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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

August 2, 2012
2:22 PM

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

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Doc# 246 NOTICE of Agenda/Notice of Agenda of Matters Scheduled
for Hearing on August 2, 2012 at 2:00 PM

Doc# 137 MOTION to Approve/Debtors' Motion for Approval of
Procedures for the Assertion, Resolution and Treatment of
Reclamation Claims and Claims Asserted Pursuant to 11 U.S.C.
503(b)(9)

Doc# 138 MOTION to Authorize/Debtors' Motion for Authorization
to Employ Ordinary Course Professionals Nunc Pro Tunc to the
Petition Date

Doc# 139 MOTION to Authorize/Debtors' Motion to Establish
Procedures for Interim Monthly Compensation and Reimbursement
of Expenses of Professionals

Doc# 39 INTERIM Order Signed on 7/11/2012 by the Honorable
Allan L. Gropper (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 Pre-Petition Secured Lenders
Pursuant to 11 U.S.C. 361, 362, 363 and 364, and (III)
Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b)

1 and (c) (related document(s) 25). Final Hearing to be held on
2 8/2/2010 at 2:00 p.m. Eastern Time in Courtroom 610 (SCC).
3 Objections due by 7/25/2012 at 4:00 p.m. Eastern Time.

4
5 Doc# 87 INTERIM Order Authorizing (I) the Debtors to Honor Pre-
6 Petition Obligations to Customers in the Ordinary Course of
7 Business and (II) Financial Institutions to Honor and Process
8 Related Checks and Transfers signed on 7/16/2012. (related
9 document(s)11) Final Hearing to be held on 8/2/2010 at 2:00 PM
10 at Courtroom 610 (SCC). Objections due by 7/25/2012 at 4:00
11 p.m. Eastern Time.

12
13 Doc# 91 INTERIM Order Authorizing (I) Debtors to Continue and
14 Renew their Liability, Property, Casualty and Other Insurance
15 Programs and Honor all Obligations in Respect Thereof and (II)
16 Financial Institutions to Honor and Process Related Checks and
17 Transfers signed on 7/16/2012. (related document(s)17) Final
18 Hearing to be held on 8/2/2010 at 2:00 PM at Courtroom 610
19 (SCC). Objections due by 7/25/2012 at 4:00 p.m. Eastern Time.

20
21 Doc# 92 INTERIM Order Authorizing Debtors to Continue and Renew
22 Surety Bond Program signed on 7/16/2012. (related
23 document(s)18) Final Hearing to be held on 8/2/2010 at 2:00 PM
24 at Courtroom 610 (SCC). Objections due by 7/25/2012 at 4:00
25 p.m. Eastern Time.

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Doc# 93 INTERIM Order Authorizing (I) Debtors to Pay Certain Pre-Petition Taxes, Governmental Assessments and Fees and (II) Financial Institutions to Honor and Process Related Checks and Transfers signed on 7/16/2012. (related document(s)21) Final Hearing to be held on 8/2/2010 at 2:00 PM at Courtroom 610 (SCC). Objections due by 7/25/2012 at 4:00 p.m. Eastern Time.

Doc# 40 INTERIM Order signed on 7/11/2012 by the Honorable Allan L. Gropper Authorizing (I) Payment of Certain Pre-Petition Claims of Shippers, Warehousemen and Service Providers and (II) Financial Institutions to Honor and Process Related Checks and Transfers (related document(s)12). Final Hearing to be held on 8/2/2010 at 2:00 PM at Courtroom 610 (SCC). Objections due by 7/25/2012 at 4:00 p.m. Eastern Time.

Doc# 33 INTERIM Order signed on 7/10/2012 by the Honorable Allan L. Gropper Authorizing (I) Debtors to (A) Pay Pre-Petition 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. (related document(s)9) Final Hearing to be held on 8/2/2010 at 2:00 PM. Objections due by

1 7/25/2012 at 4:00 p.m. Eastern Time.

2

3 Doc# 41 INTERIM Order signed on 7/11/2012 by the Honorable

4 Allan L. Gropper Authorizing (I) Debtors to Pay Pre-Petition

5 Obligations Owed to Foreign Creditors and (II) Financial

6 Institutions to Honor and Process Related Checks and Transfers

7 (related document(s)13). Final Hearing to be held on 8/2/2010

8 at 2:00 PM at Courtroom 610 (SCC). Objections due by 7/25/2012

9 at 4:00 p.m. Eastern Time.

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ALSO PRESENT:

MICHAEL HICKENBOTHAM, Ernst & Young Corporate Finance

(Telephonically)

JACQUELYN A. JONES, ESQ., Deputy General Counsel, Patriot Coal

1 P R O C E E D I N G S

2 THE COURT: All right, good afternoon, Mr. Huebner.

3 MR. HUEBNER: Good afternoon, Your Honor. For the
4 record, I am Marshall Huebner of the law firm of Davis, Polk &
5 Wardwell, LLP on behalf of the debtors, Your Honor.

6 I don't know if Your Honor would like to take
7 appearances or if should proceed and people will speak as they
8 are ready?

9 THE COURT: You can get started. I'll note that there
10 are a number of parties on the telephone line, the majority of
11 whom are on "listen only". I believe that a representative of
12 Ernst & Young is on the line live. Is there anyone else who's
13 on the line live who wishes to note their appearance?

14 MR. LEVINE: Steven Levine, Brown, Rudnick, LLP for
15 the ad hoc committee of noteholders for the 2002-D (ph.) notes.

16 THE COURT: Did you hear that, Mr. Huebner?

17 MR. HUEBNER: I apologize, Your Honor; I did not.

18 THE COURT: All right. Once more, please, sir.

19 MR. LEVINE: Steven Levine, Brown, Rudnick, LLP for
20 the ad hoc committee of noteholders for the 2002-D notes.

21 THE COURT: All right, thank you.

22 MR. HUEBNER: Your Honor, there are nineteen matters
23 on the agenda letter listed as going forward. I would ask the
24 Court's indulgence; if it's okay, item number 1 on the list
25 which is the DIP, there are still some last-minute

1 conversations going on --

2 THE COURT: Okay.

3 MR. HUEBNER: -- and so if we can, I'd like to do --

4 THE COURT: Certainly.

5 MR. HUEBNER: -- 2 through 18 first and then --

6 THE COURT: Okay.

7 MR. HUEBNER: -- see where we are with the DIP at the
8 time.

9 Your Honor, with me in court today -- just to say some
10 thank yous -- are Darren Klein and Michelle McGreal of my
11 office, as well as Ms. Jacquelyn Jones, who is the deputy
12 general counsel of the Patriot family of companies.

13 Your Honor, as you might imagine, it has been an
14 extraordinarily intense few weeks for everybody connected with
15 the Patriot situation. With the assistance provided to Patriot
16 by this Court and also by Judge Gropper on the very first day
17 and the liquidity and the vote of confidence provided by the
18 capital markets and our DIP agents in particular, I'm happy to
19 report that we have achieved a quite seamless transition into
20 Chapter 11 and there really have been no disruptions or
21 dislocations to speak of.

22 As the Court very likely knows, on July 18th, the U.S.
23 Trustee's office appointed a seven-member creditors' committee.
24 That committee has selected Kramer, Levin as its proposed legal
25 advisors. Mr. Rogoff and Ms. Anu (sic) are in the court

1 today -- I apologize on the last name -- and also Mesirow and
2 Houlihan as their proposed financial advisors.

3 As I think is our job, we have been engaged on the
4 Patriot side in very intensive education, initiation, and
5 negotiation sessions primarily with the official creditors'
6 committee but also with other parties as well over the last few
7 weeks. And while we'll turn to the DIP at the end, I'm happy
8 to report that as to the other eighteen motions which I can now
9 go through, there are no objections left of any kind. We
10 worked productively as we had signaled to all parties we would
11 very much like to do, to take in all of their comments, resolve
12 everything that we could. A few of the first days which are
13 not particularly time sensitive were adjourned until the August
14 15th hearing. We continue to work with parties and get ever
15 closer, and my hope and aspiration is that as we approach
16 August 15th, we will again be ready to draft an agenda letter
17 that says that there are no contested matters.

18 THE COURT: Okay.

19 MR. HUEBNER: In terms of the other eighteen, Your
20 Honor, we have a binder of blacklines that I believe was
21 provided to chambers to show the differences between the
22 interim --

23 THE COURT: Right.

24 MR. HUEBNER: -- and the final. You know,
25 fundamentally, our most intense negotiations were, of course,

1 with the unsecured creditors' committee. They are stewards, as
2 we are, and fiduciaries and wanted to ensure, especially where
3 money was being spent, that they understood exactly where it
4 was going and that it was both necessary and appropriate.

5 As to three of the motions in particular, Your Honor,
6 the insurance motion, the customer motion and the cash
7 management motion in particular, we diligenced the amounts with
8 the committee and they asked, when we picked a number that was
9 sort of a cap with a cushion, that we not go above those
10 numbers without getting either their consent or, if we need to,
11 coming back to the Court because we all are very aligned on
12 hopefully never going anywhere near those caps let alone above
13 them. We agreed those caps weren't enshrined in the orders
14 because the orders give us the authority we need. The
15 committee separately asked us to give them a direct concession
16 that we would get their approval or come back if the facts
17 turned out different than we expected. And we were comfortable
18 doing that as to those three motions, as I said before, cash
19 management, insurance and customers.

20 With respect to wages, Your Honor, the committee had
21 asked for a couple of changes; I think in the scheme of things
22 they're actually pretty minor, and we were fine with those as
23 well.

24 And with respect to the tax motion, Your Honor, as
25 opposed to sort of caps or limits, the committee asked that we

1 give them quarterly reports of the amounts paid. As we sort of
2 all agree, taxes are taxes. The government is the government.
3 Whether it's liens or interest or superpriority or the ability
4 to block permits or the like, it is what it is. That said, we
5 all need to know what it is and we, of course, have no problem
6 whatsoever providing the requested quarterly reports to the
7 committee and also agreeing that where there are disputes, that
8 they'll be resolved, I think, pursuant to -- where there are
9 settlements of disputes, they'll be subject to the claim
10 settlement procedures ultimately approved in the case.

11 So, Your Honor, with those general introductions which
12 I think cover the things that we were supposed to articulate --
13 or actually, it was our choice; we thought it was more
14 appropriate to articulate for the Court so they would know the
15 nature of the deals where it's not separately, clearly written
16 into the order for the world to see, the rest of the changes to
17 the orders are right there in black and white.

18 I'm happy to do a quick page flip of the blacklines
19 and explain. I'm happy to answer only any questions or I'm
20 happy to just say if there are no questions, we have eighteen
21 uncontested first-day motions that we believe are supported by
22 all and objected to by none.

23 THE COURT: All right. Well, why don't we, just for
24 the sake of clarity, go through the exercise of going down the
25 agenda and affording any parties who are present here today the

1 opportunity to object or make an observation.

2 Mr. Rogoff.

3 MR. ROGOFF: Your Honor, if I can?

4 THE COURT: Yes.

5 MR. ROGOFF: Thank you; Adam Rogoff, Kramer, Levin,
6 proposed counsel on behalf of the creditors' committee here in
7 the courtroom today with my colleague Anu Yerramalli and I hope
8 to be joined in a bit by my partner Amy Caton who has been back
9 working on trying to resolve the DIP.

10 I thought it might be helpful as Your Honor goes
11 through each one of these, since Mr. Huebner gave a sort of
12 global presentation of the eighteen matters and since I think
13 our comments sort of reflect all eighteen matters, if I could
14 just give a global, quick sound bite and then we can go through
15 each one.

16 THE COURT: Absolutely.

17 MR. ROGOFF: But, as noted, the committee was formed
18 on July 18th. It consists of seven members; I don't know if
19 Your Honor is familiar with who the members --

20 THE COURT: I am.

21 MR. ROGOFF: Okay. The committee identified Kramer,
22 Levin, my firm, as counsel and has also proposed to retain
23 Houlihan, Lokey and Mesirov as financial advisors. Promptly
24 upon both our engagement as the proposed legal counsel and then
25 bringing in Houlihan and Mesirov -- although this part of

1 today's hearings have been handled more by Houlihan -- we
2 started diligencing the business issues and the necessity and
3 the various relief that the debtor was seeking.

4 We were guided by two things. One, preserving the
5 business and helping to stabilize the transition in the Chapter
6 11, and two, importantly, making sure we understood the
7 reasonableness of what was being sought and avoiding sort of
8 blank check authorization for the debtor to incur or pay
9 various obligations. And so we worked very closely with Mr.
10 Huebner, his colleagues, and with the debtors' financial
11 advisors. We've gotten comfortable with the caps that are set
12 forth in the motions. We have understandings with respect to
13 amounts that are anticipated to be paid under certain of the
14 other orders that were noted.

15 So we believe, at this point, that we're comfortable
16 that the relief is appropriate, warranted and that we have
17 suitable protections in terms of oversight, coordination,
18 cooperation and being able to make sure that everything being
19 spent is reasonable and appropriate.

20 THE COURT: All right. And obviously, to the extent
21 that there have been issues with certain of the other orders
22 that have been adjourned, that further reflects that you're
23 actually working on these issues and suggesting changes to the
24 debtors.

25 MR. ROGOFF: That's exactly correct, Your Honor.

1 Certain motions have been adjourned because we're continuing to
2 diligence the business requests that underlie those and, as
3 we've done today, I would expect and hope that we will come
4 forward with consensus. Mr. Huebner and I, I think, have
5 agreed that we're going to keep all of the fireworks and
6 theatrics in the cinema this summer and not in the courtroom,
7 although the 3D here is quite nice.

8 THE COURT: Okay.

9 All right, Mr. Huebner, let's go down the agenda one
10 by one.

11 So skipping over the DIP financing for the moment --

12 MR. HUEBNER: Number 2, Your Honor --

13 THE COURT: -- that brings us to the cash management
14 which is number 2 on the agenda.

15 MR. HUEBNER: Yeah, the only change is -- of any
16 substance is the junior superpriority for the intercompany
17 (ph.) that I actually think was even discussed by some parties
18 at the last hearing. Your Honor may remember Mr. Silverstein,
19 I think, stood up and may have consented to that. We do this a
20 lot. It didn't bother us at all to pop it in. The committee
21 liked it, too. The rest of the changes, I think, are pretty
22 minor.

23 THE COURT: Yes. Is Mr. Silverstein here today or
24 someone from his firm?

25 You have anything further you'd like to add?

1 MR. SILVERSTEIN: I was going to suggest we cannot
2 hear the speaker.

3 THE COURT: You cannot hear Mr. Huebner?
4 Mr. Huebner, you can fix that.

5 MR. HUEBNER: Sorry. I will try to speak with more
6 volume. Should I quickly repeat --

7 THE COURT: Say that again, please.

8 MR. HUEBNER: Sure. The cash management order, Your
9 Honor, the changes are quite minor. They really relate
10 primarily to the granting of junior superpriority claims for
11 interdebtor transfers during the case. There are blacklines
12 available which I think the Davis Polk folks have offered to
13 everybody in the courtroom. The other changes, without
14 limiting or disrespecting them, I think are pretty ministerial.
15 The cash management motion is largely in the form presented at
16 the interim hearing, but for the inclusion of the junior
17 superpriority concept.

18 THE COURT: All right. Does anyone else wish to be
19 heard with respect to the entry of the final order on the
20 debtors' cash management motion?

21 All right, that's approved.

22 Next is the debtors' wage motion.

23 MR. HUEBNER: Thank you, Your Honor.

24 On the debtors' wage motion as well, we had already
25 had extensive conversations both with ourselves, because there

1 are things that I think one should and should not do in a wages
2 motion, as well as with the U.S. Trustee's office prior to the
3 filing. And I think it was actually quite in good shape and
4 appropriate before then. There were a few other relatively
5 small changes, frankly, asked for by the creditors' committee
6 which we put in. Unless the Court wants to go through them, I
7 think the blackline probably speaks for itself. But it goes
8 without saying that I'm happy to answer any questions that you
9 have.

10 THE COURT: All right. I note that you've put in a
11 provision that provides for a notification of the committee if
12 there are any material modifications to the compensation and
13 benefit programs --

14 MR. HUEBNER: Yes, Your Honor.

15 THE COURT: -- which makes perfect sense.

16 All right, does anyone else wish to be heard with
17 respect to the debtors' motion for a final order on wages and
18 benefits?

19 All right, that'll be approved.

20 MR. HUEBNER: The next item, Your Honor, on the agenda
21 is the customer obligations order which is really only turned
22 into a final order. I think that with the exception of
23 language merely clarifying what is a legal truism that the
24 authority to pay does not make anything a post-petition
25 obligation nor does it assume any contracts, which was always

1 true but now it's both true and explicit, I think there are no
2 other changes of substance other than making it a final order.

3 THE COURT: Don't you have the paragraph here that
4 confirms what also is true, that nothing converts the priority
5 of any claim or enhances anyone's rights or status?

6 MR. HUEBNER: Yes, Your Honor.

7 THE COURT: Right? Okay.

8 Anyone else wish to be heard with respect to the
9 debtors' motion for a final order regarding customer
10 obligations?

11 Okay. That'll be approved.

12 Next we have the shippers and warehousemen and other
13 service providers.

14 MR. HUEBNER: Yeah. Your Honor, on this one,
15 honestly, I think that other than the same "nothing converts
16 the priority or assumes contract" paragraph, I think there
17 really is really nothing that bears a shout out.

18 THE COURT: All right. You've been taken down a notch
19 from sole discretion to reasonable business judgment.

20 MR. HUEBNER: Your Honor, as debtors, we are always
21 reasonable, so we did not view that as a change.

22 MR. ROGOFF: Although we did want that clarification.
23 Thank you for making it yet again.

24 THE COURT: And Mr. Rogoff, I will count on you to
25 continue to make that clarification.

1 Does anyone else wish to be heard with respect to the
2 debtors' motion for an order with respect to the shippers,
3 warehousemen and service providers?

4 All right, that'll be approved.

5 MR. HUEBNER: Your Honor, the next item on the agenda
6 is number -- the next one is the foreign creditors which is
7 number 6.

8 THE COURT: Yes.

9 MR. HUEBNER: There, too, Your Honor, I'd say eighty-
10 seven percent of the changes are merely finalizing it. There
11 is a paragraph similar to the paragraphs often found in
12 essential vendors, which again I'm not sure we needed Court
13 authorization to seek clarification that we will get trade
14 terms or otherwise from foreign counterparties where we could,
15 but we certainly had no objection to adding it. So that is the
16 blackline paragraph on page 4. I think the other changes are
17 really ministerial.

18 THE COURT: All right. And the cap remains at 750?

19 MR. HUEBNER: It does, Your Honor.

20 THE COURT: Okay.

21 MR. HUEBNER: And we have no reason to believe that
22 will not more than sufficient.

23 THE COURT: Okay. Anyone else wish to be heard with
24 respect to the debtors' motion for a final order authorizing
25 the payment to foreign creditors?

1 Okay. That will be approved.

2 MR. HUEBNER: Thank you, Your Honor. The next one is
3 the more generic, I guess one would say, critical vendors
4 motion. And there, too, the vast majority of the changes are
5 either ministerial or of the categories that we have already --
6 on which we have already alighted: reasonable business
7 judgment, taking out the interim order mechanics. There is a
8 new paragraph which again I think is true but it never hurts to
9 clarify that exercising vendor agreements does not waive any
10 causes of action including avoidance actions. Then there is
11 the same paragraph we already discussed. With respect to not
12 converting the priority, there also is a paragraph -- let me
13 just check one thing if I may for a moment?

14 Your Honor, there is also a paragraph specifically --
15 there is a lot of work to be done on all sides, both by the
16 debtors and the committee and possibly others -- although I
17 think it will be the debtors and the committee -- about whether
18 and how and to what extent our ultimate relationship with
19 Peabody from whom, as I described to the Court at the last
20 hearing, we were spun off and Arch with whom -- who is the
21 original owner of many of our assets --

22 THE COURT: Um-hum.

23 MR. HUEBNER: -- how that ultimately shakes out.

24 The committee -- and we had no problem with it -- was
25 among other things was focused on what payments, if any, are

1 Peabody and Arch getting under the first days, because in
2 particular with Peabody, there's still a lot of operational
3 contracts between the parties. And in some cases, we may have
4 a road or they may have a washing facility or the like where
5 there is no other way to get one another's coal out of the
6 ground and into where it needs to go.

7 As to the critical vendors motion, we were able to add
8 the paragraph requested by the committee on page 8 that there
9 are no payments under this motion going out to Peabody or Arch.
10 And in general in the very few circumstances where we might be
11 making a payment under a different order to Peabody or Arch,
12 those have been fully discussed with the committee and we have
13 complete agreement on what it is that may or will or has gone
14 out.

15 THE COURT: All right. What would be going out to
16 Peabody or Arch?

17 MR. HUEBNER: Peabody, Your Honor, there's a very
18 complicated set of arrangements, particularly with respect to
19 retirees, where many people who are our retirees, Peabody
20 actually pays their retirement benefits.

21 THE COURT: Okay.

22 MR. HUEBNER: In some instances we reimburse them on a
23 flow-through and some basises (sic), they reimburse us. That's
24 one category.

25 THE COURT: Okay.

1 MR. HUEBNER: But again, we really view one or the
2 other entity as the pipeline --

3 THE COURT: Got it.

4 MR. HUEBNER: -- as opposed to the obligor.

5 The other issue -- and I'd prefer if possible not to
6 elaborate too much, but there's an operational contract where
7 it may be sort of a sole-service provider-type issue. And
8 again --

9 THE COURT: Okay.

10 MR. HUEBNER: -- I don't want to glimmer too much, but
11 a lot of conversations have been had about it and everybody's
12 very comfortable that if we were to decide to make that
13 payment, everyone agrees that that would be okay.

14 THE COURT: All right. Fair enough.

15 One housekeeping matter. For the purpose of this
16 hearing, we previously entered into evidence the declaration of
17 Mr. Schroeder for the purpose of the prior hearing. I think
18 just to make the record neat, we probably should put the
19 declaration into evidence in this hearing as well.

20 MR. HUEBNER: Sure, Your Honor. Shall I formally re-
21 move it --

22 THE COURT: Why don't you re-move it?

23 MR. HUEBNER: -- into evidence? Sure. Are there any
24 objections to that?

25 THE COURT: No. That's my -- I ask that.

1 MR. HUEBNER: Right, right.

2 I was just showing them that I was on your team.

3 THE COURT: Mr. Huebner, would you like to move for
4 the admission into evidence of Mr. Schroeder's first-day
5 declaration?

6 MR. HUEBNER: I would very much like to, Your Honor.

7 THE COURT: All right. Are there any objections to
8 the admission into evidence of Mr. Schroeder's first-day
9 declaration?

10 Does anyone wish to cross-examine?

11 All right, the declaration is in.

12 (First-day declaration of Mr. Schroeder was hereby received
13 into evidence as a Debtor's Exhibit, as of this date.)

14 And let me also ask if anyone else wishes to be heard
15 with respect to the debtors' motion for a final order
16 authorizing the payment of critical vendors?

17 All right. So that'll be approved.

18 And that brings us to the insurance motion.

19 MR. HUEBNER: On insurance, Your Honor, I had already
20 referenced before the fact that we had agreement with the
21 committee about certain amount of payments on account of pre-
22 petition. So that's done and I won't repeat each of those.

23 I would say that as I see it, Your Honor, the two
24 paragraphs on page 4 are probably the things that are slightly
25 substantive. The first is the proviso at the very top of the

1 blackline that we will not make material modifications to our
2 insurance programs that are outside the ordinary course and not
3 consistent with past or industry practice without the consent
4 of the committee. And the second down below, Your Honor, is
5 the paragraph we've already discussed, I think thrice, about
6 the fact that making payments under this, like under all first
7 days, does not assume contracts, does not convert the priority
8 of claims, et cetera, et cetera. Again, we think that's always
9 been true, but the paragraph is certainly helpful and further
10 makes that point obvious to all.

11 THE COURT: All right. Thank you.

12 Does anyone else wish to be heard with respect to the
13 debtors' insurance motion?

14 All right, that'll be approved.

15 MR. HUEBNER: Your Honor, the next motion is the
16 surety bond motion which for those who are following on the
17 agenda letter is number 9 on the agenda. There, Your Honor, in
18 addition to the types of changes that we've already discussed,
19 which I guess I will not call out again --

20 THE COURT: Yes.

21 MR. HUEBNER: -- since we've described them now
22 several times, there is the same concept of no material
23 modifications that are both outside the ordinary course and not
24 consistent with past or industry practice, just like we had in
25 the prior motion. There is the "won't convert the priority"

1 paragraph that we talked about. And then on page 5, Your
2 Honor, again, this is just more clarification -- in some cases
3 requested by the counterparties, in some cases requested by the
4 committee -- about all the things the order doesn't do. And
5 obviously, I think that paying somebody or doing a contract
6 does not fundamentally affect these types of legal rights and
7 so we were fine to make peace with everybody to wordsmith
8 language that all sides could agree on.

9 THE COURT: Okay. Does anyone wish to be heard with
10 respect to the debtors' surety bond motion?

11 All right. That'll be approved.

12 MR. HUEBNER: Your Honor, on taxes, which is number 10
13 on the agenda, there is nothing that is not of the category
14 we've already discussed.

15 THE COURT: All right.

16 Does anyone wish to be heard on the debtors' motion
17 for authority to pay certain pre-petition taxes?

18 All right. I'll approve that as well.

19 I assume, Mr. Huebner, that the blacklines I have in
20 this binder are the final blacklines. Or are there any
21 additional changes?

22 MR. HUEBNER: Your Honor, on two of the motions --
23 which we e-mailed to chambers this morning, and I believe that
24 they were received -- on three, on wages, foreign creditors and
25 surety, each of which we've already hit -- and thank you for

1 calling that to my attention -- there were some very, very
2 minor -- like adding the definition of DIP agents in one place
3 and adding on to DIP agents in the other --

4 THE COURT: All right.

5 MR. HUEBNER: -- and we did e-mail those to chambers
6 this morning --

7 THE COURT: Yes.

8 MR. HUEBNER: -- as soon as they were ready.

9 THE COURT: I understood that they had arrived; I just
10 wanted to make that a part of the record.

11 All right. That brings us to number 11 on the agenda
12 which is the reclamation and 503(b)(9) procedures.

13 MR. HUEBNER: Your Honor, on that one, it's just the
14 same things we discussed that sort of --

15 THE COURT: Does not appear to be --

16 MR. HUEBNER: -- for the avoidance -- I'll just call
17 them "for the avoidance of doubt" paragraphs.

18 THE COURT: All right. Does anyone wish to be heard
19 on the debtors' motion for approval of the reclamation
20 procedures?

21 Okay, we'll approve that as well.

22 I think the next two we can probably take together
23 since they're very ordinary and ordinary course; the interim
24 compensation motion and the ordinary course professionals.

25 Is there anything to add with respect to those, Mr.

1 Huebner?

2 MR. HUEBNER: There is not, Your Honor, really other
3 than adding primarily Kramer Levin as proposed counsel, I think
4 there are no changes that are not ministerial.

5 THE COURT: All right. Does anyone wish to be heard
6 with respect to the interim compensation or ordinary course
7 professional motions?

8 Okay, those will be approved.

9 And that brings us to the retention section of the
10 agenda.

11 MR. HUEBNER: It does, Your Honor. As to the
12 retentions, as the agenda letter reflects, all but four have
13 been adjourned because they're more complicated or they were
14 filed later or the U.S. Trustee asked that there be a seasoning
15 period with respect to indemnification obligations or the like.
16 So the rest of them are not going forward. The only four that
17 are going forward today, assuming that that is the Court's
18 pleasure, as to which we have received no comments and no
19 objections from any party are numbers 14 through 17 on the
20 agenda which are GCG; Davis Polk; Curtis, Mallet; and Ernst &
21 Young.

22 And there's no blackline and so I don't have anything
23 to walk through. These are just the forms of order that we
24 hope would be acceptable.

25 THE COURT: All right. Office of the U.S. Trustee

1 have any comments?

2 MS. GASPARINI: We have vetted those retention
3 applications prior to their filing. They took all our comments
4 so we have no objections in the form that they're presently in.

5 THE COURT: All right, thank you.

6 Does anyone else wish to be heard with respect to the
7 GCG retention, the Davis Polk retention, Curtis, Mallet
8 retention or the E&Y retention?

9 All right, those will be approved.

10 MR. HUEBNER: Thank you, Your Honor. The last two
11 items on the agenda are the Vitol and EDF stipulation. As the
12 stipulations say in general terms, these are customers of ours.
13 We've reached a new business understanding with them. For
14 obvious reasons, the terms of those business -- or maybe it's
15 not obvious to some so I'll just say it differently. It is the
16 debtors' view that the terms of those business arrangements are
17 quite confidential. We have many customers. I'm sure they
18 would love to know what new business deals we reach with other
19 customers, but confidentiality is obviously critical to people
20 who sell products to various customers and have separate
21 negotiations with them.

22 There as well, we worked very extensively with the
23 creditors' committee as well as with our DIP lenders, all of
24 whom diligenced the revised deals with Vitol and EDF. I'm
25 delighted to report that not only do we have the very strong

1 support of the creditors' committee and the DIP lenders, we
2 also have no objection nor any comments of any kind from any
3 other party. And so in our view, subject to --

4 THE COURT: All right. And those are noticed for
5 presentment, for the sake of completeness, were included on the
6 agenda and I expect that those will be entered on the docket
7 along with the rest of the orders by 5 p.m. today.

8 MR. HUEBNER: Thank you, Your Honor.

9 Unless the Court sees it differently, I was not
10 planning to discuss what the adjourned matters were. That
11 would seem to be an unnecessary taking up of everybody's time.
12 If the Court has any questions about what was adjourned,
13 obviously, as always, I stand ready to answer them.

14 THE COURT: No. I've looked through them for that
15 purpose and I didn't have any questions.

16 Let's reconfirm that we're going to get together again
17 on August 15th at 11 o'clock.

18 MR. HUEBNER: Yes, Your Honor.

19 THE COURT: Correct? All right. I think that's all
20 we have today. Does anyone else have anything --

21 MR. HUEBNER: Well, Your Honor, what I would like to
22 do if I may, just without saying too much on the DIP, if it
23 would be possible to take a quick recess --

24 THE COURT: Of course.

25 MR. HUEBNER: -- go into the hallway, see where things

1 are. It is very much our hope to still be able to present a
2 consensual order. But things have been happening as I've been
3 up at the podium --

4 THE COURT: All right. I'm not going anywhere, so do
5 your best to get it resolved today and then just come and let
6 us know if you want to come back on the record or if you get to
7 the point that you know that you can't resolve it today and
8 wish to adjourn to another date.

9 MR. HUEBNER: Perfect. Thank you.

10 THE COURT: All right, Mr. Rogoff?

11 MR. ROGOFF: That's fine, Your Honor. And just a
12 couple of quick administrative matters from the committee's
13 perspective.

14 You've heard reference to the fact that the
15 committee's identified my firm, Houlihan, and Mesirov as
16 advisors. We're also looking to work with Epiq as an agent
17 that could assist the committee in fulfilling its obligations
18 in the establishment of a Web site.

19 Each of these retention papers, we're going to be
20 working with the U.S. Trustee's office on. We understand the
21 preference is to have those scheduled to be heard for the
22 September 11th hearing date. I just wanted Your Honor to note
23 that the committee's various retentions are in work. We will
24 be coordinating with the U.S. Trustee on -- the financial
25 advisors will be coordinating with the debtors and it is

1 something that we have targeted for the September 11th hearing.

2 The other piece of administration is we appreciate
3 that the case management order was entered before the committee
4 was formed. We have gone through that. We had a couple of
5 minor but substantive comments that we have shared with the
6 debtors and we are hopeful that those will be the types of
7 things that can be accommodated in an amended case management
8 order.

9 THE COURT: All right. Since you've raised it, let me
10 ask a couple of questions.

11 I assume that you're going to demonstrate why you need
12 both Mesirow and Houlihan.

13 MR. ROGOFF: Yes, Your Honor. They will have --

14 THE COURT: And that there's going to be a clear
15 delineation of responsibilities and no duplication?

16 MR. ROGOFF: That is correct, Your Honor. Those will
17 be laid out carefully in the respective retention. The
18 committee has been working closely with both of those firms to
19 identify specific projects and to avoid duplication of
20 services.

21 THE COURT: All right. And then along the same lines,
22 I'm going to need a little education on why it is that we need
23 to separately employ Epiq when we have the debtors charged with
24 maintaining a Web site and keeping folks informed.

25 MR. ROGOFF: We will happily do that in our 1102

1 motion when we file it. But just to preview it, Your Honor,
2 we've actually worked with Epiq. We've gotten fairly
3 aggressive billing rates from them and they've waived a number
4 of fees -- for example for the establish of a committee Web
5 site, for the hosting of a committee Web site -- and so even
6 were Garden City Group, which is the debtors' noticing agent,
7 to host a portion of the Web page that would be utilized and
8 under the control of the committee for reaching out to
9 creditors, that cost has been neutralized. In other words,
10 there's going to be no extra cost by having Epiq providing that
11 same service. And we'll identify all this hopefully to Your
12 Honor's satisfaction in our motion when we file it under
13 Section 1002.

14 THE COURT: So is this going to be more like a
15 Facebook page, so to speak, than a Web site?

16 MR. ROGOFF: Yes.

17 THE COURT: In other words, you're going to have to
18 be -- who's entitled to gain access and how are they entitled
19 to gain access? Is it fully open to the public?

20 MR. ROGOFF: It is a public Web page much like the
21 debtors have their own public restructuring Web page and it is
22 a vehicle which I think Your Honor may be seeing has become
23 more commonplace these days, especially with Section 1102
24 having been amended to put an affirmative obligation on
25 committees to reach out to its constituents which are the

1 unsecured creditors. And this is like our Facebook page to
2 keep people posted. Hopefully they'll like us and we'll be
3 able to fulfill our obligation to keep unsecured creditors
4 informed of progress in the case. And it's also a vehicle by
5 which creditors, for example, can submit inquiries to us.

6 THE COURT: Okay.

7 MR. ROGOFF: We will review those inquiries, allow us
8 to analyze them --

9 THE COURT: Okay.

10 MR. ROGOFF: -- and it's a way of keeping in touch
11 with the constituents.

12 THE COURT: All right. Well, obviously I think
13 information and access is a very good thing. And my question
14 was solely directed at the issue of cost. But I would have
15 also assumed that you had thought of that.

16 MR. ROGOFF: We were very sensitive to that and we
17 have not been shy in being aggressive in, frankly, telling in
18 this instance Epiq that whatever cost they have from Garden
19 City, the debtor has, has to be equal to or less than and
20 whatever costs would be redundant would have to be waived so
21 that the estate would not be any worse off for the committee
22 utilizing an agent.

23 MR. HUEBNER: Now, just from the debtors' perspective,
24 to be clear, we have not yet had all these conversations yet.
25 Some of this is sort of new to me. We obviously -- we all are

1 perfectly aligned in wanting to make sure that whoever is
2 hired, it's darn necessary and incredibly cost efficient --

3 THE COURT: The most information for the least cost.

4 MR. HUEBNER: Exactly. So we'll figure it out
5 together --

6 THE COURT: Okay.

7 MR. HUEBNER: -- I would imagine, like on much greater
8 things on which we have ended up aligned, we will. The nitty
9 gritty details -- and it sounds like they've done yeoman's work
10 already. We all have a shared interest.

11 THE COURT: Okay. Ms. Gasparini?

12 MS. GASPARINI: And if I may chime in with respect to
13 Epiq and the retention under 1102 of a claims agent for a Web
14 site, actually, our office is approached a lot of times and is
15 asked the question can the committee, in order to fulfill their
16 duties under 1102, hire the same claims agent as the debtor.
17 And given some developments that happened last year with
18 respect to claims agent on the debtor's side being retained for
19 both claims work as well as other things like schedules and
20 whatnot, as Your Honor is aware, there is a division now of
21 duties under 28 U.S.C. --

22 THE COURT: Yes.

23 MS. GASPARINI: -- 156 and 327(a). So our office
24 position with respect to anybody that the debtor -- the
25 committee retains under 1102 is that there has to be a

1 division; otherwise it'd be a conflict between the 327(a)
2 claims agent and 1102. So we've asked in other mega cases,
3 it's usually different; we always review their fee
4 applications, ensure that there is no duplication. But we're
5 concerned with the conflict issue if it is the same claims
6 agent.

7 THE COURT: All right. Well, why don't I not get
8 ahead of myself and ahead of you both? You'll have the
9 conversation. To the extent that there are going to be monthly
10 Web posting charges and the like, you can look at all of that.
11 And I'm quite sure you'll figure out the most cost-efficient
12 way to deliver the information, so.

13 All right. Anything else?

14 All right. We'll go back to chambers and come around
15 and let us know when you'd like to reconvene or that you won't
16 be reconvening today.

17 MR. HUEBNER: Thank you.

18 THE COURT: All right? Thank you, all.

19 MR. HUEBNER: Thank you, Your Honor.

20 MR. ROGOFF: Thank you.

21 MS. GASPARINI: Thank you.

22 (Recess from 2:55 p.m. until 3:57 p.m.)

23 THE COURT: All right, thank you folks for waiting.

24 Mr. Huebner?

25 MR. HUEBNER: Your Honor, for the record -- and I will

1 try to speak up for the benefit of those in the court -- I am
2 Marshall Huebner of Davis, Polk & Wardwell and I appear on
3 behalf of the debtors.

4 Your Honor, I am delighted to report that we have used
5 the time that the Court graciously gave us to, in fact, reach a
6 fully consensual deal on the DIP. What I propose to do, as
7 with the other orders, is first give a brief overview
8 explanation of some of the primary benefits, which are actually
9 great news for Patriot, and then this one, the blackline, is,
10 in fact, rather more complex.

11 THE COURT: Okay.

12 MR. HUEBNER: I propose to take a slightly slower tour
13 through the blackline than of the more workaday first days.

14 THE COURT: All right, you have a copy for us?

15 MR. HUEBNER: I do, Your Honor.

16 THE COURT: Great.

17 MR. HUEBNER: I have several. I thought your clerk
18 might want one, as well.

19 THE COURT: That would be wonderful. Thank you.

20 MR. HUEBNER: May I approach?

21 THE COURT: Yes.

22 MR. HUEBNER: Thank you.

23 THE COURT: All right.

24 MR. HUEBNER: So the record is clear, this is item
25 number 1 on the agenda for today's hearing which is the motion

1 for final approval of the debtors' DIP facility. Your Honor,
2 as, of course, you will not be surprised to hear, the most
3 focused and intense negotiations, of course, of all took place
4 with respect to the DIP facility. My original note said they
5 concluded less than two hours ago. That turned out to be
6 optimistic; they actually concluded about one hour -- one
7 minute ago from now.

8 The fact that we were able to reach a global agreement
9 on a very large, very complex DIP facility really is a
10 testament, Your Honor, to both the professionals and the
11 businesspeople on behalf of all three of our DIP agents,
12 represented both by the Weil, Gotshal firm and the Willkie,
13 Farr firm, as well as the tireless efforts of Ms. Amy Caton
14 from Kramer Levin on behalf of the committee. And I think
15 probably the Patriot folks deserve a little bit of credit, as
16 well.

17 Happily, Your Honor, the news on the DIP, besides the
18 fact that it's fully consensual, is also excellent news
19 economically for the company which I'm delighted to be able to
20 report. Your Honor, as you probably remember, as most large
21 facilities do, our DIP contained confidential flex language
22 that could have resulted in -- often, it flexes up because in
23 order to syndicate, the agents need to offer some more robust
24 pricing, although there is also some history, especially with
25 agents who act wonderfully and with good faith, with good

1 market knowledge, of recent DIPs flexing down. And in fact,
2 Your Honor, I'm delighted to announce that this is one of those
3 DIPs, and that in fact Citi and Barclays, the agents under our
4 senior or first-out DIP facility, were able to achieve a
5 twenty-five basis point reduction in the LIBOR margin with
6 respect to the new money DIP term loan as well as a twenty-five
7 basis point reduction cutting in half what otherwise would have
8 been the fifty basis point extension fee, should the DIP go
9 from fifteen months to eighteen months.

10 Moreover, Your Honor, the first-out arrangers have
11 agreed to rebate to us twenty-five basis points, which totals,
12 I think, something over 900,000 dollars of their fees at the
13 closing of the syndication of the DIP as part of the global
14 deal reached with the committee.

15 But yet, there is yet more good economic news from
16 Patriot's perspective because as part of the global deal
17 reached with the committee, the second-out DIP loan agent,
18 which is Bank of America, has also agreed to rebate just over
19 750,000 dollars of its previously approved upfront fees. So in
20 addition to lower interest rates and a lower expected extension
21 fee with respect to the senior DIP term loan, there also is
22 going to be a very substantial rebate coming to the debtor in
23 the form of actual cash on the barrelhead in connection with
24 the closing of the successful syndication.

25 One final economic improvement and then we're going to

1 turn to a fair number of legal issues, which are not directly
2 dollars but they matter to us as well, is Bank of America --
3 and we're actually quite grateful for this -- has also gotten
4 the three LC issuing banks under the second-out DIP facility to
5 reduce the cash collateralization level, should LCs need to be
6 cash collateralized in the future, from 105 percent to 103
7 percent. And given that that facility is entirely LCs, two
8 percent on 302 million dollars is not actually a tiny sum. So
9 we are actually quite grateful, both to our creditors'
10 committee for engaging intensely and with a lot of focus on the
11 DIP issues, and also, frankly, very much to our DIP agents who
12 both hit the market, it sounds like, quite just right for us,
13 as well as making some very real and economic accommodations to
14 buy a global deal on the time frame that we think is good for
15 everybody including the estate.

16 Your Honor in terms of timing, to make sure I don't
17 forget to do it at the end, we have kind of a slightly unusual
18 request. The syndication's literally ongoing as we speak --
19 literally as we speak. And so assuming that at the end of the
20 hearing, if Your Honor is comfortable with what we're asking,
21 what we would ask is that you would note for the record that
22 the DIP is approved, but that you hold entry of the order --
23 normally debtors want orders entered immediately, but here,
24 because all these concessions are connected to what we have
25 been led to understand is -- absolutely the agents have

1 confidence, nobody expects any issues, but it is tied to
2 successful syndication, which we think will be done in the next
3 forty-eight hours. And so in order for the DIP agents to
4 finally, definitively, and irrevocably deliver this pricing,
5 they just need to finish the last lap of syndication, which
6 they have no reason to expect will go anything other than
7 exactly as I just described. But if, for some reason,
8 something terrible happens in the next five hours, twelve
9 hours, sixteen hours, then the committee understandably doesn't
10 want to see this order entered and then say wait a second,
11 something changed, the flex didn't happen the way we were led
12 to expect; we have a problem.

13 So assuming that Your Honor's okay with it, we'll ask
14 that, if you like what you hear and there are no unexpected
15 objections, you'll signal us that we can tell the market that
16 the order's acceptable, but not actually enter it until we
17 hear, which we believe will be either tomorrow --

18 THE COURT: Well, we have -- there's an additional
19 step because I haven't -- I can approve in principle with what
20 you're saying and so order the record, but it has to be subject
21 to my ability to actually read the order. So if you want to
22 take another break for me to read this and then for me to come
23 back and say those magic words, I'm happy to do that, or I can
24 say subject to my final review of the final version of the
25 order, the DIP is approved.

1 MR. HUEBNER: Sure.

2 THE COURT: Tell me which one of those options better
3 suits your needs?

4 MR. HUEBNER: The DIP agents' counsel, Your Honor,
5 which is -- for whom the approval from the Court is important
6 would prefer that after we finish the walkthrough, assuming
7 that Your Honor's willing to do that, we give you the time and
8 then get the final --

9 THE COURT: Okay.

10 MR. HUEBNER: -- comfort that it's a mechanistic step
11 that is left as opposed to --

12 THE COURT: Fine.

13 MR. HUEBNER: -- questions or concerns of the Court.

14 THE COURT: All right, then why don't you proceed with
15 going through -- walking me through the substantive terms that
16 have changed, and then we'll take a break one more time, and
17 I'll go back and finish reading it. And those who want to stay
18 can stay, and then we'll go back on the record and, assuming
19 everything's in order, we'll do it the way you said.

20 MR. HUEBNER: Perfect. Thank you very much, Your
21 Honor.

22 So we have blacklines available for people in the
23 courtroom and we have offered them; I believe all the principal
24 parties are holding the same blackline --

25 THE COURT: Okay.

1 MR. HUEBNER: -- as well as both Your Honor and Your
2 Honor's clerk.

3 What I will do is I will simply flip -- and I would
4 ask, frankly, anybody to feel free to correct me if they think
5 I've either misstated something or skipped over something they
6 view as material, and somehow I neglected to address.

7 Your Honor, on pages --

8 THE COURT: What's the difference between the blue and
9 the green?

10 MR. HUEBNER: There's no difference, Your Honor. They
11 came in at different times.

12 THE COURT: All right, they don't --

13 MR. HUEBNER: They don't reflect any difference.

14 THE COURT: Okay.

15 MR. HUEBNER: What is new is in a color, and what is
16 stricken is in strikethrough, and I don't believe there's any
17 other difference --

18 THE COURT: Okay.

19 MR. HUEBNER: -- from a color perspective. I believe
20 what is stricken is in red strikethrough.

21 THE COURT: Yes.

22 MR. HUEBNER: Your Honor, I believe the pages on 6 and
23 7 are either verbiage or just conversion to final order.

24 THE COURT: Yes.

25 MR. HUEBNER: The same is true --

1 THE COURT: The same is true of 8.

2 MR. HUEBNER: -- of page 8.

3 Your Honor, on page 11, there is a reference -- there
4 is a new paragraph D at the top which refers to a commitment
5 letter. This is one of the things the committee was focused
6 on. The commitment letter -- and it's defined below, so once
7 couldn't tell this from page 11 -- refers to a pre-petition
8 commitment letter by Citibank, Barclays and Natixis that
9 contemplated a nonbankruptcy 625 million dollar financing.
10 That commitment letter was never hit by the debtors, and as it
11 says in here, the commitment letter expired by its own terms
12 prior to the petition date, and the debtors are not aware of
13 any valid claims or causes of action.

14 The committee, understandably, hasn't yet looked into
15 it or done its diligence, and so there are things down below
16 about whatever happens if there ever is a good cause of action,
17 which I'll get to below, but as part of the overall package to
18 which everybody agreed, we've agreed to put in this summary
19 form our view of the situation, which is: it expired, and we
20 don't know of any claims against the lenders with respect to
21 it.

22 This is, of course, one of the many things that the
23 committee has a right to bring an action against about or
24 challenge at some future date pursuant to the parameters set
25 forth below should they choose to. But like the other

1 stipulations, as to the rest of the pre-petition debt, this is
2 just simply the debtor's view of the situation.

3 THE COURT: Okay.

4 MR. HUEBNER: Pages 12 and 13, Your Honor, I don't
5 think deserve separate notice by the Court.

6 Page 14, I believe, is just interim to final and
7 reflecting the correct full borrowing amounts, as opposed to
8 the amounts in the interim order which were, of course, the
9 interim borrowing amounts.

10 Page 15, I believe, is simply temporal conversion.

11 Page 16, I believe, is the same.

12 Page 18, Your Honor, the paragraph in the middle that
13 is in blue, double-underlined, is the memorialization of one of
14 the economic concessions that I just described. I said a
15 little bit over 750,000; the precise number, as set forth, is
16 751,901.08, which is 25 basis points. It's not like we
17 negotiated this precise number including eight cents. It's a
18 basis point number, and this is how it calculates out.

19 Number 19 -- on page 19, Your Honor, is consistent
20 with what committees often ask for and often get. There are a
21 variety of places in this order where the committee asked for
22 notice with respect to various types of changes and the like.
23 There are things below about remedies. This is nonmaterial
24 amendment. Everybody, I think, was actually quite reasonable,
25 and we worked out what we all thought we could live with. And

1 I believe the language is pretty straightforward, but the
2 concept relates to prior notice or contemporaneous notice or,
3 in some cases, subsequent notice to the committee.

4 The bottom of paragraph 20 deals with the professional
5 fees of the professionals to the DIP agents, which provides a
6 sort of -- they have to be reasonably detailed but they can be
7 redacted; and there's a ten-day period; and if you have a
8 problem you need to say it; and if there's a dispute, you don't
9 pay the disputed amounts but you should pay the undisputed
10 amounts. Again, I think, although others may see it
11 differently it's not an atypical resolution of how one needs to
12 deal with what's fair is fair, and what's objected to needs to
13 have a process, including, ultimately, of course, making a
14 motion to this Court if there's a disagreement about expenses
15 that cannot be resolved.

16 The rest of 21, Your Honor, I don't believe is
17 analytically new or interesting.

18 22 and 23, 24 and 25 have nothing. 26 is just a
19 cross-reference, sort of avoidance of doubt when we'll get to
20 the committee's reservation of rights below. They were just
21 very thoughtful, ensuring that no other provisions could be
22 viewed as accidentally overriding them. Unless the court has
23 prior questions --

24 THE COURT: I think you can skip to page 39.

25 MR. HUEBNER: Yeah. Page 39, yeah, is another,

1 actually, notice issue. The committee just wanted
2 clarification that a full range of remedies was subject to the
3 prior notice requirement, and so there was clarifications,
4 maybe a little bit of moving on substance.

5 40 and 41 are mechanical. I think the same is true --
6 I'm flipping a fair number of pages.

7 THE COURT: Okay, so let's go to 50, paragraph 18.

8 MR. HUEBNER: Yeah. So 50, Your Honor, was the
9 subject of a fair amount of conversation. This, in super-
10 summary form, is the committee saying what if there are
11 successful actions against you, the lenders? You clearly
12 should not be able to be the beneficiaries of those. And that
13 was a sort of complicated discussion, and this was the,
14 frankly, much more reticulated than usual resolution of it that
15 has slightly different implications under different facilities.
16 But fundamentally, the committee negotiated for and got a
17 package to ensure that certain claims of the lenders would be
18 subject to risk and couldn't be paid out of avoidance actions
19 against those lenders, should they ever come to pass.

20 And let me just pause and see if anybody wants to say
21 it differently or if I'm misspoken at all.

22 THE COURT: Ms. Caton, do you want to describe this in
23 a new way to elaborate on what Mr. Huebner has said?

24 MS. CATON: I'm happy to describe it, but I think Mr.
25 Huebner did a fine job on it.

1 THE COURT: Okay.

2 MS. CATON: Thank you.

3 THE COURT: All right.

4 MR. HUEBNER: Your Honor, on page 51, this relates to
5 both the time period and then, in a page or so, the budget for
6 the committee's investigation. That committee is now being
7 given ninety days subject, obviously, to their ability to
8 always ask for more time to investigate and bring potential
9 challenges against the various items with respect to the
10 lenders who are now DIP lenders. You'll see down below a
11 substantial increase in the budget. Normally, there's a time
12 period in the budget and they both move up from the interim
13 order to the final order.

14 On page 52, Your Honor, we're including, as I
15 described before, this is the pre-petition commitment letter
16 that is not really relevant to the DIP analytically, except
17 that two of the arrangers under that commitment letter, Citi
18 and Barclays, are also the two senior DIP agents. Natixis is
19 not a DIP agent; I'm not even sure it's in the DIP. But in
20 order to make sure the committee was not barred in any way from
21 fully investigating that transaction, that is what the language
22 on page 52 is designed to do, as well as clarifying that as
23 long as they file a motion by the challenge date, that tolled
24 the period as otherwise set forth in the DIP order as their
25 limitation.

1 On page 55, Your Honor, is the foreshadowed increase
2 in budget from 75,000 which, frankly, was a holding number -- I
3 don't think anybody thought that was going to be the number --
4 to 250. We always leave those for the committee to negotiate
5 since it's their budget that's at issue. I think the rest of
6 it is just clarifying the full range of things that they can
7 and, I assume, will be investigating.

8 The bottom of page 55, carrying over to 56, is another
9 "we want notice, as well" provision that is being afforded to
10 the UCC with respect to DIP LCs.

11 I think on page 57, Your Honor, these are now changes
12 requested by the United States government, as opposed to
13 changes requested by private parties. The bottom of the first
14 paragraph, the middle paragraph on page 57 I think clarifies or
15 maybe limits the finding that the DIP lenders aren't in
16 control. And the government has added language that basically
17 says as long as they're not actually in control. So it's not a
18 pre-finding that if they were to be in control, somehow there's
19 an order that they're not.

20 Page 25 (sic), Your Honor --

21 THE COURT: Paragraph. Paragraph 25.

22 MR. HUEBNER: I apologize, Your Honor. I misspoke.
23 Paragraph 25 on page 57 is language which, again, I think is
24 correct and was true before, but sometimes people had
25 clarifications and we were fine with it. There was actually a

1 reasonable amount of debate about this, and the one thing I
2 think the DIP lenders asked that we make clear on the record
3 was that clearly nothing in this Court's order excuses debtors'
4 compliance with law. Period, end of story. Obviously, should
5 we go into default, which we think will never happen, and
6 should they seize all of our money, which we think will never,
7 ever happen, we may not be able to comply with lots of things,
8 including things that require the payment of money because we
9 don't have any money. That's obviously just a epistemological
10 truism. So it's not in the order, but it is a possibility.
11 But to be clear, what is important is what is in the order,
12 which is nothing in this DIP excuses us from complying with
13 applicable law.

14 THE COURT: Okay.

15 MR. HUEBNER: Your Honor, paragraph 25.b, this gets
16 back to the sort of interdebtor post-petition issue. It's
17 actually analytically very similar to the junior superpriority
18 claim concept --

19 THE COURT: Um-hum.

20 MR. HUEBNER: -- that is now in the cash management
21 order.

22 THE COURT: Um-hum.

23 MR. HUEBNER: This is, I think, probably best
24 described as a junior superpriority subrogation concept --

25 THE COURT: Um-hum.

1 MR. HUEBNER: -- that if one debtor pays back another
2 debtor's borrowings or they were not dealt in a beneficiary,
3 there's a junior superpriority claim, because again, there are
4 different states with different claims, and we don't get to
5 know where it's all going to go, so we all need to be careful
6 about protecting each individual estate.

7 I think that that's probably a fair summary of
8 subparagraph (b) which spans 57, 58, and a little bit of 59,
9 unless people think that one of its subsections requires
10 separate elucidation.

11 THE COURT: Looks like the next change of substance is
12 26.a, with respect to the applicable rate.

13 MR. HUEBNER: Yes, Your Honor. So these are the
14 economic -- well, the first part of it, which spans 59 to 60,
15 are the economic changes that I referred to before, essentially
16 dropping the margin down on the term loan, on the first out
17 term loan, by twenty-five basis points. It used to be L plus
18 8; now it's L plus 7.75. And then I'll skip change of control
19 for a second. And the extension fee below is what drops it
20 from .5 to .25 being the second of the three economic
21 concession on the senior DIP.

22 To move backwards to the change of control, the
23 committee raised the concern of with stock where it is, this
24 could be tripped, sort of accidentally, and maybe with not that
25 much money being spent, and so the DIP lenders raised the

1 threshold in A, the definition of change of control, from
2 thirty-five percent to fifty percent. Obviously, we may all
3 have a lot to say, and there may be actions if the unexpected
4 happens and somebody decides to try and do something that they
5 view as appropriate and we don't, with respect to acquiring
6 very, very cheap stock and trying to control this estate.

7 On page 61, Your Honor, subparagraph (b), these are
8 the second out changes that I described in part before,
9 including the cash collateralization. It used to say 105; it
10 now says 103.

11 I think on pages 62 and 63, Your Honor, as well as 64,
12 those are simply interim-to-final mechanistic changes. I don't
13 think there's anything of substance in there, and I would turn
14 one last time since there were various parties in this sort of
15 complex brew. I believe, and certainly have endeavored in good
16 faith to describe accurately and completely all the changes,
17 but I want to make sure that nobody views me as having either
18 omitted or incorrectly nuanced or described what I went
19 through.

20 THE COURT: All right, thank you.

21 Do either of the DIP lenders wish to be heard to
22 amplify or correct or otherwise add to what Mr. Huebner has
23 said?

24 MR. SMOLINSKY: Joseph Smolinsky of Weil Gotshal &
25 Manges for Barclays and Citi as first-out DIP agents.

1 I think Mr. Huebner properly walked through the
2 changes as we see them, and we thank the Court for the
3 indulgences to give us the time to work this out with the
4 committee.

5 THE COURT: Certainly. All right, thank you, Mr.
6 Smolinsky.

7 Ms. Schonholtz?

8 MS. SCHONHOLTZ: Your Honor, Margot Schonholtz,
9 Willkie Farr, for BofA as second out. I'll just make it brief
10 and say ditto.

11 THE COURT: Okay, thank you.

12 Ms. Caton, anything more from you?

13 MS. CATON: Yes, Your Honor. I wanted to say that the
14 committee really tried to be productive here with both the
15 debtors and the lenders, and there were certain issues that we
16 could have raised with respect to the DIP, but we thought that
17 in the context of the overall financing that the debtors are
18 trying to accomplish, these things were fair. I'm talking
19 about the rollup and the synthetic lien issues which all looked
20 fine to us.

21 We did focus on pricing. There were -- it was an
22 expensive DIP, but DIPs are expensive. And we appreciate the
23 accommodation that the lenders did make. And we did move
24 forward today in order to support the company in its efforts to
25 lock in its financing and move forward with the cases.

1 THE COURT: All right, it sounds like you did a very
2 excellent and diligent job.

3 So why don't we take one more break, and let me go and
4 read this from start to finish. And I anticipate that no more
5 than a half an hour, given that you've walked me through this,
6 and I think that seventy-five percentage of the changes are
7 ministerial in nature. All right? So no later than twenty
8 minutes to 5, we'll come back and give you a heads up. All
9 right? Thank you, folks.

10 (Recess from 4:09 p.m. to 4:46 p.m.)

11 THE COURT: Please have a seat.

12 All right, we've brought in our closer, Mr. Chien
13 here. The Mariano Rivera of this chambers. Mr. Huebner?

14 MR. HUEBNER: Your Honor, for the record, Marshall
15 Huebner, Davis Polk. I believe we have reconvened --

16 THE COURT: Yes.

17 MR. HUEBNER: -- pen in hand to hear any questions,
18 comments, or concerns of the Court on the proposed DIP order.

19 THE COURT: I've taken this opportunity to review the
20 blackline version of the DIP order with particular emphasis on
21 the substantive provisions that you highlighted to me. I found
22 nothing that differed from your descriptions, and I have no
23 comments on the order. So with that, and consistent with the
24 request of the debtors and the DIP lenders, we will hold the
25 order. And let's be very precise in terms of how you would

1 like to let us know when you want it to be entered.

2 MR. HUEBNER: Sure. Your Honor, I think what the DIP
3 lenders were looking for was that the Court would approve the
4 DIP and approve entry of the DIP order, that we would hold
5 actual entry. What I understand from the DIP agents, not only
6 do they have an extremely high degree of confidence that this
7 is it and we are done, but that that will be within forty-eight
8 hours. And so my expectation is that, assuming that it is the
9 Court's preference, we would simply call chambers either
10 tomorrow or Monday and say we've been advised that this
11 indication is complete, and we would ask that the order be
12 formally signed and entered on the docket.

13 THE COURT: All right, just for the sake of being
14 overly focused on the worst-case scenario, that something
15 happens between now and then and the phone call is don't enter
16 the order, I'm not sure what we have. And I want to make sure
17 that we have no lack of clarity about any fees, any -- the
18 status of any advances that may be made between now and then.
19 I'm happy to accommodate you; I just don't want to have a
20 situation which nobody here anticipates occurring. But the
21 very reason you're asking me to do it in this fashion is to
22 cover the unlikely situation where you wouldn't want the order
23 entered, and then I have an approved DIP without an order. So
24 please help me. I'm happy to accommodate you, but I just need
25 you to walk through this with me and make sure we've thought of

1 all the possibilities.

2 MR. SMOLINSKY: Your Honor, Joe Smolinsky. The way we
3 would envision it is if you were so kind as to advise the
4 parties on the record that the order is --

5 THE COURT: Been found acceptable, yes.

6 MR. SMOLINSKY: -- agreed in principle and the form
7 acceptable --

8 THE COURT: So that's different from the DIP is
9 approved.

10 MR. HUEBNER: They're the ones with these unusual
11 needs, so maybe I'll let Mr. Smolinsky articulate what he
12 wants.

13 MR. SMOLINSKY: I think what's the one caveat is I
14 think we would ask for the record to be closed for the hearing.

15 THE COURT: Sure.

16 MR. SMOLINSKY: And that the DIP is effectively
17 approved, but we will operate under the interim order until
18 such time as it's approved.

19 THE COURT: Until such time as the final order is
20 entered.

21 MR. SMOLINSKY: As the order is entered. As the order
22 is entered.

23 MR. HUEBNER: Yeah, so maybe the better way to say it
24 is that this order is not actually being entered orally or so
25 ordered orally --

1 THE COURT: Because it's not.

2 MR. HUEBNER: -- because it's not. Rather --

3 THE COURT: It's not.

4 MR. HUEBNER: -- the Court, I think --

5 THE COURT: I am telling you that, based on the record
6 before me, the DIP is approved subject to entry of the final
7 order, and that the final order in the form in which you've
8 submitted it to me today is acceptable and will be the form of
9 order that is entered when the parties advise the Court that it
10 should be entered, and that until such time as it's entered,
11 the authority and the governing order is the interim DIP order.

12 MR. HUEBNER: And I'm --

13 THE COURT: Ms. Caton, is that okay? You look a
14 little concerned.

15 MS. CATON: I just wanted to make one thing clear on
16 the record, Your Honor, and that is one of the reasons for the
17 delay here is that the committee's consent to the order is
18 contingent upon the rate set forth in the order, and in the
19 event that -- in the unlikely event that this indication
20 weren't to close and the rates were potentially to flex up,
21 we're reserving our rights to revisit that with Your Honor.
22 That's --

23 THE COURT: Yes, which is why I'm not entering the
24 order --

25 MS. CATON: Okay.

1 THE COURT: -- which is why I don't want to say that
2 the DIP is approved, that in some way I am informally entering
3 the order today. I think this is a lot of lawyers worrying
4 about something that's not going to happen, but I have had the
5 experience of --

6 MR. HUEBNER: Right.

7 THE COURT: -- an issue arising, an ambiguity arising,
8 and I just want to be clear.

9 So I think, Mr. Smolinsky, your formulation worked.
10 And I saw Ms. Schonholtz agreeing.

11 MR. SMOLINSKY: I am prepared to put one more thing on
12 the record.

13 THE COURT: Okay.

14 MR. SMOLINSKY: Under the interim order, the final
15 order has to be entered within thirty days unless there's a
16 pending objection, and if there's a pending objection, it's
17 extended to forty-five days. If we come back to Your Honor on
18 the 15th, we're outside the thirty days but within the forty-
19 five days. We're fully prepared to continue to -- there
20 probably won't be any further advances, but to live under the
21 interim order and to extend the period such that there won't be
22 a breach of that provision --

23 THE COURT: Okay.

24 MR. SMOLINSKY: -- pending the closing.

25 THE COURT: Okay.

1 MR. HUEBNER: That's fine. That's fine with us, Your
2 Honor. And we appreciate it.

3 THE COURT: All right.

4 MS. SCHONHOLTZ: It's fine with us, Your Honor.

5 THE COURT: All right. So with that, then, and to be
6 clear, I'd like an e-mail from Davis Polk with a copy to Ms.
7 Schonholtz, to Willkie, Weil Gotshal, and to Kramer Levin
8 saying please enter the final order; there's no ambiguity
9 whatsoever. And anyone else who'd like that notice.

10 MR. HUEBNER: Yup, that, probably, Your Honor, is how
11 we would have done it and it's certainly how we will do it.

12 THE COURT: Okay. All right. So I think that with
13 that, we're going to close the record of the final DIP hearing,
14 and we will await further word from you and that from my
15 perspective, subject to the conditions occurring that you've
16 talked to me about today, the order will be entered as, and
17 when you tell me it should be entered, in the form that you've
18 submitted it to me, and if somebody finds a typo between now
19 and then, as these things go, just let us know and we'll make
20 that revision. All right?

21 Thank you very much for your patience and have a good
22 day.

23 (Whereupon these proceedings were concluded at 4:53 PM)

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I N D E X

E X H I B I T S

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Debtors' motion authorizing payment to foreign creditors approved	25	1
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Debtors' insurance motion approved	29	14
Debtors' surety bond motion approved	30	11
Debtors' motion for authority to pay certain pre-petition taxes approved	30	18

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I N D E X (cont'd)

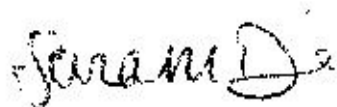
RULINGS

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

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



SARA DAVIS
AAERT Certified Electronic Transcriber CET**D 567

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Date: August 3, 2012