords and what rights they  
3 may or may not have in the Chapter 11. And I know Mr.  
4 Buchbinder raised that and the lenders will address that. But  
5 I wanted to make sure Your Honor was aware that that was fully  
6 disclosed.

7 There are various releases and indemnifications,  
8 again, that we think are fairly standard. And as we explained  
9 earlier, avoidance actions are encumbered by both DIP liens and  
10 the adequate protection liens.

11 So Your Honor, with that, what I'd like to do is turn  
12 the podium over to Mr. Buchbinder, who, as I said, has raised a  
13 number of very thoughtful and very important issues, certainly  
14 to the U.S. Trustee, generally relating, I think, to the  
15 restricted nature of the facility, which we think is certainly  
16 appropriate under the circumstances, without commenting on any  
17 of the specific issues raised by Mr. Buchbinder.

18 THE COURT: Very well. All right. Thank you, Mr.  
19 Greissman.

20 Mr. Buchbinder, yes.

21 MR. BUCHBINDER: Good afternoon, Your Honor. David  
22 Buchbinder on behalf of the United States Trustee.

23 I think, for the moment, Your Honor, what I'm going to  
24 do is provide an overview of some of the aspects of the order  
25 that caused the U.S. Trustee's Office the most concern.

1 THE COURT: Okay.

2 MR. BUCHBINDER: Because I think -- I think it might  
3 be best, after counsel for the lender makes its comments, the  
4 Court may have some comments of its own. And at that point, we  
5 may want to go through the order.

6 For the most part, it is a routine DIP facility, 6  
7 million interim; 12 million final, to finance a sales process,  
8 with a credit bid. It does not appear that this is a  
9 transaction that is an insider deal. It appears from all the  
10 pleadings that a group of lenders bought the loan from another  
11 group of lenders and are facilitating that, to become a  
12 stalking horse. But that is -- there's nothing wrong with that  
13 business structure. This looks like, for the most part, a  
14 reasonably up-front business deal. It doesn't look like  
15 there's anything untoward about it.

16 And with that preface, I find it hard to believe that  
17 there are so many provisions in this interim DIP order, that  
18 perhaps if one of them -- one or two of them were here on their  
19 own, it might not be offensive. But when you add them all up,  
20 this is a very offensive and a very restrictive credit  
21 agreement. And let me quick -- go through some of them  
22 quickly.

23 There are provisions that violate some of the dictums  
24 in Judge Walsh's well known letter, like the clause at the very  
25 beginning of the order, where the Court is approving the DIP



1 credit agreements, and other certain financing agreements, none  
2 of which, except for the DIP credit agreement, for example, are  
3 attached to the order --

4 THE COURT: Right.

5 MR. BUCHBINDER: -- none of which any of us have seen.

6 There are revisions to the well known dictum about  
7 giving notice, but finding that notice -- not finding that  
8 notice is sufficient. They haven't even agreed to make those  
9 changes.

10 But let's go to some of the big ones, Your Honor.  
11 They want the challenge period to expire at the bid procedures  
12 hearing, which they want to have in about ten days. So a  
13 committee would be formed on Friday, and they would have until  
14 Monday to investigate the bona fides of the financing  
15 arrangements and the challenge period would end. That's just  
16 simply not acceptable; it's not consistent with local rules.

17 There are a number of provisions -- and I'm not going  
18 through all of them right now, Your Honor. The surrender of  
19 Chapter 5 claims --

20 THE COURT: Right.

21 MR. BUCHBINDER: -- without filing schedules, without  
22 disclosing what they are, and without any assurance that the  
23 administrative or priority claims of this estate may be paid.  
24 Certainly, the lender doesn't have a duty to pay those debts.  
25 But the debtor, as a debtor-in-possession, has a fiduciary duty

1 to all creditors of the estate. And to surrender these claims  
2 on the very first day of the case, whether we're liening up the  
3 claims now and the proceeds later, or doing it all at once, the  
4 end result is that the lender takes control of the Chapter 5  
5 claims, and the estate is left in the lurch, wondering whether  
6 or not it will be able to satisfy its obligations in accordance  
7 with the Bankruptcy Code.

8 Paragraph 23 is a number of provisions that would  
9 affect landlords without notice to landlords, and affect all of  
10 their rights.

11 There's another provision in Paragraph 12 that would  
12 act to usurp the rights of statutory lienholders like state  
13 claims for property taxes, and such like. It's a subtle  
14 provision. It doesn't refer to state claims, but it would  
15 affect all liens, which would include statutory liens.

16 There are a number of provisions towards the end of  
17 the document, which collectively would not only restrict the  
18 debtor's activities, but would prevent the Court itself from  
19 taking action.

20 Paragraph 31, for example, would minutely control the  
21 fees of the professionals. And if the reports aren't made, the  
22 loan is in default.

23 Paragraph 30 is a very interesting paragraph because,  
24 although the agreement -- and this wasn't disclosed by way of a  
25 motion, even though it results in disparate treatment to the

1 debtor's professionals and other professionals. Paragraph 30  
2 is a very interesting provision, and you need to read it a  
3 couple of times to figure out what's going on. But what's  
4 going on is the debtor is waiving 506(c) in favor of the lender  
5 --

6 THE COURT: Right. Yes.

7 MR. BUCHBINDER: -- right now, today. But Paragraph  
8 30 is an exception to the 506(c) waiver, to the extent that the  
9 fees of the debtor's professionals exceed the carve-out.

10 In other words, the lender is agree to pay to pay all  
11 of the debtor's fees, because there's no 506(c) waiver for  
12 them. But everyone else is going to be subject to a 506(c)  
13 waiver. So I think that results in disparate treatment for the  
14 debtor's professionals and other professionals.

15 Then Paragraphs 46, 47, and 48, all of those  
16 paragraphs contain a number of items that would restrict, not  
17 only the debtor, but in reading the provisions, restrict the  
18 Court from entering orders if circumstances merit changes to  
19 the orders or different orders.

20 We suggested to the lender that some or all of the  
21 items in these paragraphs be redefined as events of default  
22 under the credit agreement, and not be terms in the order; and  
23 that, if the loan agreement defaults, the parties have their  
24 remedies and their rights. But to put these provisions in the  
25 order ties, not only the hands of the debtor, but also ties the

1 hands of the Court.

2           And because of all of these difficulties with the  
3 order, that would basically mean that what we're going to do in  
4 this case is sell these assets by July 2, and close by July 9.  
5 That is the preordained conclusion by signing this order  
6 because any slight deviation from that road is likely to be a  
7 default under the credit agreement. That's how tightly these  
8 provisions control this debtor. That's simply not appropriate.

9           And so, because of all of these onerous provisions,  
10 the end result is the U.S. Trustee cannot support a good-faith  
11 finding for this interim loan.

12           THE COURT: Uh-huh.

13           MR. BUCHBINDER: With that overview, I'm happy to go  
14 through the specific paragraphs with counsel and the Court when  
15 it's time to, and work through them time by time. But that is  
16 the overview of our concerns.

17           THE COURT: All right. Thank you, Mr. Buchbinder.

18           Mr. Rothman, good afternoon.

19           MR. ROTHMAN: Good afternoon, Your Honor. Donald  
20 Rothman, Riemer & Braunstein, on behalf of the proposed DIP  
21 lender Crystal Financial. Thank you for permitting me to  
22 appear. It's always a pleasure, Your Honor.

23           First, I would just like to say as an overview,  
24 talking in theory about the structure of the DIP facility  
25 sometimes isn't as helpful as is the case of many negotiations,

1 if we could focus on the terms that are in the proposed order,  
2 and what changes could be made, deletions, et cetera.

3           Secondly, I would also note that many of the things  
4 that Mr. Buchbinder noted really don't apply to the proposed  
5 DIP lender; they apply to the prepetition lender, such as the  
6 challenge period. That's also a function of the expedited sale  
7 process. And I understand why they're looking for it. But we  
8 will defer to counsel for the prepetition lender on many of  
9 those points.

10           THE COURT: Yes. You don't need to fight their  
11 battle, too.

12           MR. ROTHMAN: Thank you, Your Honor. Yes.

13           THE COURT: Sure.

14           MR. ROTHMAN: Just to clarify one thing, Your Honor.  
15 I believe in Paragraph 98 of the Myers declaration there is a  
16 factual statement regarding the debtor's efforts to shop the  
17 DIP facility.

18           THE COURT: That's right.

19           MR. ROTHMAN: So there were some efforts there.

20           THE COURT: Yes.

21           MR. ROTHMAN: I would also like to just clarify, on  
22 the closing fee, it does not have to be to the stalking horse  
23 bidder, that's correct. But the waiver and the refund occur  
24 only if Crystal Financial provides the acquisition financing  
25 for the successful bid.

1 THE COURT: Thank you. Thank you. Okay.

2 MR. ROTHMAN: This was kind of a herculean task. You  
3 can see the number of attorneys here and the amazing amount of  
4 hours that were spent in the last several weeks to put this  
5 together. That investment is made. And if we're just in this  
6 for a month or two, it really doesn't make economic sense for  
7 us. But if we continue forward, we're willing to amortize that  
8 income over time and refund and waive, as provided in the  
9 document.

10 THE COURT: That's much clearer. Thank you, Mr.  
11 Rothman.

12 MR. ROTHMAN: We did get an email passed on to us by  
13 debtor's counsel that they had received from Mr. Buchbinder.

14 THE COURT: Yes.

15 MR. ROTHMAN: So I'd like to just proceed with an  
16 order on those. And I don't know if you want to have me go  
17 through the whole list, or back and forth with Mr. Buchbinder  
18 on each one.

19 THE COURT: I think -- let's go back and forth. And  
20 you can remain where you are seated, Mr. Buchbinder, and speak  
21 from there.

22 MR. ROTHMAN: Okay. The first one addresses a fee,  
23 and it has been explained correctly, economically. If things  
24 go as planned -- and we have worked extensively with the  
25 stalking horse bidder to negotiate the acquisition facility, if

1 they are the winning bidder, the actual fee is \$155,000, Your  
2 Honor. It's less than one and a half percent. So we don't  
3 think that it's particularly offensive, economically.

4 THE COURT: Okay.

5 MR. ROTHMAN: Number two -- unless you have a comment?

6 MR. BUCHBINDER: No. I had simply requested them to  
7 explain the fee, Your Honor.

8 THE COURT: Good.

9 MR. BUCHBINDER: I had not -- I had not actually  
10 objected to the fee. I had wanted a further explanation --

11 THE COURT: All right.

12 MR. BUCHBINDER: -- as to how it worked, and I'm  
13 satisfied with the explanation.

14 THE COURT: All right. When you hear something, Mr.  
15 Buchbinder, that you are -- to which you are objecting, don't  
16 hesitate to speak up.

17 MR. ROTHMAN: Next, Your Honor, is Page 10, Paragraph  
18 1. It doesn't say -- as we understand Judge Walsh finds  
19 offensive, and the Court would be reluctant to enter as well --  
20 that you have examined, nor proved. It says that the facility  
21 is entered in accordance with the terms of the order, the  
22 credit agreement, and the documents. It has to be in  
23 accordance with the documents, it has to be in accordance with  
24 the order. I think it's kind of self-evident that that is what  
25 exactly is going on here. And we request that that provision

1 be included.

2 MR. BUCHBINDER: Your Honor, the additional language  
3 after "interim order" implies that the Court is approving the  
4 other documents, which is exactly what Judge Walsh reacted  
5 against in his well known letter. The DIP credit agreement is  
6 attached to the motion.

7 THE COURT: Right.

8 MR. BUCHBINDER: I would note that. But the reference  
9 to the other DIP financing agreements, we don't know what they  
10 are, and none of them are attached to the motion.

11 MR. ROTHMAN: Your Honor, we'd also note that, on  
12 March 27th, Judge Walsh did enter an order, an interim order in  
13 the Nabco case, and a final order on May 7th, which has this  
14 exact same provision in it.

15 MR. BUCHBINDER: Your Honor, one case out of hundreds  
16 does not make a rule.

17 THE COURT: Okay. All right. Well, let me --  
18 continue on, and I'll give that one some more thought.

19 MR. ROTHMAN: Thank you, Your Honor.

20 Page 4, Finding B.

21 THE COURT: Yes.

22 MR. ROTHMAN: The final sentence:

23 "Under the circumstances, such notice and interim  
24 hearing and relief requested in the motion is due,  
25 proper, and sufficient notice, and complies with



1 Bankruptcy Rules 2002, 4001, and Local Rule 4001-2."

2 THE COURT: Mr. Buchbinder.

3 MR. BUCHBINDER: Your Honor, that sentence is normally  
4 not included in an interim DIP order. The recitation before  
5 that as to who got notice and notice has been given pursuant to  
6 these various rules is. But a finding that it's been  
7 sufficient is generally not entered in this court on an interim  
8 order.

9 THE COURT: All right.

10 MR. ROTHMAN: Your Honor, we see it as appropriate and  
11 entirely consistent with our customary practice.

12 THE COURT: Okay. All right. Thank you, Mr. Rothman.

13 MR. ROTHMAN: Page 10, Paragraph 2. Mr. Buchbinder  
14 requested the deletion of a term, "empowered." We have no  
15 objection to deleting that term.

16 THE COURT: All right.

17 MR. ROTHMAN: Mr. Buchbinder requested confirmation  
18 that there is a fee review provision, and we have confirmed for  
19 him, yes, in Paragraph 52. There is a fee review provision for  
20 the DIP lender, not a fee application process, obviously. And  
21 we would be certainly pleased to add the United States Trustee  
22 as a notice party.

23 THE COURT: All right.

24 MR. BUCHBINDER: That's agreeable, Your Honor.

25 THE COURT: Great. Okay.

1 MR. BUCHBINDER: Paragraph 52 --

2 THE COURT: Thank you.

3 MR. BUCHBINDER: -- doesn't contain a customary  
4 provision.

5 THE COURT: Yes. Thank you. Okay. Thank you, Mr.  
6 Rothman.

7 MR. ROTHMAN: Page 14, Paragraph 7.

8 THE COURT: Oh, we're going backwards.

9 MR. ROTHMAN: I'm just going in order of the --

10 THE COURT: I'm disappointed.

11 MR. ROTHMAN: -- of the email from Mr. Buchbinder.

12 THE COURT: All right.

13 MR. ROTHMAN: I apologize, Your Honor.

14 THE COURT: And that's okay.

15 MR. ROTHMAN: And it's the same provision, or the same  
16 substance as Page 40, Paragraph 55, the equities of the case  
17 exception.

18 THE COURT: Yes.

19 MR. ROTHMAN: I believe we've resolved it by agreeing  
20 to insert the following at the end:

21 "Provided that the foregoing waiver by the debtor  
22 shall not preclude any other party-in-interest to  
23 assert the equities of the case exception under  
24 Section 552(h) of the Bankruptcy Code."

25 MR. BUCHBINDER: That's agreeable, Your Honor. And

1 Mr. Rothman also indicated that that would not be limited in  
2 time. And with that provision, we're agreeable to that  
3 revision to the two paragraphs.

4 MR. ROTHMAN: That's correct, Your Honor.

5 THE COURT: Okay. Thank you, Mr. Rothman.

6 MR. ROTHMAN: Page 16, Paragraph 11. Mr. Buchbinder  
7 has requested that we delete the final clause of Paragraph 11.

8 THE COURT: Beginning with "whether"?

9 MR. ROTHMAN: ...

10 "-- whether or not such expenses are claimed, they

11 become secured by a judgment, lien, or other" --

12 What we're trying to do, Your Honor, is confirm that

13 the permitted prior liens that exist prepetition --

14 THE COURT: Yes.

15 MR. ROTHMAN: -- are fine, we have no problem with  
16 that. As Mr. Buchbinder noted, that's what they would be. But  
17 anything that arises subsequently is subordinate to the DIP  
18 facility liens. Somebody has to be first, and we're just  
19 trying to confirm that we're first.

20 We're not aware of any tax lien or otherwise that  
21 could prime us, other than potentially on real estate. If they  
22 want to carve that out, because I don't believe we have any  
23 real estate, that's fine. But other than that, I'm not  
24 understanding what the difficulty really is.

25 MR. BUCHBINDER: Well, Your Honor, this debtor

1 operates in many jurisdictions.

2 THE COURT: Yes.

3 MR. BUCHBINDER: There are lots of state laws.

4 Neither the Court, nor myself can purport to know all the  
5 different state laws. But under virtually all state tax laws,  
6 the state has a -- has an existing lien to recover its taxes,  
7 whether they're real estate taxes or payroll taxes, or sales  
8 taxes. You can't take away those statutory lien rights.

9 And what this provision would do would be to take away  
10 those rights for post-petition obligations. It would also take  
11 them away for prepetition obligations, to the extent that they  
12 might need to be perfected. And some state statutory liens may  
13 or may not be perfected.

14 We have no problem with this clause, up to the last  
15 part of it, "whether or not." With the "whether or not"  
16 stricken, it's fine.

17 MR. ROTHMAN: Your Honor, we're either a first  
18 priority administrative superpriority lender, or we're not.

19 THE COURT: Okay.

20 MR. BUCHBINDER: You can't prime yourself over  
21 statutory lien rights.

22 THE COURT: All right.

23 MR. ROTHMAN: You need to recall, Your Honor, we're  
24 not the prepetition lender. We're coming in new.

25 MR. BUCHBINDER: You still can't prime yourself over

1 statutory lien rights.

2 THE COURT: Well -- and this is applicable just to the  
3 DIP obligations. Is that right? I believe, subject --

4 MR. ROTHMAN: That's correct.

5 (Participants confer.)

6 THE COURT: All DIP obligations. Okay. You know, it  
7 is -- it is what it is, as far as the Court is -- Mr.  
8 Cunningham, did you wish to be heard on this?

9 MR. CUNNINGHAM: Yes, Your Honor. Just so I --

10 THE COURT: This is new money.

11 MR. CUNNINGHAM: Yes. That money -- probably, he  
12 explained to Your Honor what -- from the debtor's standpoint,  
13 the largest tax lien issue that we have, from the debtor's  
14 standpoint. The debtor's have personal property taxes --

15 THE COURT: Uh-huh.

16 MR. CUNNINGHAM: -- that they owe on their pallets  
17 because they're out there in commerce. We have literally,  
18 hundreds and hundreds of taxing authorities that the debtors  
19 pay personal property taxes on these pallets. Those personal  
20 property taxes are, for the most part, assessed on the 1st of  
21 the year for the entire year. So we are in the process of  
22 trying to reconcile our 2013 personal property taxes.

23 We believe, White & Case believes, that that does  
24 create, as Mr. Buchbinder said, statutory liens that are  
25 created on our pallets. I believe Mr. Buchbinder is just

1 seeking clarification from the DIP lender that he's not looking  
2 to prime those *ad valorem* personal property taxes that state  
3 taxing authorities have, you know, on the pallets themselves;  
4 that is, the ultimately collateral here. I think that was the  
5 clarification. And I wanted Your Honor to know, from the  
6 debtor's standpoint --

7 THE COURT: What your discussions have been.

8 MR. CUNNINGHAM: -- what the tax issue we believe is  
9 the most prevalent -- because we don't have real estate. We  
10 have a lease and the headquarters. It's really the personal  
11 property taxes that, I think, the parties are talking about  
12 here.

13 THE COURT: But I don't think Mr. Buchbinder is  
14 limiting -- limiting his objection to those *ad valorem* type  
15 taxes. Is that right?

16 MR. BUCHBINDER: That's correct, Your Honor.

17 THE COURT: It's whatever a statute of a particular  
18 state provides that is --

19 MR. BUCHBINDER: Yeah. That's correct, Your Honor.

20 THE COURT: -- is a priority tax.

21 MR. BUCHBINDER: None of the taxing authorities have  
22 been given notice of today's hearing, I would add.

23 THE COURT: All right. Well, Mr. Rothman, on an  
24 interim basis -- let me suggest this. This is, of course, an  
25 interim order, and it's something that we can revisit. I will

1 allow the language on an interim basis, but it may be -- it may  
2 be an issue at the final order.

3 MR. ROTHMAN: I understand, Your Honor. And in fact,  
4 we were going to propose something similar to that on another  
5 provision that relates to third parties.

6 THE COURT: Yes. Okay.

7 MR. ROTHMAN: Page 18, Paragraph 15. Expenses of  
8 administration are subordinate to the DIP protections and the  
9 DIP obligations. It's a secured claim, Your Honor. It's ahead  
10 of administrative claims, whether it's Chapter 11 or Chapter 7,  
11 and that's all we're trying to clarify. The administrative  
12 expenses are being paid in accordance with the budget. We  
13 believe that there's sufficient funding to cover the budget;  
14 that the budget covers all reasonably foreseeable  
15 administrative expenses. And we just need to confirm that, if  
16 there are any unpaid administrative expenses, Chapter 11 or  
17 Chapter 7, they are subordinate to the DIP obligations.

18 MR. BUCHBINDER: Well, Your Honor, the problem with  
19 this provision here is, given what we know about this case,  
20 we're looking at a quick sale, and a quick sale case can often  
21 turn into a quick conversion. And if we saddle a potential  
22 Chapter 7 Trustee with the inability to have any way to fund a  
23 Chapter 7, we have made it impossible for a Chapter 7 Trustee  
24 to perform his or her duties in a successor case.

25 THE COURT: Is there a way to protect -- to exempt a

1 Chapter 7 Trustee from this, Mr. Rothman? Is that something  
2 that you would find acceptable?

3 MR. ROTHMAN: Your Honor, normally, I would -- I would  
4 think about that and discuss that with my client. But the  
5 nature of this case, first of all, we are not the prepetition  
6 lender. Again, we're coming in late.

7 THE COURT: Right.

8 MR. ROTHMAN: It is contemplated to be a very quick  
9 sale case. There is a legitimate stalking horse in place that  
10 has a large secured claim, that I believe it's prepared to  
11 credit bid. If this case doesn't proceed on track and somehow  
12 gets converted, and we haven't been paid out, something has  
13 gone terribly wrong. So I don't think I'm prepared to agree to  
14 that today because I don't think that's at all what is  
15 contemplated.

16 If the assets have not been sold and it's determined  
17 by the Court or by the parties to -- for the Judge to convert  
18 the case or for us to voluntarily convert it, then we'll all be  
19 working together to figure out what to do next.

20 I can tell you that, just as an example, in the Satcon  
21 case --

22 THE COURT: Yes.

23 MR. ROTHMAN: -- that case was converted. We worked  
24 very well with Mr. Forman.

25 THE COURT: Yes.



1 MR. ROTHMAN: We funded the budget, we've got the  
2 asset sold. We understand the realities of the world. But I  
3 don't think I can agree on day one that the Chapter 7  
4 administrative expenses are going to prime the DIP facility.

5 THE COURT: Yes, Mr. Greissman.

6 MR. GREISSMAN: Excuse me. Thank you, Your Honor.  
7 I'm just going to jump up when I think I have something  
8 valuable to add.

9 THE COURT: Please.

10 MR. GREISSMAN: And our view is, A, that this is a  
11 routine provision, seen in just about every DIP order that's  
12 entered in this district and elsewhere. And only half the DIP  
13 facility is going to be funded on an interim basis, anyway. So  
14 our suggestion would be to leave it in for the interim order.  
15 I'm not suggesting it's not appropriate for the final order; I  
16 think it is.

17 THE COURT: Right.

18 MR. GREISSMAN: But for today, I think that that would  
19 free a lot of unnecessary problems, if that provision was not  
20 in there.

21 THE COURT: Okay. That's what I -- where I'm going  
22 with it at this point. And I won't say anything more because I  
23 don't want to, in any way, you know, sort of inhibit the  
24 parties' discussions.

25 MR. ROTHMAN: Thank you, Your Honor.

1 THE COURT: All right. So that language will remain  
2 in this order.

3 MR. ROTHMAN: The next point, I'm not really sure what  
4 Mr. Buchbinder was suggesting, but I think there's some  
5 references missing. He's talking about Page 19, Paragraph  
6 17(b). It says "conform the paragraph, Comments D, E, and F."

7 MR. BUCHBINDER: Your Honor, I can explain. In the  
8 comments that I originally sent to counsel, my DIP comments  
9 were lettered.

10 THE COURT: Okay.

11 MR. BUCHBINDER: And in this, they have somehow turned  
12 into numbers.

13 THE COURT: Gotcha.

14 MR. BUCHBINDER: And so "D, E, and F" would correspond  
15 to 4, 5, and 6.

16 And what it was in, in the mentioned paragraph, 17, it  
17 has the same language at the three provisions we have just  
18 dealt with. And so the Court's ruling would be --

19 THE COURT: I see. Okay.

20 MR. ROTHMAN: Thank you for that.

21 THE COURT: That helps.

22 (Participants confer.)

23 THE COURT: All right.

24 MR. ROTHMAN: Page 20, Paragraph 18.

25 THE COURT: Right.

1 MR. ROTHMAN: This also relates to payment of  
2 administrative expenses. The provision provides, Your Honor,  
3 that the proceeds from the sale would be paid first to the DIP  
4 lender, and then to the prepetition lender. And I believe the  
5 offensive provision is the payment to the prepetition lender,  
6 so I don't think it applies to the DIP lender. Do I understand  
7 that correctly, Mr. Buchbinder?

8 MR. BUCHBINDER: Well, not exactly, Your Honor. The  
9 concern here is liening up the Chapter 5 claims today, when we  
10 don't know what the Chapter 5 claims are, and when we don't  
11 know if this estate will be able to be administratively  
12 solvent. And in the event this case were to convert, the  
13 Chapter 5 claims would be the only potential asset available to  
14 pay the claims of administrative and priority creditors not  
15 covered by the wind-down budget or by the budget in this  
16 particular case. And we're simply acting, at this time, to  
17 preserve the Chapter 5 claims.

18 (Participants confer.)

19 MR. ROTHMAN: If I may respond, Your Honor. What --  
20 it may not be clear enough, but I believe the only thing we're  
21 taking on the Chapter 5 claims are 549 recoveries; so post-  
22 petition recovery of something that was previously our  
23 collateral. We think, if they get it back, it should be our  
24 collateral again.

25 The second one is what I like to call the "reverse

1 506(c)" and --

2 THE COURT: Okay.

3 MR. ROTHMAN: -- Judge Walrath laughs every time I say  
4 that, as well.

5 If we funded a Chapter 5 recovery through the carve-  
6 out, first, by definition, that means we've lost money, because  
7 the carve-out only comes into play if there's insufficient  
8 proceeds to pay us and those professional expenses, and the  
9 professional expenses would get paid first. So if they've used  
10 \$100,000 of our money and recovered a million-dollar  
11 preference, all we're asking is that you give us back the  
12 hundred.

13 THE COURT: Right.

14 MR. ROTHMAN: Because we financed it for you, we spent  
15 -- you spent money for your benefit, we financed it, give it  
16 back. The same thing as if you spent money protecting our  
17 collateral, when the collateral is sold, those funds would get  
18 repaid first. That's all we're looking for on the Chapter 5's.

19 MR. BUCHBINDER: Your Honor, if they are limiting  
20 their collateral on the Chapter 5 claims, I will defer to the  
21 Court's discretion.

22 THE COURT: All right. And I will permit that  
23 language then, Mr. Rothman, sure.

24 MR. ROTHMAN: Thank you, Your Honor. And if someone  
25 wants to propose clarifying language, that's certainly fine.

1 Paragraph 23, Page 23, Your Honor. Several things.

2 First, as I noted several times, we are not a  
3 prepetition lender. Many times, we ask the Court to, in the  
4 interim order and the final order, provide that the prepetition  
5 collateral access agreements also apply to the DIP facility.

6 THE COURT: Not here.

7 MR. ROTHMAN: Not that much of a stretch for the Court  
8 to be able to do that. Here, we do not have that. We're  
9 trying to, in this order, get the benefit of the existing ones,  
10 and be deemed a secured creditor under the existing collateral  
11 access agreements that are in place under the original B of A  
12 facility that was recently purchased.

13 We also need to have intercreditor provisions for the  
14 DIP facility and that prepetition credit facility, because they  
15 didn't both exist before. The DIP facility is now new.

16 And then, third, with respect to the third parties and  
17 our collateral, you've heard about a lot of noise, if not  
18 chaos, with respect to where this collateral is, \$3 million of  
19 pallets are missing. We saw what happened with Belacon, and so  
20 that has, hopefully, now been resolved. We need to know that,  
21 if we find out collateral, we are able to go get it and  
22 liquidate it; people cannot interfere. We've put in a very  
23 standard provision that will pay for the right of access and  
24 the like.

25 We are prepared, as I mentioned earlier, to have this

1 in the interim order, and expressly state, either on the record  
2 or even in the order, if you would prefer, Your Honor, that  
3 this is subject to further review at the final hearing, it's  
4 subject to objection by these third parties.

5 But as you've heard, many retailers have these  
6 pallets. There are these depot facilities everywhere. We  
7 don't even know what we're really grasping for because it is a  
8 very fluid situation. We just think that, for a DIP lender  
9 coming in new, if it's our collateral, we need to be able to  
10 get it and liquidate it.

11 MR. BUCHBINDER: Your Honor, if someone has -- if a  
12 third person has someone's collateral, the typical remedy is  
13 you sue them for it. What Paragraph 23 provides for here is,  
14 effectively, an injunction against a number of third parties  
15 who aren't here today: Landlords, bailees, any party who may  
16 now or hereafter have against the DIP collateral -- we're not  
17 talking about the prepetition lenders here; we're talking about  
18 the DIP collateral. Every single one of these provisions in  
19 Paragraph 23 would affect the substantive rights of landlords,  
20 warehousemen, and bailees. None of them have notice of today's  
21 hearing.

22 THE COURT: Well --

23 MR. ROTHMAN: Your Honor -- oh, excuse me.

24 THE COURT: Go.

25 MR. ROTHMAN: I would also note, this is if the DIP

1 lender were enforcing its rights and remedies. There's a  
2 notice provision to all parties. There would have to be a  
3 default. We could certainly come into the Court and work that  
4 out. The debtor, the trustee, anyone could say, we need a  
5 hearing before you are permitted to go out, take possession of  
6 collateral, and liquidate it.

7 THE COURT: Yeah.

8 MR. ROTHMAN: We just need the right in the order  
9 today, so that we know we've got it.

10 THE COURT: Yeah. Notice --

11 MR. ROTHMAN: The money is going out the door today.

12 THE COURT: Notice will be provided of the final  
13 hearing, in any event. And frankly, if somebody has a concern  
14 under these terms, one of these parties, they can argue that  
15 they didn't receive notice, and perhaps whatever court --  
16 either this Court or another court will take -- take notice of  
17 that.

18 MR. BUCHBINDER: Your Honor, I want to bring to the  
19 Court's attention Subparagraph (d).

20 THE COURT: Yes.

21 MR. BUCHBINDER: This is a provision that most  
22 typically is rejected in first-day orders. This is a provision  
23 that's imposing upon landlords per diem rent. It's affecting  
24 their rights substantively. This is more --

25 THE COURT: You say (d)?

1 MR. BUCHBINDER: Yes, "To the extent not paid" --

2 THE COURT: I thought we were on (a). I'm sorry.

3 MR. BUCHBINDER: "-- or prepaid by the debtor,"

4 Paragraph 23(d).

5 "The DIP lender shall pay the affected landlord,  
6 warehouseman, bailee, et cetera, a per-diem basis, in  
7 an amount equal to the monthly base rent."

8 These are provisions that are typically stricken when  
9 they're in first-day orders. This affects the substantive  
10 rights of landlords. This is more than we want to get our  
11 pallets back. This provision is not collateralable [sic].

12 THE COURT: Am I misunderstanding that paragraph? I  
13 don't read it the way Mr. Buchbinder is reading it.

14 MR. ROTHMAN: Your Honor, this is a very standard  
15 paragraph in our collateral access agreements. I have not seen  
16 the Bank of America forms and what's in place. But I would  
17 dare hazards a guess that there's something very similar to  
18 this. We were trying to be fair and up front and say, look,  
19 we're going to pay for the access when we're there --

20 THE COURT: Right.

21 MR. ROTHMAN: -- if it hasn't already been prepaid by  
22 the debtor. We don't want to have the landlord or the third  
23 party get a windfall here. So all we're trying to do is say we  
24 will pay for the time that we're using the premises, to either  
25 repossess or liquidate the collateral.



1 MR. BUCHBINDER: Normally, the landlord has a right to  
2 demand their payment under the lease, Your Honor.

3 I wouldn't have any problem with these provisions if  
4 all of the affected persons had been noticed of today's  
5 hearing, but they haven't been. And their substantive rights  
6 are being affected. If they want to notice these provisions  
7 out for a final hearing and serve everyone, that's a different  
8 story, but none of the affected parties have been served, or  
9 even noticed of today's hearing.

10 MR. ROTHMAN: And that's why we have the final  
11 hearing, Your Honor.

12 THE COURT: Right.

13 MR. ROTHMAN: We really do need these rights.

14 MR. BUCHBINDER: Well --

15 THE COURT: All right. I understand. I will -- this  
16 -- again, it's an interim order, and parties will have an  
17 opportunity to object to the final, if they are so inclined,  
18 and which I would doubt. But let's see what happens.

19 MR. ROTHMAN: Thank you, Your Honor.

20 The next one is Page 28, Paragraph 30. And I will  
21 defer to Ms. Jones, coming up.

22 THE COURT: Thank you. So you've now addressed all of  
23 the DIP lender issues. Is that right, Mr. Rothman?

24 MS. JONES: No. There are some more, Your Honor.

25 THE COURT: Okay.

1 MS. JONES: Your Honor, for the record, Laura Davis  
2 Jones, Pachulski, Stang, Ziehl & Jones, on behalf of iGPS  
3 Logistics.

4 Your Honor, I believe Mr. Rothman skipped over one --  
5 THE COURT: Okay.

6 MS. JONES: -- that Mr. Buchbinder had raised as well,  
7 it was right before it. It's Page 27, Paragraph 28.

8 THE COURT: Yes.

9 MS. JONES: Two issues there that Mr. Buchbinder  
10 raised, Your Honor.

11 One is the -- that if the case should convert, that he  
12 thought it was appropriate for the trustee to have time to look  
13 at the challenge period, and he asked us for sixty days, Your  
14 Honor, and we'll be glad to give him that.

15 THE COURT: Okay.

16 MS. JONES: Your Honor, with respect to the challenge  
17 period, if this -- if this is in a Chapter 11, there was a  
18 little discussion earlier that the challenge period, as set out  
19 in this paragraph, could be as early as the bid procedures  
20 date.

21 THE COURT: Right.

22 MS. JONES: Your Honor, frankly, this is going to be a  
23 case where there's a committee appointed. It seems appropriate  
24 to me that we leave this as it is, knowing that we're going to  
25 have a negotiation with the committee on this and, being it's

1 an interim order, deal with this with the committee, and come  
2 back to Your Honor with what issues the committee may have, in  
3 terms of timing.

4 Your Honor, the tension here is, as Mr. Cunningham  
5 said earlier, and I believe Mr. Rothman referenced, this is  
6 obviously going to be a credit bid, Your Honor.

7 THE COURT: Yes.

8 MS. JONES: So we have to have some finality going  
9 into the auction and going into the sale hearing; so that, if  
10 we are the winning bidder, that folks know it's a -- that it's  
11 a good and final bid, if you will. At the same time, we want  
12 to give the committee some time to look at the -- at the lien  
13 situation.

14 So Your Honor, I think it's something that we can work  
15 out, but frankly, I think it's something we -- I hate to kick  
16 the can down the road again, but I do think it's something that  
17 we should spend some time with the committee on -- this is an  
18 interim order -- and come back to Your Honor with respect to  
19 our thoughts there.

20 Your Honor, and I'll be quite candid that I think  
21 we'll be looking for a fairly quick deadline, as is typically  
22 done in sale cases, where there's likely to be a credit bid.  
23 Because for all parties involved, and committees -- and I've  
24 represented a good number of committees before this Court --  
25 committees understand, Your Honor, that you have to have --

1 know the parties you're dealing with, and make sure that you  
2 have finality to the bids.

3 THE COURT: Of course. For a credit bid you do.

4 And let me just say this with respect to all of these  
5 concerns. A committee will be appointed, and the Court will be  
6 very sensitive to what the committee requests. And so none of  
7 these dates, and none of these provisions, at this point, are  
8 final. And that's very important for all of the parties to  
9 understand as you do go forward to negotiate with the  
10 committee. But I appreciate that position, and that really is  
11 my thoughts on this order, as well.

12 MS. JONES: Thank you, Your Honor.

13 And Your Honor, the next point that --

14 MR. BUCHBINDER: Excuse me.

15 MS. JONES: Oh, I'm sorry.

16 THE COURT: Yes.

17 MR. BUCHBINDER: Your Honor, the notion that a  
18 committee appointed on Friday has until the following Monday --

19 THE COURT: If they come in on Monday, Mr. Buchbinder

20 --

21 MR. BUCHBINDER: -- to investigate the bona fides of -

22 -

23 THE COURT: If they come in on Monday and they say,  
24 Judge, we haven't had enough time, we need more time, I'll be  
25 sensitive to that.

1 MR. BUCHBINDER: Your Honor, I would not oppose a  
2 provision that cuts it off at the sale approval hearing. And I  
3 certainly understand the need for finality. But the bid  
4 deadline seems a little bit too soon, especially since we're  
5 talking about compressed time periods here that are already  
6 significantly shorter than what the local rules permit.

7 THE COURT: Well, if the committee comes in and says  
8 that, I will certainly be reasonably sensitive to that request.

9 MS. JONES: Your Honor, I -- and Your Honor, I --

10 THE COURT: But I'm going to leave it to the committee  
11 to negotiate, because maybe they'll negotiate even more -- you  
12 know, who knows what will happen with the committee. But I  
13 think that we could anticipate all sorts of things here, and  
14 let's see what the committee has to say as an actual matter.

15 MS. JONES: Your Honor, the next point that had been  
16 raised by Mr. Buchbinder was on Page 28, Paragraph 30, and this  
17 was the concern that he raised with respect to the 506(c)  
18 waiver --

19 THE COURT: Yes.

20 MS. JONES: -- and why there is an exception for  
21 debtor professionals.

22 THE COURT: Right.

23 MS. JONES: Your Honor, with respect to White & Case,  
24 Winter Harbor, and Fox Rothschild, they have agreed, Your  
25 Honor, to be subject to a budget.

1 THE COURT: Right.

2 MS. JONES: And we thought it was only appropriate,  
3 Your Honor, that unlike other parties, who are not going to be  
4 put to a budget, that they have to live by that budget, that  
5 they have the right to come back and try to surcharge. That's  
6 the only reason that was there.

7 THE COURT: Yes, Mr. Greissman.

8 MR. GREISSMAN: Excuse me. Your Honor, just very  
9 quickly. Only, as you know, under the Hen House case by the  
10 Supreme Court, the trustee or debtor-in-possession has the  
11 right to surcharge. So it's not effectively the firm  
12 surcharging; it's the debtor surcharging to pay the firm's  
13 fees. And that's why the comment, we think, regarding the  
14 committee's fees isn't necessarily an appropriate one here, or  
15 the fact that the debtor's professionals are being treated  
16 differently. It's really on the debtor who has authority to --  
17 statutory authority to surcharge collateral, in any event. So  
18 we think the provisions are appropriate.

19 MR. BUCHBINDER: Your Honor, I want to add, I have not  
20 opposed this provision. I'm simply pointing out --

21 THE COURT: Yes.

22 MR. BUCHBINDER: -- that it needs to be highlighted  
23 because it does result in disparate treatment.

24 THE COURT: I would hope, Mr. Buchbinder, that you'll  
25 share your concerns with the committee, frankly, and they will

1 then decide whether or not to pursue some of those objections  
2 on a final basis.

3 MR. GREISSMAN: Thank you, Your Honor.

4 MS. JONES: Your Honor, I'm going to yield back to Mr.  
5 Rothman now, because --

6 THE COURT: All right.

7 MS. JONES: -- they go back to the DIP lender.

8 THE COURT: Thank you, Ms. Jones.

9 MS. JONES: Thank you.

10 THE COURT: Thank you.

11 Mr. Rothman.

12 MR. ROTHMAN: Thank you, again, Your Honor.

13 Page 29, Paragraph 31.

14 THE COURT: Yes.

15 MR. ROTHMAN: This, again, relates to the  
16 administrative expenses. We do have a budget. And if we see  
17 that the budget is being terribly exceeded, and the  
18 administrative expenses are being incurred and not paid, we'd  
19 like the ability to terminate the interim order. It's actually  
20 probably a good thing for the case, so that we don't run up  
21 excessive administrative fees that are not going to be paid.

22 Again, we all believe we understand what's going to  
23 happen here: A very narrow period of time and a very well  
24 thought out and constructive process.

25 THE COURT: I think the issue here is whether or not

1 there needs to be notice of -- you're declaring, in effect, a  
2 default here, and whether or not, due to the -- whether it's  
3 three days or what --

4 MR. ROTHMAN: We have no problem providing the same  
5 type of notice as we would do on a termination notice.

6 THE COURT: Is that helpful?

7 MR. BUCHBINDER: Your Honor, it's more than that.  
8 Your Honor, this -- this provisions says that, if the  
9 professionals go over their budget, the loan is in default, and  
10 we can terminate. We don't know what's going to happen in this  
11 case. This puts the fire to the attorneys, to say you spend  
12 more than this money, we're going to pull the plug, and we're  
13 going to take our toys and go home.

14 THE COURT: On -- but what we're suggesting now is  
15 that it would be on notice.

16 MR. BUCHBINDER: Well, this is -- this is what --

17 THE COURT: Just as --

18 MR. BUCHBINDER: -- I consider --

19 THE COURT: Just as with any default.

20 MR. BUCHBINDER: If it's defined as an event of  
21 default in the credit agreement, that might be one thing. But  
22 this here is a term in an order that would tie counsel's hands.  
23 And if counsel goes over the line, are they going to be acting  
24 in their clients' best interests or not if they go over the  
25 line?



1           What if the committee identifies issues that are not  
2 apparent before the Court or the parties today, and it turns  
3 out the committee has to litigate an issue? Are we going to  
4 allow the lender to terminate the credit agreement and  
5 repossess because the committee discovered issues and has to  
6 perform its duties and incur fees? Because that's what this  
7 paragraph requires us to do.

8           MR. ROTHMAN: Your Honor, we're not really exercising  
9 control here. We're agreeing to fund a specific amount of  
10 money for a specific budget. If this line item is three to  
11 four times what it's supposed to be, then some other line items  
12 aren't going to be paid because there's only a certain amount  
13 of money that's available under this facility.

14           MR. BUCHBINDER: I --

15           MR. ROTHMAN: We're funding, we're agreeing to fund  
16 what they say they're going to do. It's got variances in it,  
17 it's got cushion in it, and provisions for overages. This  
18 isn't a finite, you know, to-the-penny budget, nor test under  
19 the documents.

20           THE COURT: I must be missing something. But it's my  
21 understanding that, once a budget number is hit, if you will --  
22 forgive the vernacular -- you don't have to fund any more.

23           MR. ROTHMAN: It is capped, yes.

24           THE COURT: All right.

25           MR. BUCHBINDER: Correct, Your Honor.

1 THE COURT: So what are we arguing about here?

2 MR. BUCHBINDER: Well, it's one thing to say you don't  
3 have to fund any more.

4 THE COURT: Right.

5 MR. BUCHBINDER: It's another thing to say you're in  
6 default of the DIP credit agreement.

7 What if the committee ascertains an issue --

8 THE COURT: Then they --

9 MR. BUCHBINDER: -- that it --

10 THE COURT: -- have to come --

11 MR. BUCHBINDER: -- has to --

12 THE COURT: -- to court --

13 MR. BUCHBINDER: -- litigate?

14 THE COURT: -- and ask for more of a budget, don't  
15 they? These folks don't have to fund it.

16 MR. BUCHBINDER: But -- I agree that those -- that --

17 THE COURT: Mr. Buchbinder --

18 MR. BUCHBINDER: I agree that --

19 THE COURT: -- we are talking about such -- overruled.

20 We're talking about such esoteric issues. I appreciate -- this  
21 is not a bar exam; this is a case, a Chapter 11 case that is  
22 failing miserably now. All right?

23 Let's proceed.

24 MR. ROTHMAN: Thank you, Your Honor.

25 I believe Mr. Buchbinder's 14, we have resolved.

1 Number 14 is Page 35, Paragraph 46.

2 THE COURT: Yes.

3 MR. ROTHMAN: This is one, again, near and dear to our  
4 heart, based upon some recent experience. We're restricting  
5 additional financing, unless the financing pays us out. It's  
6 not contemplated in this case. It's not needed in this case,  
7 based upon the budget that we have and the DIP facility. And  
8 if it's happening, again, something very unanticipated has  
9 occurred.

10 And we do not want to be primed by another loan coming  
11 in. We don't want to have a competing lender in the case. If  
12 you need to take us out, that's certainly fine. They can do it  
13 at any time.

14 THE COURT: All right. On an interim basis, I will  
15 approve that provision.

16 MR. ROTHMAN: Thank you, Your Honor.

17 Page 36, Paragraph 47. It's very similar to the  
18 provision we just discussed, Your Honor. We are trying to  
19 restrict what happens here; we're trying to maintain the guard  
20 rails, so that the car doesn't go off the road. And these are  
21 things that we believe are necessary and very customary,  
22 particularly in these circumstances, that the debtor will not  
23 seek these orders.

24 We are not tying the Court's hands, we are not taking  
25 the gavel out of the Judge's hand, because Your Honor has to be

1 comfortable with this order today, to enter these things. And  
2 understand that this is what we're contemplating; that they  
3 will not be seeking, and we're going to ask you not to enter if  
4 they try, any of these restricted orders. Thank you.

5 MR. BUCHBINDER: Your Honor, on --

6 THE COURT: But if I do enter such an order -- yes.

7 MR. BUCHBINDER: Your Honor, on this paragraph, we  
8 propose that, if they want to make these items events of  
9 default under the credit agreement, and if there's a default,  
10 they can exercise their default remedies under the credit  
11 agreement. But the provision, "There shall not be entered in  
12 the Chapter 11 case," that --

13 THE COURT: Right.

14 MR. BUCHBINDER: -- that ties the Court's hands.

15 MR. ROTHMAN: It's -- Your Honor, it is something that  
16 we get quite frequently. If you've already done it, it's too  
17 late. Declaring an event of default is too late. If the Court  
18 determines that you're going to permit a priming lien, and it  
19 gets funded, it's too late, we're already subject to it.  
20 That's not what we're willing to take on in this case.

21 THE COURT: All right. Well, I think we have -- first  
22 of all, let me just say this. We have a sad situation, in  
23 which it's clear to me that the parties didn't make much of an  
24 effort to discuss these issues and resolve them. So I'm  
25 sitting here, going through, paragraph by paragraph, a DIP

1 order. And I'm not happy about it. All right? Whether it was  
2 in the afternoon or five o'clock at night, I'm not happy that  
3 this is like this.

4 And I'm wondering what, really, I should do. Because  
5 this case is this poor, that we have to go to a sale hearing so  
6 quickly on terms like this, I'm wondering if you just really  
7 shouldn't say, let's go over to the state court.

8 Now here's what I'm going to do. There are a number  
9 of issues and a number of orders that are going to come under  
10 certification of counsel. And this one is, too. I am not  
11 going to spend any more time going through this, paragraph by  
12 paragraph, at this point.

13 This is an offensive provision. It should not have  
14 been in here. It should have been given -- there should have  
15 been some give on the part of the lenders, too, just as there  
16 should have been some give on the part of the United States  
17 Trustee. Perhaps the debtor could have been an honest broker.  
18 And I'm not going to sit here another minute and go through  
19 this order.

20 Do what you want to do. If the case crashes, it  
21 crashes because it's a very poor case. And it's a case that,  
22 as far as the Court is concerned, is providing for professional  
23 fees, because the case really shouldn't be here. Okay? So do  
24 what you want to do. We're recessing for the evening.

25 (Proceedings concluded at 5:07 p.m.)

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CERTIFICATION

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



June 7, 2013

Coleen Rand, AAERT Cert. No. 341  
Certified Court Transcriptionist  
For Reliable

**UNITED STATES BANKRUPTCY COURT  
District of Delaware**

**In Re:**

iGPS Company LLC  
225 E. Robinson Street  
Suite 200  
Orlando, FL 32801  
EIN: 20-4496297

**Chapter: 11**

*Case No.:* 13-11459-KG

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND  
REDACTION***

A transcript of the proceeding held on 06/06/2013 was filed on 06/19/2013 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 7/10/2013 .

If a request for redaction is filed, the redacted transcript is due 7/22/2013 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 9/17/2013 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 6/19/13

(ntc)

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