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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 11-11527 (SCC)

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In the Matter of:

SBARRO, INC., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York

May 3, 2011  
2:04 PM

B E F O R E:  
HON. SHELLEY C. CHAPMAN  
U.S. BANKRUPTCY JUDGE

1  
2 HEARING re Debtors' Motion for Entry of Interim and Final  
3 Orders (I) Authorizing the Debtors to Obtain Postpetition  
4 Financing and to Use Cash Collateral, (II) Granting Adequate  
5 Protection to Prepetition Secured Lenders, (III) Scheduling A  
6 Final Hearing, and (IV) Granting Related Relief.

7  
8 HEARING re Debtors' Motion for Entry of Interim and Final  
9 Orders Authorizing, but Not Directing, Debtors to Pay Certain  
10 Prepetition Claims of Critical Vendors, Lien Claimants and  
11 Claims Pursuant to the Perishable Agricultural Commodities Act  
12 and Certain Related Relief.

13  
14 HEARING re Debtors' Motion for Entry of Interim and Final  
15 Orders Authorizing, but Not Directing, Debtors to (A) Pay  
16 Certain Prepetition Wages and Reimbursable Employee Expenses,  
17 (B) Pay and Honor Employee Medical and Other Benefits and (C)  
18 Continue Employee Benefits Programs.

19  
20 HEARING re Debtors' Motion for Entry of Interim and Final  
21 Orders Authorizing the Debtors to Maintain, Administer, Modify  
22 and Renew Customer Programs, Promotions and Practices and to  
23 Honor Obligations Related Thereto.

1  
2 HEARING re Debtors' Motion for Entry of Interim and Final  
3 Orders Authorizing the Debtors to (A) Continue Using Their  
4 Existing Cash Management System, Bank Accounts and Business  
5 Forms, (B) Continue Intercompany Transactions and (C) Provide  
6 Postpetition Intercompany Claims Administrative Expense  
7 Priority.

8  
9 HEARING re Debtors' Motion for Entry of Interim and Final  
10 Orders Authorizing the Debtors to Pay Taxes and Fees.

11  
12 HEARING re Debtors' Motion for Entry of an Order Establishing  
13 Certain Notice, Case Management and Administrative Procedures.

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15 HEARING re Debtors' Motion for Entry of an Order Determining  
16 Adequate Assurance of Payment for Future Utility Services.

17  
18 HEARING re Debtors' Motion for Entry of an Order Authorizing  
19 the Debtors to Continue Prepetition Insurance Coverage and  
20 Related Practices.

21  
22 HEARING re Debtors' Motion for Entry of an Order Establishing  
23 Procedures for Interim Compensation and Reimbursement of  
24 Expenses for Professionals.

1  
2 HEARING re Debtors' Motion for Entry of an Order Authorizing  
3 the Retention and Compensation of Certain Professionals  
4 Utilized in the Ordinary Course of Business.

5  
6 HEARING re and Retention of Epiq Bankruptcy Solutions, LLC as  
7 Administrative Agent for the Debtors and Debtors in Possession  
8 Nunc Pro Tunc to the Petition Date.

9  
10 HEARING re Debtors' Application for Entry of an Order  
11 Authorizing the Employment and Retention of Pricewaterhouse-  
12 Coopers LLP as Bankruptcy Consultants, Independent Auditors,  
13 Tax Consultants and International Tax Advisors to the Debtors  
14 Nunc Pro Tunc to the Petition Date.

15  
16 HEARING re Debtors' Application for Entry of an Order  
17 Authorizing the Retention and Employment of Curtis, Mallet-  
18 Prevost, Colt & Mosle LLP as Conflicts Counsel for the Debtors  
19 and Debtors in Possession Nunc Pro Tunc to the Petition Date.

20  
21 HEARING re Application for an Order Authorizing the Retention  
22 Of Cadwalader, Wickersham & Taft LLP as Counsel to the  
23 Restructuring Committee of Sbarro, Inc.'s Board of Directors  
24 Pursuant to 11 U.S.C. Section 327(a) Nunc Pro Tunc to the  
25 Petition Date.

1  
2 HEARING re Debtors' Application for Entry of an Order  
3 Authorizing the Retention and Employment of Marotta Gund Budd &  
4 Dzera, LLC as Special Financial Advisor for the Debtors and  
5 Debtors in Possession Nunc Pro Tunc to the Petition Date.

6  
7 HEARING re Debtors' Application for Entry of an Order  
8 Authorizing the Employment and Retention of Steinberg, Fineo,  
9 Berger & Fischhoff, P.C. as Special Counsel with Respect to  
10 General Business Matters of the Debtors and Debtors in  
11 Possession Pursuant to Section 327(e) of the Bankruptcy Code  
12 Effective Nunc Pro Tunc to the Petition Date.

13  
14 HEARING re Debtors' Application for Entry of an Order  
15 Authorizing the Retention and Employment of Kirkland & Ellis  
16 LLP as Attorneys for the Debtors and Debtors in Possession Nunc  
17 Pro Tunc to the Petition Date.

18  
19 HEARING re Debtors' Application for Entry of an Order  
20 Authorizing the Retention and Employment of Rothschild Inc. as  
21 Financial Advisor and Investment Banker for the Debtors and  
22 Debtors in Possession Nunc Pro Tunc to the Petition Date.

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25 Transcribed by: Penina Wolicki

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ALSO PRESENT: (TELEPHONICALLY)

PETER GRUSZKA, Chicago Fundamental Investment



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P R O C E E D I N G S

THE COURT: All right. Ms. Greenblatt? No? Okay.

MR. SASSOWER: Good afternoon, Your Honor. Edward Sassower of Kirkland & Ellis, on behalf of the debtors.

THE COURT: All right. I have one person on the phone, Peter Gruszka from Chicago Fundamental Investment on listen-only.

All right.

MR. SASSOWER: Your Honor, joining me in the courtroom today are my colleagues Nicole Greenblatt, who is suffering from a terrible cold, so she will not be speaking today, and Paul Wierbicki.

THE COURT: You have to stop working her that hard.

MR. SASSOWER: Exactly. Yeah. And Paul Wierbicki, who is going to --

THE COURT: Okay, great.

MR. SASSOWER: -- be speaking for an extra amount.

And also in the courtroom with me today is Nicky McGrane, the debtors' chief executive officer, and --

THE COURT: Okay.

MR. SASSOWER: -- and the first-day declarant.

THE COURT: All right.

MR. SASSOWER: And Carolyn Spatafora, the debtors' CFO.

THE COURT: Okay.

1 MR. SASSOWER: And Tony Missano, president of business  
2 development and our declarant for the critical vendor motion.

3 THE COURT: All right. And I see Mr. Hazan has joined  
4 us.

5 MR. SASSOWER: Yes.

6 THE COURT: How are you?

7 MR. HAZAN: Good afternoon, Your Honor. Scott Hazan,  
8 together with my partner Jenette Barrow and my colleague  
9 Jessica Ward, from Otterbourg, Steindler, Houston & Rosen,  
10 P.C., proposed counsel to the official committee.

11 THE COURT: Okay.

12 MS. GASPARINI: Good afternoon, Your Honor.  
13 Elisabetta Gasparini, on behalf of the Office of the United  
14 States Trustee.

15 THE COURT: All right. Hello, Ms. Gasparini.

16 All right. I'm ready when you are.

17 MR. SASSOWER: Okay. Did you want to take other  
18 appearances, or me to mention the other attorneys?

19 THE COURT: No, let's just start.

20 MR. SASSOWER: Let's get into it?

21 THE COURT: Yep.

22 MR. SASSOWER: Okay. Your Honor, today we are seeking  
23 entry of final orders with respect to typical first and second-  
24 day motions. And I am pleased to report that we have an almost  
25 entirely uncontested hearing, other than a limited objection to

1 Rothschild's retention application.

2           The U.S. Trustee and the committee have commented on  
3 all of the orders. And we've made certain changes and we have  
4 black-lines and revised orders to hand up to you. We greatly  
5 appreciate the cooperation of the Office of the United States  
6 Trustee and our newly appointed creditor's committee counsel.  
7 And we've been working very well with each other and been able  
8 to resolve almost all of our issues.

9           THE COURT: Great. All right.

10           MR. SASSOWER: Your Honor, just before I get into the  
11 agenda, I wanted to give a brief case update.

12           First, the interim relief that Your Honor entered at  
13 the first-day hearing has allowed the debtors to stabilize  
14 their operations in Chapter 11. We're working well with  
15 vendors. We've only utilized approximately 720,000 of the 1.2  
16 million dollar critical vendor bucket to secure go-forward  
17 trade with Vistar, the debtors' primary wholesale distributor  
18 and other critical vendors.

19           The debtors have also performed well operationally  
20 during the first few weeks of the case. The debtors are  
21 finalizing their April financial data, but anticipate that  
22 same-store sales in April exceeded 5 percent when the budget  
23 had projected 0.55 percent. So sales are ahead of budget.  
24 However some of these gains have been offset by increased  
25 costs. Costs are also up.

1           THE COURT: So is that an indication of the return of  
2 traffic in the malls, largely?

3           MR. SASSOWER: We think so.

4           THE COURT: Okay.

5           MR. SASSOWER: We expect sales to continue to  
6 increase.

7           THE COURT: Okay.

8           MR. SASSOWER: Your Honor, on April 12, 2011, the  
9 Office of the United States Trustee held an organizational  
10 meeting and appointed a statutory creditors' committee which  
11 included five members: two of the debtors' largest landlords,  
12 Simon Properties and General Growth Properties; and two of the  
13 debtors' key suppliers, Vistar and Pepsi; and Bank of New York  
14 as indenture trustee. And the committee, as you noted,  
15 selected Otterbourg. Mr. Hazan and Ms. Barrow-Bosshart are in  
16 the courtroom today, and Mr. Posner is also on this matter. He  
17 is unable to be here today. And they also selected Mesirow as  
18 financial advisor.

19           I'm sure Mr. Hazan will want to say a few words, but  
20 I'll finish my remarks and then I'll maybe cede the podium to  
21 him --

22           THE COURT: Okay.

23           MR. SASSOWER: -- before we get into the agenda.

24           The debtors, as I noted, have been working closely  
25 with the committee, and we're pleased that we've been able to

1 resolve almost all of their issues with respect to the first  
2 and second-day relief.

3 Your Honor, the plan support agreement provides for  
4 certain milestones. Under the plan support agreement, we need  
5 to file a plan and disclosure statement by May 14th. And we  
6 need to seek approval of the equity commitment agreement by May  
7 19th. And then there are some additional milestones regarding  
8 the disclosure statement and the plan. In order to comply with  
9 the May 19th equity commitment agreement milestone, we would  
10 need to file a motion to approve the equity commitment  
11 agreement by tomorrow in order to have it heard on full notice  
12 at the May 18th hearing, which is the only hearing in this case  
13 before May 19th.

14 Before you check your calendar, over the past few days  
15 we've been in discussions with the plan sponsors and the  
16 creditors' committee and the first lien lenders regarding  
17 whether we should modify the milestones or other aspects of the  
18 plan support agreement and equity commitment agreement in light  
19 of several developments.

20 First, during the pre-petition period, when we were  
21 negotiating the plan support agreement, Rothschild conducted a  
22 marketing process to, among other things, market test the plan  
23 support agreement. Rothschild contacted ninety-five of the  
24 most likely potential purchasers. Twelve of those parties  
25 signed nondisclosure agreements and we received only one

1 nonbinding indication of interest from a foreign strategic.

2 After the debtors filed for Chapter 11 this foreign  
3 strategic buyer made a revised indication of interest. As a  
4 result, the debtors' restructuring committee of independent  
5 directors decided to engage this party and facilitate their due  
6 diligence, and that process is currently ongoing.

7 Second, all the parties in the case have been very  
8 focused on liquidity and leverage and want to make sure that  
9 the debtors emerge from Chapter 11 with an appropriate capital  
10 structure and sufficient liquidity. To that end, the debtors  
11 are working to refresh their numbers based on first quarter  
12 results.

13 In light of these two developments, over the past few  
14 weeks, and more so over the past few days, the debtors, as I  
15 said, have been in discussions with the plan sponsors and the  
16 creditors' committee and the first lien lenders discussing  
17 whether they should revise the plan milestone as necessary to  
18 allow the debtors to continue working on this alternative plan  
19 structures, including this potential offer from a foreign  
20 strategic, and also whether we should increase the thirty  
21 million dollar equity commitment that's currently contemplated  
22 by the PSA to further enhance the debtors' liquidity upon  
23 emergence. And these discussions are ongoing.

24 It's quite fluid. What we're going to do tomorrow, I  
25 don't know yet. Maybe we'll be in a position to file something

1 that's revised as appropriate. Maybe we'll need to file  
2 something later in the week and we'll file a motion on  
3 shortened notice in order to make the May 18th hearing. And I  
4 look forward to advising you further when I know more.

5 THE COURT: I'm trying to think how I can say this.  
6 Isn't it possible that your decision could affect what happens  
7 with this foreign strategic?

8 MR. SASSOWER: No. I think we are, at this point,  
9 contemplating a dual path. So we want to give this foreign  
10 strategic sufficient time to do the due diligence and find out  
11 if their bid is real and what value that bid is at. And we  
12 want to be in a position to compare that to the deal  
13 contemplated by the PSA.

14 On the other hand, we don't want to lose the deal  
15 contemplated by the PSA. So we're working with the committee  
16 and the lenders to try to come up with a compromise that  
17 everyone's happy with, that enables us to keep the option of  
18 the PSA alive, while allowing us to explore this foreign  
19 strategic bid and see if it's real.

20 THE COURT: All right. And when you talk about  
21 getting the equity commitment approved, are you filing  
22 specifically to approve the equity commitment, or more  
23 generally to approve the PSA?

24 MR. SASSOWER: Just the equity commitment. And what  
25 is really the cost of that agreement, is essentially, at this

1 point, professional fees.

2 THE COURT: Okay.

3 MR. SASSOWER: So, if you recall, initially, the PSA  
4 had a one million dollar breakup fee. That was pushed to the  
5 end of the case and it's paid in equity only if we do the deal.  
6 So that commitment agreement or breakup fee is no longer really  
7 an issue. The issue is the reimbursement of the expenses of  
8 professional fees of the plan sponsors.

9 I think the plan sponsors are eager to have those fees  
10 start to be reimbursed and would like for those -- for that  
11 expense reimbursement to start happening after the May 18th  
12 hearing. So we're trying to contemplate structures that allow  
13 us to keep -- to be able to pay those fees, which we view as a  
14 pretty low cost, in order to keep this thirty -- potentially  
15 more than thirty -- equity commitment in place while not  
16 upsetting the other parties in the case and not starting World  
17 War III. Because what we don't want to see happen is a lot of  
18 litigation and discovery and unnecessary restructuring costs  
19 that this case can ill afford, over really what is just an  
20 expense reimbursement agreement at this point.

21 THE COURT: Well, you just exactly what my next  
22 sentence was going to be. And you indicated that you're  
23 working with all the constituencies, and it would be  
24 unfortunate to have a litigation war just generally, but given  
25 the current posture, so --



1 MR. SASSOWER: Yes.

2 THE COURT: -- I'll just wait to hear from you.

3 MR. SASSOWER: Yes. I think our -- as debtors, what  
4 we've been trying to do in this case is first and foremost try  
5 to build consensus and get a deal done. But secondly, while  
6 that deal is coming together, we're trying to keep all the  
7 parties in their respective corners and litigation to a  
8 minimum, and restructuring costs to a minimum, until we can see  
9 if a deal is possible.

10 It could be that deal is not possible and we'll need  
11 to have a confirmation -- contested confirmation battle in this  
12 case. That's not where we want to be, but that may be where we  
13 end up. But we don't to run up a lot of litigation and  
14 restructuring costs until we know that's an absolute certainty.

15 THE COURT: Okay. All right. Mr. Hazan is there  
16 anything you want to add?

17 MR. HAZAN: Just a little bit, Your Honor. Good  
18 afternoon. Scott Hazan, again, Your Honor. And I appreciate  
19 Mr. Sassower's introduction of our recent arrival on the scene  
20 and our client's recent arrival. Just a few observations.

21 We had our first meeting last week of the committee.  
22 All of the executives -- excuse me, two of the three executives  
23 that were identified here were present. The third was not and  
24 I was not. But my partners were. I am advised it was a very  
25 productive meeting, and the company and its professionals are

1 very professional in what they have presented; and they have  
2 presented an extensive amount of data. It just so happens the  
3 lead partner at Mesirow is in court, and we're advised that  
4 they're getting the kind of cooperation that Your Honor would  
5 expect from a debtor.

6 The committee has already started formulating views on  
7 the exit strategy. Considering the makeup of the committee,  
8 which, as noted by Mr. Sassower, includes two landlords and two  
9 key vendors plus the trustee, is supportive of the outline of  
10 the concept: emerge; emerge quickly; emerge relatively intact.  
11 There are no apparent plans on massive store closings. We're  
12 not going to be Blockbuster and Borders. And we're not going  
13 to be Innkeepers. Because they've already learned that lesson  
14 in front of Your Honor and others, and they're acting  
15 appropriately.

16 THE COURT: You're reading my mind a little, right?

17 MR. HAZAN: It's not hard. But, as part of that  
18 support for the plan concept, they're not yet signing up on the  
19 plan, not so much because the distributions for the general  
20 unsecured creditors are too low, too high, is the porridge just  
21 right; but rather, they're trying to get their arms around, is  
22 this the right exit strategy; is that foreign entity a better  
23 exit strategy? And yes, we have had discussions about possibly  
24 improving the liquidity of the company. Because if there was  
25 anything that was a key concern to the creditors' committee, it

1 was the viability of the company.

2 They do not want a Chapter 22. They are concerned  
3 about the lev -- the debt that is proposed to survive this  
4 bankruptcy. The lenders, who are going to be that debt are  
5 concerned about the level of the debt that they're being asked  
6 to accept under this plan. And so liquidity is a key issue.  
7 And we have a committee meeting tomorrow morning, telephonic,  
8 where we're going to address some suggested approaches by the  
9 debtor to address those revisions which they have mentioned to  
10 you.

11 We certainly don't want -- and certainly Mr.  
12 Sassower's made it clear that they do not want -- to obstruct  
13 the dual track. And whether there is that singular buyer or  
14 multiple buyers, we certainly don't want to prematurely shut  
15 off any opportunities for third-party interest, and we'll be  
16 talking to the committee about that tomorrow.

17 With respect to the matters on the agenda, as Mr.  
18 Sassower noted, we're in agreement on everything except one  
19 aspect of Rothschild, which Your Honor will hear. It's not the  
20 make or break of the case. But it's important. And that  
21 includes the DIP facility, where we're resolved.

22 And though it's -- I may not even stand up later,  
23 we've done a very careful look-see on the Kirkland & Ellis  
24 retention. We asked a lot of questions of Kirkland & Ellis;  
25 the U.S. Trustee was concerned about Kirkland & Ellis; and

1     though this is not necessarily the poster child for facts for a  
2     debtor counsel, because they have a history with players in the  
3     case, we ultimately satisfied ourselves that the prophylactics  
4     that had been put in place a while back whereby experienced  
5     counsel recognizing that if they were ever going to take this  
6     engagement before Your Honor, they better put in place those  
7     prophylactics, and we were satisfied that that they worked.

8             THE COURT: All right.

9             MR. HAZAN: With that, I'll be seated subject to  
10     questions.

11            THE COURT: There are -- the size of this binder  
12     reflects, among other things, that there are a lot of  
13     professionals in this case -- a lot of professionals. And I'm  
14     really going to expect everybody to be on their toes about not  
15     duplicating efforts. This was something that I'll say later.  
16     But it is striking how many professionals --

17            MR. HAZAN: On the debtors' side. For now, though you  
18     don't have our applications, for now there's one law firm and  
19     one financial advisory firm.

20            THE COURT: No, I was talking about -- I was talking  
21     about the debtors.

22            MR. HAZAN: And we --

23            THE COURT: This is not an indication that I have a  
24     concern. I do have a concern, but it's not based on something  
25     that I've seen. It's just there are a lot of professionals,

1 and I do expect there to be a high degree of cooperation and  
2 nonduplication.

3 MR. HAZAN: We had the same concern, and we questioned  
4 why you needed a PWC and a Marotta Gund. We questioned why you  
5 need -- first of all is K&E appropriate? Then why do you need  
6 K&E and Cadwalader? We questioned. And the answer is not a  
7 perfect world. Every case is a different of facts. But we  
8 ultimately signed off on it.

9 THE COURT: All right.

10 MR. HAZAN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. WIERBICKI: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. WIERBICKI: Paul Wierbicki of Kirkland & Ellis on  
15 behalf of Sbarro Incorporated and its affiliated debtors. Your  
16 Honor, if I may, I'll just jump right into the agenda.

17 THE COURT: Please.

18 MR. WIERBICKI: The first item on the agenda is the  
19 debtors' motion to approve their post-petition financing,  
20 continue to use the cash collateral and related relief on a  
21 final basis. The Court entered the interim order at the first-  
22 day hearing, granting the debtors immediate access to sixteen  
23 and a half million dollars in post-petition financing, which  
24 financing the debtors closed on April 6th.

25 The facts supporting the financing and the debtors'

1 cash collateral and liquidity needs, as well as their marketing  
2 efforts, are set forth in the declaration of Mr. Neil Augustine  
3 of Rothschild and were also placed on the record at the first-  
4 day hearing in these cases.

5 Since that time the debtors have worked with their  
6 various constituents to come to the proposed final order which  
7 we filed with the Court last Friday. In addition to certain  
8 cleanup changes necessary to reflect this is a final rather  
9 than interim order, the changes fell under a few general  
10 categories which I will highlight for the record. And as the  
11 committee noted, there was agreement here amongst the  
12 creditors' committee and the DIP lenders' counsel, certain  
13 landlord counsels, as well as the debtors.

14 There are two primary or -- actually three or four  
15 primary buckets of changes, the first of which was landlord-  
16 specific changes, one of which is to clarify that to the extent  
17 of the pre-petition liens, the pre-petition lenders' collateral  
18 does not include liens on the leases. To the extent the  
19 underlying -- however, with respect to the liens securing the  
20 DIP and the adequate protection obligations, they do have liens  
21 on leases, except with respect to those leases set forth on  
22 Schedule A, to which they only get leases (sic) to the extent  
23 the leases allow; however they do have a lien on the prices of  
24 those leases.

25 Another change that was negotiated was with respect to

1 use and occupancy rights upon a default under the DIP and  
2 acceleration of the loans, paragraph -- this is set forth in  
3 paragraph 20 of the order, primarily, which generally provides  
4 that the applicable financing agents have lease designation  
5 rights at the time of an event of default and acceleration, and  
6 they may demand the debtors immediately seek to assume and  
7 assign certain relevant leases to the agent.

8           However, paragraph 20(b) allows the DIP agent, upon an  
9 event of default, to occupy any premises, but provides that  
10 with respect to the leases set forth in Schedule A, prior to  
11 the assumption and assignment of those leases, the DIP agent  
12 shall not use the premises other than in a manner consistent  
13 with its existing rights and the landlord's rights under  
14 applicable nonbankruptcy law, written agreement with the  
15 landlord, or as otherwise provided in the bankruptcy court  
16 order.

17           The second set of changes relates to the protections  
18 for the creditors' committee and third-party investigation and  
19 other rights in the order. A set of these changes was made to  
20 paragraph 15 in the order. Pursuant to paragraph 15(c), the  
21 creditors' committee is able to seek to recharacterize any  
22 interest fee or expense payments as principal payments, if  
23 liens to the first lien lenders are successfully challenged and  
24 invalidated.

25           Paragraph 15(e) makes clear that proceeds from asset

1 sales that are to be used to repay the second lien debt are  
2 subject to any order or judgment that may be entered for  
3 preference, fraudulent conveyance or other avoidance actions.  
4 More generally speaking, there are no liens on avoidance  
5 actions or proceeds recovered from the lenders.

6 The creditors' committee, also on paragraph 22, has  
7 the right to request standing on an expedited basis. And  
8 nothing in the DIP order limits any parties' abilities to bring  
9 claims against the second lien agent and lenders. The  
10 committee's investigation budget has been increased from 50,000  
11 to 150,000, as well as the committee has information rights  
12 regarding financial and periodic reporting provided to the pre-  
13 petition and DIP lenders.

14 One additional point is that the milestones with  
15 respect to filing the plan and obtaining an order approving the  
16 disclosure statement are to be extended by thirty days,  
17 respectively. So that now the plan needs to be filed within  
18 ninety days from the petition date as opposed to the previous  
19 sixty. And the disclosure statement and order entered in 120  
20 days from the petition date, as opposed to the previous 90.

21 In addition, the paragraph granting affirmative rights  
22 to the first lien lenders to credit bid has been removed from  
23 the proposed final order.

24 The final -- the debtors believe that the final DIP  
25 order provides them with the necessary liquidity during these



1 cases and full access to the thirty-five million post-petition  
2 financing, as well as adequate protection for the pre-petition  
3 lenders, and we would request that the proposed order be  
4 approved.

5 THE COURT: In light of the dual track and the  
6 possibility of going down a different track than the PSA  
7 contemplates, does that ninety days give you enough time, and  
8 are you confident that if you had to push, you would get the  
9 cooperation of the DIP lender?

10 MR. SASSOWER: Yes, Your Honor. The PSA milestones  
11 are much tighter --

12 THE COURT: Yes.

13 MR. SASSOWER: -- than the DIP milestones.

14 THE COURT: Right.

15 MR. SASSOWER: The DIP lender has been very  
16 cooperative on pushing out the milestones, and I -- we do think  
17 that ninety days should be sufficient. And we're also  
18 confident that if they're not, Mr. Graulich is going to give us  
19 whatever we want.

20 THE COURT: Okay.

21 MR. GRAULICH: You had me until the very last  
22 statement. Timothy Graulich of Davis, Polk & Wardwell, on  
23 behalf of Cantor Fitzgerald, as pre-petition agent and DIP  
24 agent. I can -- and I did have a couple of comments that I  
25 wanted to make in --

1 THE COURT: Okay.

2 MR. GRAULICH: -- respect -- I don't know if it would  
3 be appropriate to say it now or wait until -- if there was any  
4 more on the presentation. But on this point in particular, we  
5 were concerned, as I think the creditors' committee was  
6 concerned, about the sort of speed of the case. You know, by  
7 the same token, this is not a case that would be well-served to  
8 stay in bankruptcy for a protracted period of time. But given  
9 the uncertainty around liquidity, the concerns about the  
10 leverage on the company, and the possibility that there may be  
11 an entity out there that could solve most of the problems, we  
12 did think it would appropriate to push out the milestones under  
13 the DIP.

14 So right now, a plan and disclosure statement would  
15 not need to be filed until July, under this.

16 THE COURT: Right.

17 MR. GRAULICH: And certainly, we would be as  
18 reasonable, later, as we are now, with respect to giving more  
19 time, if the circumstances suggested it was appropriate.

20 THE COURT: All right. All right.

21 All right, does anyone else -- was that the end of  
22 your presentation?

23 MR. WIERBICKI: That was the end of my presentation.

24 THE COURT: All right. Does anyone else wish to be  
25 heard?

1 MR. GRAULICH: If I may be heard --

2 THE COURT: Yes.

3 MR. GRAULICH: -- generally?

4 THE COURT: Certainly.

5 MR. GRAULICH: I can do it right here?

6 THE COURT: You can stay there.

7 MR. GRAULICH: Okay. Great. So I just wanted to make  
8 three quick points. One I've already made with respect to the  
9 milestones, which is that the company -- that the senior  
10 lenders here do have a concern about not moving too quickly and  
11 maybe forcing parties to a litigation stance before it is clear  
12 that that's actually what would be necessary.

13 Then, I just wanted to say with broad brush, with  
14 respect to the -- basically the two baskets of changes to the  
15 order, I think that's also consistent with our view that we  
16 should try to minimize litigation as much as possible.

17 With respect to the landlord issues, these are issues  
18 that may well be litigated -- appropriate to be litigated in a  
19 different type of case, but given the size of the DIP and the  
20 size of the company, the liquidity of the company, we thought  
21 that this was a package of relief that was appropriate under  
22 the circumstances. To be sure, in a different type of case  
23 with a larger DIP, where the value of the leases may be more  
24 important to provide value to the DIP lender, it may have been  
25 appropriate under those circumstances. But given the

1       circumstances here, we thought it would be appropriate to try  
2       and resolve this on a consensual basis.

3               And similarly with respect to the modifications that  
4       we made in connection with discussions with the creditors'  
5       committee, the one that I would just want to note is of a  
6       similar vein. We had, in our interim order, a finding -- a  
7       provision that would deal with the Philadelphia Newspaper issue  
8       that we made clear that for the purposes of this case, as an  
9       additional inducement to make the DIP that the pre-petition  
10      lenders would have the ability to have -- the ability to make a  
11      credit bid, either in a 363 situation or in a plan situation.

12             Again, given the fact that while we certainly aren't  
13      on board with the plan as described in the plan support  
14      agreement, considering the fact that it does not provide for  
15      credit bidding in any event, the fact is, is that it seemed  
16      premature to try and litigate an issue that may not, in fact,  
17      become relevant in this case. So I just wanted to be clear  
18      that its removal from the order wasn't any type of concession  
19      by the pre-petition lenders that they don't have the right to  
20      credit bid -- indeed they believe they do -- they just did not  
21      believe it would be appropriate to try to litigate this now,  
22      particularly in light of the fact that there is no plan that  
23      provides for credit bidding on the horizon.

24             THE COURT: All right. Thank you.

25             MR. GRAULICH: Thank you, Your Honor.

1 MS. BARROW-BOSSHART: Good afternoon, Your Honor.  
2 Jenette Barrow-Bosshart, of Otterbourg, Steindler, Houston &  
3 Rosen, P.C. on behalf of the committee.

4 We appreciate the efforts of the debtors'  
5 professionals and the first lien lenders and second lien  
6 lenders and obviously the DIP lenders in reaching this  
7 consensual resolution. As Mr. Graulich had indicated, some of  
8 the provisions that were deleted or not inserted in the manner  
9 that perhaps the committee would have wanted, were done so  
10 because of the determination that, in fact, it may be  
11 premature. If the issues are ripe later, we can all argue  
12 about it if it comes to pass.

13 That issue -- credit bidding was one the committee  
14 felt strongly about. We asked that it be deleted, and we  
15 appreciate that it was. There were other provisions that we  
16 had asked for but didn't insist upon for the same reason,  
17 especially with respect to the second lien debt, although we  
18 both stepped back from positions we had wanted.

19 But I do want to point out, Your Honor, one or two  
20 things that were not mentioned in the prior presentations with  
21 respect to the milestones. Only the first two milestones with  
22 respect to the filing of the plan and the approval of the  
23 disclosure statement and the hearing on the disclosure  
24 statement are being moved the thirty days. The outside dates  
25 have not changed, and that's in recognition by everybody of the

1       need for speed.

2               Hopefully, if things slipped a little bit, everybody  
3       will agree to further extensions, but we're hoping there won't  
4       be slippage.

5               THE COURT: But we can you get from -- if you got to  
6       disclosure statement, we can get you from disclosure statement  
7       to confirmation in fifty days. That's plenty of time.

8               MS. BARROW-BOSSHART: Yes, Your Honor.

9               THE COURT: I think.

10              MS. BARROW-BOSSHART: And to use a phrase that the  
11       counsel for the DIP agents used, there's a little bit of an  
12       accordion in the middle, and we're stretching the accordion  
13       out.

14              THE COURT: Exactly. Okay.

15              MS. BARROW-BOSSHART: With respect to the adequate  
16       protection liens that are being granted, there are no longer  
17       going to be a grant (sic) upon thirty-five percent of the stock  
18       of the foreign subsidiaries. There no longer will be a lien  
19       on, as you heard, certain of the leases. There will be super-  
20       priority claims attaching to those proceeds, but at least the  
21       liens themselves won't be there. The same thing with avoidance  
22       actions. There will be no lien on the avoidance action. There  
23       will be a no-recourse to the proceeds or to the -- and no lien  
24       on the proceeds to the extent of any recoveries against the  
25       specific pre-petition lender, if any.

1           And in addition, Your Honor, similar to the deletion  
2   of the 364(e) protections that initially were going to both the  
3   DIP lenders and the pre-petition first lien lenders, those have  
4   been deleted with respect to the pre-petition first lien  
5   lenders. There also will be a very specific limitation on the  
6   stipulations and admissions that are the subject of the  
7   challenge period, and now are specifically limited paragraph 6  
8   of the final order, whereas before it was including but not  
9   limited those in paragraph 6. It seemed vague. We didn't  
10   really know what it was that was being stipulated or not.

11           And I think that pretty much covers. There were a  
12   couple of notice provisions that weren't mentioned that were  
13   changed. And there were -- an extension of the use of cash  
14   collateral after notice, from five days to seven. It doesn't  
15   sound like a big change, however, it actually is, because the  
16   DIP notice was seven days. So you could have been caught in a  
17   situation where there's no use of cash collateral but no  
18   ability by anybody to do anything else.

19           And I think that pretty much covers it. But if you  
20   have any questions, Your Honor --

21           THE COURT: All right. Have you had an opportunity to  
22   review the revised order, and it reflects all of these changes?

23           MS. BARROW-BOSSHART: Yes, Your Honor.

24           THE COURT: All right. Does anyone else wish to be  
25   heard with respect to the final DIP order?

1 All right. I'll approve it subject to my having a  
2 chance to review the final order as revised.

3 MR. WIERBICKI: Thank you, Your Honor.

4 The next item on the agenda is the debtors' motion for  
5 authority to pay certain critical vendor, lien and PACA claims  
6 on a final basis. As was noted previously, at the first-day  
7 hearing, the debtors did obtain authority to pay up to 1.2  
8 million of critical vendor claims as well as 25,000 in lien  
9 claims and pay PACA claims in the ordinary course.

10 Since then, the debtors have judiciously used this  
11 relief in an effort to stabilize their trade in the post-  
12 petition period. And as Mr. Sassower mentioned, they've only  
13 spent 720,000 of the 1.2 million allocated to critical vendor  
14 claims, in exchange for which the debtors have received certain  
15 favorable trade terms.

16 Additionally, on April 19th, the debtors filed a  
17 supplemental request with respect to their critical vendor  
18 motion, noting that they had -- we had inadvertently  
19 overestimated the amount of PACA claims versus critical vendor  
20 claims. And so whereas in the initial motion we'd asked for  
21 final relief for critical vendor claims up to 4.7 million, it's  
22 actually 5.2 million. It was a 500,000 dollar overestimation  
23 of the PACA claims. We did preview this with the committee,  
24 who has indicated they don't object to this revision. And it  
25 is also in accordance with our DIP budget.



1           Additionally, as reflected in the proposed order that  
2           was attached to the supplemental request, the creditors'  
3           committee will receive advance notice and approval of any  
4           critical vendor claims the debtors propose to pay, to the  
5           extent the final order is entered.

6           So we'd ask that to ensure our continued supply on  
7           normalized trade terms, and pursuant to the facts and the  
8           importance of our trade as set forth in the first-day hearing  
9           as well as the declaration of Anthony Missano, the debtors'  
10          president of business development, that was entered into the  
11          record at the first-day hearing, that the motion be granted on  
12          a final basis.

13          THE COURT: All right. The only question I have is,  
14          you said you've spent 720 of the 1.2 million. Given where you  
15          are in the case now, do you still anticipate having to spend a  
16          lot more? Are there still critical vendors out there?

17          MR. WIERBICKI: Sorry about that. I just wanted to  
18          get the facts. We are in the process of negotiating trade  
19          agreements --

20          THE COURT: Okay.

21          MR. WIERBICKI: -- with a number of other vendors --

22          THE COURT: Okay.

23          MR. WIERBICKI: -- that just haven't been finalized as  
24          of today. But we would -- you know, are seeking to finalize  
25          those to ensure favorable trade terms going forward in the

1 case.

2 THE COURT: All right. Does anyone else wish to be  
3 heard with respect to the critical vendor motion? Mr. Hazan,  
4 you're okay with this one?

5 MR. HAZAN: We are. As commented, as we do in most  
6 cases, we requested a procedure for professional-eyes-only,  
7 where the financial advisors of the committee sign off on the  
8 appropriateness --

9 THE COURT: Okay.

10 MR. HAZAN: -- of the critical vendor treatment.

11 THE COURT: All right. I'll enter this order.

12 MR. WIERBICKI: Thank you, Your Honor. The next order  
13 on the agenda is the debtors' request for entry of a final  
14 order to pay and honor certain of their pre-petition employee  
15 wage and benefit claims. This is just essentially, bringing to  
16 a final basis what was granted in the interim order.

17 There are three changes that we made to the order at  
18 the request of the U.S. Trustee and the creditors' committee.  
19 One was to clarify that there be no bonus or severance pay to  
20 any insiders pursuant to this order. Another was clarifying  
21 language regarding the 11,725 cap, that except for certain  
22 field level employees, all pre-petition compensation is subject  
23 to that cap. And with respect to any program in the motion  
24 where the debtors stated that they believed that as of the  
25 petition date, no amounts were outstanding, to the extent we

1 later learn that amounts were outstanding, we seek to pay  
2 those. We will give notice to the creditors' committee of  
3 that.

4 THE COURT: Anyone have anything on this motion?

5 All right, I'll approve it.

6 MR. WIERBICKI: Thank you, Your Honor. The next  
7 motion is the debtors' motion seeking a final order authorizing  
8 them to maintain and administer their customer programs, which,  
9 as noted at the first-day hearing, include customer gift card  
10 programs, certain discounts and promotional programs. There  
11 are no changes that were made to the final order filed with the  
12 motion, and we ask that the relief be granted.

13 THE COURT: All right. Anyone want to be heard on  
14 this motion?

15 All right. I'll approve this one as well.

16 MR. WIERBICKI: Thank you. The next motion is the  
17 debtors' motion for entry of a final order to continue to use  
18 their cash management system and existing bank accounts. Only  
19 one change to the proposed final order, which is, the  
20 creditors' committee requested that we provide three days'  
21 advance notice before transferring any funds from a debtor to  
22 one of our joint ventures. And we included that provision in  
23 the proposed final order. In order to be able to effectively  
24 track our cash flows and maintain our cash system, we'd ask  
25 that the order be entered.

1           THE COURT: All right. Anyone wish to be heard on  
2 this one?

3           All right. I'll approve this one.

4           MR. WIERBICKI: Thank you, Your Honor. The next is  
5 the debtors' motion seeking entry of a final order allowing the  
6 debtors to remit and pay certain taxes and fees. The only  
7 change to the proposed order was that we agreed with the  
8 creditors' committee, that if the debtors proceed to pay taxes  
9 that would be entitled to priority under Section 507, we will  
10 provide advance notice to the creditors' committee of that.

11          THE COURT: All right. I'll enter this order.

12          MR. WIERBICKI: Thank you, Your Honor. The next  
13 motion is the debtors' request for authority to establish  
14 notice, case management, and administrative procedures. These  
15 are consistent with the local rules and procedures approved in  
16 other cases. We did get two omnibus hearing dates in June-  
17 July, from your chambers, of June 2nd and July 12th, as well as  
18 clarified that the objection deadline is seven days before the  
19 hearing, consistent with --

20          THE COURT: All right. On that -- on the question of  
21 dates, with significant matters where you need additional days,  
22 just call us. You don't have to be bound by the omnibus dates.  
23 So don't let the dates that we have given you for general  
24 calendar matters drive your process. When you get to the point  
25 where you know what you want to do, call us and we'll obviously

1 do our best to accommodate you.

2 The only thing that generally is nonnegotiable are our  
3 Chapter 13 days, which we only have five left, so -- but who's  
4 counting?

5 MR. WIERBICKI: We greatly appreciate it, Your Honor.  
6 And we will. Thank you so much.

7 THE COURT: All right. Other than that observation,  
8 I'll enter this order.

9 MR. WIERBICKI: Thank you, Your Honor. The next  
10 motion is the debtors' motion seeking entry of an order  
11 determining adequate assurance payment for future utility  
12 services and establishing procedures for additional adequate  
13 assurance requests.

14 As noted in the motion, the debtors have funded in a  
15 segregated account, 240,000 dollars, which represents  
16 approximately two weeks of utility services, as adequate  
17 assurance. That funding was made on April 21st. In addition,  
18 the motion sets forth certain procedures by which the utilities  
19 can come back to us if they have additional adequate assurance  
20 requests.

21 There were two objections filed to the motion, one by  
22 Alabama Power Company and another, which was a group of about  
23 twenty utilities. I'm happy to report that we were able to  
24 resolve those by giving them a month's worth of deposit with a  
25 credit of that two weeks. So the two weeks that was already in

1 the segregated account was credited towards the month.

2 THE COURT: Okay.

3 MR. WIERBICKI: With that, we'd ask the Court to  
4 approve the motion.

5 THE COURT: All right. I'll approve the utilities  
6 motion.

7 MR. WIERBICKI: Thank you, Your Honor. The next  
8 motion is the debtors' motion seeking entry of an order  
9 authorizing debtors to continue their pre-petition insurance  
10 coverage and practices. The debtors maintain approximately  
11 fourteen policies and use the services of the insurance broker  
12 Wells Fargo Insurance. The debtors believe they are current on  
13 all amounts outstanding, and would ask that they be able to  
14 continue their insurance programs.

15 THE COURT: All right. Anyone wish to be heard on the  
16 insurance motion?

17 All right. That's approved.

18 MR. WIERBICKI: Thank you, Your Honor. The next  
19 motion is the debtors' motion requesting approval of certain  
20 interim compensation procedures for retained professionals.  
21 These procedures follow the court's General Order M-412, and  
22 are consistent with procedures approved in other Southern  
23 District of New York cases, and we'd ask that they be approved.

24 THE COURT: All right. This is fine and I'll approve  
25 it. One observation regarding fees. I made my comment before.

1 When you get to your fee applications, we've been working on  
2 forms to assist the clerk's office and the reporting that they  
3 have to do to Washington regarding fees requested and fees paid  
4 in Chapter 11 cases. So as and when we get to that point in  
5 four to six months or whenever, just make a mental note to  
6 check with us to see what the latest form of those schedules  
7 and other reporting requirements are.

8 MR. WIERBICKI: We will do so, Your Honor. Thank you.

9 THE COURT: All right. I'll enter that order. And  
10 that brings us to retentions?

11 MR. WIERBICKI: I believe that's correct, yes. The  
12 next motion is the debtors' motion requesting authority to  
13 continue employing certain ordinary-course professionals. We  
14 did make some changes to the proposed order at the request of  
15 the United States Trustee, the first of which is that each  
16 ordinary-course professional must file their declaration of  
17 disinterestedness within either twenty days from the date of  
18 entry of the order to twenty days from the date of hire. And  
19 as well, the monthly cap has been lowered to 40,000, and  
20 there's now a case cap of 300,000.

21 THE COURT: Okay. All right. I'll approve this.

22 MR. HAZAN: Your honor, just there's a note on that --

23 THE COURT: Yes.

24 MR. HAZAN: -- though it's not an objection at all.

25 Is the reduction in caps were at the committee's request,

1 consistent with Your Honor's observation earlier on trying to  
2 maintain a closer look-see and a lower budget on outside  
3 ordinary-course professionals.

4 THE COURT: Okay. Thank you.

5 MR. WIERBICKI: Thank you, Your Honor. The next item  
6 on the agenda is the retention of Epiq Bankruptcy Solutions to  
7 provide certain services that were not covered in their initial  
8 retention. These relate to solicitation, balloting, and  
9 certain data room and call center services that they provided.  
10 It used to be contained in the first-day applications, and now  
11 they're on separate applications.

12 THE COURT: Right.

13 MR. WIERBICKI: This retention application, along with  
14 all the other retention applications, was filed on April 14th  
15 to allow us to work with the United States Trustee's Office and  
16 incorporate their comments. And other than Rothschild, we've  
17 been able to resolve their concerns.

18 THE COURT: Okay. All right. I'll approve the Epiq  
19 order.

20 MR. WIERBICKI: Thank you, Your Honor. The next  
21 matter on the agenda is the retention application of  
22 PricewaterhouseCoopers who act as bankruptcy consultants, tax  
23 advisors and auditors for the debtors. The debtors chose  
24 Pricewaterhouse in light of their extensive experience with the  
25 debtors more generally. As with the Epiq retention, the order



1 here was negotiated and commented upon with the United States  
2 Trustee's Office.

3 THE COURT: All right. Does anyone have anything with  
4 respect to the retention of PWC?

5 MS. GASPARINI: Your Honor, I'll speak now for all the  
6 applications --

7 THE COURT: Okay.

8 MS. GASPARINI: -- and then I'll speak to Rothschild  
9 in a minute.

10 THE COURT: All right.

11 MS. GASPARINI: But I just wanted to make a statement  
12 for the record. Our office has vetted all retention  
13 applications very closely. We did share Your Honor's concern  
14 with respect to duplication and the number of professionals  
15 retained in these cases. And going through the comments, we  
16 made sure that the services that each professional is to  
17 provide were specified in the order. And our office is  
18 certainly going to closely scrutinize the fee applications to  
19 make sure that these services are indeed what is going to be  
20 provided.

21 And we also made sure that each order did state that  
22 the work is not going to be duplicative of another  
23 professional. So we certainly second Your Honor's concerns and  
24 certainly reserve all our rights with respect to duplication  
25 when it comes to fee application time.

1           THE COURT: Right. I mean, just by dint of everyone  
2     understandably wanting to keep track of what's happening in the  
3     case, you could have a status call when you have groups and  
4     groups of professionals on the phone. So it's proper for them  
5     to be keeping track of things. The left hand needs to know  
6     what the right hand is doing, but that quickly, quickly begins  
7     to add up.

8           So I would just ask -- I echo that concern again, and  
9     I would just ask that you also attempt to limit the number of  
10    professionals from each firm that does various tasks. I'm not  
11    going to tell you how to run your case, but I think you know  
12    what I'm talking about.

13          MS. BARROW-BOSSHART: Your Honor, Jenette Barrow-  
14    Bosshart on behalf of the committee. With respect to PWC, the  
15    committee did also have some concerns with respect to PWC  
16    performing services related to schedules and statements. We  
17    thought that perhaps they weren't best utilized for that  
18    purpose; that perhaps Epiq could have done those services and  
19    that perhaps their normal hourly rate was too high to be  
20    billing for that.

21          However we -- after probing the issue and speaking  
22    with PWC and debtors' counsel on the matter, we were convinced  
23    that it was appropriate under these circumstances for two  
24    reasons. PWC indicated that they would not be doing the actual  
25    preparation of the schedules themselves, but rather supervising

1       them.   And two --

2               THE COURT:   Supervising personnel at the company?

3               MS. BARROW-BOSSHART:   That's my understanding.

4               THE COURT:   Okay.

5               MS. BARROW-BOSSHART:   And two, that they were --  
6       although they're charging the normal hourly rate for the  
7       schedules and statements, they are giving an overall fifteen  
8       percent discount on audit services, which is really a much more  
9       lucrative area.   So we were convinced that it was appropriate  
10      under the circumstances.

11              THE COURT:   All right.   I appreciate that.   All right.  
12      With that, I'll approve PWC's retention.

13              MR. WIERBICKI:   Thank you, Your Honor.   The next item  
14      is the retention application of Curtis Mallet to act as  
15      conflicts counsel in these cases.   The debtors seek to employ  
16      Curtis to handle matters that are not appropriately handled by  
17      Kirkland or to which Kirkland has actual or potential conflict  
18      of interest.

19              Again, as with the other retentions, the order was  
20      negotiated with and incorporates comments from the United  
21      States Trustee's Office.

22              THE COURT:   All right.   Anyone wish to be heard with  
23      respect to Curtis Mallet?

24              All right.   I'll approve their retention.

25              MR. WIERBICKI:   Thank you, Your Honor.   The next item

1 is the retention application to employ Cadwalader as counsel to  
2 the restructuring committee. Given that certain of the  
3 directors are MidOcean members, a restructuring committee of  
4 disinterested directors has been formed here, and Cadwalader  
5 provides advice to them. And again the application was vetted  
6 with the United States Trustee and incorporates her comments.

7 THE COURT: All right. Anyone wish to be heard with  
8 respect to Cadwalader?

9 All right, I'll approve their retention.

10 MR. WIERBICKI: Thank you, Your Honor. The next item  
11 is the debtors application to employ Marotta Gund as special  
12 financial advisors to assist the debtors in managing their  
13 thirteen-week cash flow and the DIP budgeting requirements,  
14 preparing liquidation and best interests analysis. This, along  
15 with the other retentions, was also discussed with the United  
16 States Trustee and incorporates many changes that she -- all of  
17 the changes she requested, and it's significantly different  
18 from where we started from, to address many of the concerns  
19 that the U.S. Trustee has raised and you have raised as well.

20 THE COURT: All right. Anyone wish to be heard on  
21 this application?

22 All right, I'll approve it.

23 MR. WIERBICKI: Thank you, Your Honor. The next item  
24 is the debtors' application to employ the Steinberg Fineo firm  
25 with respect to certain general business matters. The

1 Steinberg firm served in the capacity of acting general counsel  
2 of the debtors since 2007, as well as served with respect to  
3 litigation matters.

4 At the request of the United States Trustee, we filed  
5 a supplemental declaration on April 26th that provided  
6 additional description of the services that the Steinberg firm  
7 provides, particularly with respect to the litigation matters,  
8 and noted -- attached an exhibit of the current litigation  
9 matters in which they are involved. And with respect to any  
10 new matters the debtors will come on notice of presentment  
11 requesting supplemental application for those matters.

12 We've asked that the application be approved.

13 THE COURT: All right. This one actually looked like  
14 it would be a savings in terms of not bringing someone else up  
15 to speed and lower hourly rates. I'll approve this  
16 application.

17 MR. WIERBICKI: Thank you, Your Honor. And with that,  
18 I'll turn the last two items back over to Mr. Sassower.

19 THE COURT: Okay.

20 MR. WIERBICKI: Thank you.

21 THE COURT: Thank you.

22 MR. SASSOWER: For the record, Edward Sassower of  
23 Kirkland, on behalf of the debtors. Your Honor, the next item  
24 on the agenda is Kirkland's retention application. You've  
25 heard a bit about that already.

1           As you know, Kirkland represented MidOcean --  
2       represents MidOcean on matters unrelated to the debtors, and  
3       represented MidOcean in connection with its acquisition of  
4       Sbarro. We've had extensive conversations and inquiries from  
5       the Office of the United States Trustee and the committee. And  
6       those parties, as every other party in the case, has gotten  
7       comfortable that we have all of the proper procedures and  
8       prophylactic measures in the case. And I think also, the  
9       parties in the case have observed our behavior in the case and  
10      have gotten comfortable that we are doing all the right things,  
11      and keeping us in place in this case is what's in the best  
12      interests of all parties.

13           So, unless Your Honor has questions or comments --

14           THE COURT: Well, I think I'll pick up on a theme of  
15      what Mr. Graulich said with respect to certain changes that  
16      were agreed to in the context of the DIP. Every case turns on  
17      its own facts. And the fact that everybody has gotten  
18      comfortable with this constellation of facts in this case, is  
19      fine with me. It may not necessarily be the case in some other  
20      case, given the prior relationships. But I thought about this  
21      a lot, and I am comfortable, particularly since you all are  
22      comfortable.

23           Had somebody had a serious objection, I think we'd  
24      have a different conversation. But I'm prepared to move  
25      forward, so I'll approve the retention.

1 MR. SASSOWER: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. SASSOWER: Your Honor, the last item on the agenda  
4 is Rothschild's retention application.

5 THE COURT: Okay.

6 MR. SASSOWER: There are limited objections from the  
7 Office of the United States Trustee and the creditors'  
8 committee regarding the reimbursement of professional fees.  
9 That's the only --

10 THE COURT: That's the only open issue? Not --

11 MR. SASSOWER: -- that's the only open issue.

12 THE COURT: -- not the other two issues that were in  
13 the committee's objection?

14 MR. HAZAN: Your Honor, Scott Hazan again. That is  
15 correct. We agreed with the revised proposed language on  
16 transaction.

17 THE COURT: Okay.

18 MR. HAZAN: We accepted the entitlement on a credit  
19 bid.

20 THE COURT: Credit bid.

21 MR. HAZAN: And we --

22 THE COURT: The third one was --

23 MR. HAZAN: -- accepted --

24 THE COURT: -- the carveout.

25 MR. HAZAN: -- the carveout, though in every case, we

1 are concerned with the magnitude of the fees the investment  
2 bankers and how they can absorb the whole carveout. But again,  
3 on the facts of this case, we accepted that.

4 THE COURT: Okay. Then we're just talking about  
5 reimbursement of expenses?

6 MR. SASSOWER: Correct. We're talking about that one  
7 discrete issue.

8 Your Honor, Rothschild is represented by Richard Hahn  
9 of Debevoise, who is here.

10 THE COURT: All right.

11 MR. SASSOWER: I'll just say a couple remarks on the  
12 debtors' behalf, and then I'll cede the podium to --

13 THE COURT: Okay.

14 MR. SASSOWER: -- the objectors. And then --

15 THE COURT: All right.

16 MR. SASSOWER: -- they'll be followed by Mr. Hahn.

17 THE COURT: All right. So the goal is to spend more  
18 fees discussing this issue now than are at issue under the  
19 reimbursement. Just to put a fine point on it.

20 MR. SASSOWER: With that, I'll be extremely brief.

21 THE COURT: Good.

22 MR. SASSOWER: I'll just say, in one sentence or less.  
23 The debtors believe that -- the debtors understood that this  
24 provision was in there when they negotiated the retention  
25 application and we think this provision is consistent with past



1 practice and precedent and market. And we're supportive of it.  
2 We also understand --

3 THE COURT: Let me ask you a question, though. And  
4 maybe this is more appropriate -- I'd like to know what the  
5 underlying facts are. Looking at the provision in the  
6 engagement letter -- let's see if I can find it again,  
7 Expenses, section 6 -- I had a little bit of a hard time with  
8 the language.

9 MR. SASSOWER: Yes.

10 THE COURT: And I just wanted to understand, is there  
11 a request to pay pre-petition counsel fees for Rothschild?

12 MR. HAHN: No, Your Honor.

13 THE COURT: There's not, right?

14 MR. HAHN: No.

15 THE COURT: Because the engagement letter was  
16 obviously entered into pre-petition. And it therefore  
17 contemplated the scenario of there being such expenses pre-  
18 petition. But you're not asking me --

19 MR. HAHN: This relates entirely to fees accruing  
20 post-petition.

21 THE COURT: All right. And the ask is really for the  
22 fees in getting Rothschild retained and -- in other words,  
23 we're not looking at a shadow set of lawyers here, correct?

24 MR. HAHN: That's correct, Your Honor. The fees  
25 typically arise --

1           THE COURT: Why don't -- identify yourself for the  
2           record.

3           MR. HAHN: Certainly, Your Honor. Richard Hahn of  
4           Debevoise & Plimpton for Rothschild, Inc.

5           In our experience, Your Honor, the fees arise in two  
6           circumstances; first as I think Your Honor was suggesting, in  
7           connection with retention and compensation. If there are  
8           objections, as there are here, Rothschild turns to counsel to  
9           assist them.

10          THE COURT: Right.

11          MR. HAHN: If there are no objections, there's no  
12          outside counsel, no fees.

13          And picking up on Your Honor's earlier points, the  
14          provision only applies to documented and reasonable fees.  
15          We're perfectly happy to let people after the fees are incurred  
16          and reimbursement is sought, to review and challenge the  
17          appropriate -- the reasonableness, rather than dealing with  
18          this in the abstract.

19          The second area where this sometimes comes up is in  
20          cases that are litigious. It's -- for better or worse, it's  
21          sometimes a common tactic for those challenging the debtors'  
22          motions or plan to seek discovery from the debtors' financial  
23          advisors through depositions, document production. Often the  
24          debtors' counsel handles that. On occasion they have turned to  
25          Rothschild and said we're overburdened, could your counsel

1 handle it, or we see a divergence of interests here on a  
2 particular issue. There's an accusation that's been made about  
3 particular behavior. You should get your counsel involved.

4 And in those limited circumstances, we sometimes -- for fees --

5 THE COURT: All right. Well, the latter, to the  
6 extent that there's an accusation or something in which  
7 Rothschild needs its interests protected, that's one category,  
8 and I can understand that. But if they're overburdened, that's  
9 not okay with me for them to call you. They've got a bunch of  
10 other lawyers. They can call Curtis Mallet, they can unpack  
11 some other lawyers. But it's not okay with me for Rothschild  
12 to turn to counsel to, in essence, be rendering services to the  
13 estate on a non-retained basis.

14 And I don't think that's what your --

15 MR. HAHN: No, Your Honor.

16 THE COURT: -- I don't think that's what contemplated  
17 here.

18 MR. HAHN: No. And I don't think that's, frankly,  
19 what's at dispute with the U.S. Trustee. I think the dispute  
20 relates to the fees associated with retention and compensation.

21 THE COURT: Okay. All right. I think -- okay, thank  
22 you.

23 Ms. Gasparini?

24 MS. GASPARINI: Thank you, Your Honor.

25 THE COURT: Before you start, not to cut you off at

1 the pass. And you can make your full remarks. But I disagree  
2 with your view of overhead. I think overhead is paying for the  
3 lights, paying for the air conditioning, paying for the  
4 administrative staff. I don't think that paying Debevoise to  
5 help Rothschild get retained is overhead.

6 You know, I suppose you could say -- you know, you  
7 could look at the fees that they're going to receive under the  
8 case and say, why do they need an extra 14,000 dollars. But  
9 that's a different issue. So I look at it somewhat  
10 differently. I think that it's not what I view as overhead,  
11 and therefore I disagree with that piece of your argument.

12 MS. GASPARINI: Sure, Your Honor. I'll get to that in  
13 one minute.

14 THE COURT: Okay.

15 MS. GASPARINI: But just to start out, we're not  
16 disputing the fact that Rothschild should not be retained under  
17 Section 328.

18 THE COURT: Right.

19 MS. GASPARINI: We're just disputing the fact of  
20 whether or not the provision regarding the reimbursement of  
21 their professional fees, whether or not that is a reasonable  
22 provision. And the burden of proof rests on the applicant to  
23 come forth and prove that it is such a reasonable provision.

24 We did argue -- we made three main arguments, and I  
25 won't dwell too much on it, as they are set forth in our paper.

1 But I'll also rebut to some of the arguments that were raised  
2 in the reply papers.

3 One of the arguments that we made is that the  
4 reimbursement for legal fees should not be permitted because  
5 for an attorney to be paid, they need to be retained in the  
6 bankruptcy case. The second one is that the reimbursement of  
7 fees and expenses usually focuses on whether or not they fall  
8 within the provisions of 330, whether they're reasonable and  
9 whether they provide --

10 THE COURT: Right.

11 MS. GASPARINI: -- a benefit to the estate. And here  
12 we don't see any reason why they -- we don't view them as  
13 providing any benefit. As a matter of fact, the only benefit  
14 that Debevoise's services provide is to Rothschild.

15 With respect to overhead, I understand Your Honor's  
16 concern, and the interpretation of the U.S. Trustee Guidelines  
17 how "overhead" is defined therein. So maybe it's not in the  
18 same category as word processing or rent or renting space for  
19 files. But we see it as the cost of doing business -- for  
20 Rothschild to do business. And when we use the term "overhead"  
21 that is what we're referring to.

22 I'd like to respond to some of the arguments that  
23 Rothschild made in its reply papers. With respect to the fact  
24 that legal fees for financial advisors have been approved many  
25 times in the past, that may be the case, Your Honor, but I

1 would like to point out one thing. Our office may not -- this  
2 may have been -- evolved into a more recent position with  
3 respect to the 328 retentions. But that does not mean that in  
4 the past we have not objected to the reimbursement of legal  
5 fees at fee application time.

6 We now view it as let's argue about it now. Let's not  
7 defer the issue to a fee application time, because we view it  
8 as a provision that's not reasonable under the retention  
9 standards of 328. So once again, a lot of the cases that they  
10 cite, doesn't mean that we didn't object to such fees to the  
11 extent that they were sought at fee application time. It was  
12 just a matter of when they were argued.

13 The Blockbuster case has been cited, both in our  
14 papers and in the reply papers. The same issue did come up  
15 before Judge Lifland, and Rothschild was, indeed, the financial  
16 advisors who was being retained by the debtors. We objected to  
17 the same provision which was I think almost -- very similar, if  
18 not identical, in the engagement letter. And Judge Lifland did  
19 find that Rothschild should not be reimbursed for any charges  
20 for its counsel.

21 THE COURT: But weren't the facts in Blockbuster  
22 different from the facts here with respect to the amount of  
23 fees at issue?

24 MS. GASPARINI: I don't think so, Your Honor. I think  
25 that they -- basically the provision in the engagement letter

1 did seek reimbursement for both any fees related to the  
2 engagement as well as fee applications and that's what we  
3 objected to. We actually objected to any legal fees, and the  
4 judge basically entered an order saying that they should not  
5 seek reimbursement for any legal fees of Debevoise or, you  
6 know, legal counsel that they retained.

7           Rothschild does cite in its reply papers -- they say  
8 that "in Blockbuster itself Judge Lifland permitted  
9 reimbursement of legal expenses with respect to three  
10 professionals." And I'm not sure that's entirely true. In  
11 Deloitte -- Deloitte Tax, which is one of the retention  
12 applications that they cite in their reply papers, there's a  
13 specific provision in the order that says -- in the order  
14 signed by Judge Lifland that says, " Deloitte Tax shall not be  
15 entitled to reimbursement by the debtors for any fees,  
16 disbursements or other charges to Deloitte Tax's attorneys  
17 other than those incurred in connection with the request of  
18 Deloitte Tax of payment for indemnity."

19           So Your Honor, we're not here to discuss that they  
20 should not be entitled to legal fees related to  
21 indemnification. That's part of the Blackstone protocol. And  
22 there's a provision in the proposed order, paragraph 12, that  
23 does allow that, that does allow for Rothschild to be  
24 reimbursed for legal fees related to indemnification as  
25 provided for in the engagement letter.

1           With respect to Alvarez & Marsal, in Blockbuster, in  
2           that order that was approved by the Court there's a provision  
3           that says, "Notwithstanding anything to the contrary in the  
4           engagement letter or the application, A&M shall be entitled to  
5           seek and obtain payment of its reasonable attorneys' fees only  
6           upon its prior application to this Court pursuant to sections  
7           330 and 331 of the Bankruptcy Code, provided however, the U.S.  
8           Trustee retains all rights to object to any attorneys' fees  
9           sought, including the right to assert that such fees are not  
10          permitted." So Judge Lifland did not allow for these fees; we  
11          just carved it out as part of the negotiations with respect to  
12          other terms and issues we had with respect to that retention  
13          application.

14                 And same thing for Retail Resource. The order was  
15          actually silent with respect to legal fees. I was not the  
16          attorney -- the trial attorney on that case, but sometimes it's  
17          not addressed because we are told that they don't have outside  
18          counsel so the issue is moot; there is no issue with respect to  
19          legal fees.

20                 THE COURT: Let's stop and talk about some of these  
21          issues.

22                 MS. GASPARINI: Sure.

23                 THE COURT: I mean, first of all, with respect to the  
24          requirement of complying with 327, for a retained professional  
25          on the case the U.S. Trustee has a legitimate concern that



1       there be the appropriate level of disinterestedness --

2               MS. GASPARINI:   Correct.

3               THE COURT:   -- right?   So with respect to a  
4       professional who's providing limited services to a financial  
5       advisory firm, they are rendering service to Rothschild in this  
6       case, and I don't think the same requirement of  
7       disinterestedness really pertains.   But that being said, they  
8       are conferring a benefit on the estate because they're enabling  
9       the estate to retain Rothschild.

10              One could say -- I suppose you could argue back and  
11       say, well, they could go out and get a financial advisor who  
12       doesn't want to charge through their legal fees.   But I would  
13       suggest to you that you then would have a situation where they  
14       might be able to find someone, but that to me would seem to be  
15       the tail wagging the dog for such a small amount of money and I  
16       do think a debtor should be given deference for their choice of  
17       professionals.

18              And secondly -- and this might be very cynical -- but  
19       if the standard fee structure for a financial advisor or  
20       investment banker for a large debtor is 150,000 dollars a month  
21       for the first six months and the credit back and all of those  
22       other bells and whistles, don't you think that if I don't -- if  
23       we weren't to approve their attorneys' fees coming in, that  
24       that first month would simply kick up by 25,000 dollars.   And  
25       then we are going to have a retention that includes that

1 amount, and then I'm not even going to have the ability to look  
2 at the fees.

3 Now if I were to approve this, they're going to come  
4 in, they're going to have to submit their fees for approval and  
5 I would have the ability to look at the expenses that they're  
6 asking reimbursement for. You'd have the opportunity to  
7 object. Isn't that a better outcome?

8 MS. GASPARINI: Well, Your Honor, we think, number  
9 one, going back -- and I know Your Honor may not view it the  
10 same, but we view it as part of doing business. With respect  
11 to -- and I think that it may have been argued in their papers,  
12 if I understood them correctly --

13 THE COURT: Well, let me -- let's pause of that one  
14 and we now will exceed the hourly rate of what's at issue here  
15 but here we are. For example, the other professionals in the  
16 room whose applications I'm approving, they get to bill for  
17 being here, right?

18 MS. GASPARINI: Yes.

19 THE COURT: So why -- you could take the position that  
20 that's a cost of doing business, that's a cost of Kirkland &  
21 Ellis being retained. Why should the be entitled to get fees  
22 for fees?

23 MS. GASPARINI: Sure.

24 THE COURT: Right? And we do limit, on a percentage  
25 basis or on some kind of a, you know, amorphous reasonable

1 standard, the amount of fees that professionals get for fees.  
2 Right? We're not going to allow them to bill for certain  
3 things, entering their time on their time sheets, for example.  
4 But we do allow them to get paid for getting paid. So that, to  
5 me, seems to be a disparity that doesn't make a whole lot of  
6 sense in terms of your argument that it's a cost of doing  
7 business.

8 MS. GASPARINI: But the way I view it is this, and I  
9 think they raised it in their papers, that 330(a)(6) even  
10 allows for you to get reimbursed -- for a professional to get  
11 reimbursed for fees related to preparation of fee applications.  
12 And as long as they're reasonable, for example, our office  
13 doesn't usually object as long as they're reasonable; we may  
14 have other grounds for objection.

15 But for example, for K&E to seek reimbursement with  
16 respect to entering into retention, you know, dealing with  
17 their engagement, retention papers or dealing with filing fee  
18 applications. We wouldn't even have an objection, once again,  
19 to the extent that the fees are reasonable, for somebody in-  
20 house at Rothschild to seek reimbursement for their fees  
21 related to their retention application or fee applications. We  
22 see that -- as long, once again, as they're reasonable, I think  
23 they're allowed for under the Code.

24 But it's when that -- those services are outsourced to  
25 a third party that I think that's when the line crosses to the

1       unreasonableness. And the reason being, we're dealing here  
2       with financial advisors that get paid usually a monthly fee  
3       that either gets credited at the end or does not get credited,  
4       but then there's a success fee. So a lot of times financial  
5       advisors are the highest paid professional in a case, and it's  
6       not in their incentive to keep it in-house because that brings  
7       down, technically -- you know, eats into their success fees.  
8       But having said that, usually at the end of the case they are  
9       the highest paid professionals on a blended hourly rate  
10      account, and so it isn't their incentive to outsource their  
11      services, and that is what, in our view, crosses the line to  
12      the unreasonableness.

13               THE COURT: All right. I hear you but I disagree with  
14      you, notwithstanding what Judge Lifland did in Blockbuster.

15               Mr. Hazan, I don't know if you want to continue the  
16      objection, but I'm happy to hear you.

17               MR. HAZAN: I would like to, briefly, Your Honor.

18               THE COURT: Okay.

19               MS. GASPARINI: Sure. If I may make two more  
20      statements --

21               THE COURT: Okay.

22               MS. GASPARINI: -- in reply to the papers that were --

23               THE COURT: And when you're done I want to say one  
24      more thing. Go ahead.

25               MS. GASPARINI: Sure. I think there was a statement

1 in the reply papers that the U.S. Trustee's position is  
2 contrary to the Blackstone protocol, and once again, that is  
3 not what we're saying. As a matter of fact, paragraph 12 does  
4 say that to the extent that the fees are with respect to  
5 indemnification --

6 THE COURT: Right.

7 MS. GASPARINI: -- that they are certainly provided  
8 for.

9 THE COURT: Okay.

10 MS. GASPARINI: And the other thing that I wanted to  
11 state for the record is that the same issue came up during --  
12 in Marotta Gund's engagement letter they do seek fees related  
13 to their counsel and they did agree not to seek legal fees with  
14 respect to the retentions as well as the fee applications.

15 THE COURT: All right, thank you.

16 MS. GASPARINI: Thank you.

17 MR. HAZAN: Your Honor, Scott Hazan from Otterbourg  
18 again. A couple of preliminary comments. Certainly this issue  
19 on legal fees is a small issue, and Your Honor may recall when  
20 I stood up here at the very outset I said there was remaining  
21 issue; this case will not rise or fall on the issue.

22 Two, Rothschild is an excellent firm. Mr. Augustine,  
23 Mr. Douton and Mr. Resnick are superior investment bankers.  
24 And Mesirow Financial, our financial advisors, have reviewed  
25 the reasonableness of the totality of fees and were satisfied

1       that they were getting well paid but market rate. We tried a  
2       variety of solutions to solve the problem so we wouldn't have  
3       to be here.

4               The committee has already, I think, Your Honor,  
5       demonstrated to you, we look at fees, whether it was the  
6       ordinary course professional where we reduced the caps and  
7       other items of a similar note. Every case does stand on its  
8       own facts, and our experience differs from whatever experience  
9       Mr. Hahn may suggest to you and has already suggested to you,  
10      and our experience suggests not in every case do the investment  
11      bankers get, seek, or seek and then waive the fees for their  
12      counsel.

13             Mr. Hahn commented that there will be an opportunity  
14      to review the fees, they'll be documented, subject to  
15      objection. That was one of the proposals we made. I don't see  
16      that anywhere in any of the pleadings in terms of a process --

17             THE COURT: But of course they will because they have  
18      to apply for their fees. So --

19             MR. HAZAN: They do not apply for their fees.  
20      Rothschild applies for the fees.

21             THE COURT: Rothschild. No --

22             MR. HAZAN: They could have a single-line entry: our  
23      legal expense is twenty-two dollars or twenty-two million  
24      dollars.

25             THE COURT: Well, no, but we're not going to do it

1       that way.

2               MR. HAZAN:   Okay, good.

3               THE COURT:   I'll ask to see details.

4               MR. HAHN:   Your Honor, the engagement letter says they  
5       must be documented and reasonable.  It is Rothschild's practice  
6       and I --

7               THE COURT:   We can't record you unless you're at the  
8       microphone.

9               MR. HAHN:   I'm sorry.

10              THE COURT:   Could you repeat that?

11              MR. HAHN:   The engagement letter says that the fees  
12       must be documented and reasonable.

13              THE COURT:   That's what I --

14              MR. HAHN:   And it is our practice and I commit to you  
15       here that the detail will be provided in connection with  
16       Rothschild's applications and subject to the review of people  
17       who want to challenge the reasonableness of it, they will be  
18       able to.

19              MR. HAZAN:   And Your Honor, this is a 328 retention,  
20       so what is the basis and authority for the challenge?  Our  
21       rights under 330 reserve as to those expense items.

22              MR. HAHN:   The reasonableness requirement is embedded  
23       in the engagement letter.  It's not imposed by the statute,  
24       so --

25              THE COURT:   And it will be imposed by me.

1 MR. HAHN: Okay.

2 MR. HAZAN: And really the thrust of this, Your Honor,  
3 to conclude -- because if there is a process we have come a  
4 long way -- is that it wasn't an objection on our part if  
5 discovery is taken of Rothschild in a way that is appropriate  
6 by outside counsel because we didn't get into a litigation to  
7 make a lot of noise about that. But it was our problem for  
8 them to have outside counsel prepare an application to be  
9 hired, to prepare monthly statements and expend money for what  
10 we consider -- put aside overhead; we can debate that until the  
11 cows come home -- something that you just don't need an estate  
12 to bear the expense of.

13 In our committee cases, for which we do most secured  
14 lending and committee work, the advisors to the committee --  
15 Mr. Lang (ph.) is in court; he's prepared his own paperwork.  
16 We don't prepare it for him. Now, is every financial firm of  
17 the same note? No. But most that we deal with will prepare  
18 their own.

19 So our major thrust was there are certain things that  
20 the estate should not bear, whether it's the retention, the  
21 monthlies, the interims, the finals. And there are certain  
22 things the estate properly ought to bear: discovery and the  
23 like. And we tried to find a happy middle ground but were not  
24 successful.

25 And so we would ask Your Honor to limit the places



1 where they might seek it, from the mundane to the not so  
2 mundane. And when Your Honor decides against that, because  
3 Your Honor has already very much indicated her view on this, we  
4 certainly would ask you --

5 THE COURT: When you say the mundane to the not so  
6 mundane --

7 MR. HAHN: So the two examples being --

8 THE COURT: Go ahead.

9 MR. HAHN: -- who prepared the retention papers, the  
10 application in support, the affidavit, who prepared them and  
11 who has to pay for them? In our view, outside counsel for the  
12 investment banker should not be charging the estate. Counsel  
13 for the debtor often does it. Counsel for the debtor often  
14 stands up and defends these applications, and you don't need  
15 counsel for the investment banker.

16 THE COURT: But if they did that then they would ask  
17 for their fees in doing it.

18 MR. HAZAN: Correct, but they're already here. He  
19 doesn't have to be here. Okay? And I say that respectfully --  
20 as well as his colleague who is here.

21 THE COURT: Not personally.

22 MR. HAZAN: Right, it's not personal, believe me.

23 THE COURT: Right.

24 MR. HAZAN: That's in respect to --

25 THE COURT: No, I didn't say personable, I said

1 personal.

2 MR. HAZAN: Right. And --

3 THE COURT: No, but let's pause on this because if  
4 someone from Kirkland had done their work to get Rothschild  
5 retained, that attorney at Kirkland would put in for that. So  
6 that's a person billing. The person billing to get Rothschild  
7 retained is from Debevoise. The only difference between those  
8 two people in the generic sense is that Debevoise is not  
9 itself, as of today or ever, a retained professional in this  
10 case. Right?

11 MR. HAZAN: Yes, but Your Honor commented earlier, you  
12 have a gaggle of professionals --

13 THE COURT: Right.

14 MR. HAZAN: -- you get on calls, you have multiple  
15 teams.

16 THE COURT: Agreed.

17 MR. HAZAN: You know and I know there's an extra cost  
18 being borne. And we simply suggested that the administrative  
19 kind of costs not be borne by the estate. That was our major  
20 thrust and we do it every case. Sometimes we success. More  
21 often than not it's resolved and Your Honor doesn't have to  
22 hear it. That was our position here. That is our position  
23 here.

24 There were discussions on capping it, however those  
25 didn't work. And our view, Your Honor, is you retained

1 Rothschild. We support that. The structure is fine. You  
2 somehow limit that which could be charged, and at worst, that  
3 which you've already made clear -- but that's at worst -- we  
4 have a clear process to determine reasonableness --

5 THE COURT: All right.

6 MR. HAZAN: -- and a full opportunity --

7 THE COURT: Well, I think that -- I'm going to approve  
8 their retention application. I'm going to approve of including  
9 the provision in the engagement letter that allows for the  
10 reimbursement of fees but subject to what I've already stated,  
11 which is that when it's fee application time I'll expect to see  
12 the detail with respect to the fees and expenses expended by  
13 any outside lawyer that Rothschild retains, Debevoise or  
14 whoever.

15 And I reserve all of my rights to come to the view  
16 that those expenses are not reasonable, excessive, et cetera,  
17 and I think that that -- it doesn't really push the entire  
18 issue to the end of the day so much as reaffirm kind of the  
19 basic rules of engagement is that everybody has to keep their  
20 eye on the ball and not be charging this estate for things that  
21 it ought not be charged for.

22 MR. HAZAN: Just one point of clarification. You said  
23 you reserved all of your rights. Your rights are always  
24 reserved. Did Your Honor mean to say that all rights of the  
25 committee and the U.S. Trustee, as an example, with respect

1 to -- and the debtor, for that matter --

2 THE COURT: I think Mr. Hahn didn't disagree.

3 MR. HAHN: All parties have a right to object to  
4 reasonableness of fees.

5 THE COURT: If your fee -- I mean, now we've spent an  
6 hour and a half of quality time together, but you know, if you  
7 put in 50,000 dollar for getting Rothschild retained I'm  
8 probably not going to be that happy about it. So --

9 MR. HAHN: Understood, Your Honor.

10 THE COURT: All right? With all due respect to my  
11 esteemed colleague two doors down the hall, I think we'll do it  
12 that way in this case.

13 And I will say, with all due respect for the Office of  
14 the United States Trustee, I do think that it would be helpful  
15 to the bar if the United States Trustee, when there is a change  
16 in position or even a perceived change in position from what's  
17 perceived to be a practice that's generally available in cases  
18 and done in cases, that there be a discussion. I think it's  
19 important that professionals know what's coming and what they  
20 can expect. And if there are changes in policy, which is her  
21 purview to change policies, that it would be a good thing that  
22 there would be a discussion with the bar so that the members of  
23 the bar can understand where the Office of the United States  
24 Trustee is coming from. But that's just my view.

25 MR. HAHN: Your Honor, we did agree to make one change

1 to the form of order submitted with respect to the definition  
2 of transaction at the request of Mr. Hazan. With your  
3 permission I can bring up a clean and blackline version.

4 THE COURT: All right. Is that only with respect to  
5 the credit bid --

6 MR. HAHN: No, this would be --

7 THE COURT: -- issue?

8 MR. HAZAN: This is a --

9 THE COURT: No, the transaction.

10 MR. HAHN: -- the liquidation.

11 THE COURT: Okay.

12 MR. HAHN: Yeah.

13 MR. HAZAN: And Your Honor, we don't need to have the  
14 order changed to reflect what Your Honor said. We're satisfied  
15 at the record.

16 THE COURT: All right. But the transaction issue,  
17 that's in the event of a liquidation?

18 MR. HAHN: Correct, Your Honor.

19 THE COURT: Right? Okay.

20 Do we have a disk, if we're handling this one  
21 differently from the others?

22 MR. HAHN: I'm afraid we don't have a disk. I have  
23 hard copies, if that's okay.

24 THE COURT: All right. Well, you'll have to either  
25 get us a disk or e-mail us --

1 MR. HAHN: All right.

2 THE COURT: -- a clean copy.

3 MR. HAHN: I'll do that.

4 THE COURT: And then I'll assume I'll get either a  
5 folder of disks or an e-mail from Kirkland with all the other  
6 orders.

7 MR. SASSOWER: Yeah.

8 THE COURT: All right. I appreciate the arguments.  
9 Anything else, Mr. Sassower?

10 MR. SASSOWER: No, Your Honor. That's all we had for  
11 you today.

12 THE COURT: All right. So let us know how you come  
13 out with respect to scheduling the next hearing in the case,  
14 and as I said, we're more than happy to try to accommodate you  
15 outside of omnibus hearing dates.

16 MR. SASSOWER: Thank you very much, Your Honor.

17 THE COURT: All right. Thank you, folks. Have a good  
18 day.

19 IN UNISON: Thank you.

20 (Whereupon these proceedings were concluded at 3:26 p.m.)

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## I N D E X

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

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Wolicki

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