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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12900(SCC)

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

July 10, 2012
4:02 PM

B E F O R E:
HON. ALLAN L. GROPPER
U.S. BANKRUPTCY JUDGE

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Debtors' Motion for an Order Directing Joint Administration of
Chapter 11 Cases

Debtors' Motion for an Order (i) Waiving Requirement to File
List of Creditors and (ii) Establishing Procedures for
Notifying Creditors of the Commencement of the Debtors' Chapter
11 Cases

Debtors' Motion for Entry of Interim and Final Orders (i)
Authorizing Debtors (a) to Obtain Post-Petition Financing
Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2),
364(c)(3), 364(d)(1) and 364(e) and (b) to Utilize Cash
Collateral Pursuant to 11 U.S.C. § 363, (ii) Granting Adequate
Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C.
§§ 361, 362, 363 and 364 and (iii) Scheduling Final Hearing
Pursuant to Bankruptcy Rules 4001(b) and (c)

Debtors' Motion for an Order Authorizing Debtors to File Under
Seal the Fee Letters Relating to Debtors' Motion to Obtain
Post-Petition Financing

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Debtors' Motion for an Order Authorizing (i) Debtors to
Continue to Use Existing Cash Management System and Maintain
Existing Bank Accounts and Business Forms and (ii) Financial
Institutions to Honor and Process Related Checks and Transfers
Debtors' Motion for an Order Authorizing (i) Debtors to (a) Pay
Prepetition Wages, Salaries, Employee Benefits and Other
Compensation and (b) Maintain Employee Benefits Programs and
Pay Related Administrative Obligations, (ii) Employees and
Retirees to Proceed with Outstanding Workers' Compensation
Claims and (iii) Financial Institutions to Honor and Process
Related Checks and Transfers

Debtors' Motion for an Order Authorizing (i) Payment of Certain
Prepetition Claims of Shippers, Warehousemen and Service
Providers and (ii) Financial Institutions to Honor and Process
Related Checks and Transfers

Debtors' Motion for an Order Authorizing (i) Debtors to Pay
Prepetition Obligations Owed to Foreign Creditors and (ii)
Financial Institutions to Honor and Process Related Checks and
Transfers

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Debtors' First Omnibus Motion for an Order Approving Procedures
for (i) the Rejection of Certain Agreements Effective as of the
Petition Date and (ii) the Abandonment of Certain Excess Leased
Equipment

Debtors' Second Omnibus Motion for an Order Approving
Procedures for (i) the Rejection of Certain Agreements
Effective as of the Petition Date and (ii) the Abandonment of
Certain Excess Leased Equipment

Debtors' Motion for an Order Establishing Notification
Procedures and Approving Restrictions on Certain Transfers of
Claims Against and Interests in the Debtors' Estates
Application for an Order Appointing GCG, Inc. as Claims and
Noticing Agent for the Debtors Nunc Pro Tunc to the Petition
Date

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P R O C E E D I N G S

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THE COURT: Please be seated. All right. These are first day orders in Patriot Coal Corporation, et al. I'm sitting in for Judge Chapman who is away and taking these first day orders. May I have appearances from anyone who wishes to appear today and then -- from those in the courtroom first and then -- we have people on the telephone. Then anyone on the telephone who wishes to appear.

MR. SCHAIBLE: Since I'm standing here, I'll start, Your Honor. Damian Schaible with Davis Polk & Wardwell on behalf of the debtors.

MR. RESNICK: Your Honor, Brian Resnick of Davis Polk, also on behalf of the debtors.

MR. REISMAN: Good afternoon, Your Honor. Steven Reisman, Curtis Mallet-Prevost, Colt & Mosle, proposed conflicts counsel for the debtors.

MS. SCHONHOLTZ: Good afternoon, Your Honor. Margot Schonholtz of Willkie Farr on behalf of BofA as the pre-petition agent.

MS. GOLDSTEIN: Good afternoon, Your Honor. Marcia Goldstein, Weil, Gotshal & Manges, and my partner, Joe Smolinsky. We represent Citigroup Global Markets and Barclays Capital as joint arrangers and Citibank as well as administrative agent for the first out DIP lenders.

THE COURT: The first out lenders --

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1 MS. GOLDSTEIN: Yes.

2 THE COURT: -- so-called.

3 MS. GASPARINI: Good afternoon. Elisabetta Gasparini
4 from the Office of the United States Trustee.

5 THE COURT: Anyone else? Who's representing the
6 second out lenders? You're representing the pre-petition
7 lenders and the second out lenders, is that right?

8 MS. SCHONHOLTZ: Correct, Your Honor. Margot
9 Schonholtz.

10 THE COURT: All right. Anyone else in the room who
11 wishes to speak today?

12 All right. Anyone on the telephone who wishes to note
13 an appearance?

14 All right. Mr. Schaible, where would you like --
15 well, let's start with -- even before you give me any
16 background or give --

17 MR. SCHAIBLE: Yes, Your Honor.

18 THE COURT: -- those present background which is
19 always useful, let's deal with joint administration which is
20 strictly a procedural order but it takes a while to enter it
21 since you have ninety-nine petitions if I -- I haven't counted
22 them but --

23 MR. SCHAIBLE: Excellent counting, Your Honor. It's
24 exactly right.

25 THE COURT: -- I'll take your word for it.

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1 MR. SCHAIBLE: It's exactly right. I hope. If
2 there's any missing, if you could advise us, please.

3 THE COURT: I did read all of your papers but only one
4 version of them --

5 MR. SCHAIBLE: That's fair.

6 THE COURT: -- not ninety-nine.

7 MR. SCHAIBLE: Fair. I had to read them all.

8 THE COURT: All right. Joint administration. Does
9 anyone wish to be heard?

10 All right. Then we'll enter the joint administration
11 order. We'll get started on that. I don't know if we'll be
12 able to get anything else on the docket today but that will be
13 a place to start.

14 MR. SCHAIBLE: Thank you, Your Honor. We appreciate
15 that.

16 THE COURT: All right. Now, if you want to give us
17 some background --

18 MR. SCHAIBLE: That would be wonderful.

19 THE COURT: -- and then we'll go through the motions
20 in any order you wish.

21 MR. SCHAIBLE: Thank you, Your Honor. Good afternoon.
22 As I said before, I'm Damian Schaible of Davis Polk & Wardwell
23 on behalf of Patriot Coal Corporation and its ninety-eight
24 other subsidiaries that are Chapter 11 debtors.

25 I'd like to begin today, if I could, with just a

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1 couple of thank yous. The U.S. Trustee's office moved with
2 extraordinary speed and went through all of our first days in
3 great detail providing a number of very helpful comments.
4 We've worked out all of the comments and I think, with the
5 exception of possibly one minor issue, we have reached
6 resolution with the U.S. Trustee's office on all of the orders
7 that we'll be submitting to Your Honor today. And I was very
8 grateful for the accommodation of the U.S. Trustee's office to
9 work with us on that.

10 We're also very appreciative of the court clerk's
11 office which worked with us on the GCG claims agent retention
12 providing us helpful comments and feedback and we appreciated
13 that as well.

14 We're, of course, very grateful of Your Honor and your
15 chambers --

16 THE COURT: You can wait till the end of the hearing
17 to tell me if you're grateful to me.

18 MR. SCHAIBLE: As of right now, Your Honor, I'm very
19 grateful --

20 THE COURT: That's fair.

21 MR. SCHAIBLE: -- for your time and willingness to
22 help us out in a pinch today.

23 Your Honor, if I could just -- we introduced the
24 lawyers already. If I could just introduce a couple of non-
25 lawyers. We have the debtors' financial advisors, Flip Huffard

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1 and Mark Buschmann and Tim Coleman, I see, of Blackstone as
2 well here today and a man who hopes not to have to speak to
3 you, Your Honor, Mark Schroeder, the CFO of Patriot Coal
4 Corporation who's our declarant. And I'll be seeking to move
5 into evidence the declaration shortly. We also have the
6 general counsel of Patriot, Joseph Bean, in the courtroom as
7 well today.

8 Your Honor, I'm not going to go into extraordinary
9 detail on the company. I know you've read the first day
10 declaration. But for the benefit of those in the courtroom and
11 those listening, I may spend just a couple of minutes giving a
12 very brief overview.

13 Patriot is a leading miner and preparer and seller and
14 principally two types of coal: thermal coal and metallurgical
15 coal. I've learned quite a lot about coal in recent days. I
16 used to think it was just what my mother threatened I would get
17 at Christmas. It turns out it's actually much more complicated
18 than that. And as, unfortunately, Your Honor may come to know,
19 it is very specific in terms of chemical composition and the
20 contracts that you use to buy coal are very, very specific and
21 detailed with respect to where the coal comes from, the
22 specifications, the chemical bases, the source mines. It's
23 very, it turns out, extraordinarily complicated.

24 And so we're going to be learning a lot about coal.
25 And principally, the first thing I learned is that thermal

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1 coal --

2 THE COURT: I don't think I will. So you can save
3 this for --

4 MR. SCHAIBLE: Give us time, Your Honor.

5 THE COURT: -- save this for Judge Chapman.

6 MR. SCHAIBLE: You'll be -- well, today you're going
7 to learn a little bit about coal.

8 THE COURT: I've already learned a little bit about
9 coal, enough to be dangerous.

10 MR. SCHAIBLE: So the debtors' currently have mining
11 operations at twelve active mining complexes consisting of
12 nineteen different mines. And they control approximately 1.9
13 billion tons of proven and probable coal which is quite a lot.

14 They ship coal domestically and internationally to
15 various countries across North America, Europe, South America
16 and Asia. In 2011, they sold 31.1 million tons of coal,
17 twenty-nine percent of which was actually in the export market.

18 There are 4,000 active employees, forty-two percent of
19 whom are unionized. And the debtors provide health care and
20 other benefits to more than 10,000 primary insureds and over
21 12,000 additional beneficiaries. So there are a lot of very
22 real people whose livelihoods are very much at stake in these
23 cases.

24 Our pre-petition capital structure -- as Your Honor
25 knows, we have a senior secured credit facility with Bank of

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1 America as agent. On the petition date, there are
2 approximately 300 million dollars of letters of credit
3 outstanding and 25 million dollars of borrowings. We also have
4 51.8 million dollars of LCs outstanding under an accounts
5 receivable securitization facility and two series of unsecured
6 notes, 250 million due in 2018 and 200 million due in 2013.

7 As Your Honor and others in the courtroom may well be
8 aware, the demand for coal has decreased --

9 THE COURT: Is there a trustee for those two issues?

10 MR. SCHAIBLE: There are, Your Honor. And they've
11 been notified.

12 THE COURT: And they have notice of this hearing
13 today?

14 MR. SCHAIBLE: Indeed. Indeed, they've been notified.

15 THE COURT: All right.

16 MR. SCHAIBLE: As Your Honor is likely aware and many
17 in the courtroom may be aware, the demand for coal has
18 decreased in recent years in large part because of alternative
19 sources of energy which have become less expensive, and more
20 burdensome environmental and other governmental regulations
21 which have made the mining and production of coal more
22 expensive, and the still flagging global economy has led to
23 lower demand for steel which is something that some of our coal
24 goes to help make. As a result, we've been forced to reduce
25 production, idle mines and lay off workers.

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1 During the first half of this year, Patriot was
2 approached by a number of customers seeking to cancel or delay
3 shipments of coal and, famously and publicly, two of Patriot's
4 major customers in the past several months actually defaulted
5 on their contractual obligations to take hundreds of thousands
6 of tons of coal. And that has obviously impacted the debtors'
7 near-term liquidity.

8 The demand for coal is declining and, as I said, the
9 debtors face very burdensome liabilities. From a legacy
10 liability standpoint, as I said, there are 22,000 people who
11 are active and retired employees and dependents that rely on
12 benefits from the debtors. Retiree benefits are more than 100
13 million dollars just this year alone. Coal Act liabilities are
14 approximately 140 million dollars in the aggregate; Black Lung
15 Act liabilities, approximately 186 million dollars; and then
16 workers' comp liabilities of over 70 million dollars.

17 In response to these headwinds of lower demand, lower
18 prices, increased costs, the management has taken a number of
19 actions to try to right the ship outside of bankruptcy. They
20 reduced thermal coal production. They delayed expansion. They
21 decreased capital spending. They worked with customers to try
22 to reorganize our contracts and our business going forward. We
23 reduced our workforce by more than 1,000 employees since the
24 beginning of this year alone. And, unfortunately, Your Honor,
25 due the headwinds and due to the economy in this situation, we

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1 were not able to remain out of bankruptcy.

2 That said, we believe that we have a very strong and
3 reorganizable company. And we look forward to working with
4 parties-in-interest throughout the case, our unions, our
5 employees, our contract counterparties to reorganize and
6 restructure our company in a way that will lead it to be a
7 strong competitor and a solid competitor in the future.

8 THE COURT: I assume the unions have notice of this
9 hearing as well?

10 MR. SCHAIBLE: Indeed, Your Honor.

11 THE COURT: All right.

12 MR. SCHAIBLE: I'm happy to answer any questions Your
13 Honor may have about the industry or the chemical
14 specifications of coal or we can move on to the first days.

15 THE COURT: I think we should move on unless anyone
16 wishes to be heard at the outset.

17 All right. Let's go to the first order.

18 MR. SCHAIBLE: Your Honor, before that, may I move
19 into evidence the declaration of Mark Schroeder?

20 THE COURT: Well, you can certainly move it into
21 evidence. There's no one here, as far as I can tell, who
22 wishes to cross-examine. We can take it as the basis of entry
23 of the other orders. But obviously, it is subject to
24 explanation, cross-examination during the remainder of the
25 case.

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1 MR. SCHAIBLE: Understood and appreciated.

2 THE COURT: So on that basis, I have no problem taking
3 it, making it part of the record. When you say move it into
4 evidence, it sounds permanent and final, and I don't think it
5 can be for purposes of this hearing which is not permanent and
6 final except insofar as there are final orders entered.

7 MR. SCHAIBLE: Understood.

8 THE COURT: All right.

9 MR. SCHAIBLE: You've made --

10 THE COURT: And we'll --

11 MR. SCHAIBLE: -- Mr. Schroeder's day, however.

12 THE COURT: -- take it on that basis unless there's
13 any objection. All right. I think it's the nonobjectors who
14 have made his day.

15 MR. SCHAIBLE: Now, I think we have made Mr.
16 Schroeder's day.

17 (Declaration of Mark Schroeder, CFO of the debtors, in support
18 of the first day motions was hereby received into evidence as
19 of this date.)

20 MR. SCHAIBLE: Your Honor, I think the next item is
21 item 4 which is the list of creditors. We worked with the
22 clerk of the court and were instructed by the clerk rather than
23 filing a list of creditors to provide that list to the claims
24 agent. And this motion just seeks procedures for us to serve
25 notice of commencement of the case and publish it in a large

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1 number of newspapers for our employees and our retirees to see.

2 THE COURT: All right. Does anyone wish to be heard?

3 All right. We'll enter that order.

4 MR. SCHAIBLE: Thank you, Your Honor. Your Honor,
5 next in order of the agenda is actually the debtor-in-
6 possession financing. But I would propose that we go through
7 the other non-DIP motions first unless you would prefer to --

8 THE COURT: No. No. I think it's the debtor-in-
9 possession financing that usually takes the longest. But we'll
10 see.

11 MR. SCHAIBLE: Okay. So you'll have a little bit more
12 of my time before you move on to Mr. Resnick.

13 Your Honor, the next motion, I believe, is cash
14 management. This motion, as you know, just seeks permission to
15 continue, on interim basis only, the debtors' ability to
16 continue to use their cash management system. The U.S.
17 Trustee, in particular, has some comments on this order. And
18 we have made changes to accommodate and resolve the U.S.
19 Trustee's concerns.

20 THE COURT: All right. I see you've skipped over the
21 motion extending the time to file schedules of assets and
22 liabilities and so forth?

23 MR. SCHAIBLE: Oh, I'm sorry, Your Honor. I
24 understood that you did not want to hear that today.

25 THE COURT: I ordinarily don't because you get a

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1 statutory period. But this is a fairly routine order. We can
2 either deal with it or not.

3 MR. SCHAIBLE: I would love to deal with it.

4 THE COURT: I gather that Judge Chapman has, if
5 necessary, scheduled some time for you next week.

6 MR. SCHAIBLE: Yes, Your Honor.

7 THE COURT: So that's within the fifteen days that you
8 get statutorily.

9 MR. SCHAIBLE: If you'll enter it, I'll take it, Your
10 Honor. But --

11 THE COURT: All right. Let me see.

12 MR. SCHAIBLE: And I should mention, we worked with
13 the U.S. Trustee on this motion as well. There were some
14 concerns which we resolved essentially by shortening the
15 request.

16 THE COURT: So you're asking for thirty days at this
17 time --

18 MR. SCHAIBLE: Yes, Your Honor --

19 THE COURT: -- to file your schedules.

20 MR. SCHAIBLE: -- with the ability to seek more time.

21 THE COURT: Does anyone wish to be heard?

22 MS. GASPARINI: No objection, Your Honor.

23 THE COURT: I'll enter that order as a matter of
24 routine.

25 MR. SCHAIBLE: Thank you, Your Honor.

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1 THE COURT: With regard to the giving notice to equity
2 holders --

3 MR. SCHAIBLE: Yes, Your Honor.

4 THE COURT: -- do we waive that? I think we put in
5 procedures. You're going to give equity holders notice of your
6 order affecting trading.

7 MR. SCHAIBLE: Yes, Your Honor --

8 THE COURT: Is that right?

9 MR. SCHAIBLE: -- we are.

10 THE COURT: So I think you should give -- I assume
11 you'll give them notice of the commencement of the case as
12 well.

13 MR. SCHAIBLE: We will along with --

14 THE COURT: All right.

15 MR. SCHAIBLE: -- the NOL.

16 THE COURT: All right. Then I'll enter an appropriate
17 order with regard to extending the time to file your schedules
18 and statement of affairs.

19 MR. SCHAIBLE: Thank you, Your Honor. I appreciate
20 that. So now, I think, we're on to --

21 THE COURT: But --

22 MR. SCHAIBLE: Sorry.

23 THE COURT: -- now we have to look at the provision
24 with regard to the "requirement of Bankruptcy Rule 2002(d) to
25 give notice to all equity holders of the debtors of the orders

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1 for relief is hereby waived". I think we ought to -- and you
2 can consider that. I think we should reconsider that because
3 you're going to give them some notice. You really should give
4 them notice of the filing if you're going to give them notice
5 of the --

6 MR. SCHAIBLE: We're going to give them notice of the
7 NOL or, I guess, just in order to save money, if it's okay, if
8 we could just give them notice of the filing in the NOL order.

9 THE COURT: You should give it to them together.

10 MR. SCHAIBLE: Yes. That would be fine.

11 THE COURT: Have a combined notice.

12 MR. SCHAIBLE: That would be fine.

13 THE COURT: And you seem to imply you have to give
14 every single equity holder -- you give notice to the security
15 holder and --

16 MR. SCHAIBLE: Indeed.

17 THE COURT: -- it's their responsibility --

18 MR. SCHAIBLE: Indeed.

19 THE COURT: -- to pass it on.

20 MR. SCHAIBLE: Indeed. That's right.

21 THE COURT: And I'm sure you're familiar with that.

22 All right. I do usually pass over the order establishing
23 notice, case management, and administrative procedures until we
24 have a committee --

25 MR. SCHAIBLE: I understand that.

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1 THE COURT: -- so somebody else has an opportunity to
2 look at that.

3 All right. We'll come back to the DIP order. We go
4 into volume 2. At least I do. All right. Volume 2. All
5 right. Next is cash management. Now we are up to cash
6 management.

7 MR. SCHAIBLE: Yes.

8 THE COURT: All right. This is obviously an important
9 order but also a routine one. Does anyone wish to be heard
10 with regard to the cash management order or do you want to
11 explain a little bit further? I guess you're giving each of
12 the ninety-nine debtors an administrative but not superpriority
13 claim against the other debtors for funds transferred during
14 the course of the case.

15 MR. SCHAIBLE: It's actually technically superpriority
16 junior to the DIP lenders, which is a change actually that
17 Judge Gerber asked us to make in our last case and we decided
18 to adopt it here.

19 THE COURT: All right. Well, Judge -- I should have
20 handed this whole thing over to Judge Gerber. All right. Next
21 time I'll remember that.

22 The only change I would make in the order is to -- and
23 this is true for all of the orders -- where you say if no
24 objections are received, there won't be a final hearing. As I
25 understand it, it's certainly my policy but I think it's also

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1 Judge Chapman's to have a final hearing and to consider these
2 orders on a final basis. So you'll have to change the last few
3 paragraphs of many of the orders appropriately. And although I
4 hate to keep you up another night, that should be possible.

5 MR. SCHAIBLE: That's easy, Your Honor. And, I'm
6 sorry, when you say to change it, to take out even the
7 possibility that the Court could determine we don't need to
8 have a final hearing with respect to any given orders?

9 THE COURT: Well, certainly this order.

10 MR. SCHAIBLE: Okay.

11 THE COURT: Certainly cash management. We can go
12 through -- some of them may be routine enough, but I think we
13 ought to have final orders --

14 MR. SCHAIBLE: Okay.

15 THE COURT: -- final hearings on any of these.

16 MR. SCHAIBLE: Absolutely.

17 THE COURT: All I'm doing today is holding the fort
18 until we have a committee.

19 MR. SCHAIBLE: Understood.

20 THE COURT: And I think Judge Chapman would be --
21 holding the fort for Judge Chapman who would ordinarily be here
22 holding the fort until we have a committee.

23 MR. SCHAIBLE: Okay.

24 THE COURT: And that's all I'm trying to do.

25 MR. SCHAIBLE: And we weren't intending otherwise,

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24

1 obviously. But --

2 THE COURT: No. I understand that. It's --

3 MR. SCHAIBLE: Understood. We'll make that change,
4 Your Honor. Thank you.

5 THE COURT: There's nothing untoward about seeking
6 that type of a provision, but I don't think it works for
7 interim orders of this type.

8 MR. SCHAIBLE: Okay.

9 THE COURT: Some other judges --

10 MR. SCHAIBLE: No problem.

11 THE COURT: Maybe it's okay with Judge Gerber. I'm
12 not sure.

13 MR. SCHAIBLE: There is no comparison, Your Honor.

14 THE COURT: All right.

15 MR. SCHAIBLE: There's nothing I can --

16 THE COURT: -- pre-peti --

17 MR. SCHAIBLE: -- say that will not get me in trouble
18 one way or another.

19 THE COURT: You're absolutely right. It's best to be
20 silent. All right. Now we're up to wages, salaries?

21 MR. SCHAIBLE: Yes, Your Honor.

22 THE COURT: All right. Now, the provisions of the
23 motion and the order seem to be crystal clear that you're not
24 giving any bonuses or retention payments of any type to anyone
25 who would be covered by any of these subparagraphs of Section

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1 503(c).

2 MR. SCHAIBLE: That's absolutely correct, Your Honor.

3 THE COURT: All right.

4 MR. SCHAIBLE: It does, as ordinary course as you can
5 go; and also, I would like to just -- Your Honor, I'm not going
6 to detail the different relief --

7 THE COURT: But no. I think go ahead and describe the
8 motion for those --

9 MR. SCHAIBLE: Oh.

10 THE COURT: -- who haven't had a chance --

11 MR. SCHAIBLE: Okay.

12 THE COURT: -- to read them.

13 MR. SCHAIBLE: Sure. This motion just seeks the
14 ability on an interim basis to pay pre-petition employee
15 obligations on an uninterrupted basis so that we can continue
16 our business in the ordinary course of business. We want to be
17 able to assure our employees that we are operating in the
18 ordinary course of business and they can show up for work
19 knowing that they're going to be paid for their services.
20 We're also looking to be able to continue our employee and
21 retiree programs and allow employees and retirees to continue
22 to proceed with outstanding workers' comp claims in the
23 ordinary course. Again, this is all part of just operating in
24 the ordinary course of business.

25 I do need to make clear for the record -- I know Your

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1 Honor knows this -- we are not by this motion assuming or
2 committing to any programs on an ongoing basis. As part of our
3 restructuring and our reorganization, we're looking at every
4 aspect of our business, and looking for the savings, and
5 looking to be able to reorganize in a way that will help us to
6 be able to be stronger going forward. But we are seeking the
7 relief at this time in our discretion to continue these
8 programs. And as of now, for now, we intend to do so.

9 And we addressed a number of comments from the U.S.
10 Trustee's office on this motion. And as a result, in part, of
11 the U.S. Trustee's views and others, we are, as Your Honor
12 stated, not seeking to pay any types of bonuses or retentive
13 plans or incentives in any regard to statutory insiders. We're
14 also capping almost all the payments that are made under this
15 motion by the 11,725-dollar priority claim amount. And there
16 are a number of programs, including our ordinary course annual
17 incentive plans and an ordinary course noninsider retention
18 plan, that we are not seeking relief for in this motion. We'll
19 seek separate relief when the time comes. But they are not
20 payments under this program, so we felt comfortable doing that,
21 Your Honor.

22 THE COURT: All right. Does anyone wish to be heard?

23 All right. Then I'll approve the motion, again, with
24 the change that we'll have a final hearing.

25 MR. SCHAIBLE: Understood.

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1 THE COURT: Although, as I've said, on many occasions
2 like this one, we're not going recover any of the funds paid to
3 the employees, I don't think --

4 MR. SCHAIBLE: I would hope not.

5 THE COURT: -- under any circumstances. But we can
6 call this one an interim order, too, because I know the U.S.
7 Trustee likes to do that.

8 MR. SCHAIBLE: I appreciate that, Your Honor. Thank
9 you.

10 THE COURT: Now, you need a date. I understand from
11 Judge Chapman that she would propose August 2nd --

12 MR. SCHAIBLE: At 2 p.m., Your Honor.

13 THE COURT: -- at 2 p.m.

14 MR. SCHAIBLE: That's right.

15 THE COURT: All right.

16 MR. SCHAIBLE: And the objection deadline --

17 THE COURT: Then a date for objections -- you want --

18 MR. SCHAIBLE: July 25th I think is what we discussed
19 in chambers.

20 THE COURT: -- July 25th. And then a reply, if you
21 want, July 29th, is it?

22 MR. SCHAIBLE: Perfect. Thank you, Your Honor.

23 THE COURT: 28th or 29th?

24 MR. SCHAIBLE: Thank you.

25 THE COURT: All right. All right. Then we'll approve

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1 the motion with that one change.

2 MR. SCHAIBLE: Thank you very much for that. The next
3 motion, Your Honor, is -- well, the next motion that I
4 understood Your Honor wanted to hear today, understandably, is
5 our --

6 THE COURT: Well, let's change that to is willing to
7 hear --

8 MR. SCHAIBLE: Is willing to hear today.

9 THE COURT: -- because I believe very strongly that
10 first day orders should be kept to the absolute minimum. You
11 have a motion -- the next motion on the agenda is to engage in
12 derivative contracts. I don't under -- that's the first time
13 I've seen this one. It would seem to me it's all ordinary
14 course of business operations. However, if you can convince
15 Judge Chapman that you need an order, some kind of a comfort
16 order --

17 MR. SCHAIBLE: Right.

18 THE COURT: Is this one of the ones she's willing to
19 hear next week?

20 MR. SCHAIBLE: Yes, Your Honor. Or I'll say it
21 differently. That's one of the ones that we would ask her to
22 hear next week.

23 THE COURT: All right. You'd have a hard time
24 convincing me --

25 MR. SCHAIBLE: I know.

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1 THE COURT: -- to enter this simply because it's
2 ordinary course. And to complicate the record --

3 MR. SCHAIBLE: I understand.

4 THE COURT: -- even further in these cases I think
5 does a disservice to the whole process. But I gather she'll
6 hear you July 16th at 11 a.m.?

7 MR. SCHAIBLE: Exactly, Your Honor. Thank you.

8 THE COURT: All right.

9 MR. SCHAIBLE: And your editorialization, I understand
10 not to be a ruling.

11 THE COURT: Well, it's not my --

12 MR. SCHAIBLE: Understood.

13 THE COURT: It's not my decision to make.

14 MR. SCHAIBLE: Very much understood and appreciated.

15 THE COURT: The next one, payment of pre-petition
16 claims of shippers and warehousemen.

17 MR. SCHAIBLE: Yes, Your Honor.

18 THE COURT: Now, I don't know what you were told by
19 chambers. This is not necessarily a critical order, but I do
20 fairly routinely approve these on the basis that shippers and
21 warehousemen and similar service providers have liens.

22 MR. SCHAIBLE: That's right.

23 THE COURT: You're in the process of shipping goods --

24 MR. SCHAIBLE: That's right.

25 THE COURT: -- constantly. There are goods in transit

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1 now.

2 MR. SCHAIBLE: That's exactly right.

3 THE COURT: And you need the relief on the first day.

4 MR. SCHAIBLE: You said it better than I could, Your
5 Honor. That is the basis for us seeking relief.

6 THE COURT: Now, I gather that the claims cap here is
7 eighteen million dollars which is --

8 MR. SCHAIBLE: Yes, Your Honor.

9 THE COURT: -- which is a lot -- which used to be a
10 lot of money. It is still a lot of money to some people.

11 MR. SCHAIBLE: It's a large company. And we are very
12 dependent on shippers, in particular, and warehousemen. As you
13 can imagine, we're shipping our coal, as we said, not only all
14 over the United States but all over the world. And at any
15 given time, we have our coal in transit. We have things that
16 we're purchasing in order to produce our coal in transit.

17 There's a number of different things that are in transit at any
18 given time. And we do agree with Your Honor this is with
19 regard to parties' debt where we need to obtain relief of our
20 equipment and other items and goods and raw materials where
21 they would otherwise potentially have a lien on those goods.

22 THE COURT: All right. I gather this is one of the
23 orders that the U.S. Trustee has reviewed. Does anyone wish to
24 be heard?

25 All right. You've asked for approval on an interim

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1 basis and I'll approve it on an interim basis making the change
2 that there will be a final hearing.

3 MR. SCHAIBLE: Yes, Your Honor. We'll do that. Thank
4 you very much.

5 THE COURT: You say in the order that "the debtors, in
6 their sole discretion, may condition payment on agreement by
7 the shipper or warehouseman to continue to supply goods or
8 services to the debtor." Should that be "shall"?

9 MR. SCHAIBLE: I'd ask that it be "may" given the fact
10 that we have a lot of complicated relationships where we're
11 negotiating a lot of things at once and a lot of moving pieces.
12 And so --

13 THE COURT: All right.

14 MR. SCHAIBLE: -- the latitude would be helpful.

15 THE COURT: All right. All right. I'll approve it as
16 requested.

17 MR. SCHAIBLE: Thank you, Your Honor. And in order to
18 be a foil to the eighteen million dollars for our foreign
19 creditors' motion next, we're seeking a measly 750,000 dollars.

20 THE COURT: Yes. But before that, we passed over the
21 critical vendor --

22 MR. SCHAIBLE: I'd like to pass --

23 THE COURT: -- motion.

24 MR. SCHAIBLE: -- over that if we could, Your Honor.

25 THE COURT: And you'd like me not to provide any

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1 editorial comments.

2 MR. SCHAIBLE: I'd like to pass over that with the
3 record showing that we have deferred that motion --

4 THE COURT: Till --

5 MR. SCHAIBLE: -- until Monday, which ever judge is
6 going to be hearing us on that date.

7 THE COURT: Well, it will probably be Judge Chapman.
8 And I don't know what her views are but it seems to me, that
9 whatever her views are, that your motion would be much stronger
10 if you gave the readers some idea about who these critical
11 vendors are and how you're going to determine them.

12 MR. SCHAIBLE: Okay.

13 THE COURT: And if the U.S. Trustee and the creditors'
14 committee had some input on such determination and if perhaps
15 you've pushed it off beyond Monday, which is awfully early in
16 the case. I mean, there are critical vendors, perhaps,
17 although I've been quoted as being very dubious about that. We
18 lived for many years in cases under the Bankruptcy Code without
19 even the concept --

20 MR. SCHAIBLE: Understood, understood.

21 THE COURT: -- of a critical vendor. And perhaps
22 you'd want to push this off till August 2nd but I'll leave that
23 up to you and Judge Chapman.

24 All right. So we're on to the foreign creditors. As
25 I've said in other cases, I think they're in an entirely

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1 different position from domestic critical vendors who are
2 subject to the Bankruptcy Code. So does anybody wish to be
3 heard with regard to paying foreign creditors who are deemed
4 critical?

5 All right. I'll approve that --

6 MR. SCHAIBLE: Thank you, Your Honor.

7 THE COURT: -- motion. I gather that approval is on
8 an interim basis as well.

9 MR. SCHAIBLE: It is indeed.

10 THE COURT: All right. Next?

11 MR. SCHAIBLE: Next, Your Honor, we have two first day
12 rejection procedures motions.

13 THE COURT: Right. Before -- well, you have some
14 others. And again, I don't know -- again, I try to avoid
15 comfort orders --

16 MR. SCHAIBLE: Understood.

17 THE COURT: -- but if you -- simply to make Judge
18 Chapman's life next week easier. I gather you want a comfort
19 order saying what I think is clearly the law, that you have a
20 right to pay --

21 MR. SCHAIBLE: For post-petition goods.

22 THE COURT: -- shippers of goods that are in transit
23 on the petition date.

24 MR. SCHAIBLE: I would love that, Your Honor. Indeed,
25 and as I said, in particular, our business really -- it's

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1 important. These are not Wall Street bankers or complicated
2 lawyers that we are -- sophisticated lawyers we're dealing
3 with. These really are people in Kentucky in the coalmines
4 that we're purchasing goods from. And it is helpful to have
5 something to show people. So I would -- I'd gladly ask Your
6 Honor for the relief if you'd be willing to consider it today.

7 THE COURT: All right. Does anyone wish to be heard
8 with regard to simply giving the debtor a comfort order on what
9 the law is and, as they know very well and as parties in
10 Kentucky know very well, if you doubt it, you might start
11 talking to former Judge Joe Lee who was one of the authors of
12 the Bankruptcy Code and he's located in Lexington. So there
13 are a lot of people down there who know the bankruptcy law --

14 MR. SCHAIBLE: I in no way --

15 THE COURT: -- a lot better than I do.

16 MR. SCHAIBLE: I in no way intended to denigrate
17 anyone from Kentucky. It's a fabulous state.

18 THE COURT: I'm sure not because one of your --

19 MR. SCHAIBLE: I clerked for a judge there.

20 THE COURT: -- one of your client representatives
21 might have a word or two.

22 MR. SCHAIBLE: Indeed. I lived for a year in
23 Louisville and I think it's a wonderful state.

24 THE COURT: All right. All right. I'll approve that
25 order.

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1 And the next one, however, you say you want authority
2 to perform contracts in the ordinary course of business. I
3 mean, haven't you answered your question in the name of the
4 motion? It's ordinary course of business.

5 MR. SCHAIBLE: Your Honor, actually, on this one --
6 this one, if Your Honor has the patience for me to explain it
7 to you --

8 THE COURT: No. I have the patience.

9 MR. SCHAIBLE: I --

10 THE COURT: I'm here all night if necessary.

11 MR. SCHAIBLE: We enter into large -- we enter each
12 day -- and actually, in the near term, it becomes very
13 important for the coming year -- that we're entering into large
14 coal sale contracts.

15 THE COURT: Right.

16 MR. SCHAIBLE: And they are large in dollar amounts
17 because they last for a large number of years. People have --
18 more sophisticated companies have been advised in the past
19 years -- and, frankly, I question and advise clients to be
20 cautious, as well, of entering into large contracts where
21 you're committing to at least large banner dollar amounts of
22 things with debtors without making the debtor go to court and
23 get an order. The problem is that these dollar amounts are
24 very much in the ordinary course of our business -- are well
25 below the level, the threshold of contracts that need to go

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1 even to a committee of the board let alone to the board. So
2 they very much are in the ordinary course of our business. But
3 they are, because they're multi-year contracts, large dollar
4 amounts. And if we had to go and seek separate court approval
5 to enter into each of these contracts, I'm advised by Mr.
6 Schroeder and Mr. Schroeder's colleagues that we would simply
7 lose out on contracts because these are coal traders --

8 THE COURT: Are we going to lose anything if we leave
9 this until August 2nd?

10 MR. SCHAIBLE: We're not going to -- I would be
11 concerned about August 2nd, Your Honor. But I wouldn't be
12 concerned about next week if I need to wait --

13 THE COURT: All right. Let's put this on for next
14 week because just to hear you describe the facts, it may be --
15 and obviously, this can be entered on an interim basis, but it
16 may be that the committee would want to have some --

17 MR. SCHAIBLE: I understand that.

18 THE COURT: -- knowledge of the large contracts you're
19 entering.

20 MR. SCHAIBLE: Yes, absolutely. And it is only on an
21 interim basis subject to the committee's review. We're not
22 looking to prejudice the committee in any way.

23 THE COURT: All right. Well, why don't we put this on
24 Monday?

25 MR. SCHAIBLE: Thank you, Your Honor. I appreciate

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1 that.

2 THE COURT: And we could do the same thing with the
3 insurance --

4 MR. SCHAIBLE: Indeed we can.

5 THE COURT: -- contracts.

6 MR. SCHAIBLE: And the letter of credit of the surety
7 bond motion as well, Your Honor.

8 The next one that I'd like to bother you with today --

9 THE COURT: You're not bothering me.

10 MR. SCHAIBLE: -- is the first omnibus rejection. Now
11 I've learned actually from Judge Gerber and actually from Judge
12 Chapman that we're not seeking any substantive relief really in
13 this motion. What we're really seeking is just the Court to
14 authorize the procedure for us to seek nunc pro tunc rejection.

15 THE COURT: Um-hum.

16 MR. SCHAIBLE: So all Your Honor is being asked to do
17 is to set the procedures for us to provide notice this
18 afternoon or tomorrow at the latest to the counterparty and
19 give them a ten-day objection period to object to rejection of
20 their contracts. So we're not prejudicing anyone. We're
21 merely asking for a baseline to be set. And where I run into
22 trouble with this when I've just simply set the motion for the
23 next hearing is the counterparty arguing that we're not
24 entitled to nunc pro tunc relief to the petition date. Since
25 that's very important to the debtors, I want to at least leave

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1 open that argument. And --

2 THE COURT: Absolutely.

3 MR. SCHAIBLE: -- again, we're not prejudicing them.

4 THE COURT: And that's fine. You have the argument.

5 Your motion's on file. You can ask for nunc pro tunc relief.

6 I don't -- I'll hear from anyone who wishes to be heard on

7 these procedures. But we're not doing anything -- I agree.

8 We're not doing anything substantive today.

9 MR. SCHAIBLE: Thank you, Your Honor.

10 THE COURT: I do think -- I would suggest a couple of
11 changes.

12 MR. SCHAIBLE: Perfect.

13 THE COURT: On page 3 of the order, I would suggest
14 since you want the hearing in ten days, you get out the motion
15 within two business days.

16 MR. SCHAIBLE: We'll do that. We're planning on
17 getting it out tomorrow.

18 THE COURT: I assumed that. And in the last paragraph
19 on page 3, you want a hearing -- any objection must be heard
20 ten days after the date of, I would say, not the entry of this
21 order, service of this order.

22 MR. SCHAIBLE: Okay.

23 THE COURT: And then we ought to have a hearing date,
24 the same thing as with the interim orders.

25 MR. SCHAIBLE: Okay.

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1 THE COURT: You want an interim one sooner but it
2 seems to me that --

3 MR. SCHAIBLE: I think it can wait.

4 THE COURT: -- probably April 2nd -- pardon me --

5 MR. SCHAIBLE: It can wait.

6 THE COURT: -- August 2nd would work.

7 MR. SCHAIBLE: I agree with that, Your Honor. It can
8 wait.

9 THE COURT: And I would suggest on page 5, in the
10 second paragraph, to make it a little bit fairer that you
11 simply say, "Ordered that the Debtors propose that the order of
12 rejection also provide that if a counterparty does not retrieve
13 or otherwise take control of the excess leased equipment within
14 three days of the hearing date" -- or five days of the hearing
15 date -- you see where I am?

16 MR. SCHAIBLE: Yes, Your Honor.

17 THE COURT: I'm adding some language.

18 MR. SCHAIBLE: Okay. I got it.

19 THE COURT: Do you want me to read it again or
20 something like it?

21 MR. SCHAIBLE: Please do. I'm at the ordered
22 paragraph.

23 THE COURT: "That the Debtors propose that the order
24 of rejection also provide" then continue with the text as is.

25 MR. SCHAIBLE: Got it.

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1 THE COURT: But I would say, instead of fifteen days
2 of the petition date, make it five days of the hearing date.
3 That will be a little fairer.

4 MR. SCHAIBLE: Understood. Thank you, Your Honor.

5 THE COURT: So they can come in and complain if they
6 want to. That would be true of both motions.

7 MR. SCHAIBLE: Understood, Your Honor. Thank you.

8 THE COURT: Yes?

9 MR. SCHAIBLE: As you know, we're not --

10 THE COURT: Ms. Goldstein?

11 MR. SCHAIBLE: Sorry, Your Honor.

12 MS. GOLDSTEIN: Your Honor, we don't have a problem
13 with this with respect to the particular contracts that will be
14 addressed in the motion we plan to file in two days. But to
15 the extent that this purports to address procedures for all
16 future rejections, which it seems to do, there are limitations
17 in the DIP credit agreement --

18 THE COURT: I saw them. I saw them in the order in
19 any case.

20 MS. GOLDSTEIN: -- and in the order. So we just want
21 to make clear that nothing in this order would in any way be
22 intended to modify those rejections and on a go-forward basis
23 that the procedures will be consistent with the DIP order.

24 THE COURT: Well, it depends. I mean, what are the
25 procedures in the DIP order?

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1 MS. GOLDSTEIN: Well, Your Honor, we're --

2 THE COURT: We're not rewriting the Bankruptcy Code.
3 There are certain procedures. I don't read the DIP order
4 procedures as being contrary to the procedures in the
5 Bankruptcy Code.

6 MS. GOLDSTEIN: Oh, they're not, Your Honor. They're
7 not contrary to the procedures in the Bankruptcy Code. But
8 they do --

9 THE COURT: I read that you get notice and you have
10 the right to step into the --

11 MS. GOLDSTEIN: We have certain rights.

12 THE COURT: -- debtors' shoes and that type of relief.

13 MS. GOLDSTEIN: Right. So to the extent this purports
14 to set notice, et cetera, it should not impair the DIP lenders'
15 rights. That's really all --

16 THE COURT: Well, why don't we say it applies only to
17 these -- or it's understood --

18 MR. SCHAIBLE: I think that was the intent.

19 THE COURT: -- it applies only to these rejections.

20 MS. GOLDSTEIN: And we'd have no issue with that.

21 MR. SCHAIBLE: I think that was the intent. We were
22 not seeking this --

23 THE COURT: I think it may say that somewhere here.

24 MR. SCHAIBLE: Yeah. We were not intending for this
25 to apply more broadly.

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1 THE COURT: All right. So that would also apply to
2 the other order, the Curtis Mallet order?

3 MR. SCHAIBLE: Yes, Your Honor.

4 MR. REISMAN: Yes, Your Honor.

5 THE COURT: All right. We'll put the taxes, et
6 cetera -- do you want them on for --

7 MR. SCHAIBLE: For Monday, Your Honor.

8 THE COURT: -- August 2nd or Monday?

9 MR. SCHAIBLE: For Monday, Your Honor.

10 THE COURT: You can try again on Monday. All right.

11 MR. SCHAIBLE: Live to fight another day.

12 THE COURT: All right. Now -- and then the order with
13 regard to notification procedures?

14 MR. SCHAIBLE: Now, Your Honor, I'd love for this to
15 be heard today. What I will tell you, if it's any comfort, is
16 that we have confirmed and conformed it in certain respects to
17 the order that Your Honor entered in Kodak. And we believe
18 that this is what I call the soft form of order. So it is not
19 prejudicing the rights of claims holders. Claims holders can
20 continue to trade their claims. They're just put on notice
21 that we may, if we need to at the end of the case, seek a sell
22 down order at which time --

23 THE COURT: So you made some substantial changes --

24 MR. SCHAIBLE: No.

25 THE COURT: -- in the order?

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1 MR. SCHAIBLE: Not from the version Your Honor has
2 seen. I'm saying we made those changes prior to filing.

3 THE COURT: All right.

4 MR. SCHAIBLE: Davis Polk's sort of form of NOL order
5 is consistent with the type of order that Your Honor entered in
6 Kodak and has entered in other cases where, again, we're not
7 prejudicing claims holders today. We're merely putting the
8 world on notice that we may seek a sell down order, at which
9 time they will have full objection rights to object to such
10 sell down order, if we need to at the end of the case. But the
11 parties that we need it to apply to on an interim basis
12 effective today, understandably, are the equity holders because
13 pre-petition equity holders who are greater than, is it the 4.9
14 percent because --

15 THE COURT: Do you have any that you know of?

16 MR. SCHAIBLE: I don't. Do we know of any greater
17 than -- any approximately five percent equity holders?

18 MR. REISMAN: No. There's no --

19 MR. SCHAIBLE: We don't know of any, Your Honor.

20 THE COURT: All right.

21 MR. SCHAIBLE: But I was involved in a case recently
22 where we had an order very much like this. They got notice of
23 it, but say that they didn't notice it, it can actually cause
24 problems for the debtors if a change of control were to happen.
25 And given the large value in our NOLs, we would ask Your Honor

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1 to enter the order on an interim basis.

2 THE COURT: What is the amount of your NOLs?

3 MR. SCHAIBLE: I knew you were going to ask that
4 question. I'm moving to it. 867 million dollars --

5 THE COURT: Okay.

6 MR. SCHAIBLE: -- which is significantly more than our
7 foreign vendor cap. Just kidding.

8 So we would ask Your Honor, again, just to consider
9 this on an interim basis subject to objection and subject to a
10 final hearing. And we'll conform the order, as we said we
11 would for all the orders, to require a final hearing. But
12 this'll protect the NOLs in the interim.

13 THE COURT: All right. Does anyone wish to be heard?
14 All right.

15 MR. HANSEN: Your Honor?

16 THE COURT: I do -- I don't know that --

17 MR. HANSEN: Your Honor?

18 MR. SCHAIBLE: Your Honor, someone stood.

19 MR. HANSEN: Your Honor?

20 THE COURT: Yes?

21 MR. HANSEN: I'm sorry.

22 THE COURT: Come forward.

23 MR. HANSEN: I'm kind of trapped over here --

24 THE COURT: Well, take your time.

25 MR. HANSEN: Good afternoon, Your Honor. Kris Hansen

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1 with Stroock & Stroock & Lavan. Your Honor, my firm and I have
2 been representing a number of convertible noteholders for the
3 course of the last month and we've had a number of
4 conversations with the debtors. I apologize for not making my
5 appearance earlier, Your Honor.

6 With respect to this interim order, I know Mr.
7 Schaible said on the record that the component of this order
8 that is applicable to claims as opposed to equity is really
9 just a notice that they may be subject to a sell down in the
10 future. But it's our view that this portion of the order goes
11 significantly beyond that. It certainly does provide notice
12 that they might be subject to a sell down and have their rights
13 to object at that time.

14 But there is an awful lot of information in here with
15 respect to whether or not the debtor has the right to make
16 challenges with respect to those parties' involvement in
17 connection with the plan based upon whether or not they contain
18 newly traded claims. There's a whole host of information in
19 here with respect to claims. And I do appreciate that they're
20 not seeking to restrict the trading in those claims today, but
21 I do think it's inappropriate on the basis of an interim order
22 to have any of this information contained with respect to
23 claims. And they should be required to put this on regular
24 notice and have this hearing at a later point in time.

25 MR. SCHAIBLE: Again, I think we're in agreement that

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1 these are notice provisions. So I didn't --

2 THE COURT: Well, why don't --

3 MR. SCHAIBLE: -- view those as changing substance.

4 THE COURT: Why don't you try after the hearing --

5 MR. SCHAIBLE: Yes.

6 THE COURT: -- to see if you can put in a paragraph or
7 a provision in the order that meets the concern.

8 MR. SCHAIBLE: We'll do so. And, in fact --

9 THE COURT: And --

10 MR. SCHAIBLE: -- I'm happy for the notice -- for the
11 information provisions to not apply to claims holders during
12 the interim period.

13 THE COURT: There are two aspects of this that I think
14 you should consider, as well. One is confidentiality issues
15 relating to notices of a party being a substantial equity
16 holder. And the debtor has notice; the creditors' committee
17 counsel gets notice. That's something to consider.

18 The other thing is on page 5 of your order. The Court
19 must finally approve a transaction by a final and nonappealable
20 order. It seems to me that it should simply be an order or the
21 issue of getting a final and nonappealable order could take
22 years.

23 But why don't you try to put in some language if
24 you're both in agreement that this interim order should not
25 have a substantive effect on claim holders.

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1 MR. SCHAIBLE: We're happy to do that. We're happy to
2 do that.

3 MR. HANSEN: Thank you, Your Honor. Appreciate it.

4 THE COURT: All right.

5 MR. SCHAIBLE: Your Honor, I made a misstatement of
6 fact which I want to raise to the Court. We believe, although
7 we're not sure, we believe that there may be three parties that
8 may indirectly own or control five percent or more of the
9 equity securities. Black Rock --

10 THE COURT: You don't have to identify them.

11 MR. SCHAIBLE: Okay. We believe they are and they'll
12 be notified.

13 THE COURT: And they should -- just it's a matter of
14 notice.

15 MR. SCHAIBLE: Yes, Your Honor. They'll be notified.

16 THE COURT: So they can certainly appear at the final
17 hearing if they wish.

18 MR. SCHAIBLE: Yes, Your Honor. They'll be notified.

19 And, Your Honor, maybe the last or the penultimate
20 motion I'd ask Your Honor to consider would be the application
21 for retention of GCG. This is the -- I call it the bankruptcy
22 court clerk's order. This is --

23 THE COURT: No. That's routine. Does anyone wish to
24 be heard about the appointment of a claims and noticing agent
25 for the case?

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1 All right. I'll approve that.

2 MR. SCHAIBLE: Okay, Your Honor. Since we're on a
3 roll, although I do so with great trembling of knees, I wonder
4 whether -- we skipped over it, but just to see if Your Honor
5 might be willing to consider our customer obligations motion
6 which was item 12?

7 THE COURT: I think you would probably be well served
8 to put that on the calendar --

9 MR. SCHAIBLE: Your Honor --

10 THE COURT: -- on Monday merely --

11 MR. SCHAIBLE: Your Honor, I'd like to sit down at
12 this time.

13 THE COURT: I am always willing to approve a customer
14 motion as in Kodak when someone has a broken camera if there
15 are any further cameras. It's easy. But I wonder whether your
16 customer obligations meet the usual criteria or if there are
17 offsets or I think some of what you're seeking is routine.

18 MR. SCHAIBLE: Understood.

19 THE COURT: You have a right to give people refunds if
20 it's in the ordinary course of business.

21 MR. SCHAIBLE: Understood.

22 THE COURT: If they have recoupment rights, they have
23 recoupment rights.

24 MR. SCHAIBLE: I understand.

25 THE COURT: Nobody's going to take them away. So I

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1 really wonder whether you need that order at all.

2 MR. SCHAIBLE: I will --

3 THE COURT: But I'll let Judge Chapman --

4 MR. SCHAIBLE: I will defer, Your Honor.

5 THE COURT: -- deal with it.

6 MR. SCHAIBLE: And with that, I will thank you very
7 much. And if you don't mind, I'll turn the podium over to my
8 partner, Brian Resnick. Thank you, Your Honor.

9 THE COURT: All right.

10 MR. RESNICK: Good afternoon, Your Honor. For the
11 record, Brian Resnick of Davis Polk for the debtors.

12 Your Honor, by this motion, the debtors are seeking
13 authorization to enter into a DIP facility that was arranged by
14 Citigroup, Barclays, and Bank of America Merrill Lynch. And
15 this DIP facility will ensure the debtors' continued operation
16 during their Chapter 11 restructuring and provide the debtors
17 with sufficient time and breathing room to affect the changes
18 necessary to emerge from Chapter 11 as a stronger and more
19 viable enterprise.

20 The aggregate principal amount of this DIP facility is
21 802 million dollars. It's broken down into a 375 million
22 dollar term loan facility, a 125 million dollar revolving
23 borrowing base facility, and a 302 million dollar -- it's
24 called a second-out DIP facility which is essentially a rollup
25 of issued but undrawn letters of credit under the debtors'

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1 existing credit facility.

2 Of this amount, Your Honor, the debtors are seeking
3 authorization to access 250 million dollars of the term loan
4 facility as well as the entire 125 million dollars of the
5 revolving facility and to effectuate the full 302 million
6 rollup of the letters of credit into the second-out DIP
7 facility. And the balance would be available upon entry of the
8 final order.

9 So twenty-five million dollars of the initial draw
10 would be used to repay the debtors' funded secured debt under
11 the existing pre-petition facility and approximately fifty
12 million dollars would be used to collateralize letters of
13 credit under the debtors' existing securitization facility.

14 So overall, this facility provides approximately 425
15 million dollars of incremental liquidity in order to fund the
16 debtors' restructuring.

17 Your Honor, we believe that rolling up and refinancing
18 the debtors' existing secured debt makes a lot of sense in this
19 case. This is not --

20 THE COURT: Well, it's not a question today as to
21 whether or not the rollup makes a lot of sense in this case.
22 It's a question under the rules that if we don't roll up 300
23 million dollars of letters of credit that there will be
24 immediate and irreparable harm to the estate pending a final
25 hearing.

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1 MR. RESNICK: Sure. I understand, Your Honor.

2 THE COURT: I'm only here -- I'm sitting in for Judge
3 Chapman --

4 MR. RESNICK: Yes.

5 THE COURT: -- who would be sitting in, if she were
6 sitting here, for a creditors' committee, which hasn't been
7 formed, and for more notice to creditors of financing which is
8 the most critical step in any bankruptcy case.

9 MR. RESNICK: Sure.

10 THE COURT: I've read your papers very carefully and I
11 don't see any indication, much less evidence, of immediate and
12 irreparable harm to the debtors if you don't roll up 300
13 million dollars of letters of credit. I don't see any
14 indication that any single one of those letters of credit is
15 going to come due in the next fifteen days or before August
16 2nd.

17 MR. RESNICK: Understood, Your Honor.

18 THE COURT: You want to -- I know you want to roll up
19 twenty-five million dollars.

20 MR. RESNICK: Yes.

21 THE COURT: In this case -- I don't denigrate the
22 importance of twenty-five million dollars to anyone, but it's
23 not worth spending a great deal of time on. For the twenty-
24 five million dollars, it may be simpler simply to pay it, get
25 it out of the case and to move on. But on the first day of the

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1 case, you want to roll up 300 million dollars of obligations.

2 And that's my main problem with your motion.

3 MR. RESNICK: Sure. I understand, Your Honor. Allow
4 me to try to help out with that. So, first of all, Your Honor,
5 this is a package financing that has been offered by --

6 THE COURT: I have no doubt that it would be simpler
7 to do it.

8 MR. RESNICK: Um-hum.

9 THE COURT: And I have no doubt that it could be done
10 appropriately at the final hearing which is in twenty days --
11 twenty-two days. So no problem. The committee may agree with
12 you that to roll up all of the pre-petition letters of credit
13 into a post-petition financing is simpler, makes sense, and it
14 does -- and it makes things work. And I have no interest in
15 standing in the way. I'm trying to apply the rules as they're
16 written which say that unless there's immediate and irreparable
17 harm that you can't do it --

18 MR. RESNICK: I understand, Your Honor.

19 THE COURT: -- on the first day of the case.

20 MR. RESNICK: Great. I understand. The truth is,
21 this is a package financing. And we do not have DIP financing
22 offered to us without doing the immediate rollup and --

23 THE COURT: That's not a good enough answer.

24 MR. RESNICK: Okay.

25 THE COURT: That's no answer at all. That's an answer

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1 we'll adjourn till tomorrow morning at 10 o'clock and we'll see
2 where things stand.

3 MR. RESNICK: Right.

4 THE COURT: So that's no answer, the fact that it's a
5 package. Maybe somebody else can come up with a better answer.
6 But you can continue your presentation. We'll come back to
7 this issue.

8 ***BEGIN PART 6

9 MR. RESNICK: Sure. I'm happy to continue my
10 presentation and we can come back to the rollup, although,
11 again, it was offered up as a package and, to my understanding,
12 the rest of the financing is not available to the debtors
13 without doing the rollup --

14 THE COURT: I don't know what you need in the first
15 twenty days of the case in any event.

16 MR. RESNICK: Right.

17 THE COURT: You haven't told me what you need. You
18 haven't given any evidence with regard to immediate and
19 irreparable harm if you don't get financing before the final
20 hearing. We're not in any way dealing with the question as to
21 whether or not you can get and are entitled to financing at the
22 final hearing on August 2nd.

23 MR. RESNICK: Understood. Well, we did file the
24 declaration of Paul P. Huffard of Blackstone.

25 THE COURT: I read it very carefully --

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1 MR. RESNICK: Okay.

2 THE COURT: -- and I accept it.

3 MR. RESNICK: Okay. And the debtors do need financing
4 within the first twenty days. And I'd be happy to --

5 THE COURT: How much do they need in the first twenty
6 days? You have an enormous amount provided for in this motion.
7 Presumably, you won't use any -- the debtors won't use any more
8 than they really need. But there's certainly no indication of
9 what they're really going to need in the first few weeks of the
10 financing.

11 MR. RESNICK: Understood. We could go back and see if
12 there's a somewhat smaller amount of initial availability that
13 we could access if that's acceptable to the lenders. And we
14 thought that this was the appropriate amount in order to
15 provide the debtors with enough cushion --

16 THE COURT: Well, I realize it's important on the
17 first day of the case to show the market that you have
18 financing. And my main concern isn't the amount of the
19 financing sought because I trust the debtors not to use any
20 more than they really need. And if they don't need it, they
21 won't take it down. My problem is in this enormous rollup on
22 the first day of the case without notice to anyone.

23 MR. RESNICK: Right. Okay. Okay. Understood.

24 THE COURT: But I will hear, obviously, from the
25 lenders.

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1 MR. RESNICK: Right. Okay. So I guess, Your Honor,
2 it probably makes sense for us to confer with lenders' counsel
3 if you would allow us --

4 THE COURT: Well, let me hear from them if they wish
5 to be heard.

6 MR. RESNICK: Sure. Or -- okay.

7 MS. SCHONHOLTZ: Good afternoon, Your Honor. Margo
8 Schonholtz on behalf of the pre-petition lenders and the
9 second-out or rollup lenders.

10 Let me just try and address the question of the need
11 for the rollup. This DIP --

12 THE COURT: Today.

13 MS. SCHONHOLTZ: Today.

14 THE COURT: As opposed to August 2nd.

15 MS. SCHONHOLTZ: Absolutely, Your Honor. This
16 financing is not available without the rollup particularly
17 because the financing is built on liens to the new money
18 lenders that are essentially equal to or senior in some
19 respects of payment to the existing senior secured debt. And
20 the pre-petition lenders were not willing to agree,
21 essentially, to have that amount of financing put over them
22 without the rollup. There are, built in to this order as we
23 would always do, unwind provisions with respect to the rollup.
24 There are --

25 THE COURT: Yes. But it's only unwound in the event

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1 that the pre-petition liens are found to be avoidable or
2 ineffective for some reason. Otherwise, there's no unwinding
3 whatsoever, is there?

4 MS. SCHONHOLTZ: There is unwinding if it's
5 disadvantageous to somebody in 5(g), if they're prejudiced
6 which 5(g) --

7 THE COURT: In 5(g).

8 MS. SCHONHOLTZ: -- of the order, of the interim
9 order.

10 THE COURT: Tell me -- show me the language.

11 MS. SCHONHOLTZ: Sure. The bottom of page 17, Your
12 Honor. Subject to a successful challenge, Your Honor is
13 correct. We can unwind it. And there are required time
14 periods for that.

15 THE COURT: All right. And what's the basis for a
16 challenge?

17 MS. SCHONHOLTZ: "[V]alidity, enforceability, extent,
18 perfection or priority of the Pre-Petition Debt or a
19 determination that the ... Debt was undersecured" -- which
20 clearly, here it is not -- "the Court reserves the right to
21 unwind it". Again, the important part here, Your Honor, is the
22 financing is not available. BofA is taking up a third of the
23 new money. I don't believe it --

24 THE COURT: Who's the agent on the pre-petition?

25 MS. SCHONHOLTZ: BofA.

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1 THE COURT: All right. And there --

2 MS. SCHONHOLTZ: And --

3 THE COURT: -- has to be -- there's some provision in
4 here for a vote of the pre-petition lenders, isn't there?

5 MS. SCHONHOLTZ: In terms of --

6 THE COURT: Some consent from the pre-petition
7 lenders?

8 MS. SCHONHOLTZ: Correct, Your Honor.

9 THE COURT: And what's that? Where was that? I --

10 MS. SCHONHOLTZ: The --

11 THE COURT: I could probably find it. But you could
12 find it a lot --

13 MS. SCHONHOLTZ: I'm not sure that it's built into
14 here. But as you'll see in the motion, ninety percent of debt
15 has voted in favor of this deal and this structure. We
16 actually were approached four business days before the filing
17 and managed to put this financing together when the debtor had
18 no financing. Part of the financing is wholly dependent on the
19 rollup of these LCs which, again, are all standbys. And it's
20 not as if we're rolling up funded debt. If there is a time and
21 place to unwind this or essentially just putting standby LCs
22 back in their pre-petition position -- but BofA --

23 THE COURT: None of these LCs are going to come due in
24 the next twenty days, are they?

25 MS. SCHONHOLTZ: They are not. They are not. The

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1 urgency and irreparable harm --

2 THE COURT: And who gets the -- who are these LCs
3 provided to? Who are the beneficiaries?

4 MS. SCHONHOLTZ: These LCs are provided to
5 municipalities and to various agencies to support the debtors'
6 obligation with respect to all sorts of reclamation
7 obligations, workers' comp obligations. These are standard
8 standby LCs. So --

9 THE COURT: So essentially, we're simply substituting
10 the new lender for the -- we're substituting the new lender for
11 the old lender. So the new lender gets the fees and interest
12 or whatever --

13 MS. SCHONHOLTZ: I'm pleased to report, Your Honor,
14 that the new lenders are the old lenders.

15 THE COURT: The same people?

16 MS. SCHONHOLTZ: They are the same --

17 THE COURT: So then we're just converting pre-petition
18 debt into post-petition debt. And you're telling me that they
19 won't wait twenty days for this benefit, till we have a
20 committee.

21 MS. SCHONHOLTZ: They are not.

22 THE COURT: Now --

23 MS. SCHONHOLTZ: They are not -- two points, Your
24 Honor. They are not willing to be primed or have an equal lien
25 in the amount of the new money put on them without rolling up

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1 the standby LCs, number one.

2 THE COURT: Why?

3 MS. SCHONHOLTZ: And importantly -- because they
4 don't --

5 THE COURT: If they could be given exactly the same
6 lien -- I mean, the new lender -- these same lenders, you're
7 telling me, same people, are coming in as the new lenders. And
8 the only difference is now they're lending on a post-petition
9 rather than a pre-petition basis.

10 MS. SCHONHOLTZ: And they're not being pushed down and
11 remaining as pre-petition lenders.

12 THE COURT: Right. But they wouldn't be pushed down
13 by --

14 MS. SCHONHOLTZ: There --

15 THE COURT: -- because there's no new loan until
16 August 2nd. They'd be in the --

17 MS. SCHONHOLTZ: No --

18 THE COURT: The pre-petition lenders would have the
19 lien position, would they not?

20 MS. SCHONHOLTZ: No, Your Honor.

21 THE COURT: They just wouldn't have the superpriority
22 yet.

23 MS. SCHONHOLTZ: No. According to the structure
24 that's being proposed, they would be put behind a 125 million
25 new revolver and 375 million dollar new term loan. This is --

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1 THE COURT: Right. And now -- and under the new loan?
2 What's happening to them?

3 MS. SCHONHOLTZ: Essentially, they share a first lien
4 with the other two facilities on the bulk of the collateral but
5 they are third-out in terms of payment, if these obligations
6 are funded. And with respect to the revolver collateral, they
7 essentially share a second position.

8 THE COURT: And we couldn't give them exactly the same
9 lien position as adequate protection without the rollup?

10 MS. SCHONHOLTZ: I have a sneaking suspicion that the
11 new money lenders might not necessarily agree to that.

12 THE COURT: Why not?

13 MS. SCHONHOLTZ: Because I think that the whole
14 structure, and it's a complicated structure, Your Honor, is
15 built on --

16 THE COURT: Now you're --

17 MS. SCHONHOLTZ: -- the payment --

18 THE COURT: -- telling me what --

19 THE COURT: No, no, no. Wait. Let me --

20 THE COURT: -- Mr. Resnick told me --

21 MS. SCHONHOLTZ: Let me just finish my sentence.

22 THE COURT: -- that it has to be because this is -- it
23 has to be because this is the way you --

24 MS. SCHONHOLTZ: No, no, no. Because the payment --

25 THE COURT: -- set it up.

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1 MS. SCHONHOLTZ: No. Because the payment priorities
2 are very specific. And the deal was structured so that the
3 debtor would have access to the capital it needs and so that we
4 wouldn't have a priming fight which we would think would not be
5 beneficial to this estate. And given the fact that there are
6 unwind provisions in there, there are challenge provisions in
7 there, given the fact that a third of the financing, of the new
8 money financing from BofA, may well be dependent on what
9 happens with this rollup, we respectfully suggest that it's
10 appropriate to do it on day 1 understanding full well, Your
11 Honor, that it can be unwound and that the challenge periods
12 are in there. There is nothing extraordinary that we're doing.
13 And we'll wait for the committee. I'd be happy to talk to the
14 committee.

15 THE COURT: All right. Now, I know Ms. Goldstein
16 wanted to speak.

17 MS. GOLDSTEIN: Thank you, Your Honor. I am sure that
18 Your Honor is aware of this but I just want to make the record
19 clear that the first-out new money providers are not the same
20 group as the pre-petition lenders that are getting rolled up.

21 THE COURT: Oh, I understand that.

22 MS. GOLDSTEIN: And so they would not agree to the new
23 money facility without the pari passu liens, the payment
24 priorities and, obviously, the package of rights that have been
25 provided for in the proposed DIP financing. The rollup --

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1 THE COURT: To them.

2 MS. GOLDSTEIN: To them.

3 THE COURT: To them. But --

4 MS. GOLDSTEIN: The rollup is part and parcel of an
5 understanding in an agreement to avoid a contested priming,
6 Your Honor. And so I think that was the -- the packages that
7 Mr. Resnick was talking about was more than just a package deal
8 because there's two sets of lenders: one set that wants to be
9 in a priority position and another set that basically said they
10 would object to that and cause a priming issue before this
11 Court absent the package -- I'll go back to Mr. Resnick's
12 words -- that has been proposed.

13 THE COURT: No. I think we should avoid the "package"
14 word.

15 MS. GOLDSTEIN: Well, I think it's a --

16 THE COURT: But explain to me why it would be contrary
17 to the package deal -- I'll use that phrase -- for your
18 clients, the new lenders, to come in exactly where they are and
19 for the pre-petition lenders to stay in for twenty days till
20 the date of the final order without the rollup getting exactly
21 the collateral position that they would have gotten but getting
22 it as adequate protection and then to get their rollup on the
23 final date -- on the date of the final hearing.

24 MS. GOLDSTEIN: Your Honor, it is not --

25 THE COURT: -- April (sic) 2nd --

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1 MS. GOLDSTEIN: I think --

2 THE COURT: -- assuming that Judge Chapman approves it
3 at that time.

4 MS. GOLDSTEIN: I think, Your Honor, that the
5 pre-petition lenders were presented with the proposed
6 priorities that the new moneylenders have required. They would
7 have objected to the, what you have described --

8 THE COURT: Why?

9 MS. GOLDSTEIN: -- as the traditional --

10 THE COURT: Well, I should ask --

11 MS. GOLDSTEIN: Well, they have to speak for
12 themselves, Your Honor.

13 THE COURT: -- Ms. Schonholtz why. But --

14 MS. GOLDSTEIN: I understand why. They objected to
15 what I would describe as the more traditional priming that you
16 just described with adequate protection liens. I think -- I
17 can't answer for them. We could talk about it. And I think
18 perhaps we should have a short recess. But I can only speak
19 for the providers of the new money on that issue.

20 THE COURT: All I'm trying to do, and I emphasize
21 that, is hold the fort not only for Judge Chapman but also for
22 the bankruptcy process and to try to give some credence to the
23 principle that unless you have real irreparable harm, there
24 shall be no rollups.

25 MS. GOLDSTEIN: Your Honor, I think the rollups --

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1 THE COURT: Now, maybe we should approach it from the
2 perspective of what is the harm. These letters of credit are
3 outstanding. They have to, I gather -- and correct me --

4 MS. GOLDSTEIN: I do believe, Your Honor --

5 THE COURT: -- if I'm wrong. They have to stay
6 outstanding. And they may never be called on.

7 MS. GOLDSTEIN: Exactly.

8 THE COURT: Is the cost of keeping them outstanding
9 any higher --

10 MS. GOLDSTEIN: No, Your Honor. The --

11 THE COURT: -- in the post-petition --

12 MS. GOLDSTEIN: The post-pe --

13 THE COURT: -- than in the pre-petition? Well, now
14 tell me. Does it cost any lower?

15 MS. GOLDSTEIN: The rollup --

16 THE COURT: Ms. Schonholtz probably is the best person
17 to tell me that.

18 MS. GOLDSTEIN: Absolutely. I defer to Ms. Schonholtz
19 on this point.

20 THE COURT: All right. Is the debtor saving some
21 money?

22 MS. SCHONHOLTZ: The cost is the same as long as they
23 are undrawn. The cost is different when they're rolled up if
24 there's actually drawings under them.

25 THE COURT: But I gather the debtor does not

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1 anticipate any draws. Well, I can hear that from the debtor.

2 MR. RESNICK: That's correct, Your Honor. We do not
3 anticipate draws. And it's crucial that these -- these are
4 auto-renew LCs and rolling them up into the DIP facility would
5 provide certainty that they would be able to continue to renew
6 and be outstanding --

7 THE COURT: All right.

8 MR. RESNICK: -- and would not -- if they remain pre-
9 petition, they may end up getting draws which could -- which
10 would create funded secured debt against the estate and could
11 cause beneficiaries to seek additional letters of credit.

12 THE COURT: All right. Yes?

13 MS. SCHONHOLTZ: Your Honor, if I may, obviously, part
14 of the consideration here, given the company's entering into
15 bankruptcy yesterday, is to avoid a priming fight and a
16 discussion of valuation or other issues that, frankly, none of
17 us believe would be helpful on the first day of the case --

18 THE COURT: Well, I'm --

19 MS. SCHONHOLTZ: And I will tell you --

20 THE COURT: I agree with that proposition
21 wholeheartedly.

22 MS. SCHONHOLTZ: I will tell you, Your Honor, this was
23 something that was brought to the pre-petition lender group
24 early last week and was a way to avoid that kind of priming
25 fight. And it's something that we would require going forward.

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1 THE COURT: All right. All right. Shall we go
2 through the rest of the order? And then I think we'll take a
3 five-minute recess.

4 MR. RESNICK: Sure.

5 THE COURT: And the debtors can put on any further
6 evidence that they may have as to the need.

7 As to the amounts, I'll accept your proposition that
8 perhaps some of the total amounts of the borrowing during the
9 first twenty days can be examined. There's a lot of
10 availability. But let me give you a few comments on the form
11 of order.

12 Page 9, first line. Debtors can stipulate as to
13 various facts. But we're not talking about waiver and release.
14 So let's cross out that parenthetical on the first line, "and
15 hereby waive and release".

16 MR. RESNICK: Okay.

17 THE COURT: All right? Page 12. Seems to me that it
18 would be more accurate to add after (a) "Subject to entry of
19 the final order" but I'll leave you to consider that with the
20 lenders.

21 MR. RESNICK: I'm sorry. Where is this, Your Honor?
22 In the beginning of --

23 THE COURT: I'm on page 12, paragraph 5(a).

24 MR. RESNICK: Where it says "The Debtors
25 are...authorized to enter into the..."

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1 THE COURT: Yeah.

2 MR. RESNICK: I think, Your Honor, we're requesting
3 immediate authorization to enter into the document so that
4 they're --

5 THE COURT: All right.

6 MR. RESNICK: -- effective immediately.

7 THE COURT: All right. Now, "Debtors" -- on the next
8 page. "[T]he Debtors are authorized to incur and pay in cash
9 Obligations under Secured Cash Management Agreements -- what
10 are those -- "and obligations arising under Secured Hedge
11 Agreements and the Credit Card Agreement".

12 MR. RESNICK: Sure. So the secured hedge agreements
13 and the secured cash management -- well, let me take them
14 separately. The cash management obligations are traditional
15 obligations that are incurred, overdraft protections and so on
16 and so forth, with respect to the debtors' banks. And the DIP
17 facility does permit them to be secured under the facility as
18 does the existing pre-petition facility. The secured hedge
19 agreements are --

20 THE COURT: You're talking about the junior
21 superpriority given --

22 MR. RESNICK: Yeah. So there exists --

23 THE COURT: -- to co-debtors who advance funds?

24 MR. RESNICK: No. This isn't to co-debtors. This
25 is -- my understanding is that if, for example, if the debtors

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1 have an account with Bank of America and there's overdraft
2 protection, for example, that if Bank of America winds up with
3 a claim against the debtors because of it that that claim would
4 be secured. It's my understanding that these are not
5 particularly significant amounts, generally, but they are
6 secured under the DIP facility. Same with --

7 THE COURT: So these are bank fees and similar
8 arrangements --

9 MR. RESNICK: Correct.

10 THE COURT: -- and the same with the secured hedge --

11 MR. RESNICK: The secured hedges are different.

12 THE COURT: -- obligations.

13 MR. RESNICK: The secured hedges are different. There
14 are actually hedge obligations under --

15 THE COURT: Right.

16 MR. RESNICK: -- hedging agreements. But my
17 understanding is there's a very small net position right now.
18 It's not a significant amount. But by allowing them to be
19 secured under the DIP facility induces the lenders to engage in
20 these types of hedges with the debtors.

21 THE COURT: All right. And what are the obligations
22 under the credit card agreement that --

23 MR. RESNICK: Right. That's the debtors' corporate
24 card which is being amended and restated and approved today.
25 It's their corporate expenditure card.

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1 THE COURT: How much is outstanding under it pre-
2 petition?

3 MR. RESNICK: A million and a half going down to a
4 million in availability. There's about 600,000 outstanding is
5 what I'm being told.

6 THE COURT: 600,000. All right. Now, on page 13,
7 paragraph (b), I think it's 5(b)(iii): "with respect to
8 obligations in excess of \$10,000,000, constitute unsecured
9 claims". What does that mean?

10 MR. RESNICK: This serves as basically a basket that
11 limits the amount of these types of obligations that would --

12 THE COURT: We're talking about going forward. We're
13 not talking about prior claims or this is --

14 MR. RESNICK: Correct.

15 THE COURT: This is what the debtors are authorized to
16 incur on a secured basis.

17 MR. RESNICK: No. I'm sorry. This is -- these are
18 obligations that are deemed to be under the revolving facility
19 and then -- and any excess --

20 MS. GOLDSTEIN: No. This is a new occurrence.

21 MR. RESNICK: -- is a new occurrence so they'd be
22 admin --

23 THE COURT: Why don't I have an answer from one of the
24 lenders?

25 MR. RESNICK: This is a new occurrence so they'd be

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1 administrative expenses?

2 MS. GOLDSTEIN: The idea here, Your Honor, was to
3 limit the incurrence of additional obligations of this type to
4 ten million dollars. If they want to engage in unsecured
5 transactions, that's fine. But in terms of being secured,
6 there's a limit to additional incurrence.

7 THE COURT: All right.

8 Page 16, I think you need to revise the paragraph with
9 regard to amendments to the DIP documents. You'll have to file
10 amendments on the docket and you'll need to inform the
11 committee.

12 MR. RESNICK: Right. Your Honor, if I recall
13 correctly, we came up with a standard that worked for Your
14 Honor in Kodak which --

15 THE COURT: That's fine.

16 MR. RESNICK: Okay. We'll --

17 THE COURT: It doesn't have to be the Kodak one.

18 MR. RESNICK: Because there --

19 THE COURT: I'm sure you can come up with a reasonable
20 standard.

21 MR. RESNICK: Okay, thank you. Because there are some
22 immaterial amendments that probably don't make sense to come
23 back to the Court.

24 THE COURT: All right. If they're truly immaterial,
25 as long as you put them on the docket.

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1 Page 17, ten days, you have ten days' notice to the
2 U.S. Trustee and counsel to the committee. And we can wait for
3 the committee to come in and make the change, but I think
4 that's certainly one simple change the committee's going to
5 want. Might as well put it in now.

6 Now, I tried to find the definition of collateral and
7 I guess I have to go the security agreements to find the
8 definition of collateral?

9 MR. RESNICK: Yes. Your Honor --

10 THE COURT: Which I don't have. So I mean, I'll take
11 your word for it --

12 MR. RESNICK: It was filed --

13 THE COURT: But this is the first day. That's why I
14 try to hold the fort until we get a committee.

15 MR. RESNICK: Yeah. So it --

16 THE COURT: I mean, I went to collateral.

17 MR. RESNICK: Yeah.

18 THE COURT: Means the collateral, you say, in the
19 credit agreement.

20 MR. RESNICK: Yeah.

21 THE COURT: And that's about as far, I guess, as we
22 can get tonight.

23 MR. RESNICK: Right. Well, we did file the security
24 agreement shortly before the hearing and we did, until last
25 night, have a very extensive sort of description of the

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1 collateral, but the parties have spent so much time negotiating
2 it in torturous detail in the security agreement that we
3 probably would have had to postpone the filing by a week if we
4 had actually tried to bake it into here. So we thought that
5 this was the most efficient approach.

6 THE COURT: All right.

7 MR. RESNICK: Yeah.

8 THE COURT: Now, on page 22, I understand the first
9 sentence in subparagraph (d). Then you have, "For the
10 avoidance of doubt, the superpriority claims are payable from
11 and have recourse to the avoidance proceeds of the excluded
12 avoidance action claims".

13 MR. RESNICK: Um-hum.

14 THE COURT: I think that just confuses things. I
15 think you said it very well in the first sentence.

16 MR. RESNICK: Okay, understood.

17 THE COURT: I'll leave it alone but, I think you
18 created doubt, not avoided it.

19 MR. RESNICK: Understood. We'll take a look at that.

20 THE COURT: And I don't know -- then you say in the
21 next paragraph, to the extent permitted by the DIP credit
22 agreements, you are not priming anyone. Now, I think it
23 should -- that, I think, has to be understood today, that if
24 there are valid and existing pre-petition liens held by
25 municipalities for unpaid taxes or for anyone for any reason,

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1 whether or not it's on the DIP credit agreement list as a
2 permitted lien, we're not priming anybody today. Is that
3 correct?

4 MR. RESNICK: That is correct, Your Honor.

5 THE COURT: I think that's correct, Ms. Schonholtz?

6 MS. SCHONHOLTZ: That's correct, Your Honor.

7 THE COURT: And Ms. Goldstein?

8 MS. GOLDSTEIN: Yes, Your Honor, but we would like to
9 explore a little bit more with the debtors before the final
10 hearing the extent of any of these things. We have a schedule
11 that we agree is not primed.

12 THE COURT: All right. But I haven't seen the
13 schedule; the committee ought to look at the -- well, the
14 committee isn't interested. It's the --

15 MS. GOLDSTEIN: No, they don't care about this.

16 THE COURT: It's the un --

17 MS. GOLDSTEIN: But if there's a larger universe, we'd
18 want to discuss it with them.

19 THE COURT: It's the person who isn't here and, as I
20 said, I'm just trying to hold down the fort.

21 MS. GOLDSTEIN: We understand that, Your Honor.

22 THE COURT: All right. This is not unusual; we've
23 been through this before.

24 MS. GOLDSTEIN: Yes.

25 THE COURT: All right. Otherwise, actually, it's a

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1 very well-drafted order, I will say.

2 MR. RESNICK: Thank you, Your Honor.

3 THE COURT: And I know that if Mr. Huebner was here,
4 he would give me a lecture on how you can prime lessees even if
5 they don't agree. I see you very carefully put in provisions
6 that --

7 MR. RESNICK: We very carefully did so, Your Honor.

8 THE COURT: -- don't do that.

9 MR. RESNICK: We very carefully did.

10 THE COURT: So I'll have to wait for another case for
11 Mr. Huebner to explain to me how he convinced Judge Drain that
12 he could do it under the Bankruptcy Code. Well, I -- that's
13 for another day.

14 MR. RESNICK: Yep.

15 THE COURT: It's too late in the evening.

16 MR. RESNICK: Yep.

17 THE COURT: On page 35, line 1, 2, 3, 4, 5, 6, 7, I
18 would like to just eliminate the words "waive their right to"
19 and just leave it at "shall not be entitled to seek relief".

20 MR. RESNICK: Okay.

21 THE COURT: Now, there are provisions here for the use
22 of cash collateral. How much is the cash collateral today?

23 MR. RESNICK: I understand it's approximately
24 thirty -- in the high thirties, I believe. High thirty
25 million.

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1 THE COURT: Ms. Schonholtz?

2 MS. SCHONHOLTZ: Your Honor, in the Bank of America
3 concentration account, as of the opening of business today, I
4 believe there was about forty-eight million dollars.

5 THE COURT: All right. Thank you. Well, that's
6 important to know. That's useful.

7 I would like you to look at the provisions at the very
8 bottom of page 45. I think we've got to get rid of the
9 "irrevocably waived" language. "Relinquished", it's all right.
10 We have "waiver" and "release" again on page 46 in the third
11 line. I just -- I don't think we're talking about waiver or
12 release.

13 I think it's only fair to state on page 48 at the end
14 of paragraph 18 -- I'll let -- obviously, I think the committee
15 has to have the opportunity to come back and argue about the
16 75,000-dollar number, but I don't want to take your time today.

17 MR. RESNICK: Understood.

18 THE COURT: They can also argue about, I think the
19 seven million dollar number, but that seems to me to be a
20 number that's hard to argue about.

21 I think, just on page 51, a final hearing is scheduled
22 for a date. And then I think we should say, "The debtors shall
23 promptly mail copies of this interim order and notice of the
24 final hearing." So the notice can at least tell people what
25 this fifty-page totally incomprehensible document is supposed

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1 to be about.

2 MR. RESNICK: Okay.

3 THE COURT: And objections, I guess, by the same date
4 that we've been using. And those were my comments.

5 Why don't I -- oh, one other thing I guess we
6 should -- before we take a brief recess, we ought to discuss
7 the fee order.

8 MR. RESNICK: Sure. Certainly, Your Honor. And we
9 initially filed the motion to seek approval to file the fee
10 letters under seal. We believe they contain confidential,
11 proprietary information under the meaning of 107(b) of the
12 Bankruptcy Code. The U.S. Trustee contacted us and requested,
13 as is often done in these cases, that we disclose the aggregate
14 amount of fees which are disclosed in the motion. And with
15 that arrangement, the U.S. Trustee has agreed to permit this.

16 What we did in Kodak, as you may recall, was we just
17 filed redacted fee letters on the docket and we'd be happy to
18 do the same now.

19 THE COURT: I'm not sure, and this was probably an
20 oversight, that the redacted fee letter was filed in Kodak, but
21 we'll take that up with counsel for the lenders or counsel for
22 the debtors in Kodak. Let's put Kodak aside.

23 MR. RESNICK: Yeah.

24 THE COURT: You gave me a redacted copy of the fee
25 letter with every number blanked out. It seems to me that

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1 there are some numbers in that document that could be included,
2 including the aggregate maximum fee amount. I'm very
3 sympathetic to the need to keep the flex information
4 confidential, at least until the lenders have syndicated the
5 loans.

6 MR. RESNICK: Right.

7 THE COURT: But any other information, it seems to me,
8 should be disclosed. Now, I can hear from the lenders --

9 MR. RESNICK: Sure. We can take a lighter pen to the
10 redaction.

11 THE COURT: Perhaps it's something to discuss with
12 lenders' counsel. I certainly understand the need to keep your
13 flex amounts confidential because --

14 MR. RESNICK: Right.

15 THE COURT: -- that could benefit the debtors.

16 MR. RESNICK: Right.

17 THE COURT: But the aggregate amount in the fee
18 letter, I think --

19 MR. RESNICK: Okay.

20 THE COURT: -- would not disclose any confidential
21 information or anything that would impede syndication.

22 MR. RESNICK: Right, right. Well, in this case, we
23 have several different fee letters and we disclosed the
24 aggregate fees that will be paid by the debtors. We think that
25 that is actually the important information for our constituents

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1 to know. The actual breakdown as among the various banks
2 represented by these firms --

3 THE COURT: Well, I think --

4 MR. RESNICK: -- we don't think it's --

5 THE COURT: -- parties should know the cost of
6 multiple lenders and -- if possible.

7 MR. RESNICK: Right.

8 THE COURT: It doesn't help to file a fee letter with
9 everything blanked out.

10 MR. RESNICK: Right.

11 THE COURT: All the numbers blanked out --

12 MR. RESNICK: Right.

13 THE COURT: -- if that isn't absolutely necessary.

14 MR. RESNICK: Understood. Well, we can discuss with
15 lenders' counsel taking a lighter pen to the redaction.

16 THE COURT: Why don't we take a five- or ten-minute
17 break. If you'd let me know when you're ready to start again?

18 MR. RESNICK: Thank you, Your Honor.

19 THE COURT: Mr. Schaible?

20 MR. SCHAIBLE: Your Honor, may I beg your indulgence?
21 There's two orders that if it were possible to enter this
22 evening, we'd ask Your Honor -- we've made the change regarding
23 the final hearing and this is just cash management and wages.

24 THE COURT: All right.

25 MR. SCHAIBLE: -- so that our checks won't bounce and

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1 impair our employees.

2 THE COURT: Do you have clean copies?

3 MR. SCHAIBLE: I have them on disk.

4 THE COURT: All right.

5 MR. SCHAIBLE: May I approach?

6 THE COURT: If you hand that up, we'll try to get it
7 entered today. If not, first thing tomorrow morning, but we'll
8 try right now.

9 Let me take a recess. Thank you.

10 THE CLERK: All rise.

11 (Recess from 5:29 p.m. until 5:51 p.m.)

12 THE CLERK: Please be seated.

13 THE COURT: All right, we're back on the record in
14 Patriot Coal Corp.

15 Mr. Resnick?

16 MR. RESNICK: Thank you, Your Honor. So, Your Honor,
17 we conferred with the lenders and basically continued the
18 extensive negotiations we've been having with them over the
19 past few weeks. We have made extensive efforts to attempt to
20 get financing on a basis that wouldn't necessarily require the
21 rollup as of -- at the interim hearing. We're unable to obtain
22 that financing and, Your Honor, we submit that there would be
23 undoubtedly immediate and irreparable harm to the debtors if we
24 were unable to consummate this DIP facility.

25 I'm happy to put some testimony on the record if you

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1 would like. Flip Huffard of Blackstone who is more intimately
2 involved in the process than anybody on the planet, he can
3 testify to the debtors' efforts to obtain financing with other
4 terms. Mark Schroeder, the chief financial officer, can
5 testify to the debtors' need to obtain this financing. I'm
6 happy to put them on the record. They would both testify that
7 alternative financing is simply not available to this company;
8 we have made every effort to try. Blackstone has made every
9 effort to try and --

10 THE COURT: Well, I understand the unavailability of
11 other financing.

12 MR. RESNICK: Right. And also that the forty-eight
13 million dollars in cash is simply not enough to sustain the
14 debtors. The debtors do have an immediate need to be able to
15 access this debtor-in-possession financing facility.

16 THE COURT: All right. And every penny that was -- I
17 really had two issues.

18 MR. RESNICK: Sure.

19 THE COURT: One was the lack of any evidence that the
20 debtors would suffer irreparable and immediate harm if they
21 didn't get a loan today in the amounts proposed.

22 MR. RESNICK: Right. We think it sends a very strong
23 positive signal to the market to have a cushion available so
24 that counterparties are not at all concerned that there is more
25 than sufficient financing. We don't intend to draw the entire

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1 amount of the revolver and we submit that we believe it's the
2 right amount.

3 THE COURT: All right. I think I should get some
4 testimony as to the need for the amount of financing that's
5 been proposed because there's simply nothing in the record to
6 indicate that. And I understand the need for financing and the
7 need for a cushion, but there's nothing in the record to
8 demonstrate need for the amounts proposed.

9 MR. RESNICK: Okay, Your Honor, I'd like to call Flip
10 Huffard of Blackstone.

11 THE COURT: All right.

12 State your name for the record, please.

13 MR. HUFFARD: Flip Huffard from Blackstone.

14 THE COURT: Is that your actual name?

15 MR. HUFFARD: Paul.

16 THE COURT: Paul Huffard.

17 (Witness sworn)

18 THE COURT: Please be seated.

19 THE WITNESS: Thank you.

20 DIRECT EXAMINATION

21 BY MR. RESNICK:

22 Q. Mr. Huffard, can you please describe for the Court your
23 background?

24 A. Sure. I'm senior managing director at the Blackstone
25 Group. I'm one of the partners in the restructuring and

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1 reorganization group. I have been doing restructurings for the
2 past twenty years and have been intimately involved in the
3 company's efforts here to find financing in connection with
4 this bankruptcy filing.

5 Q. And about when were you retained by the debtors to try to
6 find financing?

7 A. We were first engaged with the debtors in late May,
8 although finding this financing in particular wasn't what we
9 were focused on. At that point we were focused on trying to
10 arrange other forms of financing that would not be applicable
11 to a bankruptcy filing.

12 We've been working with the debtors closely, I would say,
13 for the last three weeks on identifying potential DIP financing
14 sources.

15 Q. And did you contact multiple DIP financing sources?

16 A. Yes, we did.

17 Q. And do you feel like you've contacted sort of the universe
18 out there of potential DIP financing sources?

19 A. We've contacted a large number of different potential
20 organizations to provide DIP financing. This is obviously a
21 challenging industry and I think we were actually quite lucky
22 to find the DIP financing that we have found.

23 Q. Do you believe that DIP financing without providing for a
24 rollup of the existing secured debt would be available on terms
25 that would not cause a priming fight with the existing lenders?

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1 A. We explored a wide variety of different financing
2 structures in connection with our efforts. At the end of the
3 day, this particular structure was the only structure that we
4 found was feasible and it was, to be very clear, not in any way
5 feasible if we did not offer a rollup; there would be no
6 consent, in my point of view, for the existing pre-petition
7 lenders to a priming lien. And so we would be forced to be in
8 a very contentious priming DIP fight day 1 of the bankruptcy
9 case which is always very damaging, in my experience.

10 Q. Thank you. Can you talk a little bit about the sizing of
11 the facility and how it was determined?

12 A. Of the interim availability that we're requesting?

13 Q. Let's start with the aggregate amount of 802 million.

14 A. The aggregate amount of 802 million was derived by looking
15 at the company's cash flow needs over a number of years. And
16 we were looking for the size of the facility that would provide
17 the company adequate liquidity to run its business and to face
18 some of the cash flow challenges that it would have in the near
19 term in a bankruptcy case as well as to be able to handle the
20 uncertainty that the company experiences from time to time in
21 its operations.

22 This is not a business that runs necessarily like
23 clockwork. You are working in a natural environment and there
24 are uncertainties. There are times when mines go down and
25 times when shipments of coal get delayed. All of those combine

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1 to require a cushion in the company's liquidity profile.

2 Q. Thank you. And the debtors are seeking authority to have
3 access to the entire 125-million dollar revolving -- borrowing
4 base facility today and 250 million of the 375 million dollar
5 term loan. Can you talk a little bit about how that was sized
6 and also whether the debtors expect to draw on the revolver?

7 A. Sure. You know, Patriot finds itself right now in a very
8 precarious liquidity position and a very fragile financial
9 position, generally. Over the last month, the company's stock
10 has plummeted precipitously. It has been downgraded multiple
11 times, ultimately, I guess, this morning, to a D -- or last
12 night to a D. It has had many conversations, many heated
13 conversations with its vendors and its customers about its
14 financial status. The whole world right now is looking at
15 Patriot and wondering if they have enough money to get by from
16 day to day. And the sizing of the DIP was really designed in
17 large part to provide a message of financial strength to the
18 world.

19 This is a really challenged company right now. We are
20 trying to get it back on track; the management team is working
21 extremely hard to maintain all of their good relationships with
22 vendors and customers and their employees. But the message we
23 need to send out right now is that we have enough money to get
24 through this process, we are financially stable, we are a good
25 place to do business with, and that was really the goal of the

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1 sizing of the interim availability that we've requested. It's
2 not that the company needs to draw every single penny of that
3 availability. It is a big billboard that we're trying to put
4 in front of the world saying we're open for business and we
5 have enough money to run our business.

6 Q. And so in your opinion, do you believe that the company
7 would experience immediate and irreparable harm if the DIP
8 facility were not approved?

9 A. I do.

10 Q. Thank you.

11 MR. RESNICK: I have no further questions.

12 THE COURT: All right. Anyone else?

13 Ms. Schonholtz?

14 MS. SCHONHOLTZ: Very briefly. Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. SCHONHOLTZ:

17 Q. Mr. Huffard, you testified, I believe, your efforts to
18 obtain financing other than this financing were unsuccessful.
19 Is that correct?

20 A. That is correct.

21 Q. Okay. And how long were you looking for DIP financing?

22 A. I think it was approximately three weeks.

23 Q. Okay. And is it fair to say you were looking for DIP
24 financing because the out-of-court restructuring financing that
25 you were looking for before was not going to be available?

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1 A. That is correct.

2 Q. Okay. Is it also fair to say that you scoured the market
3 for DIP financing in the three weeks that you were looking?

4 A. Yes.

5 Q. And you were not able to obtain any other financing other
6 than the financing that is being presented here today?

7 A. That is correct.

8 Q. Thank you.

9 THE COURT: Anyone else?

10 All right. So do I understand your testimony
11 correctly that the irreparable harm to the company from not
12 obtaining all of the availability that the company asked for is
13 caused by the very fact that the company hasn't obtained all of
14 the availability it asked for and that sends the wrong message
15 to the market?

16 THE WITNESS: I think that's certainly a large part of
17 it. There's a certain amount of judgment that obviously goes
18 into the sizing of the facility. I can't tell you honestly
19 that one dollar one way or the other is going to make a
20 difference. But the fact that the company came --
21 theoretically came into court today with a large DIP facility
22 and didn't have that approved, I think that's very damaging and
23 sends concern -- messages of concern throughout the community.

24 But even more important --

25 THE COURT: So all we're talking about --

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1 THE WITNESS: -- even --

2 THE COURT: I'm sorry; go ahead.

3 THE WITNESS: I'm sorry.

4 THE COURT: Please finish your answer.

5 THE WITNESS: Even more important than that is just
6 the next day and the day after that, when the management team
7 is dealing with its business counterparties, the vendors, the
8 customers and trying to get them to come back onto a normalized
9 relationship, I think whether the financing is approved today
10 or not, they need to have it in place to run the business and
11 to get the business back into a stable place over the next week
12 or two.

13 This is a critical period of time for the company.

14 THE COURT: All right. Anything further?

15 MR. RESNICK: Not for me, Your Honor.

16 THE COURT: From anyone else?

17 All right, thank you.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Anything further on the
20 question of financing? From anyone? Any further argument?

21 All right. As I've said several times today, I am
22 only sitting in for Judge Chapman and we are both sitting in
23 for the committee that's not here. And we're trying to apply a
24 statute and rules that have certain meaning. And of course, we
25 have to rely on the parties to bring us transactions that

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1 comport with the rules. And if the parties do not do that,
2 then we have a deadlock.

3 I have the representation -- I have testimony now that
4 this package was put together at length and with some
5 difficulty, which I accept without any question. And I'm
6 certainly aware of the difficulties of getting lenders to agree
7 as to certain concessions and certain provisions in a
8 financing. And I'm also aware of the benefits of actually
9 getting pre-petition lenders out of the case so that the air is
10 cleared.

11 I will approve the DIP financing with the changes to
12 the order that were requested, with some reluctance, obviously.
13 I don't state this to hear myself talk; I state this because
14 unless we can rely on parties to bring us DIP financings that
15 comply with the requirements of the rules, we're left at odds
16 because we're only talking about a twenty-day period. But
17 although I think this financing could be characterized as a
18 300-million dollar rollup, it seems to me fairer to take into
19 account the fact that these are letters of credit. As I
20 understand it, these are all standby letters of credit that are
21 not likely to be called on. So what we're doing is simply
22 maintaining the status quo with regard to the letters of
23 credit. And if this is the cheapest way to do it, we're not
24 going to help the debtors by waiting another twenty days.

25 And you said, as has been stated to the Court, the

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1 provisions to unwind are very thorough and entirely
2 appropriate. If the pre-petition lenders were not fully
3 secured, under the circumstances, this all can be unwound. So
4 I'll approve it and although I approve the concept, I do not
5 necessarily approve the concept that judges can approve a DIP
6 financing amount on an interim basis merely because the debtors
7 have asked for it. But I do know the importance of the debtors
8 proceeding on a smooth track at the beginning of a case and I
9 have some testimony now to support the financing.

10 Yes, ma'am?

11 MS. GASPARINI: Your Honor, at the beginning of the
12 hearing, Mr. Schaible had indicated that there was one
13 outstanding issue with the Office of the United States Trustee
14 which I believe we've worked out during the break. And that
15 issue was that we had requested that a budget be made public.
16 I have not seen a budget yet, and we would like a budget
17 attached to even an interim order.

18 We've agreed to attach a budget that carries through
19 the final in the interim and that we can work out on what is
20 going to get attached to the order in the final.

21 THE COURT: All right.

22 MS. GASPARINI: The other, if I --

23 THE COURT: Does the order -- I don't think the order
24 refers to a budget, does it?

25 MR. RESNICK: It does not.

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1 THE COURT: It does not.

2 MS. GASPARINI: Your Honor, I think I've found -- if I
3 may, I think that it's referred to in the version that I have
4 on paragraph 18 in the limitation of the use of financing
5 proceeds and collateral, it says, "pay any amount on account of
6 any claims arising prior to the petition date unless such
7 payment are" -- in (ii) it says -- "in accordance with the DIP
8 credit agreements and the budget as accrued by the DIP agents".

9 So there is one reference, at least, in that --

10 THE COURT: Well, then, all the more reason to get
11 something on file.

12 All right. Anything further tonight?

13 MR. RESNICK: Thank you, Your Honor.

14 THE COURT: All right. Then you'll provide us
15 tomorrow with revised orders.

16 MR. SCHAIBLE: Yes, Your Honor.

17 MR. RESNICK: We will, Your Honor.

18 THE COURT: We've entered the joint administration
19 order and the two orders that you asked --

20 MR. SCHAIBLE: Thank you, Your Honor.

21 MR. RESNICK: I think that the final matter, Your
22 Honor, is the fee letters. You know, as I mentioned, the
23 aggregate matter is disclosed on the record and the lenders
24 would --

25 THE COURT: Well, I think the amount of redacting in

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1 the fee letter is still much too great. I do not think under
2 any stretch of the imagination the fees charged by a DIP lender
3 are confidential, and they should be disclosed. But I'll let
4 that matter -- it's now after 6 o'clock -- I'll let Judge
5 Chapman deal with that on Monday.

6 But the proposition, I think, is simply an absurdity
7 that the charges for a DIP loan by a DIP lender are
8 confidential because the lender would like them to be
9 confidential.

10 MR. RESNICK: Right.

11 THE COURT: That isn't --

12 MR. RESNICK: Understood, okay. We can reserve --

13 THE COURT: That isn't either required or permitted
14 under Section 107 or the Rule.

15 MR. RESNICK: Right. We can reserve on that for Judge
16 Chapman. Just to be clear, Your Honor, this order is approving
17 the payment of the fees. We'll reserve for Judge Chapman
18 whether they -- to what extent the fee letters need to be filed
19 publicly. Is that -- am I understanding correctly?

20 THE COURT: Again, subject to nondisclosure of the
21 flex provisions. I've been through this several times,
22 certainly with Ms. Goldstein, and I'm sure we can come up with
23 an appropriate disclosure.

24 MR. RESNICK: Yeah. Thank you very much, Your Honor.

25 THE COURT: All right, thank you.

PATRIOT COAL CORPORATION, et al.
MS. SCHONHOLTZ: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 6:12 p.m.)

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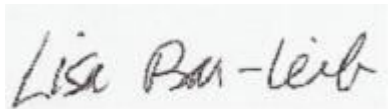
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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.



LISA BAR-LEIB (CET**D 486)
AAERT Certified Electronic Transcriber
eScribers
700 West 192nd Street, Suite #607
New York, NY 10040

Date: July 12, 2012

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