

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11233-reg

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In the Matter of:

CHEMTURA CORPORATION, et al.,

Debtors.

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

March 20, 2009

9:33 AM

B E F O R E:

HON. ARTHUR J. GONZALEZ

U.S. BANKRUPTCY JUDGE

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HEARING re Motion by debtors for entry of interim and final orders authorizing post-petition secured superpriority financing; authorizing the debtors' use of cash collateral; authorizing the debtors' use of proceeds to repurchase a receivable portfolio; granting adequate protection and scheduling a final hearing.

HEARING re Motion by debtors for interim and final orders authorizing Chemtura Corporation to enter into Guarantee with Intesa Mediofactoring SpA with respect to certain obligations of the debtors' non-debtor affiliates and scheduling a final hearing.

HEARING re Motion by debtors for entry of interim and final orders authorizing, but not directing, debtors to pay certain prepetition wages and reimbursable employee expenses; to pay and honor employee medical and other benefits and to continue employee benefits programs and authorizing financial institutions to honor all related checks and electronic payment requests.

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HEARING re Motion by debtors for entry of an order authorizing the debtors to continue their existing cash management system, bank accounts and business forms; granting postpetition intercompany claims administrative expense priority and authorizing continued intercompany agreements.

HEARING re Motion by debtors for entry of an order authorizing, but not directing, debtors to pay or honor prepetition obligations to certain critical vendors and authorizing financial institutions to honor all related checks and electronic payment requests.

HEARING re Motion by debtors for entry of an order authorizing, but not directing, debtors to pay or honor prepetition obligations to certain critical vendors and authorizing financial institutions to honor all related checks and electronic payment requests.

HEARING re Motion by debtors for entry of an order authorizing, but not directing, debtors to pay prepetition claims of shippers, warehousemen, processors and lien claimants and authorizing financial institutions to honor all related checks and electronic payment requests.

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HEARING re Motion by debtors for entry of an order granting an extension of time to file schedules and statements.

HEARING re Motion by debtors for entry of an order authorizing and approving the employment and retention of Kurtzman Carson Consultants LLC as notice and claims agent for the debtors.

HEARING re Motion by debtors for entry of an order establishing procedures for interim compensation and reimbursement of expenses for professionals.

HEARING re Motion by debtors for entry of an order authorizing, but not directing, debtors to maintain customers programs and honor prepetition obligations related thereto and authorizing financial institutions to honor all related checks and electronic payment requests.

Transcribed By: Clara Rubin

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THE COURT: Please be seated. All right, who is here on behalf of the debtor?

MS. LABOVITZ: Your Honor, Natasha Labovitz from Kirkland & Ellis on behalf of the debtors.

THE COURT: All right, you may proceed.

MS. LABOVITZ: Your Honor, first, we'd like to thank you very much for agreeing to hear this case on short notice on a temporary basis. We appreciate you giving us the time.

Today I'm going to try, in light of the facts that this is an interim appointment for the judge, going to try to walk a fine line between giving you the information you need to rule on critical motions today, and unfortunately it does appear that at least one motion is contested. But at the same time, I'm going to try to not take your time with information that ultimately will be more relevant in Judge Gerber's courtroom than here.

That said, if at any time, Judge, you have questions or if it seems that I've glossed over a particular point in an effort to move quickly, please stop me and ask for more background or detail about the company.

First, today I'd like to introduce the company representatives who are here in the courtroom. The chief executive officer of Chemtura Corp., Craig Rogerson, is here behind me. And with him are: Stephen Forsyth, the chief

1 financial officer, who has submitted a very extensive
2 declaration in support of the first-day motions in this case;
3 Billie Flaherty, the general counsel; Eric DeGoul, the head of
4 procurement for the company, who is here to answer any
5 questions, among other things that Your Honor may have about
6 the request for approval of payments to critical vendors. I'd
7 also like to introduce Mr. Ray Dombrowski, from Alvarez &
8 Marsal, who is the proposed chief restructuring officer for the
9 debtors; Dan Aronson, from Lazard, who worked tirelessly over
10 the last month to put together and negotiate this DIP financing
11 and is here to testify, if necessary, about that process. And
12 from Kirkland, Your Honor, I have with me my partners, David
13 Zott and Craig Bruens.

14 THE COURT: All right.

15 MS. LABOVITZ: Judge, it's with mixed emotion that I
16 stand before the Court today. Generally, a Chapter 11 filing
17 is not a cause for celebration, and particularly in this case
18 where a relatively short time ago I don't think anyone would
19 have predicted that Chemtura would be a candidate for Chapter
20 11.

21 Chemtura is a global manufacturer of specialty
22 chemicals. It has strong business lines in the areas of crop
23 protection, pool and spa chemicals that are marketed to
24 consumers, polymer additives and petroleum additives. This was
25 a globally diversified investment-grade company.

1 Like many chemical manufacturing companies, Chemtura
2 does have some legacy liabilities, such as environmental
3 obligations and pension and retiree benefit obligations. But
4 Chemtura has been managing those in the ordinary course. It
5 has very little secured debt. In fact, it has relatively --
6 it's relatively unleveraged over all compared with many
7 companies that file for Chapter 11. An overview, Judge, it has
8 139 million dollars in on-balance sheet secured debt; another
9 135 million in off-balance sheet obligations as of the filing
10 date; and 1.2 billion dollars in unsecured funded debt, and
11 that, Judge, is against 3 and a half billion dollars in
12 revenues, a 3 billion dollar asset base. And this is a company
13 that, in 2007, made an 864 million dollar profit compared to
14 its 1.5 billion dollars in debt.

15 That this company is now in Chapter 11 is a sad
16 reflection of the current state of the global economy and, in
17 particular, what has been a devastating loss in sales volume
18 and customer demand that have hit the chemicals industry over
19 all.

20 Judge, as I know you're aware, Chemtura's not alone.
21 LyondellBasel, Fomax (ph.) and Tranax (ph.) have all landed in
22 Chapter 11 during this quarter. And other chemicals companies,
23 as I'm sure you know from reading the newspapers, are finding
24 themselves under stress.

25 That said, it would be a fair question to ask us

1 exactly what happened here in this case. Big picture:
2 Chemtura did face challenges entering 2009. Reduced revenues
3 in the last quarter of 2008 led to an impending covenant
4 default in the company's existing bank debt facility. That was
5 resolved by an amendment in December in that the bank lenders
6 waived the covenant requirement through March 30th, 2009, but
7 the available revolver borrowing under that facility during the
8 waiver period was reduced from what it had been earlier. At
9 the same time, Chemtura was facing a maturity of 375 million
10 dollars in bond debt coming due in July of 2009.

11 In another credit market, Judge, this might have all
12 worked itself out. In today's economy, Chapter 11 was the
13 unfortunate result. But, Judge, I said before that I have
14 mixed feelings about this Chapter 11 filing. The unhappiness
15 of seeing Chemtura, a fallen angel, in bankruptcy is very much
16 tempered by a strong feeling of relief that we finally got
17 here. What does that mean? In reality, Judge, the challenges
18 I mentioned a minute ago, the bank waiver expiring at the end
19 of this month and the maturity of their bond debt in July of
20 2009, have been the least of our worries over the last few
21 weeks. Chemtura's been facing liquidity challenges for some
22 time, and those issues have been acute for the past month.

23 I'm going to lay out very briefly what's causing that
24 reduced liquidity, and then I'm going to come back and explain
25 what I mean by acute, because this isn't just oh, gee, we're

1 concerned about liquidity because we're dropping below twenty
2 million dollars' availability in our forecasts. It's not even
3 close to like that. So I'm going to come back and explain
4 exactly what I mean by lack of liquidity for Chemtura over the
5 last months.

6 But, first, what's the problem and what's causing the
7 lack of liquidity? The company has four relevant sources of
8 liquidity. First is their revolving borrowing, which I had
9 mentioned. The second is their U.S. receivables, receipts due
10 from customers. Those are securitized in an off-balance sheet
11 bankruptcy remote financing. The third source of liquidity is
12 a European factoring facility. Same thing: off-balance sheet,
13 effective financing for the European receivables. The fourth
14 source of liquidity, Judge, is trade credit: credit from their
15 vendors. And all four of those sources of liquidity have been
16 hit with a decline in the last few months.

17 The European factoring availability was reduced by
18 the purchasing bank in the factoring facility as a result of
19 ratings, downgrades and reported financial stress on the
20 company. Liquidity went from 170 million dollars and it
21 stepped down and stepped down. And as of the petition date,
22 there was only nineteen million dollars outstanding on that
23 facility. So that was a big hit for the European part of the
24 company. I say European; I should say for all of the
25 international subsidiaries.

1 The U.S. receivables facility has been operative, it
2 has not been in default, but the borrowing availability has
3 capped and it's been limited by a borrowing base. And reduced
4 receivables over all, because of low sales volume in the
5 chemicals industry, necessarily leads to lower availability.

6 The U.S. revolving credit facility has had restricted
7 availability as a result of the December 2008 waiver resolving
8 covenant default problems.

9 And trade credit, Judge, has been shrinking for some
10 time and is becoming increasingly more and more constrained.

11 So what do I mean by tight liquidity? I mean this
12 company is living day to day on receipts that come in from its
13 customers as passed through the receivables facility. In my
14 view, Judge, the procurement team of this company has done a
15 masterful job in stretching the available dollars, paying only
16 the most critical vendors and keeping the plans operating. But
17 that said, the situation has been so acute and there's been so
18 little cash to work with, Judge -- I want to stress this
19 point -- manufacturing plants have been actually shutting down
20 at times due to suppliers of critical goods refusing to ship
21 them. As one example, the Ashley, Indiana plan has been shut
22 down twice due to vendors cutting out supplies for nonpayment.
23 Most recently, it was shut down for nine days last month
24 because a vendor refused to supply bottles that are used in the
25 consumer product business. And the company had to shut the

1 plant down because they can't change the shape of the bottle
2 midstream during the selling season, and it would take at least
3 six months to get the same shaped bottle from another vendor.
4 The shutdown cost the company four million dollars in revenue,
5 and that's almost one percent of the revenues for the consumer
6 products division per year. In other words, this is a real
7 crisis, and there's been a genuine impact, and has potential to
8 be a genuine impact, on the value of the business going
9 forward.

10 Just a couple more observations on this point, Judge,
11 and then I'll note that there are company representatives in
12 the courtroom who would be able to testify to all of that in
13 more detail, should we need to get into that today. The two
14 observations are two of the debtors' four major business
15 segments are highly cyclical. And by cyclical, I should have
16 said season. The crop and consumer pool and spa chemicals both
17 have their primary selling seasons in the spring leading into
18 summer; you can imagine why. They relate to agriculture and to
19 families going out and enjoying their pools and spas in the
20 summer. So this is about the worst possible time for this
21 company to be faced with the possibility of plant shutdowns.

22 Second observation: The liquidity concern is not
23 just about vendors. I've participated in discussions over the
24 last couple of weeks about whether the company would bring in
25 enough cash from receivables in a given week to be able to make

1 its payroll. Judge, we were able to fund, before the Chapter
2 11 filing, the payroll that was due today to employees. I will
3 tell you that if we had not gotten a DIP facility and been able
4 to file for Chapter 11 this week, I don't know necessarily
5 where that payroll would have come from for next week.

6 It's a dire situation. The bottom line is that the
7 company has been running on fumes for a very long time, and at
8 this point even the fumes are gone. The company has a critical
9 need for financing, and the only financing available is in
10 Chapter 11. Judge, there's a lot of value here in this
11 company, but we need financing now to preserve it.

12 So while I was sorry to see Chemtura file for
13 bankruptcy, paradoxically, I'm happy to be standing here before
14 you today asking for approval of the funding that we finally
15 have available to us to get the company operating with
16 appropriate liquidity again.

17 A natural question, judge: What took us so long?
18 Why did it get to this point before we filed the Chapter 11
19 case? And the answer is these are difficult credit markets,
20 and it took us a month to put a DIP facility together, not for
21 lack of trying. Mr. Aronson will testify, and I will not steal
22 his thunder because he could do it much better than I can.
23 Mr. Aronson is available to testify as to the intense efforts
24 that Lazard and the management team went to to seek various
25 different sources of DIP financing or any other financing that

1 would be available out of Chapter 11. The company looked to
2 its European receivables facility to try to negotiate with the
3 buyer in that facility to give them comfort that they would
4 restart the facility outside of Chapter 11 to come up with some
5 other alternate arrangement. No financing was available
6 outside of Chapter 11, and it took until the afternoon of
7 Wednesday, the day we filed these cases, for a group to come
8 together that was able to loan the company 400 million dollars
9 needed for liquidity during the cases. And that process,
10 Judge, was difficult.

11 With that, Judge, unless there are any questions, I
12 think it makes sense to move forward into the specific request
13 for relief today.

14 THE COURT: I don't have any other questions, or any
15 questions, at this time.

16 MS. LABOVITZ: Okay. Thank you, Your Honor. The
17 first motion on the agenda is the motion for approval of
18 debtor-in-possession financing. The request, overall, is for
19 approval of a 400 million dollar financing facility that, among
20 other things, includes a roll-up of some portion of the
21 debtors' pre-petition secured debt. But the roll-up is not
22 before the Court today, and I don't believe that there are any
23 objections before the Court today related to the roll-up.

24 THE COURT: There's one related to the fees
25 associated with the roll-up.

1 MS. LABOVITZ: Sure enough. What I think makes sense
2 is to focus on what is before the Court in the request for
3 interim approval of the DIP. And I agree, Judge, the fees are
4 before the Court on an interim approval.

5 So the borrowing that's requested for approval today
6 is 190 million dollars broken out as between a revolving credit
7 facility and a term credit facility: a 25 million dollar
8 revolver, and a 165 million dollar term loan. That money would
9 be used for two sources: one, for operating liquidity, and
10 there, as I described, certainly is a need for that; the second
11 use of that money would be to repurchase the receivables that
12 were sold to a bankruptcy remote subsidiary of Chemtura Corp.
13 as part of the debtors' off-balance bankruptcy remote
14 receivables facility. And the need to repurchase those
15 receivables is really to facilitate the other borrowing that's
16 needed for the debtors.

17 If we don't repurchase the receivables, let me take a
18 minute to walk through what would happen with that facility.
19 The bankruptcy filing for Chemtura Corp. was an event of
20 default for this off-balance sheet bankruptcy remote facility.
21 And upon the event of default, all receivables in the U.S.
22 being collected by the company go to pay off the lenders under
23 that facility. So there is no more liquidity coming into the
24 debtors day to day as they collect their receivables unless and
25 until that facility is repurchased.

1 The other -- that's a bad enough problem for the
2 debtors in Chapter 11 because they do need to rely on the
3 liquidity from receivables collections. But the other problem
4 with having the receivables sold to the bankruptcy remote
5 subsidiary is that the receivables themselves are worth 232
6 million dollars. They're supporting outstanding debt of 117
7 million dollars. If the receivables are brought back into the
8 debtors' estates and are counted in the borrowing base for the
9 DIP loan that's available to them today, that's what makes it
10 possible to borrow the money that's needed for ongoing
11 operations.

12 THE COURT: What is the support for the 232 million
13 dollar value of the receivables?

14 MS. LABOVITZ: Your Honor, Mr. Forsyth, who is the
15 chief financial officer of the debtors, would be able to
16 testify as to the value of the receivables and as to how that
17 valuation has been put together.

18 THE COURT: All right. And have the DIP lenders done
19 an independent evaluation of that?

20 MR. SOSNICK: Your Honor, Fred Sosnick from Shearman
21 & Sterling, for the agents for the DIP lenders. Yeah,
22 certainly the DIP lenders have looked at the receivables and
23 have done studies of them, but it's ultimately -- you know,
24 some of it's going to turn on collectability and things like
25 that, which are actually more in the company's purview. But

1 people -- I think the way these things were always structured
2 it was to make sure there was a sufficient cushion above the
3 amount lent in the original receivables facility. So in that
4 sense, I can't tell you for sure that the number quoted is
5 exactly what we would, but it's certainly in the range.

6 THE COURT: Thank you. All right, go ahead.

7 MS. LABOVITZ: Your Honor, the repurchase of the
8 receivables and the termination of the existing receivables
9 facility is a condition precedent to the financing. I don't
10 believe that there's any objection to that repurchase, but I do
11 believe that an objection has been articulated to one aspect of
12 the repurchase, which is --

13 THE COURT: All right, and that's the --

14 MS. LABOVITZ: -- that it not be subject to challenge
15 after the interim order is entered. The debtors have raised
16 that issue with the lending group. We had raised that issue in
17 two contexts: first, in connection with this receivables
18 facility, and also in connection with the roll-up that would be
19 approved on a final order. The lenders did agree ultimately to
20 the debtors' point that the roll-up should be subject in some
21 ways to creditor challenge. They did not agree to allow that
22 for the receivables purchase. And upon hearing yesterday that
23 there was an informal objection on this point, the debtors went
24 back to the lending group, asked again whether they would be
25 willing to make any changes. The answer, and Mr. Sosnick, I'm

1 sure, would confirm this, is that the lending group is not.
2 The debtors understand the point --

3 THE COURT: No, I think the lending group's --

4 MS. LABOVITZ: -- that the creditors were making.

5 THE COURT: The lending group's going to have to
6 reconsider that. This is very aggressive relief on the first
7 day. The lending group feels comfortable with the value,
8 that's fine. But to say on the first day of this case that I'm
9 going to turn away any potential challenge to the
10 securitization seems to be a bit aggressive.

11 MS. LABOVITZ: We understand that it's an aggressive
12 move on the first day of the case, Your Honor. However, there
13 is precedent for it. In particular, I would note that Judge
14 Gerber did approve a similar position.

15 THE COURT: Well, I think you can say that, but if
16 you look at the record on Judge Gerber's hearing, I don't
17 believe anything was specifically mentioned or discussed about
18 that aspect of the financing, and I don't believe there was any
19 specific ruling on it or comment made by the judge about it.
20 So I would hesitate to go beyond the fact that that order may
21 have provided for it. But taking it a step further and to that
22 there was some analysis that, if challenged, Judge Gerber would
23 rule the same way, I think, is going a bit too far.

24 MS. LABOVITZ: Your Honor, I certainly agree that I
25 can't speculate as to how Judge Gerber would rule in this

1 situation. What I would note -- and, Judge, I -- I'm reluctant
2 to keep arguing after you've already made a statement that the
3 lenders should reconsider the position, but I want to reiterate
4 the gravity of the situation, the fact that the debtors are
5 here and must implore the Court to approve the facility in the
6 form that we can present it to the Court today. And with that,
7 Your Honor, I will just note that we'll ask the lenders one
8 more time but that that's where they've been today.

9 THE COURT: Well, I think I just did ask the lenders
10 one more time.

11 MR. SOSNICK: Your Honor, I understand, you know, you
12 asked, Your Honor. But I think from the lenders' perspective,
13 I think we take exception to the comment that it's an
14 aggressive act. It's -- these are receivables that are in a
15 special purpose entity where --

16 THE COURT: But when is this happening? It's
17 happening on the first day of the case --

18 MR. SOSNICK: Yes, to --

19 THE COURT: -- with a limited amount of notice to
20 anyone, and what's done is set in stone. And the final hearing
21 is irrelevant on this issue.

22 MR. SOSNICK: But -- yeah, Your Honor, but understand
23 that the issue is that if those lenders do not agree to release
24 that collateral, there is no DIP loan, whether it's from us or
25 anyone else, because that's where the value -- the immediate

1 value is; it's in the receivables, and it's the current assets
2 of the receivables. That's what people are most interested in
3 lending to -- so whether it's this group or some other group,
4 that's not happening without the receivables facility getting
5 repaid. And so whether it's -- that's why I hear -- and I
6 can't disagree with everything you said, but there is a
7 specific reason why that has to happen: because if those
8 lenders don't consent, they'll just wait for the receivables to
9 run off, and meanwhile, whatever's there, whether it's 230
10 million or 200 million or whatever that number is, that's going
11 to be stuck there and no DIP lender is going to lend to this
12 company against noncurrent assets until those receivables are
13 replenished, which happens over a significant period of time.

14 So I think, Your Honor -- I don't know why it's
15 contested here, why it wasn't contested in Lyondell, why it
16 wasn't contested in Quebecor, why it wasn't -- there's a whole
17 series of cases where it hasn't been raised. And it's
18 approved, and it's approved for that reason: because without
19 it, we can't get the receivables up to the debtors. And
20 without the receivables being at the debtors, we're just not
21 going to have a DIP loan. It's, sort of, as simple as that
22 from those lenders' perspectives.

23 MR. RAVAL: Your Honor, Abhi Raval from Milbank
24 Tweed, on behalf of certain holders of Chemtura's 2016 notes,
25 in their individual capacities. Your Honor, our objection was

1 not targeted to stopping the purchase of the A/R from this off-
2 balance sheet facility. Our objection is really targeted at
3 the relief that they were seeking, that you've got two
4 facilities out there. You've got this pre-petition revolver
5 facility, secured; that's subject to the standard rights of
6 parties-in-interest and the creditors' committee, which hasn't
7 been formed yet, to look at those liens, look at the
8 stipulations, to file causes of actions, et cetera, over a
9 sixty-day period. The creditors' committee, when it's formed,
10 may revisit the terms of that. And then you've got the liens,
11 that are stipulations, with respect to the A/R facility. Not
12 the repurchase. We're not objecting to the repurchase. We're
13 not objecting to the repurchase being final for all purposes.
14 What we're objecting to is a differential treatment vis-a-vis
15 the stipulations the debtors are making with the currently
16 existing pre-petition A/R facility and the pre-petition
17 revolving facility. In our perspective, the same rights that
18 people have with respect to checking on the stipulations,
19 challenging the stipulations, filing adversary proceedings,
20 should apply to the A/R facility. That's the objection.

21 THE COURT: And what happens if the lender says they
22 won't lend if they put at risk that facility, from their
23 standpoint?

24 MR. RAVAL: Your Honor, we're not saying that the
25 receivables, once they come into the DIP facility, should go

1 back. What we're saying is if the underlying A/R facility was
2 subject to disgorgement, was subject to a preference, was
3 subject to avoidance, that there should be some ability to go
4 at those lenders under the A/R. Not the DIP. Once the
5 receivables are in, they're in. That's the objection that
6 we're making.

7 In Lyondell -- we looked at this yesterday -- in
8 Lyondell, the right to investigate liens with respect to the
9 pre-petition facility -- A/R facility was preserved. What
10 Lyondell did was say that the transfer of those A/R -- of the
11 accounts receivable -- was not challengeable. We don't have a
12 problem with that. We're saying everyone ought to have a right
13 to look at the underlying facility to the same extent that they
14 have the right to look at the pre-petition revolving facility.

15 THE COURT: Mr. Sosnick?

16 MR. SOSNICK: Your Honor, just one final thought on
17 that was there is a -- as I think I tried to make clear before,
18 there's a tremendous difference between this repayment and the
19 roll-up that's contemplated at the final hearing in that these
20 assets do not belong to the debtors. The lenders are not under
21 the jurisdiction of this Court. It's in an SPV. It's
22 bankruptcy remote. It was designed that way, as all
23 receivables -- most receivables facilities of this type are.
24 And so there's just -- there is no incentive for those lenders
25 to just voluntarily -- for this group of lenders to have that

1 group voluntarily agree to the repayment without protection
2 because, if not, the alternative is just sit there and get
3 repaid, which is fine for them but in the meantime all those
4 receivables get held up. Whether it's right or wrong, that's
5 where the receivables are. And until we can free them up, we
6 just -- we don't have a DIP.

7 MS. LABOVITZ: Judge, I'm reluctant to insert myself
8 into this back-and-forth, but I think it might be relevant
9 factual background to the Court to explain that although --
10 there is the same agent for the pre-petition receivables
11 facility and the DIP that'll be provided now, and there is some
12 overlap in the lender group. There is not complete overlap.
13 So it's not the case that all the DIP lenders that are
14 participating here and are before the Court would have the
15 ability to consent to a payment under the receivables facility
16 that is anything other than consistent with the terms of that
17 loan, which requires an indefeasible payment.

18 THE COURT: Say that again.

19 MS. LABOVITZ: Sure.

20 THE COURT: I couldn't hear the last piece of what
21 you said.

22 MS. LABOVITZ: Sure. The terms themselves of the
23 receivables facility, as almost every credit agreement would,
24 require that any payment of -- that any repayment and discharge
25 of that facility be accompanied through an indefeasible

1 payment. There is no provision for a payment subject to a
2 reservation of rights. And the concern that the debtors have
3 is that because some of the lenders under that facility aren't
4 before the Court, aren't participating in the DIP, and, in
5 fact, in some cases have declined to participate in the DIP, I
6 don't have confidence, Judge, that we would be able to
7 repurchase the facility if we're not complying with the terms
8 of that credit agreement. I just wanted to make that clear.

9 THE COURT: All right.

10 MR. RAVAL: Your Honor, if I may just touch upon a
11 point that Mr. Sosnick just raised, he's right that these
12 assets, this account -- A/R, is not part of the debtors'
13 estate. The query why the debtors are making stipulations with
14 respect to the account receivables facility if they're not a
15 party to that agreement, it should be left outside the
16 bankruptcy process then. And if the stipulations are taken
17 out, then we have no issue vis-a-vis the A/R facility. They
18 can't have it both ways. They can't say that the debtors have
19 to make these stipulations but, on the same token, that this --
20 that it can't be challenged, right? It's sort of a paradigm.
21 If the stipulations aren't in there because these -- the
22 debtors are not part of the A/R facility, then there's no issue
23 and we'll just reserve people's rights as to whatever they
24 happen to be.

25 THE COURT: But the A/R -- the holders have to agree

1 to sell their position, is that right? Do they have the option
2 to say no and we'll wait for the receivables to come in?

3 MR. RAVAL: I agree, Your Honor, that they have to
4 consent to this transaction.

5 THE COURT: All right, so if the record would support
6 they would not consent unless they had the protection they're
7 looking for and the DIP lenders won't lend unless this is added
8 to the collateral, where are we left?

9 MR. RAVAL: Your Honor, I don't think we have that
10 record yet. We've had Mr. Sosnick tell us that that's the
11 case, but I'd like to see that record be developed.

12 THE COURT: All right. I guess we'll get to that.
13 All right, go ahead.

14 MS. LABOVITZ: Your Honor, would you like me to walk
15 through the other terms of the financing, including
16 highlighting what else is contested?

17 THE COURT: Yes. Go ahead.

18 MS. LABOVITZ: So, Your Honor, I had gone over the
19 terms of the fi -- sorry, the terms of the financing. And I'm
20 going to walk through in order of Local Rule 4001-2(a), just
21 the key terms of the financing and anything that the debtors
22 are required to call out to the Court. I think that's probably
23 the most efficient way to handle it.

24 Local Rule 4001-2(a)(2) requires us to call to the
25 Court's attention any significant or unusual conditions to

1 closing and borrowing. We've already discussed the repurchase
2 of the receivables, Judge, and these are not contested. The
3 debtors are required to operate within the terms of the DIP
4 budget subject to a ten percent variance during the interim
5 period; it'll be a twenty-percent variance thereafter. And the
6 debtors are required to retain a turnaround advisory firm and
7 chief restructuring officer. And, Judge, I had introduced to
8 you, at the beginning of the hearing, to Ray Dombrowski, who is
9 proposed for that position.

10 Moving to Local Rule 4001-2(a)(3) --

11 THE COURT: All right, before you go --

12 MS. LABOVITZ: Um-hum.

13 THE COURT: -- returning to the budget issue, I need
14 to hear from the debtor how confident the debtor is that that
15 ten percent variable number will protect them through the
16 interim period.

17 MS. LABOVITZ: Your Honor, I believe that the debtors
18 and also Mr. Dombrowski, the chief restructuring officer, who
19 is experienced in operations under Chapter 11, are comfortable
20 with the budget and have agreed to it. But perhaps at the end
21 of the presentation, Your Honor, if you would like us to
22 present testimony on these points, we'll take note.

23 THE COURT: Yes.

24 MS. LABOVITZ: Moving on, then, Judge, to Local Rule
25 4001-2(a)(3) on pricing, economic terms and fees, Your Honor,

1 the DIP includes a specified interest rate that includes an
2 applicable margin layered onto either a base rate related to
3 the U.S. fed funds rate or to a euro-dollar rate. In either
4 case, at this moment I believe the rate would be ten and a half
5 percent interest for the amount that's presented for interim
6 approval today.

7 The DIP facility also includes various commitment
8 fees, letter of credit fees and exit fees. Judge, I'll run
9 through them very quickly. There's a one and a half percent
10 unused commitment fee, certain letter of credit fees. It's
11 standard to have those kinds of fees in a revolving and letter-
12 of-credit arrangement. There is an exit fee of two percent,
13 upfront fees of three percent for term commitments on the
14 effective date. And then later there would be a three percent
15 for nonroll-up revolving credit commitments. Oh, sorry, that's
16 not later. There's an exit fee of three percent for the term
17 and nonroll-up facility. It requires payment of fees and
18 reimbursement of expenses to professionals of the DIP agent,
19 the DIP lenders, the pre-petition agent and the pre-petition
20 lenders.

21 And, Judge, this is another of the areas in which
22 this group of pre-petition bondholders has raised a concern.
23 My understanding is that the concern is not to the amount of
24 the fees but to the timing. And, in particular, they're asking
25 that certain fees be payable not at the closing of the interim

1 facility but only after the facility is approved by final order
2 of the Court.

3 Judge, what I will say here is that the fees were
4 hard-negotiated. They started out smaller, Judge. So, then,
5 you argue that the negotiations went the wrong way. But the
6 history of that is that over the thirty days that we were
7 trying to put a DIP together, it became clear that it was going
8 to be difficult to get lenders to participate in this financing
9 and that the debtors were going to have to offer financial
10 incentives to get lenders into the group. Do we like paying
11 that much? No, absolutely not. Do we think that it was the
12 right business judgment to agree to pay these fees and agree to
13 pay them on the timing that the lenders required rather than
14 wait for another wait and possibly not be able to make payroll,
15 possibly have plants shutting down because of the debtors'
16 liquidity problems? Judge, the debtors made the business
17 judgment that they should enter into this facility on these
18 terms, and we think it's the right business judgment.

19 Would you like to hear from Mr. Sosnick and from the
20 objectors now, or should we move on? I --

21 THE COURT: No, I'll hear from Mr. Sosnick now.

22 MR. SOSNICK: Your Honor, just to, I think, correct,
23 there was an interchange early on in the hearing about what was
24 being challenged and what fees there are. Just to be clear,
25 Your Honor, there is not a fee contemplated on -- a commitment

1 fee contemplated on the roll-up, which is what we're talking
2 about having happen at the final hearing. There is a three
3 percent fee on the term piece, which is the term loan, is a
4 three percent fee on the nonroll-up revolver. So those are
5 basically the revolver and the term net of what is being rolled
6 up at the final hearing.

7 The fee does apply, which is, I think, where there
8 may be some confusion. So the portion of the money that's
9 being advanced on the interim -- at the interim order to
10 repurchase the receiva -- the amounts due -- the receivables,
11 basically. And again, Your Honor, not to reargue what we just
12 talked about, but it's the same thing. Any lender is going to
13 have to repay that facility, and someone's going to have to
14 advance the money to buy the receivables back from the existing
15 SPV that's there now.

16 And so to have the objectors characterize this as not
17 new money is just, Your Honor, not correct. It is new money.
18 It's going to repurchase the facility. Someone would have to
19 do it.

20 The -- and so the lenders have committed. Like any
21 other financing, they're entitled to a commitment fee to do
22 that. Three percent, I think, Your Honor, is within the range
23 of what's reasonable in standard. And it should -- they're
24 entitled to it.

25 They also have -- on the exit fee, the exit fee is

1 the -- you know, it's the same thing, Your Honor. We're
2 advancing the money, and they're entitled to the exit fee. And
3 I think what we're -- what's being contested seems to be that
4 we should have the fees only apply to what's being approved now
5 at the interim hearing, which sort of belies the fact that the
6 lenders have committed today to the full facility. And if
7 there is not another facility put in place or if there aren't
8 objections that make this loan disappear, the lenders are on
9 the hook. I mean, they've signed an agreement and they have
10 committed to it.

11 And so we think they are entitled to the fees. And
12 the suggestion that it's only a -- that it's going to a roll-up
13 is just incorrect.

14 THE COURT: All right. Thank you.

15 MR. RAVAL: Your Honor, just a few thoughts on the
16 issues of fees. There were a couple of things that were not
17 raised, which we'll get into as well. Your Honor, from our
18 perspective, my clients are aware of at least two alternative
19 finance efforts that have been ongoing and that we believe, now
20 that the debtors' situation will be stabilized, can continue in
21 a more orderly course with due diligence and hopefully getting
22 to commitments.

23 The fees will directly impact that because the higher
24 the fees are in this interim period, the higher the refinancing
25 has to be, which may make that refinancing less likely or it

1 may make it more expensive. What we're simply asking for is
2 that the fees, to the extent they are payable between now and
3 the final hearing, be paid based upon the amount that's
4 actually committed to be paid -- or to be lent between now and
5 the final hearing. The bulk of their commitment doesn't happen
6 until a final hearing happens. Technically, they're committed,
7 but if there's no final hearing, that commitment rolls off and
8 goes away. So from our perspective, the fees should be
9 minimized to just what is being committed between now and the
10 final hearing.

11 With respect to the exit fees, the exit fees would
12 total eleven million dollars. Exit's likely not to happen
13 between now and the final. So we see no reason to pre-approve
14 those fees.

15 Your Honor, there's also a reference to a fee letter
16 in the DIP agreement itself. That fee letter, I don't believe,
17 has been filed anywhere. We haven't seen it. And before the
18 Court approves the DIP agreement, and therefore the fee letter,
19 we think that that should be available for review and objection
20 by all parties.

21 Secondly, Your Honor, there is a specific section in
22 the DIP agreement, Section 2.08(d)(3), which provides that the
23 debtors and lenders can agree to other fees carte blanche;
24 nothing about bankruptcy court approval; nothing about prior
25 notice to other parties-in-interest. We think that whatever

1 those other fees are, maybe they're just simply administrative
2 agent fees, I don't know, it may just be very simply, but in
3 any case, those fees should also be subject to the bankruptcy
4 court's approval.

5 THE COURT: All right. Let's deal with the last
6 point first, and that, I believe, is on page 35 in the chart
7 under fees. What? All right, go ahead. You want to say
8 something?

9 MR. ASHMEAD: Your Honor, John Ashmead, Seward &
10 Kissel, counsel to the indentured trustee for the 2016 notes.
11 Although we did not file papers, I think that's understandable,
12 given that we just got this notice yesterday. We would just
13 indicate our support for the position stated by counsel for
14 some of our holders with respect to the fees. Thank you, Your
15 Honor.

16 THE COURT: All right. Let's deal with the section
17 that provides for -- it says "and such other fees as may be,
18 from time to time, agreed among the borrower and the initial
19 lenders or their respective affiliates". What are they?

20 MR. SOSNICK: Your Honor, they are, among other
21 things, we think, just, kind of, standard banking fees. I
22 think this is a roughly standard provision. I'm a little
23 surprised that it's being raised here. I don't think -- again,
24 we have a problem with what I'm about to say, Your Honor, which
25 is that any changes we make to the agreement and order before

1 the borrowers -- the lenders lend have to be approved by all
2 the lenders. So I can indicate my thoughts, and even if it
3 works its way into the order, there's no guarantee that
4 whatever I'm about to say is going to satisfy our lenders. As
5 was alluded to earlier, this was extremely difficult to get the
6 lenders on board. We originally tried to get this loan signed
7 up over this past weekend, and it stretched to get people on.
8 But I don't think there's a real problem with providing that
9 any additional fees will be disclosed to the committee and
10 subject to further court jurisdiction. I don't think that's --
11 this is just -- I don't think this is a particularly big deal,
12 these fees. There's not -- anything that is real and now is
13 already in the agreement. So I don't -- that would be my
14 suggestion, Your Honor.

15 THE COURT: All right, but, then, turning to the --
16 that was the first point. I don't know if the debtor wants to
17 add anything to that, your comment.

18 MS. LABOVITZ: No, Your Honor, not on that point.

19 THE COURT: All right, let's go, then, to the
20 argument about the other fees and the timing of their approval.

21 MR. SOSNICK: Okay, Your Honor. In essence, if I
22 understand the objectors' position correctly, they're saying
23 that the lenders should sit here as a stalking horse, I think
24 is what he's essentially saying is that despite how difficult
25 it was to get this deal done and the discussions in the motion

1 about how it's, at best, the other lenders were weeks away or
2 whatever it is, if those people are live and they're going to
3 continue to negotiate, we're -- this lender group, who has
4 committed, is sitting basically as, my guess is what they're
5 suggesting, as some sort of stalking horse. And there is no
6 reason, under any logic that I can think of, why they shouldn't
7 be compensated for that if they're sitting there -- they've put
8 up a 400 million dollar DIP; they're prepared to stand by it.
9 That's what's there. That's what Chemtura is able to sell to
10 its suppliers as having been there. And now to say that
11 there's going to be some sort of stalking horse process without
12 protection, I think, is -- I just don't even understand it.

13 THE COURT: All right.

14 MS. LABOVITZ: And, Judge, in that regard, I will
15 preview for a moment the testimony that Mr. Aronson would give.
16 I had said before that I would leave that to him, but I should
17 surface one point now. Your Honor, at least, I believe, two of
18 the very bondholders who are objecting today were among the
19 group that Lazard approached and discussed and even, you know,
20 discussed potential financing with. So we do know that they
21 are potential lenders, that they might want to make a loan
22 sometime in the future. But those discussions have been going
23 on for almost two weeks, and the debtors need money now. So I
24 just wanted to preview that testimony.

25 THE COURT: All right.

1 MS. LABOVITZ: Should I move on, Your Honor?

2 THE COURT: Yes.

3 MS. LABOVITZ: Okay. Running, again, through Local
4 Rule 4001-2(a), on number 4, the effect on existing liens,
5 Judge, this is a priming DIP but only to a limited extent. The
6 pre-petition secured indebtedness of the bank group had a
7 security interest in the stock of first-year subsidiaries in
8 both the U.S. and outside the U.S. The pledges of the non-U.S.
9 subsidiaries were limited to sixty-six percent of the voting
10 stock. The December 2008 amendment to the credit agreement
11 granted an additional security interest in inventory.

12 Judge, leaving for another day the issue of the roll-
13 up with respect to some of that pre-petition secured
14 indebtedness, I would note that the debtors and the DIP
15 facility does propose to prime that facility to the extent that
16 the lenders do not participate in the DIP facility and do not
17 roll up. I don't believe that priming is contested today. The
18 basis for the priming would be that the lenders are adequately
19 protected by an equity cushion.

20 Your Honor, there is no intent in the DIP facility or
21 no provision in the DIP facility to prime any other secured
22 creditors. So the DIP facility would have a first-priority
23 security interest as to all unencumbered assets of the debtors.
24 At would have a second-priority security interest as to any
25 encumbered assets of the debtors, with the exception of the

1 liens of the pre-petition lenders who are not participating in
2 the DIP facility, and those would be primed by this financing.

3 I should note, by the way, that in addition to the
4 equity cushion that the debtors believes provides adequate
5 protection to the pre-petition lenders, the DIP facility does
6 also propose to provide them with adequate protection in the
7 form of administrative claims, liens and payments. And, again,
8 we believe that there is no objection to any nonparticipating
9 lenders to that priming.

10 THE COURT: To that priming today?

11 MS. LABOVITZ: Right. There may -- that's correct,
12 Your Honor.

13 THE COURT: All right, let's see if that turns out to
14 be accurate.

15 MS. VONGTAMA: Actually, Your Honor -- good morning,
16 Your Honor. Melissa Vongtama from the law firm of Blank Rome,
17 on behalf of PMC Biogenics, Inc. We do have a limited
18 objection. Our client has certain claims based on an asset
19 purchase agreement and various trade payables which, we
20 believe, are subject to the right of setoff. It's unclear from
21 the language in the interim order whether these rights are
22 subordinated. We would just ask that the order be revised to
23 protect our interests. I did speak with one of the debtors'
24 counsel this morning, but I have not heard back from him. I
25 sent him proposed language. So, that's it. Thank you.

1 THE COURT: All right. Thank you.

2 MS. LABOVITZ: Your Honor, I apologize, the proposed
3 language didn't make it to me before the hearing. We'll look
4 at the proposed language, but I will reiterate the point that
5 the DIP facility does not purport to prime any valid secured
6 obligations other than those of the pre-petition lenders, as
7 defined in the facility, meaning the participants and the bank
8 group who do not roll up.

9 THE COURT: And it includes rights of setoff?

10 MS. LABOVITZ: I don't know if the rights of setoff
11 are included in the language. I don't think there's an
12 objection to including it as long as we make clear that it's
13 valid rights of setoff.

14 THE COURT: All right. Thank you.

15 MS. LABOVITZ: Your Honor, moving on to Local Rule
16 4001-2(a)(5), the carve-out, there is a carve-out in this DIP,
17 Your Honor. It applies to U.S. Trustee fees, professional fees
18 of the debtors and statutory committee occurred before an event
19 of default, whether or not invoiced before that event of
20 default, and professional fees of the debtors and statutory
21 committee incurred after an event of default, up to eight
22 million dollars. The U.S. Trustee has requested two changes to
23 the carve-out language: one, to make clear that in that eight
24 million dollar carve-out that there would be a separate
25 designation of 40,000 dollars for fees of a Chapter 7 trustee,

1 if the cases were converted to Chapter 7, and, Your Honor, I
2 believe everyone's agreeable to that change; and the U.S.
3 Trustee had also requested that the language related to the
4 U.S. Trustee fees be clarified to refer directly to a statute
5 to make clear that interest is also included. I believe that
6 that should be consensual, but I need to ask Mr. Sosnick.

7 MR. SOSNICK: Yes, Your Honor. We are fine with the
8 interest point as well as the 40,000-dollar sub-carve-out for
9 burial costs.

10 MS. GOLDEN: Good morning, Your Honor. Susan Golden
11 on behalf of the United States Trustee. We have agreed on an
12 interim basis for 40,000 dollars for a Chapter 7 trustee, but I
13 think we've also agreed that that will be revisited for the
14 final.

15 MS. LABOVITZ: And, Your Honor, we are all hoping
16 that there is no conversion to Chapter 11 between now and --

17 MR. SOSNICK: 7.

18 MS. LABOVITZ: -- the final hear --

19 MR. SOSNICK: 7.

20 MS. LABOVITZ: Sorry, conversion to Chapter 7 between
21 now and the final hearing on the DIP financing.

22 THE COURT: All right. Go ahead.

23 MS. LABOVITZ: Moving on, Your Honor, under Local
24 Rule 4001-2(a)(7), we've discussed the roll-up provision. And,
25 again, that's not before the Court for approval today. And I

1 don't believe, other than fee points, there are any objections
2 brought before the Court today.

3 On Local Rule 4001-2(a)(8), waivers and limitations,
4 the interim order does contain an acknowledgment by the debtors
5 of the amount and validity of the pre-petition secured
6 indebtedness. And it provides, Your Honor, a sixty-day period
7 from the time a creditors' committee is appointed, during which
8 any third party and/or the committee may bring -- may
9 investigate the claims of the pre-petition lenders and during
10 which they must bring an adversary proceeding or any other
11 contested matter challenging the pre-petition liens or
12 asserting a claim against the pre-petition lenders. It does
13 provide that the lenders may extend that challenge period, on
14 consent, in their sole discretion.

15 THE COURT: All right, well, I guess that's an issue
16 that needs some clarification. One is does the filing of a
17 motion under STN, along with a draft complaint, satisfy that
18 requirement, a requirement as in to move it into sixty days?

19 MS. LABOVITZ: We're looking at the language, Your
20 Honor. You have --

21 MR. RAVAL: Your Honor, can we back to this?

22 MS. LABOVITZ: Yeah, if you have other questions on
23 this point --

24 THE COURT: All right. While you're looking, also
25 look at whether or not there is concern about having the time

1 extended for cause by the Court as opposed to limited to a
2 consent.

3 MS. LABOVITZ: Your Honor, I believe the lenders have
4 not agreed to that provision in negotiations to date.

5 THE COURT: All right, well, I think what we have to
6 do -- at some point we're going to have to step back and -- you
7 know, the lenders need to look at maybe they've pushed too far.
8 There's a point at which, I understand, lenders need to be
9 protected for what they've put at risk. And if they don't want
10 to put it at risk, that's fine. But there's also a point at
11 which their aggressiveness undermines some of the control the
12 Court should have over the case. And if they reach that point,
13 it may well be -- have a serious negative impact upon the
14 debtor.

15 All right, move on to the next issue.

16 MS. LABOVITZ: Your Honor, I should call out that I
17 believe there's an objection that is, at least tangentially,
18 related to this point, that maybe it makes sense to address
19 here, or in connection with the next point, which would be
20 Local Rule 4001-2(a)(9), limitations on funding. The credit
21 facility does provide funding availability of 50,000 dollars
22 for investigation by a committee of the lenders' claims. It
23 does provide that none of the DIP lenders' financing that they
24 are providing to the debtors should be used to prosecute claims
25 against them.

1 Your Honor, we agreed, in our business judgment, that
2 we can't use the lenders' money to sue them, but a request has
3 been made in the limited objection that the 50,000-dollar
4 availability for investigation be increased to 400,000 dollars.

5 THE COURT: Well, I don't know if the objector wants
6 to be heard on that right now or --

7 MR. RAVAL: No, Your Honor.

8 THE COURT: You want to be heard at all on it or just
9 stand on your objection?

10 MR. RAVAL: Your Honor, I imagine when the committee
11 is formed that they will revisit that issue. I would just note
12 for the record that it's a 50,000-dollar basket on a company
13 that has 3.8 billion dollars of revenue. It just -- the
14 numbers don't make sense.

15 THE COURT: All right. I mean, I -- my view was that
16 it would get revisited. And certainly 50,000 dollars, between
17 now and the time it gets revisited by any action of the
18 committee, would be sufficient.

19 MR. RAVAL: Fair enough.

20 THE COURT: All right.

21 MS. GOLDEN: Excuse me, Your Honor. I just wanted to
22 inform you that the organizational meeting will be next
23 Thursday, and a committee will be appointed then.

24 MS. LABOVITZ: Your Honor, moving on to events of
25 default under Local Rule 4001-2(a)(10), the credit agreement

1 provides for many events of default; many apply to both loan
2 parties and subsidiaries. I won't take the Court's time to go
3 through every event of default but perhaps call out some of the
4 most important or relevant today. I don't believe there are
5 specific objections related to any of the events of default.
6 The first is that a final order must be entered approving the
7 DIP facility within forty days. There is a restriction on
8 challenges of the validity of any loan document or the
9 applicability or enforceability of any loan document. It would
10 be an event of default for there to be an entry of an order
11 granting relief from the automatic stay to proceed against any
12 assets of the debtors that have an aggregate value of more than
13 ten million dollars that's on the entry of an order.

14 Judge, there's also an event of default upon the
15 filing of a motion seeking an order of the Court reversing,
16 amending or staying, staying for a period in excess of ten
17 days, or vacating the final order or approving the DIP facility
18 or terminating the use of cash collateral provided by the
19 debtors, pursuant to that final order, provided that -- and
20 this was a negotiated proviso that, I think, is important and
21 satisfies what otherwise would be very legitimate concerns by
22 this Court -- provided that there's no event of default if the
23 challenge is dismissed or withdrawn within five business days.
24 In other words, the debtors have the ability to come back in
25 before Judge Gerber, ask that the motion be dismissed,

1 withdrawn or otherwise addressed so that there is an ability to
2 come back into court before the facility automatically defaults
3 upon the filing of the motion.

4 The last event of default, which, I think, is
5 actually quite standard but I call it out anyway, is that it's
6 an event of default under the facility if there's an order of
7 the Court reversing, amending or staying or vacating either of
8 the DIP orders.

9 There has not been an objection to any of those
10 events of default.

11 MR. RAVAL: Actually, I had an objection.

12 MS. LABOVITZ: Oh, sorry. I missed it.

13 MR. RAVAL: Your Honor, we did have concerns with
14 Section 6.01(q). Again, in our views, a refinancing effort is
15 possible, more than likely, and we're hopeful that something
16 comes of it. 6.01(q), Your Honor, basically has the effect of
17 prohibiting the debtors from filing a motion to refinance the
18 DIP obligations if that refinancing seeks liens that are either
19 pari passu or priming in nature of the outstanding pre-petition
20 liens of the pre-petition lenders. They've got protections
21 under 364. We would simply submit, Your Honor, that if a
22 refinancing can demonstrate that the requirements of Section
23 364 are satisfied with respect to either a priming lien or a
24 pari passu lien that they don't need additional protections.

25 THE COURT: All right. The lenders?

1 MR. SOSNICK: Your Honor, we're talking now about
2 events of default. It's not a prohibition. These are the
3 conditions under which the lenders are prepared to continued to
4 lend, and that's what the events of default are there for. And
5 if it is, in fact, true that, you know, the lenders would be
6 perfectly happy and satisfied, I suppose that they wouldn't
7 look to utilize that default. But there's so many unknowns
8 about that type of motion, and particularly, as we heard,
9 where, I guess, it's the bondholders now who are one of the
10 financing sources, that that's just the conditions under which
11 these group of lenders are continued to prepare to lend. And
12 that's what the events of default are there for.

13 MS. LABOVITZ: Your Honor, moving forward to Local
14 Rule 4001-2(a)(11), the request that the debtors identify any
15 DIP facility provisions related to change of control, Your
16 Honor, it would be an event of default under the facility for
17 there to be a change of control defined as a person acquiring
18 thirty-five percent or more of the voting stock of Chemtura
19 Corp., the parent debtor, or a change in the board composition
20 beyond ordinary appointments of board members who are appointed
21 by the members of the existing board, Your Honor. The debtors
22 are comfortable agreeing to this position because they also
23 have filed, on the first day, a request that, for the purpose
24 of preserving NOLs, that trading in the stock of Chemtura Corp.
25 be subject to specified procedures, under which anyone crossing

1 a five-percent threshold or anyone who owns five percent of the
2 stock, buying more, would be required to serve notice to the
3 debtors; the debtors would have an opportunity to object to
4 that transaction. So we believe there are protections against
5 triggering that change of control defaults. To be clear,
6 Judge, that motion is not before you today. We'll present that
7 to Judge Gerber when he returns.

8 Local Rule 4001-2(a)(13) requires us to highlight for
9 the Court any provisions related to joint liability. Here,
10 Judge, Chemtura Corporation, the parent company, is the
11 borrower under the DIP facility. Each of the other debtors is
12 a guarantor. And all of the liens, superpriority claims and
13 junior superpriority claims granted under the DIP facility do
14 apply to the estate of each of the debtors in the Chapter 11
15 cases. In addition, Your Honor, the funding under the DIP
16 facility is available for the use of each of the debtors.

17 Local Rule 4001-2(a)(15), funding of nondebtor
18 entities --

19 THE COURT: All right, before you go to the nondebtor
20 entities --

21 MS. LABOVITZ: Um-hum.

22 THE COURT: -- with respect to the intercompany
23 transfers amongst the debtors, how are they -- how are the
24 particular estates protected?

25 MS. LABOVITZ: Your Honor, the cash management order

1 that we will propose that the Court enter today provides that
2 there will be ordinary-course transfers of cash and goods and
3 service among the debtors in connection with their existing
4 cash management system and their existing practices. But it
5 makes clear that records will be kept of all of those
6 intercompany transfers and that there will be intercompany
7 claims from one debtor against --

8 THE COURT: Well, what's --

9 MS. LABOVITZ: -- the other with respect to those
10 records.

11 THE COURT: All right, in terms of those claims, what
12 is the priority of such claims?

13 MS. LABOVITZ: The request is that they be
14 administrative priority claims. Now, I believe that there was
15 an objection today, as part of the limited objection,
16 requesting that -- not that the ordinary-course transactions
17 between the debtors -- or between Chemtura Corp. and its
18 subsidiaries be given any special priority but that to the
19 extent one of the debtors is called upon to repay the DIP
20 facility or make payments under the DIP facility that should
21 have been borne by another debtor under intercompany claims
22 that they be subrogated to the priority of the DIP lender on
23 account of those repayment claims. I have not had a chance to
24 discuss that request with Mr. Sosnick. I think that it seems
25 unlikely to me that that would happen. But I don't think

1 there's a particularized objection on the debtors' part to
2 having one debtor subrogated to the DIP priority in that
3 situation.

4 MR. SOSNICK: Your Honor, I don't think this is
5 really our issue. If it's --

6 THE COURT: No, I didn't think it was.

7 MR. SOSNICK: -- payment under the DIP, whatever
8 happens after that, if they're subrogated or not and what the
9 priority is is not really -- we don't have an issue.

10 THE COURT: And what about just junior liens as
11 between the companies for the intercompany transfers? What is
12 the debtors' concerns about that?

13 MS. LABOVITZ: The concern about granting junior
14 liens for the intercompany transfers, Your Honor, is that
15 certain of the companies' trade vendors do do business with
16 subsidiaries or individual debtors, and they're relying on the
17 credit of those individual debtors. I think that granting
18 liens for intercompany claims might give the vendors pause and
19 might be very difficult to explain to them, to each individual
20 vendor, the cash flows and what liens might be granted. And we
21 have a very skittish vendor body at this moment, Judge. We
22 would rather not scare them more.

23 THE COURT: All right. Go ahead.

24 MS. LABOVITZ: Okay. Moving on to funding of
25 nondebtor entities, Judge, I would like to go back for a moment

1 to the portion of the presentation this morning talking about
2 the European receivables facility. We'll discuss that more in
3 a moment. There's a motion specifically related to that
4 facility. But for now I'd just like to remind the Court that
5 the European subsidiaries have had their own financing, that
6 that financing is used to fund the specific subsidiaries that
7 participate in the financing and also is transferred through an
8 intercompany banking arrangement in Ireland and, as a practical
9 matter, is used as part of an international integrated cash
10 management system to fund other foreign subsidiaries.

11 We hope, and -- we hope that the European receivables
12 facility will be restored and available to the foreign
13 subsidiaries after the filing and after the approval of a
14 guaranty that we're going to request the Court to approve.
15 However, the debtors don't have any assurance that that will
16 happen or that there won't be some other need for funding for a
17 particular international affiliate. The debtors have requested
18 under the DIP facility and will request as part of the cash
19 management motion that we'll present to the Court in a moment
20 the authorization to fund to nondebtor subsidiaries, including
21 through intercompany loans, an amount not to exceed seven and a
22 half million dollars under one basket and then there's another
23 basket in the DIP facility that authorizes six million dollars
24 in investments, generally.

25 THE COURT: And again, the same question I had before

1 with the intercompanies. What protections do the debtors
2 receive for that type of advancing to the nondebtor entities?

3 MS. LABOVITZ: Focusing for a moment just on the DIP
4 facility and what its requirements are, Judge, the DIP facility
5 does not require that those intercompany loans be made on any
6 particular basis, doesn't require that they be made on a
7 secured basis. And at this point, I don't -- I can't predict
8 with certainty the situation that would arise that would cause
9 the debtors to believe they need to make that emergency
10 funding. So I can't say with certainty exactly what form it
11 would take. But focusing on the provision of the DIP facility,
12 it's a 7.5 million dollar authorization to make an intercompany
13 loan.

14 THE COURT: All right. Go ahead.

15 MS. LABOVITZ: Your Honor, I could walk through other
16 covenants of the facility but I think I'm going to try to
17 streamline it because I don't believe that there are objections
18 to them. Your Honor, on affirmative covenants, the debtors are
19 required to retain a restructuring advisor, financial advisor,
20 and we've identified that Mr. Dombrowski would be the chief
21 restructuring officers.

22 The debtors are required to put in place account
23 control agreements with respect to their bank accounts to
24 deliver mortgages within forty-five days. The debtors are
25 required to cause the facilities to be rated by S&P and an

1 additional national rating agency no later than fifteen days
2 after the entry of the final order. And, Your Honor, we
3 believe that should be able to be accomplished but I also think
4 that's something that can be addressed at the final order. And
5 the debtors are required to engage in a monthly conference call
6 with lenders.

7 On negative covenants, relatively standard covenants,
8 Your Honor. There can be no liens or new indebtedness other
9 than a basket for five million dollars in new liens and
10 indebtedness, certain standard carve-outs. Transactions with
11 affiliates are permitted on arm's-length terms and conditions
12 other than the investments that I described to the Court
13 earlier. Disposition of assets -- the debtors can sell assets
14 outside of the ordinary course up to ten million dollars and
15 can sell assets in the ordinary course of business. No payment
16 of pre-petition claims except otherwise ordered by the Court.
17 And there are some limitations on capital expenditures.

18 For financial covenants, there's a minimum cash flow
19 test, a minimum availability test of forty million dollars
20 after the final term loan advance date. And the debtors must
21 comply with a budget as I highlighted before.

22 Your Honor, I believe those are the essential terms
23 of the DIP facility. And for the reasons described at length
24 before regarding the debtors' critical need for financing, the
25 very dire liquidity situation and the fact that the debtors

1 negotiated all the way to the last minute before they needed to
2 file these Chapter 11 cases, we would request that this
3 financing be approved.

4 THE COURT: All right. Before you sit down, let me
5 raise some issues that haven't been discussed.

6 MS. LABOVITZ: Okay.

7 THE COURT: All right. One, the legal fees that are
8 being paid not only to DIP lenders as part of the adequate
9 protection but are also being paid, I believe, to the
10 receivable parties. Now what is the obligation of the debtor
11 to pay those legal fees?

12 MS. LABOVITZ: Again, Your Honor, the receivables
13 facility requires that in order for the obligations under that
14 facility to be completely satisfied that the lenders be
15 indemnified for their expenses in connection with the facility.
16 So to pay it off, we need to do it.

17 THE COURT: Okay. And this is probably more directed
18 at the lenders' question, but paragraph 32 appears to protect
19 the lenders from environmental type claims. I'd like you to
20 turn to that paragraph. And it carries over -- it's on page 32
21 and carries over to page 33 and it's paragraph 32. All right.
22 My question is to the extent that protection is being sought
23 now, what entities could assert such liabilities have been
24 given notice of such protection?

25 MR. SOSNICK: Your Honor, the debtors have noticed

1 the EPA who presumably would be the entity that would raise an
2 objection to this provision.

3 THE COURT: And when was that notice given?

4 MR. SOSNICK: I think it was together with all the
5 other notices that were --

6 MS. LABOVITZ: Yes, Your Honor. And there's an
7 affidavit of service that was filed on the docket last night
8 that specifies that notice was given on March 19th.

9 THE COURT: All right. And one drafting comment.
10 With respect to -- and it's in paragraph 9. On page 18,
11 paragraph 9, the middle sentence. "As a condition to any post-
12 petition lending, the Lenders require the Debtors to repurchase
13 the receivables portfolio." That seems to me should be more of
14 a -- should appear in the findings and as opposed to the
15 ordered paragraphs because the order there really is "The
16 Debtors are hereby authorized" and then it carries forward and
17 should follow the last sentence, "Such repurchase shall be
18 revocable", et cetera. But that middle sentence, for what it's
19 worth, belongs somewhere else.

20 MS. LABOVITZ: Your Honor, we appreciate your
21 drafting suggestion and we agree.

22 THE COURT: Well, I won't take credit for it but I'm
23 glad you appreciate it. Let me just look -- see more notes.
24 All right. I think that's the extent of the comments I wanted
25 to add. So what we're left with now is putting on whatever

1 evidence that you're going to present. Now can you just
2 outline for me who will testify in what order, et cetera?

3 MS. LABOVITZ: Your Honor, my partner, David Zott,
4 will present the testimony of Mr. Daniel Aronson, who is a
5 managing director at Lazard, who negotiated and arranged for
6 the financing. And after that, to the extent that any
7 additional points need to be covered, we'll offer the testimony
8 of Stephen Forsyth, who is the chief financial officer of the
9 debtors and who also submitted an extensive declaration in
10 support of the financing.

11 THE COURT: Will anyone else be presented by any
12 other party?

13 MR. SOSNICK: Your Honor, having heard the requested
14 objectors to put on evidence regarding whether or not people
15 would -- the lenders to -- I guess, the owners of the
16 receivables would release their receivables absent getting paid
17 in full, that request having just come up, we'd like to give a
18 little thought to how that evidence is going to get put into
19 the record.

20 THE COURT: All right. What I'll do is I'll take
21 about a ten minute -- well, I'll come back at 11 o'clock. I'll
22 take a short break. You can organize yourselves and then we'll
23 proceed with the evidence.

24 MS. LABOVITZ: Thank you very much, Your Honor.

25 THE COURT: All right? Thank you.

1 (Recess from 10:49 a.m. until 11:06 a.m.)

2 THE COURT: Those of you who already haven't done so
3 and you certainly may be free to take off your jackets -- we're
4 apparently in between seasons so we're just going to suffer.
5 Seasons as in neither have the heat on or the air conditioning
6 so we have nothing.

7 MR. ZOTT: Good morning, Your Honor. My name is
8 David Zott, Z-O-T-T. We're going to call a witness. But
9 before that, I understand one of the receivable lenders would
10 like to make a brief statement to the Court.

11 THE COURT: All right.

12 MS. METZGER: Good morning, Your Honor. Laura
13 Metzger from the firm of Orrick, Herrington & Sutcliffe LLP on
14 behalf of the Royal Bank of Scotland. I'm here today because I
15 represent both the largest purchaser and receivables financing
16 and the largest holder of the to-be DIP financing. I wanted to
17 reaffirm the statement made by Mr. Sosnick that our consent to
18 release these assets from the receivables financing is, in
19 fact, contingent of their repayment on the DIP.

20 THE COURT: All right. The repayment under the terms
21 and conditions that are set forth?

22 MS. METZGER: Yes, correct.

23 THE COURT: And to be even more specific, if there's
24 any authorization to look back at the securitization, you are
25 not consenting to advancing -- or you're not consenting to the

1 transaction.

2 MS. METZGER: That is correct, Your Honor.

3 THE COURT: All right.

4 MS. METZGER: Thank you.

5 MR. ZOTT: Your Honor, the debtors call Daniel
6 Aronson.

7 THE COURT: All right.

8 (Witness duly sworn)

9 THE COURT: Thank you.

10 DIRECT EXAMINATION BY

11 MR. ZOTT:

12 Q. Can you please state your name and spell your last name
13 for the record?

14 A. Daniel Aronson, A-R-O-N-S-O-N.

15 Q. Where do you work, Mr. Aronson?

16 A. Lazard.

17 Q. And what is your position there?

18 A. I'm a managing director in their restructuring group.

19 Q. And for how long have you been with Lazard in
20 restructuring?

21 A. Eight years.

22 Q. And before that, what did you do, sir?

23 A. Less than nine months at Peter Solomon Company working in
24 their restructuring group and then over ten years at Ernst &
25 Young also in their restructuring group.

1 Q. All together, how many years have you worked in the
2 restructuring area as a professional?

3 A. Approximately twenty.

4 Q. And as part of your responsibilities -- well, generally,
5 what are your responsibilities at Lazard?

6 A. Including some administrative things which don't see the
7 light of day, I assist in running certain of our clients, both
8 procuring them as clients, servicing their needs and executing
9 on all -- on our engagements.

10 Q. Does that include providing financial advice to debtors?

11 A. Yes, it does.

12 Q. And also, as part of your responsibilities, do you secure
13 DIP financing?

14 A. Yes, I do.

15 Q. And can you just give the Court a general idea of the
16 experience that you've had over your career in seeking DIP
17 loans and securing them, negotiating them?

18 A. Sure. Over the last approximately twenty years, I would
19 say I've averaged three to five DIP loans a year so that's
20 somewhere between sixty and a hundred.

21 Q. Okay. And did there come a time since you heard it
22 asked -- I think we know the answer to this -- when you were
23 retained by Chemtura to assist them with their financial
24 distress?

25 A. Yes, I was, in mid-February.

1 Q. And what were you retained to do, sir, you and your firm?

2 A. At the time, it was referred to as contingency planning.

3 And soon it became reality planning. We were hired to raise

4 financing both whether we could find it out of court or in

5 court and it became very apparent that it was an in-court

6 situation that we were looking for liquidity. We were hired to

7 do all the things that are in my engagement letter, as well,

8 which includes valuation, testimony, raising of the DIP,

9 raising additional financing and providing testimony, if asked,

10 providing advice to the board, et cetera.

11 Q. Focusing on the DIP loan then, can you -- I'd like to just

12 walk through the process by which we came to the court today

13 with respect to this DIP loan. Can you tell the Court, when

14 did you begin approaching potential lenders?

15 MR. ZOTT: Just hold on one second.

16 THE COURT: No. Go ahead.

17 MR. ZOTT: Should I keep going? Okay.

18 Q. When did you begin the process of approaching potential

19 lenders with respect to a DIP loan?

20 A. Immediately upon our attention in mid-February, we had a

21 due diligence session with the company. And based upon that

22 discussion, we reached initially out to Citibank as agent to

23 the AVL and securitization as well as four other parties at

24 that time and then expanded to little bit later on.

25 Q. Okay. And how would you describe the nature of the credit

1 markets at that time in general and the market for DIP lending
2 in particular?

3 A. The credit markets are essentially closed. There's very
4 little capital chasing a lot of distressed deals. So where a
5 loan like this should be -- which is not as leveraged as some
6 of the other loans out there and should be priced inside of
7 those other loans, in this market because there's such scarce
8 capital, it's very difficult to get the pricing that one would
9 imagine you could get in a different environment.

10 Q. And you mentioned then that you approached Citibank as
11 well -- did you say four other potential lenders?

12 A. At the time, there were four other potential lenders,
13 that's correct.

14 Q. And did those lenders, those potential lenders, did they
15 sign confidentiality agreements and receive materials?

16 A. Yes. All four of those lenders signed confidentiality
17 agreements. We received written proposals from three of the
18 four. We started down the road with one of those three and
19 realized that they weren't able to get there for various
20 reasons. So immediately we paid deposits to both Citibank as
21 well as one other lender. And I don't know what their
22 confidentiality agreement states so I don't -- if I don't have
23 to use their name in here, I prefer not to.

24 Q. Okay. Did the debtor then get to the point where -- with
25 respect to the -- I guess now we're talking about possibility

1 of maybe two or three lenders. Did it narrow that down?

2 A. Yes. We narrowed it down to two lenders and started
3 moving forward with those two lenders. And then we received a
4 phone call -- an e-mail, really, Friday, March 6, suggesting
5 that a group of bondholders were interested in providing a DIP
6 as well.

7 Q. These would be some of the parties that are objecting
8 today?

9 A. I believe that they are represented by those in the
10 courtroom, correct.

11 Q. Okay. Well, let's take a look -- let me follow up on that
12 point. Did you then respond to the inquiries from some of
13 these bondholders about a possible loan?

14 A. Yes. They suggested I go directly to their professionals
15 which I did. Walked their professionals through certain
16 confidential information that I felt comfortable sharing with
17 them, trying to size the DIP of -- on a secured priming basis
18 and on an unsecured non-priming basis. And as of this time,
19 that group has not signed a confidentiality agreement.

20 Q. So did that effort go anywhere?

21 A. No. Initially, it was silent for about a week. And then
22 last Friday, a week ago, the 13th, I received a phone call at
23 about 7 p.m. from a working capital lender who says that
24 they're currently representing that group and we're working to
25 provide a DIP. I suggested that the timing needed to be what

1 we had hoped to be early -- this past -- this week and they
2 said that they couldn't get there in time. I suggested they
3 keep working and I've also introduced them to the other party
4 that I did not mention -- did not mention their name earlier.

5 Q. Okay. So through this whole process, have the noteholders
6 presented anything that would provide funding for this debtor?

7 A. No.

8 Q. All right. So then focusing on who is left, we've got
9 Citibank, the pre-petition lender and then one other party?

10 A. That's correct.

11 Q. Okay. And then did the debtor move forward -- how did the
12 debtor move forward with respect to those two and ultimately
13 why did you choose Citibank and its deal?

14 A. To cut the story short, Citibank was the only one who was
15 able to get there as -- even through today. So it was the only
16 option that we had.

17 Q. Okay. And does the debtor need this loan?

18 A. Yes.

19 Q. Why?

20 A. Well, when we were first hired, and many people in this
21 courtroom have heard me say it before, it was our opinion that
22 the company was running on fumes. It has, you know, single
23 digit liquidity and was managing their operations and shutting
24 down plants so that they could manage through their liquidity
25 issues. That managing and shutting down of certain plants

1 causes both short term and potentially long term value
2 degradation in their business. And that's something that the
3 management team and the board wanted to avoid. And so, it was
4 apparent to all of us that we needed to get this company in and
5 in as quickly as possible. And when I say in, I mean in
6 Chapter 11.

7 Q. And for how long did the negotiations with Citibank's --
8 them and their counsel take? Over what period of time?

9 A. Approximately four weeks.

10 Q. And how would you characterize those negotiations?

11 A. Difficult. Difficult.

12 Q. Hard fought? Arm's length?

13 A. Yes.

14 Q. Okay. Let's talk about some of the key terms of the
15 facility and then I'd like to address the Court's questions.

16 First, what's the size of the -- assuming there's final
17 approval, what would the size be?

18 A. Four hundred million dollars.

19 Q. And how is that divided?

20 A. Term loan would be 250. Then the revolver would be the
21 balance. And there's a split between the rollup revolver and
22 the non-rollup revolver.

23 Q. And then, with respect to the interim facility that we're
24 asking for approval today, how large is that and how is that
25 divided?

1 A. A hundred and ninety-five million dollars; a hundred and
2 sixty-five in term loan and twenty-five in revolver.

3 Q. And you mentioned rollup. Is the rollup an issue for
4 today at all?

5 A. Not that I'm aware of.

6 Q. And that's because why?

7 A. That's because the rollup does not roll up until the final
8 order.

9 Q. Okay. Why don't we talk about the basic interest rate?
10 Can you tell the Court the interest rate?

11 A. Sure. The interest rate is LIBOR plus 7.50 with a three
12 percent floor. So that's effectively ten and a half percent.

13 Q. And we've heard a little bit about fees. Were you also
14 involved, you and the lawyers, in negotiating the fees?

15 Q.

16 A. Yes, I was.

17 Q. And do you recall the fees?

18 A. The fees are three percent up front on the non-rollup
19 portion of the revolver -- the non-rollup portion of the DIP
20 and three percent on the back end as well as two percent on the
21 back end for the rollup.

22 Q. And given the nature of the credit markets, as you
23 described earlier, what's your view with respect to the
24 interest rate and the fees as to how they compare to market
25 today in this environment?

1 A. They are reasonably at market. It's sixteen and a half
2 percent all in for the new money and significantly south of
3 that on the rollup because the rollup is L three percent floor
4 with 3.50, I believe, as the pricing. So the new money is at
5 or around market based upon our experience.

6 Q. And is it fair to say there are certain provisions in this
7 loan that you would prefer not to have in there?

8 A. There are certain provisions with every loan that I prefer
9 not to have in there, but yes.

10 Q. Okay. And can you give us an example or two?

11 A. Sure. Some of the issues that remain in there and that we
12 thought hard about were this hundred percent concept if
13 somebody files an objection to the DIP, we have five days to
14 rush into court and try and get that objection over -- over --
15 get that projection (sic) dismissed by the Courts. Otherwise,
16 it's a hundred percent vote of the creditors.

17 I think from the business points, the liquidity cushion
18 and measurement, the EBITDA covenants, et cetera, were hard
19 fought and are reasonably fair and we feel comfortable. You
20 know, would we have liked to have done better? The answer to
21 that is yes, we would have liked to have done better but under
22 the circumstances, we fought as hard as we could to get
23 whatever cushion we could get.

24 Q. Okay. I want to just come back to the interest rate. I
25 was handed a note. If the European receivables facility is not

1 in place, is there an increase in the interest rate?

2 A. Yes, there is. They would go up by -- they would increase
3 by two and a half percent to the risk involved with funding
4 foreign operations where approximately fifty percent of our
5 business is.

6 Q. Okay. Let me talk then, sir, about the --

7 THE COURT: I want to interrupt for a moment. With
8 respect to your reference to market rate, the sixteen and a
9 half, that's market rate for DIP loans or is that market rate
10 for loans? What is your reference point when you say market
11 rate?

12 THE WITNESS: It's market rate for DIP loans. Even
13 for exit financings on distressed companies these days, which
14 are very hard to come by, the rate is mid to high teens for the
15 most part, all in.

16 THE COURT: Thank you.

17 THE WITNESS: Sure.

18 Q. One of the issues -- let's talk about the use of the
19 funds. We heard about this receivables facility. We talked a
20 little bit about that with the Court. And is a portion of the
21 interim loan -- will it be applied to the receivables facility?

22 A. Yes. Approximately 117 million.

23 Q. And can you explain to the Court why the debtor needs to
24 repay that facility?

25 A. Well, it's been represented to me by the agent to that

1 facility as well as what we heard from RBS' attorney that
2 that -- that we would not be able to -- they would not release
3 their collateral without full -- obviously full repayment as
4 well as releases.

5 Q. Okay. So you're answering my next question which I'll --

6 A. Sorry.

7 Q. That's quite all right. Just before we get there, why,
8 from the debtors' perspective, is it necessary to pay off this
9 receivable facility?

10 A. To get the collateral in order to borrow under the
11 facility the amounts that we need.

12 Q. Okay. And then I think you answered my next question
13 which is there's been an objection raised, as you heard, to the
14 release of potential claims against the receivable lenders.
15 And do you have any understanding as to whether they would
16 basically release these funds unless if they get that kind of a
17 waiver?

18 A. They would not.

19 Q. All right. You heard their counsel at least to one of the
20 lenders represent that today?

21 A. I heard their counsel represent that and I've also been in
22 contact with the agent, Citibank.

23 Q. Okay. Let me ask about the size of the facility. In
24 particular, the Court raised the question -- well, let me back
25 up. How did the debtor go about determining the appropriate

1 size of both the interim and the final facility?

2 A. Based upon a thirteen-week cash flow as initially prepared
3 by management at Lazard and then subsequently prepared by
4 Alvarez, the company and reviewed by Lazard.

5 Q. Okay. The Court raised the question about the requirement
6 that the debtor operate within a ten percent variance to budget
7 between now and the final hearing. Can you tell the Court
8 whether, based on your understanding of the debtors' finances
9 and the budget, that that's a doable thing?

10 A. Do you mind if I clarify what I understand that point to
11 be because --

12 Q. Please.

13 A. -- ten percent is not on a weekly basis. It's a ten
14 percent test over a four week period --

15 Q. Okay.

16 A. -- based upon that cash flows.

17 THE COURT: Let me interrupt. If the final hearing
18 is held within the four week period, there is no calculation of
19 the ten percent variance?

20 THE WITNESS: I don't know the -- yes is the answer
21 to your question.

22 THE COURT: Well, I don't know the answer to it
23 either.

24 THE WITNESS: Yes is the answer. That is my
25 understanding, Your Honor.

1 Q. All right.

2 THE COURT: All right.

3 Q. So it may not be an issue at all if the hearing is within
4 four weeks. And assuming that the hearing is not within four
5 weeks, what's your view as to whether the debtor will be able
6 to operate within that ten percent variance.

7 A. Based upon my conversations with both the CFO, Mr.
8 Forsyth, as well as Mr. Dombrowski, the CRO, and our own
9 analysis, we feel that that -- with the cushions built into the
10 projections from a timing standpoint are sufficient in order to
11 operate within that ten percent cushion that, once again, would
12 I like more? Yes. Were we able to get more? No.

13 Q. In your judgment, sir, based on having done this for
14 twenty years and having done fifty or sixty of these, should
15 the Court approve the DIP facility on an interim basis?

16 A. Yes, it should.

17 Q. Why?

18 A. Well, I think the bottom line is that it was -- this
19 company would lose significant value without it, would not be
20 able to pay their vendors, would have to shut up -- shut
21 certain of their operations and, as a result, would lose
22 significant value. That, in and of itself, is reason enough to
23 approve this interim DIP. There was nobody else at the time
24 that was willing to step up and there's nobody else, as I sit
25 here today, even after we filed the papers publicly, who have

1 stepped up and said we're willing to beat that.

2 MR. ZOTT: Your Honor, those are the all the
3 questions I have. If you have further questions, however --

4 THE COURT: I do. In terms of other parties who have
5 been willing to step up -- obviously, some parties expressed
6 interest. Would anybody, any party, express any interest if
7 the additional collateral wasn't purchased by the debtor? So,
8 in other words, is there some discussion about whether or not
9 it's the restrictions placed in this order on anyone's ability
10 to challenge the securitized collateral package if they were in
11 the order it wouldn't be sold. And there was also at least
12 statements made that without that additional collateral, there
13 wouldn't be a DIP loan. What was the view, if any, expressed
14 by those that expressed an interest as to whether or not they
15 would even entertain and continue discussion with you if they
16 didn't have that collateral?

17 THE WITNESS: Both parties explored that option, Your
18 Honor. Or I explored both of those options with the two
19 parties. And both were willing to at least consider it but
20 neither were able to get there at this time. So they were
21 willing to lend without those receivables. But it was unclear
22 to them and, quite frankly, unclear to us if the borrowing
23 dates that we were to eventually negotiate with them was going
24 to be sufficient in order to operate the business with the cash
25 drain because the -- if you were to look at the thirteen-week

1 cash flows, the receivables, which is the U.S. receivables,
2 which is that top line, would disappear. And it would be
3 replaced by new receivables which would be put under the
4 balance sheet. Cash collections would not happen for, at a
5 minimum, four to six weeks. So for four to six to weeks the
6 cash drain on -- the cash available for this comp -- to this
7 company would have to come from solely the DIP as opposed to
8 ongoing operations.

9 THE COURT: All right. Thank you.

10 MR. ZOTT: I have nothing further. Thank you, sir.

11 THE COURT: All right. Would anyone else like to
12 question the witness?

13 MR. RAVAL: Your Honor, on behalf of the noteholders,
14 I'd like to introduce my partner, David Cohen, we filed as pro
15 hac this morning.

16 THE COURT: All right.

17 MR. COHEN: Good morning, Your Honor.

18 THE COURT: Good morning.

19 CROSS-EXAMINATION BY

20 MR. COHEN:

21 Q. Good morning, Mr. Aronson. I'm David Cohen with Milbank
22 Tweed on behalf of certain of the holders of the 2016 bonds.
23 You testified that it took you about a month to reach closure
24 on the terms of the proposed with the DIP lenders, is that
25 right?

1 A. That's correct.

2 Q. And you've been engaged in discussions with the bondholder
3 group who have indicated a willingness to provide DIP financing
4 for about two weeks, is that right?

5 A. The first time that they've reached out to us has been
6 about two weeks ago, that's correct.

7 Q. So March 6th is about two weeks before today, right?

8 A. Yes. They reached out to our firm earlier but never heard
9 back until March 6th when they told us to call their financial
10 advisor.

11 Q. And when they reached out to you, you started those
12 discussions with them, right?

13 A. That's correct.

14 Q. And as recently as last Friday, you were continuing those
15 discussions, right?

16 A. Yes.

17 Q. Those discussions aren't over, are they?

18 A. I have no idea.

19 Q. The bondholders have never said to you we're not
20 interested in providing DIP financing, have they?

21 A. That's correct.

22 Q. And you've never said to them we're no longer interested
23 in taking DIP financing from you, have you?

24 A. I've welcomed the opportunity.

25 Q. So you're continuing to look for final DIP financing on

1 more favorable terms, right?

2 A. I think that's my responsibility as a fiduciary to the
3 estate, yes.

4 Q. So yes, you are?

5 A. Yes.

6 Q. All right. And if you're able to find more favorable
7 terms, then you'll present them to the Court because that'll be
8 in the interest of the debtors and their estates, right?

9 A. If I can find more fa -- yes.

10 Q. All right. To your knowledge, have the bondholders
11 internally concluded that they're not interested in providing
12 financing?

13 A. There's been no representation either way.

14 Q. All right. Now the interim DIP, I believe you testified,
15 was necessary because the company was facing a liquidity
16 crisis, correct?

17 A. That's correct.

18 Q. And with the interim DIP in place, that liquidity crisis
19 would at least be alleviated, right?

20 A. That's correct.

21 Q. So the company would be able to continue its operations
22 and purchase its inventories and continue to manufacture
23 chemicals from here on out, right?

24 A. No.

25 Q. With the interim DIP, they would not have their liquidity

1 situation solved, is that your testimony?

2 A. No. That's not my testimony. You said from here on out.

3 Q. At least until final financing is put in place.

4 A. That's fine.

5 Q. All right. And if a different DIP lender comes in then
6 presumably that would address the company's liquidity going
7 forward, right?

8 A. If we were on terms acceptable to the company and the
9 other constituencies, yes.

10 Q. Well, the company wouldn't come to court with a DIP that
11 was not acceptable to it, would it?

12 A. No.

13 Q. There was some testimony about the receivable facility.
14 Do you recall giving that testimony?

15 A. Yes, I do.

16 Q. Under the receivable facility, is one hundred percent
17 consent needed to release those assets, one hundred percent
18 consent of the holders?

19 A. I don't know the answer to that question.

20 Q. That's not something you looked at?

21 A. I didn't look at the specific documents, no.

22 Q. All right. You testified that you heard from RBC (sic)
23 that without the protections in the DIP motion that it would
24 not sell its receivables, right?

25 A. No. That's not what I testified.

1 Q. What was RBC's view on that?

2 A. I have no idea who RBC is.

3 Q. RBS, I'm sorry.

4 A. You talking about RBS?

5 Q. I'm sorry, RBS.

6 A. Okay. RBS represented -- you heard them -- you were
7 sitting in this courtroom as well as I did -- that they're not
8 willing to release their collateral.

9 Q. Prior to that statement in court, had you had any
10 communication with RBS as to whether they were willing to
11 release their collateral?

12 A. RBS? No.

13 Q. With any of the other holders of collateral.

14 A. Yes.

15 Q. With whom?

16 A. Citibank.

17 Q. And how much does Citibank hold?

18 A. They're the agent. They were speaking on behalf of the
19 group.

20 Q. Are you familiar with the fee letter that's referenced in
21 the DIP agreement?

22 A. Yes, I am.

23 Q. That's the fee letter dated March 5th?

24 A. Yes.

25 Q. What does the fee letter provide?

1 **A. For --**

2 MS. LABOVITZ: Your Honor, the terms of the fee
3 letter are confidential. We would ask that if Mr. Aronson is
4 to answer the question that the courtroom be cleared.

5 MR. COHEN: Your Honor, the fee letter contemplates
6 the payment by the debtors of fees in connection with this DIP
7 financing. I don't know how they can be confidential in the
8 court -- the fee letter hasn't been provided to the
9 bondholders, it hasn't been provided to the Court. It's made
10 part of the loan documents by its own definition. I don't know
11 how we can adequately consider the fees when they're not
12 disclosed to anybody.

13 MR. SOSNICK: Your Honor, part of the way this works
14 is the fees get paid in relation to getting people into the
15 DIP. This is traditionally handled, if we're going to do it,
16 under seal because there's an important market reason why the
17 fees within the fee letter which relate to putting the deal
18 letter don't get disclosed because that's how -- it just would
19 be detrimental to the market to get lenders on board. So
20 that's the way we would normally do it if it's going to be in
21 dispute. I'm not sure what the dispute even is but this will
22 go to the committee undoubtedly. When the committee is formed
23 then the committee would review it and if it had to get filed,
24 it would get filed under seal. Just doing this --

25 THE COURT: Well, which of these are we talking about

1 just so I can understand the context of the question?

2 MR. SOSNICK: The fees under the payable to the
3 lenders under the credit agreement are disclosed in the credit
4 agreement. The fees for syndication are in the fee letter --
5 for arranging and syndicating the letter.

6 THE COURT: But what does that mean to the debtor?
7 That's what I'm not clear on. What is the impact on the debtor
8 of these fees?

9 MR. SOSNICK: Well, the impact is that they pay them.
10 But the impact on getting the syndication done is that those
11 fees, if they're in the marketplace, have a detrimental impact
12 on the syndication loan.

13 THE COURT: I understand that the debtors are going
14 to have to pay them but when are these fees -- let me approach
15 it differently. When are these fees that you're addressing
16 approved? When are they sought to be approved? Now? Even
17 though I don't know what they are? I mean, that's what I'm
18 not -- it's not clear to me is what you're asking.

19 MR. SOSNICK: Part would be payable now and part
20 relates to the final order of payment.

21 THE COURT: So the debtor is asking for approval of
22 the syndication fees payable now with respect to what -- who's
23 involved in the syndication? And then by the time the final
24 who else comes in, there are additional fees?

25 MR. SOSNICK: Just --

1 THE COURT: It's not that hard -- I mean, I
2 understand your reluctance to disclose the information but it's
3 not a very complicated question and to what is going on and
4 what I'm being asked to do.

5 MR. SOSNICK: Your Honor, that's why -- the way,
6 again, that we normally see this come up is that if it's
7 required to be filed, it's filed typically under seal.

8 THE COURT: But I want to know what it is.

9 MR. SOSNICK: It's an arranger's fee. It's a fee for
10 arranging the loan.

11 THE COURT: All right. So the arrangement fee -- and
12 how much of that fee is being sought to be approved today?
13 That's what I don't understand.

14 MR. SOSNICK: The --

15 THE COURT: For what monies does it relate to? Does
16 it relate to the numbers of parties who have participated?
17 What is it?

18 MS. LABOVITZ: Your Honor, while Mr. Sosnick is
19 checking on the timing of the payment of those fees, I would
20 just make a formal request that if the amount of the fees are
21 to be disclosed in the courtroom that the Court, under Section
22 107(b)(1) of the Bankruptcy Code protects that confidential
23 commercial information from disclosure in the public record.

24 MR. SOSNICK: Your Honor, in answer to -- well, I
25 think the earlier question was there's a portion payable that

1 relates to the amount that's going to be approved today. And
2 there's a portion of the arranger's fee that relates to the
3 approval of the final order and the monies that become
4 available then. So I think it's bifurcated in that way.

5 THE COURT: All right.

6 MS. GOLDEN: Your Honor, two things. One, the U.S.
7 trustee objects to making this fee confidential. This very
8 issue came up a few weeks ago in the Trunuts (ph.) case before
9 Judge Gropper. In fact, Kirkland & Ellis was counsel there.
10 The motion was filed. The judge overruled it and said that
11 this kind of information is not under Bankruptcy Rule 107(b)(1)
12 considered confidential information. The deal had been
13 finalized. The fees or a portion of them were going to be paid
14 pursuant to the interim order and that there was no reason why
15 they could not be disclosed in an open courtroom.

16 Your Honor, we're also concerned because there's been
17 no testimony as to whether the fee was arranged in an arm's-
18 length transaction and everything else that went into it.

19 THE COURT: All right.

20 MR. COHEN: Your Honor, the bondholders are concerned
21 that the Court is being asked to approve fees the amount or
22 nature of which are not disclosed. And I think the way around
23 this may be to defer the approval of those fees till the final
24 hearing when a committee is in place and can take a look at
25 those.

1 THE COURT: Well, that's one way around it. But it
2 doesn't get around both issues. So unless the parties are
3 willing to put off approval until the end, I have to deal with
4 the request to leave whatever fees to date are being sought to
5 be approved confidential. I'm just pointing out. So let me
6 just first hear whether the lender is willing to wait for the
7 fee approval to any of these fees until the final hearing and
8 Judge Gerber can deal with the issue of confidentiality as to
9 what is the reasonableness of the fees or then state for the
10 record what specific fees need to be approved today and I'll
11 have to determine whether or not the amount of those fees
12 remain confidential or put on the record.

13 MR. SOSNICK: Your Honor, I think from the deferral
14 of the whole issue doesn't work because there is a --

15 THE COURT: I couldn't hear what you said.

16 MR. SOSNICK: Sorry. The deferral of the entire fee
17 doesn't work till the final order.

18 THE COURT: All right.

19 MR. SOSNICK: I would suggest, Your Honor, that
20 because the interim request is less than half of the final
21 order, if Judge Gerber, when he hears this, in regards to how
22 he decides the letter gets submitted -- whether it's under seal
23 or not, there will be ample room for him to address the overall
24 size of the fees because there is only -- and it's an equal
25 amount that's payable with respect -- equal rate payable with

1 respect to the interim and the final. So more than half, by
2 definition, is going to be not payable until the final.

3 THE COURT: Well, there's another way to address it,
4 too, if you would want to present it's no greater than X if
5 that doesn't put at issue what you consider should be
6 confidential business information versus the precise number.
7 But if you're not willing to do that, then I have to deal with
8 the confidentiality issue.

9 MR. SOSNICK: I can't answer that standing here at
10 the podium by myself right now.

11 THE COURT: All right. Then we'll move on and won't
12 address this question right now to the witness. Go ahead.

13 BY MR. COHEN:

14 **Q. Mr. Aronson, other than the fees made reference to by the**
15 **fee letter, to your knowledge, are there any other undisclosed**
16 **fees in the DIP motion?**

17 **A. No.**

18 MR. COHEN: I have nothing further, Your Honor.

19 THE COURT: All right. Anyone else?

20 CROSS-EXAMINATION BY

21 MR. ASHMEAD:

22 **Q. Good morning. John Ashmead from Seward & Kissel. Just a**
23 **few questions. To your knowledge, are the DIP lenders a subset**
24 **of the pre-petition facility lenders?**

25 **A. That's not an accurate statement.**

1 Q. No? It's not a subset of the pre-petition credit facility
2 lenders?

3 A. Some are pre-petition lenders and some are not.

4 Q. Okay. With respect to the other lender prospect that you
5 were speaking to prior to finalizing the deal with the DIP
6 lenders before the court today, putting aside for a moment the
7 bondholders you were speaking to, where did you leave it with
8 the other lender prospect or how far had you gotten in terms of
9 the proximity to actually having a deal with them?

10 A. We were through one or two rounds of commitment letters
11 and documentation. But they were not there in -- from a
12 commitment standpoint. They were waiting for a third-party
13 appraiser to finish their work which they received a draft copy
14 of and they still weren't -- still are not there as of today.

15 Q. Do you have a sense of -- or did they indicate when they
16 thought they would be there affirmatively or not?

17 A. No.

18 Q. How did the pricing and fees on that proposed facility
19 compare to the pricing and fees on the facility that's being --
20 presents to the Court for approval today?

21 A. It was more expensive.

22 MR. ASHMEAD: No further question.

23 THE COURT: Anyone else? Any redirect?

24 MR. ZOTT: Very briefly, Your Honor.

25 REDIRECT EXAMINATION BY

1 MR. ZOTT:

2 Q. I had asked you during your direct examination whether the
3 terms of the loan were negotiated at arm's length. I think you
4 told me yes. Let me be specific. How about the fee part of
5 it? Was that also negotiated at arm's length?

6 A. Yes, it was.

7 Q. And did you try -- you and your colleagues -- try to get
8 the fees as low as you could?

9 A. Yes, we did. And sometimes that discussion got pretty
10 ugly.

11 Q. Okay. You also said if the noteholders were to come in in
12 the interim period with a better deal, as a fiduciary, you
13 would take a look hard at that and you would see what you could
14 do with that, right?

15 A. Absolutely. I've done it before and I'll do it again.

16 Q. Would you welcome it?

17 A. Welcome it.

18 Q. But today is there a better deal?

19 A. No.

20 Q. Today is there any other deal?

21 A. No, there's not.

22 Q. Let me just read you from the first paragraph of the
23 noteholders' objection where they say "The noteholders do not
24 seek to bar the debtors from obtaining the interim post-
25 petition financing that they so clearly need. Indeed, the

1 noteholders acknowledge the Herculean efforts undertaken by the
2 debtors to obtain the DIP financing." Do you agree with those
3 statements, that these efforts were Herculean and that we
4 clearly need it?

5 A. I would be patting myself on the back so I'll recognize
6 their compliment and I appreciate it.

7 Q. Okay. Fair enough.

8 MR. ZOTT: Thank you.

9 THE COURT: Anyone wish to recross? You may step
10 down. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 MR. ZOTT: Your Honor, we're not intending further
13 testimony on the DIP loan. We may have a witness on some of
14 the others but not on this.

15 THE COURT: All right. Then are we at a different
16 place with respect to the disclosure of the fees?

17 MR. SOSNICK: Your Honor, I'll need at least a minute
18 away from --

19 THE COURT: All right. I'll take a ten minute break.
20 I'll come back at five till twelve.

21 MR. SOSNICK: Thank you, Your Honor.

22 (Recess from 11:46 a.m. until 12:02 p.m.)

23 THE COURT: Please be seated.

24 MR. SOSNICK: Good afternoon, Your Honor. A couple
25 of things. First of all, just maybe one or two other points to

1 quickly address. I think, Your Honor, returning to a question
2 you asked earlier with regard to the environmental provision in
3 the DIP order, which is paragraph 32, the United States
4 Attorney's Office has come forward, I guess on behalf of the
5 EPA and has suggested language to insert into the order which
6 we find acceptable. So we will include that --

7 THE COURT: All right.

8 MR. SOSNICK: -- that language. And a couple of
9 other just kind of housekeeping points, there was a question
10 raised about whether the setoff rights were not going to be
11 primed. We have clarified that that's going to be the case.

12 THE COURT: I couldn't hear what you said. Whether
13 the setoff --

14 MR. SOSNICK: Sorry. I said there was a question
15 raised by one of the objectors about setoff rights not being
16 primed. And that's isn't our intent. So --

17 THE COURT: All right. So they will not be primed?

18 MR. SOSNICK: Right. And we could add --

19 THE COURT: All right.

20 MR. SOSNICK: -- language to clarify that if we need
21 to. We're also -- in response to one of the other questions
22 Your Honor asked earlier about the sixty-day period, at least
23 from the agent's perspective, we're prepared to indicate, and
24 this is on the challenge period, Your Honor, that if a motion
25 seeking request to file a complaint is filed with an attached

1 complaint that that would extend for another fifteen days the
2 period. So if the committee came in on the fifty-ninth day,
3 they'd have up until the seventy-fifth day -- the Court would
4 have up until the seventy-fifth day to approve the committee
5 filing the complaint and the complaint actually being filed.

6 THE COURT: All right. There were two parts of that
7 section. One was whether or not language unless otherwise for
8 cause the Court extends, or the way it appears to read right
9 now, is that it's only consent to the party unless, under Rule
10 60(b), the order could be attacked.

11 MR. SOSNICK: And --

12 THE COURT: So where does it stand with respect to
13 the phrase "unless otherwise ordered by the Court for cause"?

14 MR. SOSNICK: Your Honor, from the lenders'
15 perspective, that's too open-ended because then it really isn't
16 a time period. So, yeah, as to that, we wouldn't propose to
17 make a change.

18 THE COURT: All right. So the only issue would be
19 they'd still be bound by the sixty days. And within that sixty
20 days if they file an STN motion coupled with a draft complaint,
21 there would be another fifteen days, I guess, effectively -- or
22 essentially, for the Court to address the SDN motion.

23 MR. SOSNICK: Correct. So in other words, they
24 would -- yes. They'd have the full sixty days to complete
25 their review which is where we thought you were going on that

1 point. I understand you made two points, Your Honor.

2 THE COURT: Now that -- now what is the issue with
3 respect to the final as to that provision? In your view, that
4 would not be subject to, unless you consented, further
5 negotiation -- further modification as to that? I mean,
6 assuming a committee's appointed and negotiations take place,
7 only if you agree to extend that sixty-day period, in your
8 view, would that happen?

9 MR. SOSNICK: That's correct, Your Honor.

10 THE COURT: All right.

11 MR. SOSNICK: Now, coming back to the fee letter, I
12 think, Your Honor, we would say in open court today is that --
13 and I guess it actually goes back to what we thing was one of
14 the questions of the other fees that are there. There is a
15 175,000 dollar administrative agent fee which we think is quite
16 standard in line with what other administrative agents would
17 charge in the fee letter. But the other thing, Your Honor, is
18 that what I would represent is that the rest of the fees would
19 be less than five percent of the facility. And we would -- as
20 to the portion that relates -- and I say less than. I want to
21 emphasize it's less than. I'm taking Your Honor's cue that it
22 is not five percent. But it is less than that. And that we
23 today would have bound only the portion that relates to the
24 interim borrowings and that anything else in the fee letter
25 other than the administrative fee, the 175,000, and the portion

1 of the remainder of the fees that relate to the interim
2 borrowing would be subject to further Court order and
3 presumably either at the final order or at some other time.

4 THE COURT: So let me do some math with you. The
5 reference to the case Judge Gropper decided --well, let me ask
6 a question first before I said it. In this situation, has the
7 syndication been completed?

8 MR. SOSNICK: It has largely been completed but it's
9 not compl -- I don't think the arranger would think it is
10 completed at this point.

11 THE COURT: All right. Well, one of the points that
12 was made in the case before Judge Gropper -- and I'll read to
13 you from the transcript on page 45. Counsel, I guess, for the
14 agent makes a statement to Judge Gropper about why it should be
15 under seal. And then Judge Gropper responds by saying "And in
16 the current situation, has this syndication been done or is
17 this syndication in process?" The answer: "It's substantially
18 complete."

19 "THE COURT: It's complete. Well, then I see no
20 support for sealing the fee and it should be disclosed. Thank
21 you."

22 THE COURT: And then further, when it is disclosed in
23 that case, the U.S. trustee's office, I believe, makes a
24 statement about it. And at one point -- no, it's not the U.S.
25 trustee; it's a Mr. Adams. Mr. Adams makes a statement: "Your

1 Honor, it was a three percent fee." And then Judge Gropper
2 goes on to find that that's reasonable in the marketplace.

3 Now, if I do the math and this fee at issue is less
4 than five percent and, on the interim basis, you are getting no
5 more than half of that amount of fees, is that correct?

6 MR. SOSNICK: Yes, exactly.

7 THE COURT: So on the second half of that lending if
8 it takes place and the amount of the fee is at an amount
9 greater than three percent and then deemed possibly not to be
10 reasonable and an adjustment to that fee would bring it down to
11 no greater than two and a half percent --

12 MR. SOSNICK: That's correct, Your Honor. That's
13 exactly what we're saying. That is the point. There will be
14 more than enough -- maybe I hadn't explained the math that way.

15 THE COURT: No. I remember your statement earlier.

16 MR. SOSNICK: But that's what I was suggesting all
17 along is that there's more than enough --

18 THE COURT: But it's helpful to have the actual -- to
19 the best you can, the actual numbers to work through. All
20 right. Thank you. All right. Where are we now with the DIP
21 loan?

22 MS. LABOVITZ: Your Honor, with the modifications
23 stated on the record, we would request that the Court approve
24 the financing. As you've heard in testimony, the lenders,
25 under the pre-petition receivables facility would not be

1 willing to support a repurchase of those receivables without
2 that repurchase having the protections that are set forth in
3 the order. Based upon that testimony and the clear need of the
4 debtors for the financing, we would request that the Court
5 overrule the objection on that point and, except to the extent
6 that modifications have been stated on the record today, the
7 other objections to the financing.

8 THE COURT: All right. Do you need me to rule on
9 this before you proceed with any of the other -- and when I say
10 rule on this, I understand you need me to rule on it today.
11 But do you need me to rule on it before anything else is
12 presented?

13 MS. LABOVITZ: Only to the extent, Your Honor, that
14 the motions that we'll present seeking approval of payment of
15 pre-petition claims clearly require the financing.

16 THE COURT: All right. Ms. Golden?

17 MS. GOLDEN: Thank you, Your Honor. Your Honor, the
18 Court's being asked to make findings as to adequate protection
19 under Bankruptcy Rule 4001 and local Bankruptcy Rule
20 4001-2(a)(4) and Mr. Aronson's testimony did not address this.
21 Counsel hasn't produced another witness to testify and no
22 proffer was introduced. And we believe absent that evidence
23 the Court doesn't have an adequate record to approve the DIP on
24 an interim basis. And our office is also concerned because we
25 have not seen a budget. So we really have no idea the overall

1 picture of what the debtors want to spend during the interim
2 period other than the piecemeal documents that we've gotten.

3 MS. LABOVITZ: Your Honor, with respect to a budget,
4 the debtors seek to continue their operations in the ordinary
5 course of business. I'm not sure if that answers the U.S.
6 trustee's question on that point.

7 With respect to the evidentiary point, I would point
8 out to the judge that we have filed a comprehensive declaration
9 of Stephen Forsyth who is the chief financial officer of the
10 debtors in support of the first day pleading. And that does
11 set forth the factual basis for adequate protection. If you
12 would like, Your Honor, Mr. Forsyth is here in the courtroom
13 and available to testify. We had thought that it might move
14 things along if we relied on the declaration which is in
15 evidence.

16 THE COURT: All right. Before I address that, I'll
17 address your first point. There's a reference to a thirteen-
18 week budget. Where is that budget?

19 MS. LABOVITZ: Your Honor -- I believe --

20 THE COURT: There was a reference to it. Is it
21 attached to anything?

22 MS. LABOVITZ: It is a schedule to the credit
23 agreement. I believe it was not filed with the credit
24 agreement. I am not aware, although I need to confer with my
25 client, I'm not aware that there's been a request to keep that

1 confidential.

2 (Pause)

3 MS. LABOVITZ: Your Honor, we have copies of the
4 budget in the courtroom. We can share it with the U.S.
5 trustee. And there's no objection to filing that schedule to
6 complete the record.

7 THE COURT: All right, well, going to -- I didn't
8 mean to do that. I'm not sure of the timing of it, though, how
9 I'll proceed. But I think the first thing we should do is to
10 complete the record. And what I will do is accept
11 Mr. Forsyth's declaration, have him take the stand, and if
12 someone wants to cross-examine him on that declaration they're
13 free to do so. And then debtor can ask any questions in the
14 form of redirect.

15 MS. GOLDEN: Your Honor, we'll accept a proffer from
16 counsel.

17 MS. LABOVITZ: Okay. Your Honor --

18 THE COURT: Go ahead.

19 MS. LABOVITZ: Okay. Your Honor, as part of the
20 findings of fact in the interim DIP order, the debtors have
21 requested a finding that the pre-petition lenders are
22 adequately protected in connection with the priming liens that
23 are being granted to the DIP lenders under the interim DIP
24 facility.

25 Mr. Stephen Forsyth is in the courtroom today and if

1 called to the stand he would testify that the pre-petition
2 lenders are adequately protected for the limited priming that's
3 approved in the interim DIP order on the following basis: The
4 pre-petition lenders are adequately protected because of an
5 equity cushion. Mr. Forsythe would testify that the collateral
6 granted to the pre-petition lenders in support of the
7 obligations under the pre-petition facility is greater in value
8 than the outstanding secured amount of those obligations. Your
9 Honor, in addition, Mr. Forsyth would testify that further
10 adequate protection is granted to the pre-petition lenders
11 under the terms of the DIP facility in the form of payment of
12 fees and interest. And based upon that testimony, I believe
13 Mr. Forsyth would conclude that he believes the pre-petition
14 lenders are adequate protected. And, Your Honor, I would
15 proffer that that would be Mr. Forsyth's testimony.

16 THE COURT: All right. Wait before you do anything,
17 Ms. Golden.

18 MS. GOLDEN: Okay.

19 THE COURT: Mr. Forsyth, would you stand, please?

20 (Witness duly sworn)

21 THE COURT: All right, Mr. Forsyth, would the
22 statements made by counsel on your behalf be the direct
23 testimony this morning -- this afternoon if you were called
24 upon to testify?

25 THE WITNESS: They would.

1 THE COURT: All right. Would you like to add
2 anything to that statement?

3 THE WITNESS: No. I think he's decidedly covered the
4 main points I would have raised.

5 THE COURT: All right. Thank you.

6 Does anyone care to cross-examine the witness? No
7 response being heard, I'll accept the offer of proof. Thank
8 you.

9 MS. LABOVITZ: Thank you, Your Honor.

10 THE COURT: Ms. Golden, did you want to add anything
11 to that?

12 MS. GOLDEN: No, that was fine, Your Honor. Thank
13 you.

14 THE COURT: All right. All right. Now, so what was
15 mentioned earlier that all the other motions depend on the
16 approval of this funding?

17 MS. LABOVITZ: In one way or another, Your Honor, all
18 of the other motions assume that the funding is granted and, in
19 that way, depend upon the approval. Your Honor, we're willing
20 to proceed to make presentations with respect to those motions,
21 on the understanding that if we don't have the financing
22 available, the debtors, although authorized to make payment of
23 pre-petition claims, would not have the funds to do so.

24 THE COURT: It's probably easier if we proceed, and
25 then I'll take a break and rule on it. But it's probably more

1 efficient to proceed with respect to those matters that
2 probably have little opposition.

3 MS. LABOVITZ: We're happy to do that, Your Honor.
4 Fortunately or unfortunately, we have a front-loaded agenda
5 today. The next motion that appears on the agenda is probably
6 the next most-complicated. And at the request of the U.S.
7 Trustee, I'm going to take some time to walk carefully through
8 that. Anticipating a request from the U.S. Trustee, I would,
9 Your Honor, request that the factual summary I'm about to give
10 be treated as a proffer, again, of Mr. Forsyth's testimony.
11 And then again, if there's anything that he wishes to add or
12 clarify, I will welcome that, because this is somewhat
13 complicated, Your Honor.

14 The next motion is the debtors' motion for interim
15 and final orders authorizing Chemtura Corporation, which is the
16 parent company of the debtors in these Chapter 11 cases, to
17 enter into a letter of patronage, effectively, Your Honor, in
18 U.S. concept, a guarantee, with Intesa Mediofactoring SpA, with
19 respect to certain obligations of four foreign subsidiaries
20 under a European receivables factoring facility that I
21 described earlier today.

22 Your Honor, as noted earlier today, an important
23 source of liquidity for the debtors' international subsidiaries
24 is this factoring facility, under which those subsidiaries sell
25 their receivables to Intesa Mediofactoring SpA, in an arm's-

1 length true sale transaction, subject to certain repurchase
2 obligations. I say true sale transaction, Your Honor, and I
3 would note that in the debtors' audited financials, KPMG does
4 agree with that characterization as a true sale transaction.

5 Under the facility, historically, it's provided a
6 substantial source of liquidity for the company. In the last
7 six weeks or so, prior to the Chapter 11 filing, Intesa
8 Mediofactoring has declined to provide purchase price advances
9 for new receivables under the facility, meaning that,
10 effectively, Your Honor, that facility has been in runoff mode.
11 No cash is coming in even though new receivables are being
12 generated. And that has caused a liquidity strain on the
13 debtors' foreign affiliates.

14 The debtors engaged in extensive negotiations and
15 discussions with Intesa Mediofactoring -- and Judge, I'll just
16 refer to them as Mediofactoring -- during the entire six-week
17 period prior to the petition date and, on numerous occasions,
18 requested that they agree to repurchase new receivables under
19 the facility, thereby providing liquidity to the foreign
20 subsidiaries. In concept, the Mediofactoring purchaser did
21 agree to restart the facility on the condition that Chemtura
22 Corp. update a letter of patronage that had been in existence
23 for some time under the facility.

24 Your Honor, Mr. Forsyth would testify, I believe,
25 that the letter of patronage has been in existence for some

1 years, and he's not aware of any significant draw on that
2 letter or claim against that letter of patronage up until now.
3 Chemtura did agree, pre-petition, at the end of February, to
4 update the letter of patronage. The obligations under that
5 letter of patronage are limited to, effectively, guaranteeing
6 the obligations of the four foreign selling subsidiaries to
7 repurchase receivables where, for example, they were determined
8 to have been entirely extinct to be uncollectable, not in the
9 ordinary course where there's a credit risk on the other side
10 of the transaction but where they were truly extinct from the
11 beginning.

12 Judge, I will state, and I believe Mr. Forsyth would
13 agree, that the language in the agreement governing the
14 transaction is not easily translated into U.S. law terms. In
15 other words, extinct is not a legal term of law as I know it in
16 the United States. But, again, Mr. Forsyth would testify that
17 historically there has not been any significant claim on this
18 letter of patronage that's been in place for many years.

19 At the end of February, as I stated, Chemtura Corp.
20 did agree to update the letter of patronage and, as a result,
21 hoped that Mediofactoring would agree to restart the foreign
22 receivables facility. Judge, if that had happened, we might
23 not have been in court so quickly because the company's
24 liquidity problems might have been, at least, ameliorated.
25 Mediofactoring, however, determined that it was not ready to

1 seek board approval of restarting the facility at that time.
2 They were aware of the debtors' potential Chapter 11 filing
3 because their affiliate, Intesa Sao Paolo, is a lender in the
4 debtors' pre-petition bank facility and had been approached to
5 be a participant in the DIP facility.

6 Their determination at that time was that they would
7 require court approval of the guarantee as part of the Chapter
8 11 proceeding and, at that point, would be willing to present
9 the updated letter of patronage to their board of directors and
10 thereby agree to restart the facility and continue purchasing
11 the subsidiaries' receivables, thereby giving a liquidity boost
12 to the foreign subsidiaries.

13 Your Honor, Mr. Forsyth would testify, if called to
14 the stand, that the liquidity in Europe is very much needed,
15 that there has been a difficult situation in Europe, both in
16 terms of available liquidity and in terms of communications
17 with and comfort of foreign directors in light of the fact that
18 the Mediofactoring facility has been in runoff mode. And
19 Mr. Forsyth would testify that, in the debtors' view, it's
20 critical to avoiding the possibility of potential insolvencies
21 or other problems in the debtors' international subsidiaries
22 for Chemtura Corp. to enter into a letter of guarantee
23 effective post-petition to guarantee these obligations, which
24 again, Your Honor, are not expected to arise, to create any
25 significant claims.

1 I should note that the guarantee is an unsecured
2 guarantee, so this is a request for the debtors to obtain
3 unsecured financing under Section 364(b) of the Bankruptcy
4 Code.

5 And one more point that I would call to the Court's
6 attention, really, with the intent of full disclosure: The
7 letter of guarantee does provide that Chemtura Corp. would
8 submit to the jurisdiction of the Republic of Italy in
9 connection with enforcement of the guarantee. Your Honor, I
10 would request that this be accepted as an offer of proof as the
11 testimony of Mr. Forsyth.

12 THE COURT: Mr. Forsyth, would the statements made by
13 counsel on your behalf be your direct testimony this afternoon
14 if you were called upon to testify on this issue?

15 THE WITNESS: They would. I would just have one
16 additional comment or clarification. The patronage letter
17 basically says that the parent company would step into the
18 obligations of the subsidiary under their contract with
19 Mediofactoring if Mediofactoring so requests. And in addition
20 to the recourse receivables -- I mean, most of the receivables
21 backed under this facility are nonrecourse, but there are
22 certain defined terms where they become recourse, as counsel
23 has described. The other obligation, though, is to pay the
24 fees and interest due under the forms of that contract, less or
25 on merit, but that is the other aspect of the obligations

1 respecting it.

2 THE COURT: All right. Thank you. Anyone care to
3 cross-examine the witness?

4 MS. GOLDEN: Your Honor, not to cross-examine the
5 witness, but we do need some clarifications from counsel.

6 THE COURT: All right. Ask counsel, but it may
7 involve some -- does this involve the representation made by
8 counsel on behalf of the witness?

9 MS. GOLDEN: No.

10 THE COURT: All right. I'll accept the offer of
11 proof. Seek your clarification now.

12 MS. GOLDEN: Thank you, Your Honor. Our first
13 concern is the 6003 showing on why this relief cannot wait
14 until a committee is formed next week. We're concerned about
15 the notice that was given regarding this guarantee. And I
16 think a more significant issue is that this guarantee is going
17 to be interpreted under Italian law by a court in Milan, which
18 means that it would really be a final order that a committee
19 could not challenge but granting jurisdiction to a foreign
20 country.

21 MS. LABOVITZ: Your Honor, I'll respond to the points
22 in order. With respect to the offer of proof regarding the
23 immediate need for approval of this -- of entry into the
24 guarantee, I would call the attention of the counsel for the
25 United State Trustee to the portion of the proffer related to

1 the liquidity needs of the European subsidiaries and the
2 concerns that have been raised by the subsidiaries, directors
3 and officers regarding the fact that the Mediofactoring
4 facility is right now in runoff mode. And, Your Honor, if
5 there are any other clarifying questions or additional proof
6 that you or counsel for the United States Trustee would like us
7 to put into the record on that point, I'm sure Mr. Forsyth
8 would be happy to help with those clarifications or further
9 points of fact.

10 With respect, Your Honor -- and I apologize, I did
11 not write down your second point, Ms. Golden.

12 MS. GOLDEN: Notice.

13 MS. LABOVITZ: With respect to notice, Your Honor, as
14 stated in the affidavit of service that was filed on the docket
15 last night, notice of this motion was given to the notice
16 parties identified in the motion, which included, among others,
17 the debtors' top fifty unsecured creditors, the indentured
18 trustees for each of the bond issues, the agents for the pre-
19 petition and proposed post-petition lenders, and, Your Honor,
20 the SEC, the EPA, and I may even be forgetting a few. Your
21 Honor, as this is a proposal to incur unsecured financing
22 obligations, I'm not aware of any other notice that would be
23 required.

24 THE COURT: Go ahead.

25 MS. GOLDEN: One final question, Your Honor: Who

1 represents the interests of the European nondebtor
2 subsidiaries?

3 MS. LABOVITZ: The European nondebtor subsidiaries,
4 to the extent that there is no conflict of interest, are
5 represented by -- I want to stop and clarify the question. Are
6 you asking what counsel represents the interests?

7 MS. GOLDEN: Yes.

8 MS. LABOVITZ: To the extent that there's no conflict
9 of interest among them and the debtors, they are represented by
10 Kirkland & Ellis. To the extent of any conflict of interest,
11 Your Honor, I would represent that each of them has their own
12 counsel. And if further testimony or clarification on that
13 point were necessary, Your Honor, Chemtura Corporation's
14 general counsel, Billie Flaherty, is in the courtroom and would
15 be available to testify.

16 THE COURT: Ms. Golden, do those responses address
17 all the issues you raised?

18 MS. GOLDEN: Yes, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. LABOVITZ: Thank you, Your Honor.

21 THE COURT: All right. Anyone else wish to be heard
22 on the motion before the Court now? I'll grant the relief
23 requested, subject to, of course, the approval of the DIP
24 financing, if such were to occur.

25 MS. LABOVITZ: Thank you, Your Honor. And the

1 approval is requested on an interim basis and would be
2 reconsidered at a final hearing after the creditors' committee
3 is formed.

4 The next motion listed on the agenda, Your Honor, is
5 the debtors' motion for entry of an order authorizing the
6 debtors to continue their existing cash management systems,
7 their existing bank accounts and business forms, for granting
8 post-petition intercompany claims, administrative expense
9 priority -- Your Honor, we had discussed this in colloquy
10 earlier -- and authorizing continued intercompany arrangements.
11 Your Honor, there are aspects of this motion that are
12 relatively routine for a first-day motion in a Chapter 11 case
13 of this size, and those I will go over rather quickly. And
14 there are some aspects that relate to intercompany arrangements
15 among the debtors and their subsidiaries; those I'll spend a
16 little more time with.

17 In terms of the relatively routine relief, Your
18 Honor, the debtors are requesting authority to continue their
19 integrated cash management system, which involves sweeps of
20 cash into a concentration account that are later funded into
21 disbursement accounts to pay the obligations of individual
22 subsidiary debtors. Your Honor, the debtors can and do
23 represent in this motion that they will track intercompany
24 claims and obligations related to the intercompany cash
25 management system and propose that they would be granted

1 administrative priority status.

2 In addition, Your Honor, the debtors request that
3 they be authorized to continue using their existing bank
4 accounts rather than opening new bank accounts and closing
5 their pre-petition accounts. The debtors request that they be
6 authorized to continue to use their existing check stock
7 without the requirement that they get new checks stating
8 "debtor-in-possession". However, to the extent that the
9 debtors print their own checks, which they do in some cases,
10 they will be able to include "debtor-in-possession" on the
11 checks as printed.

12 I would also note that, Your Honor, that most of the
13 debtors' payments are made by ACH wire transfer. The debtors
14 request that they be permitted to make such wire transfer and
15 other payments and not that they have to make all of their
16 payments by check. The debtors request authorization to use
17 their existing business forms but will include the designation
18 "debtor-in-possession" on new forms if they order them. And
19 that, Your Honor, and other relief, which I believe is
20 uncontested in the motion, again, I believe is relatively
21 standard, fair for a cash management motion in a case of this
22 size.

23 I would highlight, and I don't think this is unusual
24 but I think it merits laying it out carefully for the Court, I
25 would highlight that the debtors have taken pains to, where

1 they can, separate the cash management system as between the
2 debtors and some U.S. subsidiaries and their international
3 subsidiaries. Historically, the debtors' cash management
4 system was global, involving cash transfers and sweeps between
5 the U.S. entities and a consolidating bank account located in
6 Ireland. The debtors have now effectively broken off that cash
7 management system so that the consolidating bank account in
8 Ireland will still be maintained and will be used as a
9 concentration account for the debtors' international
10 subsidiaries. The U.S. cash system will be maintained with a
11 U.S. concentration account that's used for the debtors and
12 certain nondebtor U.S. subsidiaries. The debtors will,
13 however -- well, and I should add, Your Honor, that, therefore,
14 the debtors would not intend to make any cash sweeps on a
15 relatively routine basis that don't reflect transfers on
16 account of intercompany exchanges of goods and services.

17 The debtors will, however, transact business with
18 their foreign subsidiaries. The debtors and the foreign
19 subsidiaries have an integrated -- vertically integrated supply
20 chain so that in the ordinary course of business they transfer
21 goods and services among one another regularly and routinely.
22 They will continue doing so. The pricing for those transfers
23 is based on transfer pricing that is designed for tax purposes
24 to approximate arm's-length transactions. They will continue
25 that, and they do propose to continue netting obligations from

1 debtors against foreign subsidiaries in that regard.

2 There is also a listing of certain other intercompany
3 arrangements that the debtors propose would continue in the
4 ordinary course of business. To the extent that claims arise
5 between the debtors and the subsidiaries on account of those
6 transactions, there's a proposal that they would be settled
7 post-petition in cash or through other transfers or through
8 netting. But, Your Honor, they would not be simply booked as
9 intercompany claims as between the debtors and their
10 subsidiaries.

11 In addition, Your Honor, and I had alluded to this
12 earlier when we were discussing the DIP facility, the debtors
13 propose in the cash management motion to seek authorization for
14 the emergency funding to foreign subsidiaries that has been
15 authorized in the DIP facilities of up to seven and a half
16 million dollars for international subsidiary funding and six
17 million dollars for funding -- for investments in joint
18 ventures and the like. We request approval of that now
19 because, as described, the liquidity situation for the
20 international subsidiaries is uncertain. While we hope and
21 trust that the Mediofactoring patronage letter that has just
22 been approved will be instrumental in restarting the factoring
23 facility for the international subsidiaries, there can be no
24 guarantee that that will happen or that it will solve all
25 issues related to international insolvency. And, as a result,

1 the debtors have requested, and their secured lenders have
2 agreed, that they have the ability to make certain limited
3 funding on an intercompany loan basis to their foreign
4 subsidiaries. And they would request approval of that today,
5 Your Honor.

6 THE COURT: All right. Anyone else wish to be heard?
7 No further comment being heard, I'll grant the relief.

8 MS. LABOVITZ: Thank you, Your Honor. That's very
9 helpful. The next motions on the agenda, Judge, are several
10 motions for payment of pre-petition obligations. Each of
11 these, Judge, is presented to the Court on an interim basis.
12 And, again, the debtors have taken pains to separate the relief
13 that is required on an immediate basis from relief that can be
14 granted at a final hearing. And in that regard, Judge, I think
15 the most efficient way to proceed through these motions is for
16 me to highlight for the Court specifically what's being
17 requested and presented for approval today.

18 With respect to the next motion on the agenda, which
19 is the debtors' motion to approve honoring pre-petition claims
20 for wages and benefits, Your Honor, there's relatively -- the
21 motion is very long. It describes a long list of programs that
22 the debtors hope to continue in place, but not all of those
23 require payment of pre-petition obligations. It was designed,
24 in part, to alleviate any questions that employees might have
25 about what programs would be continuing post-petition.

1 So what I'd like to do is walk through, very briefly,
2 what we need from the Court today. With respect to payroll
3 obligations, which are highlighted on page 8 and 9 of the wage
4 motion, the debtors anticipate -- as I mentioned before, the
5 debtors paid their payroll for this week, and, as a result, the
6 debtors don't believe that there are significant and
7 substantial payroll obligations outstanding. There may be
8 350,000 dollars outstanding, approximately, for a payroll that
9 would be due to be funded next Friday. For interim relief, the
10 debtors seek authorization to pay wages only up to the priority
11 cap, as specified in the Bankruptcy Code, of 10,950 dollars.
12 At the final hearing, we will request authorization to honor
13 all payroll obligations.

14 Your Honor, the motion -- and I'll run through these
15 for the purposes of clarity -- the motion describes a sales
16 incentive plan, certain signing bonuses and a service award
17 program. We will request relief related to those programs at a
18 final hearing, but no relief is requested today. The program
19 requests that the debtors be able to honor claims for employees
20 whose union dues and other union expenses have been withheld
21 from paychecks and that the debtors otherwise comply with
22 funding union expenses. The total amount outstanding for pre-
23 petition obligations is estimated to be 23,000 dollars. The
24 debtors do request that that be approved today. Your Honor, we
25 believe that money is probably held in trust. It's union dues

1 that were withheld from employee paychecks.

2 THE COURT: All right.

3 MS. LABOVITZ: The motion describes severance at
4 pages 12 through 14. Your Honor, there's no relief requested
5 today with respect to cash payment of any severance. The
6 debtors do have two noncash programs under the severance
7 programs that they would request to continue in the ordinary
8 course. The first is to continue honoring COBRA benefits to
9 their employees, which, I believe, the debtors are required to
10 do by law anyway. The second is to continue allowing employees
11 to participate in job retraining programs. We will ask for
12 approval of that at the final hearing, Your Honor, but we think
13 it would not make sense to ask employees to stop attending
14 their job retraining programs for three weeks until we can ask
15 for final relief at the final hearing. So we believe it is
16 important to get interim authorization to provide job
17 retraining programs.

18 There are certain independent contractor claims
19 described on pages 14 to 15 of the motion. Judge, we believe
20 the total outstanding obligations to the independent
21 contractors, and this is akin to wage obligations, is 15,000
22 dollars. The debtors request interim authorization to pay
23 contractors up to the priority cap. And we believe there's no
24 one above that priority cap.

25 Pages 15 through 16 of the wage motion describe

1 expense reimbursement programs. The debtors believe that the
2 total outstanding obligations due to all employees would not be
3 more than 35,000 dollars and request authorization on an
4 interim basis to refund expense reimbursements up to 1,000
5 dollars per employee. Later, we will ask for authorization to
6 fund all of those.

7 On pages 17 through 19 of the motion, the debtors
8 request authorization to continue benefits under their
9 insurance plans for medical, dental, vision programs and to
10 honor their obligations under the federal flex spending
11 accounts.

12 Pages 19 and 20, the debtors request authorization to
13 continue their obligations under life insurance and workers'
14 compensation programs.

15 Pages 21 and 22, the debtors request authorization to
16 continue honoring accrued vacation and paid time-off for their
17 employees but not to honor, at this time, leaves of absence for
18 their employees. That would be requested at the final hearing.

19 The debtors, on pages 22 to 23, request authorization
20 to make payments for amounts that are held in trust pursuant to
21 their 401(k) plan. These are amounts, again, withheld from
22 employee paychecks that need to be funded into the 401(k) plan.

23 Pages 23 through 26 of the program describe a
24 supplemental savings plan and define benefit plans, but no
25 relief is requested with respect to those today.

1 Pages 26 through 27 describe retiree benefits. And,
2 Judge, we do intend to continue honoring retiree benefits, as
3 required by the statute at this time.

4 Page 27 describes a job relocation program in which
5 debtors, where employees had been required to relocate for
6 purposes of the debtors' employment, pay certain relocation
7 expenses for those employees. The debtors request
8 authorization today to pay those in the ordinary course,
9 pending the final hearing.

10 And, Your Honor, the remaining programs described
11 include an education assistance program and a merit scholarship
12 program totaling approximately 63,000 dollars for employee --
13 mostly children, currently attending higher education; and
14 employee assistance program; an adoption program; an employee
15 referral program. Judge, we believe there are no pre-petition
16 amounts outstanding, but we ask to continue those in the
17 ordinary course. A deductions-for-benefits program and
18 miscellaneous deductions and payroll taxes.

19 I don't believe that there are any objections to the
20 motion. I believe that the United States Trustee had certain
21 questions, but I believe we've answered those questions either
22 before this hearing or with the presentation that I just made.
23 And, Your Honor, we would request that an interim order be
24 entered approving the employee wages and benefits as described.

25 THE COURT: Anyone else wish to be heard? No further

1 comment being heard, I'll grant the request, as modified.

2 MS. LABOVITZ: Thank you, Your Honor. The next
3 motion for presentation to the Court is the debtors' motion for
4 authorization to pay obligations of certain identified critical
5 vendors. Your Honor, I think there's been a great deal of
6 testimony and discussion today about the liquidity problems and
7 the difficulties that the debtors have faced with their trade
8 vendors leading up to these Chapter 11 cases. As a result, it
9 is probably no surprise to the Court that the debtors have
10 identified some vendors whose goods and services provided are
11 so critical to the debtors that, without them, the debtors
12 would not be able to continue their obligations or would be
13 required to seek an alternate source at either a great delay or
14 at a higher price.

15 And, Your Honor, the plant shutdown that I described
16 in Ashley, Indiana is an example of something that has already
17 happened that makes clear that the fact that the debtors have
18 critical vendors is not hypothetical and that the cost of not
19 paying a pre-petition vendor could translate into a serious and
20 immediate loss in revenues post-petition. As a result, the
21 debtors seek authorization to fund up to ten million dollars in
22 claims of critical vendors pre-petition. They have established
23 a procurement policy to ensure that only critical vendors will
24 be paid, and that will occur only after negotiations with those
25 vendors to ensure that the vendors actually would be prepared

1 to shut down the debtors' operations.

2 THE COURT: All right. Anyone else wish to be heard?
3 Based upon the pleadings as filed and the representations made
4 on the record, I will grant the request.

5 MS. LABOVITZ: Thank you, Your Honor. The debtors
6 have a similar motion pending before the Court with respect to
7 certain foreign vendors. The debtors, in the ordinary course
8 of their business -- and here I'm talking about the U.S.-based
9 debtors, Your Honor, not the foreign subsidiaries -- in the
10 ordinary course of their business, require goods and, in some
11 cases, services from vendors located outside the United States,
12 who do not have substantial contacts with or assets in the
13 United States, such that the automatic stay imposed by these
14 Chapter 11 cases is enforceable as a practical matter.

15 The debtors, therefore, have identified that certain
16 of these vendors, even if they have a contract with the debtors
17 that otherwise would require them to provide goods and
18 services, may decline to honor those contracts and may decline
19 to honor those goods -- provide goods and services that are
20 necessary. Accordingly, the debtors have established a
21 procurement policy, similar to that described for the critical
22 vendors, that would authorize payment of pre-petition claims
23 only in a situation where a foreign vendor was providing goods
24 and services so essential to the debtors that it could shut
25 down a plant. And after negotiations, it was demonstrated that

1 the foreign vendor did indeed intend to refuse to provide goods
2 or services without payment of their pre-petition claim. The
3 amount requested for payment of foreign vendors is fifteen
4 million dollars. And again, Your Honor, I believe there's no
5 objection.

6 THE COURT: Anyone else wish to be heard?

7 MS. LABOVITZ: Oh, Your Honor, I've been corrected.
8 The amount requested in the motion is fifteen million dollars.
9 But on an interim basis, the debtors believe they need only ten
10 and a half million.

11 THE COURT: Thank you. Anyone else wish to be heard?
12 Based upon the pleadings as filed and the record of this
13 afternoon's hearing, I'll grant the request.

14 MS. LABOVITZ: Your Honor, you just made the debtors'
15 head of procurement a very happy man.

16 THE COURT: I do my best.

17 MS. LABOVITZ: Thank you, Judge. The next motion,
18 and almost the last before the Court today, is a motion to
19 honor pre-petition lien claims. Your Honor, for the most part,
20 these claims relate to lien claims and, I believe, certain
21 similar claims and obligations to government authorities. Your
22 Honor, for the most part, this motion relates to goods that are
23 in transit, that are being held by shippers and warehousemen
24 who would have possessory liens on the goods. It also relates
25 to the payment of certain pre-petition claims of mechanics and

1 materialsmen who have a state law statutory lien on the
2 debtors' property.

3 The debtors would request authorization to pay pre-
4 petition obligations owed to such secured creditors who are not
5 being primed by the DIP facility and, therefore, would have a
6 first-priority security interest in the relevant property. And
7 the authorization requested in that motion is for all claims
8 that the debtors determine after review post-petition to have
9 an actual, valid or enforceable lien against the property.
10 Your Honor, again, I don't believe that there are any
11 objections to the relief requested. It is permitted under the
12 debtors' DIP financing facility, and we would request that the
13 Court authorize payment of lien claims.

14 THE COURT: Anyone else wish to be heard? No further
15 comment being heard, I'll grant the request.

16 MS. LABOVITZ: Thank you. And finally, Your Honor,
17 the last motion for payment of pre-petition claims is a motion
18 to authorize pre-petition obligations to the debtors'
19 customers. These obligations are related to the debtors'
20 rebate programs, which vary from division to division and from
21 customer to customer. These are incentive programs offered to
22 encourage customers to purchase product from the debtors.

23 The debtors are not certain that any rebates will be
24 exercised during the interim period between now and the final
25 hearing. But in an abundance of caution, to avoid a difficult

1 situation in which a creditor tries to exercise a rebate and
2 would have to be turned away or told to wait, the debtors seek
3 interim authority to honor rebate credits and to issue rebate
4 credits between now and the final hearing. I believe there are
5 no objections to the relief, but the U.S. Trustee has asked
6 that the debtors report after the fact if any customer does
7 exercise a rebate credit during the interim period. And I
8 don't believe there's any objection to providing that
9 information after the rebate's been exercised.

10 THE COURT: Anyone else? All right. I'll grant the
11 relief as requested.

12 MS. LABOVITZ: Thank you, Your Honor. That, I
13 believe, concludes the motions presented, with the exception of
14 the DIP financing.

15 THE COURT: I need to address, with respect to the
16 DIP financing, and I think this question goes --

17 MS. LABOVITZ: Oh, Your Honor, I'm reminded that we
18 do need to retain a claims agent.

19 THE COURT: Right.

20 MS. LABOVITZ: We had deferred other procedural
21 motions to wait for Judge Gerber. But we need someone to send
22 out our bankruptcy notices. KCC, Kurtzman Carson Corp., I
23 believe, has been retained by the debtors as their proposed
24 claims agent. The motion to retain them as the claims and
25 noticing agent for the debtors in the court has been approved

1 by the Clerk of the Court, and we would request that the Court
2 entertain and grant the motion.

3 THE COURT: Anyone else wish to be heard? No further
4 comment being heard, I'll grant the request.

5 MS. LABOVITZ: Thank you, Your Honor.

6 THE COURT: All right. I had two points I wanted to
7 follow up with, and they relate to adequate protection, and let
8 me focus on precisely where. I assume the counsel for the DIP
9 lender is addressing this as well, the adequate protection
10 questions?

11 MR. SOSNICK: Not knowing what they are, I suppose
12 they are.

13 THE COURT: All right. We'll try. Paragraph 10(b)
14 of the order, page 19.

15 MR. SOSNICK: Yes.

16 THE COURT: It seems more appropriate to me, and I'd
17 like to hear from you on this, that the adequate protection
18 payments are protecting any diminution value. Are they doing
19 anything more than that, in your view?

20 MR. SOSNICK: I don't think so, Your Honor.

21 THE COURT: All right. So to the extent -- and I'll
22 raise an insertion here that, I think, would clarify this
23 issue -- that after the word "lenders", where the colon is,
24 before the colon, and you start the one little (i), that this
25 would be solely on account of any diminution in value of the

1 pre-petition collateral and subject to disgorgement in the
2 event payments authorized and required hereunder exceed the
3 diminution of value. So, essentially, that just preserves the
4 right to the extent these adequate protection payments should
5 not have been paid because there was no diminution of value.

6 MR. SOSNICK: I, obviously -- I think that's fine,
7 but, Your Honor, I would just suggest, "or otherwise authorized
8 under the Bankruptcy Code." For example --

9 THE COURT: All right.

10 MR. SOSNICK: -- post-petition --

11 THE COURT: The attorneys' fees?

12 MR. SOSNICK: -- and post-petition interest,
13 obviously.

14 THE COURT: All right.

15 MR. SOSNICK: If those were --

16 THE COURT: All right. You can adjust it. And then
17 there was one -- oh, one general question about the pre-
18 petition lenders, and this may have been mentioned earlier by
19 debtors' counsel. And the pre-petition lenders have a security
20 interest in the stock of all the subsidiaries, is that correct?

21 MR. SOSNICK: Of the first-tier subsidiaries.

22 THE COURT: All right.

23 MR. SOSNICK: Including sixty-six and two-thirds of
24 the foreign first-tier subsidiaries.

25 THE COURT: What else do they have a lien on?

1 MR. SOSNICK: They have a lien -- their lien extends
2 to inventory as well, Your Honor.

3 THE COURT: And that's real -- okay, that answered my
4 question. All right. Anyone else wish to be heard? All
5 right. With respect to the Court's ruling on the financing,
6 I'd make one general comment and it is that when I heard, I
7 believe it was, Mr. Aronson make a statement about capital, it
8 seems to me that there is quite a bit of capital. The only
9 real issue is that the capital has not been made available. So
10 I think what we're faced with here, as, I think, in and outside
11 of bankruptcy, is really the availability of that capital.
12 And, unfortunately, until that capital becomes available
13 through the various credit markets, there is a lack of
14 competition for these kinds of lendings and the debtor is
15 really left with very few options, as the record here will
16 demonstrate.

17 In the matter before the Court, the record supports a
18 finding that the needs of the debtor have to be addressed today
19 or substantial value will be lost in the enterprise. And cause
20 exists by the demonstration of the immediate and irreparable
21 harm of such loss, as those terms are used in Rule 6003.
22 Although other financing may be forthcoming in the fu -- may be
23 available in the future, the record supports the finding that
24 such funding is not available immediately in sufficient time to
25 address the liquidity problem that the debtor has demonstrated

1 exists today.

2 Because of the substantial relationship between the
3 immediate need to the collateral that would be made available
4 by the repurchase of the receivables and the availability of
5 any DIP loan, it is extremely important that such collateral be
6 made available. For example, the record supports a finding
7 that any funding that was discussed prior to the filing may
8 have been made available without the repurchase of the
9 collateral and without the repurchase of the receivables adding
10 to the collateral base. However, the debtor would not be able
11 to survive awaiting the payments on new receivables, which
12 would be the source of the debtor's funding, which would
13 require, according to the testimony, more funding that could be
14 made available without that additional collateral.

15 So the problem seems to -- on one hand, may have a
16 possible solution, but that door is shut by the length of time
17 it takes to get in the new receivables. Therefore, further,
18 the Court finds that none of the fees at issue result in a
19 chilling effect on any other source of borrowing that may be
20 forthcoming such that it would warrant a disallowance at this
21 hearing today. Based upon the record before the Court, the
22 Court will grant the relief as modified. All objections not
23 resolved by such modifications are hereby overruled. The
24 debtor can make whatever adjustments to the order, show it to
25 the parties impacted by such order and submit it to chambers.

1 Thank you.

2 MS. LABOVITZ: Thank you, Your Honor. And thank you
3 on behalf of the --

4 (Audio ends mid-sentence.)

5 (Proceedings concluded at 1:02 p.m.)

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I N D E X

T E S T I M O N Y

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Debtors' motion to authorize continued use of cash management system granted	110	7
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R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
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C E R T I F I C A T I O N

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

Clara Rubin

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Date: March 22, 2009