

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE DENNIS MONTALI, JUDGE

In Re: ) Case No. 08-32514  
          ) Chapter 11  
          )  
HELLER EHRMAN, LLP, ) FIRST DAY HEARING:  
                          ) MOTION for USE of CASH  
                          ) COLLATERAL; MOTION for  
                          ) PREPETITION WAGES and  
                          ) RETENTION BONUS; and  
                          ) MOTION for CASH MANAGEMENT  
                          )  
                          ) Monday, December 29, 2008  
                          ) San Francisco, California

Appearances:

For the Debtor: David Baddley, Esq.  
                  Andrew R. Cardonick, Esq.  
                  Greenberg Traurig, LLP  
                  77 West Wacker Drive, Suite 3100  
                  Chicago, Illinois 60601  
  
                  Kenneth H. Brown, Esq.  
                  John D. Fiero, Esq.  
                  Pachulski Stang Ziehl Jones  
                  150 California Street, 15<sup>th</sup> Floor  
                  San Francisco, California 94111-4500

For Creditor Bank of America: Ana N. Damonte, Esq.  
                  Pillsbury Winthrop Shaw Pittman LLP  
                  50 Fremont Street  
                  San Francisco, California 94105-2228  
  
                  Leo T. Crowley, Esq. (via telephone)  
                  Pillsbury Winthrop Shaw Pittman LLP  
                  1540 Broadway, Suite 22  
                  New York, New York 10036

For Creditor MEPT St. Matthews LLC: David M. Wiseblood, Esq.  
                  Seyfarth Shaw LLP  
                  560 Mission Street, Suite 3100  
                  San Francisco, California 94105

Appearances continued on next page.

Appearances continued:

For Creditor Citibank (via telephone):	Jonathan M. Landers, Esq. Gibson Dunn & Crutcher 200 Park Avenue, Suite 48 New York, New York 10166
For CB Richard Ellis (via telephone):	Linda E. Lindman, Counsel CB Richard Ellis Brokerage Services MetLife Building, Floors 17 - 19 200 Park Avenue New York, New York 10166
For Landlord 333 Bush Associates:	Lillian G. Stenfeldt, Esq. Sedgwick, Detert, Moran & Arnold, LLP One Market Plaza Steuart Tower, 8 <sup>th</sup> Floor San Francisco, California 94105
	Michael P. Brody, Esq. Ellman, Burke, Hoffman & Johnson, P.C. 601 California Street, 19 <sup>th</sup> Floor San Francisco, California 94108
For Landlords 333 South Hope Co. LLC and Columbia Center, LLC (via telephone):	Vincent M. Coscino, Esq. Michael S. Greger, Esq. Allen Matkins Leck Gamble & Mallory LLP 1900 Main Street, Fifth Floor Irvine, California 92614-7321
From the Office of the United States Trustee:	Minnie Loo, Trial Attorney United States Department of Justice 1301 Clay Street, Suite 690N Oakland, California 94612-5217
For Unsecured Creditor William Lea Inc. (via telephone):	Jeffrey Bromme, Esq. Arnold & Porter LLP 555 Twelfth Street, NW Washington, D.C. 20004-1206
Digital Court Recorder:	United States Bankruptcy Court Akbar Malakooti 235 Pine Street, 22nd Floor (94104) Post Office Box 7341 San Francisco, California 94120-7341 (415) 268-2300
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1 Monday, December 29, 2008

2:32 o'clock p.m.

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

3 THE CLERK: All rise. Court's now in session, the  
4 Honorable Dennis Montali presiding.

5 THE COURT: Good afternoon. Please be seated.

6 THE CLERK: The matter of Heller Ehrman.

7 THE COURT: Well, let's try getting all the  
8 appearances. We have a line up.

9 MR. FIERO: Do you want to do in court first, Your  
10 Honor?

11 THE COURT: Sure.

12 MR. FIERO: John Fiero for the debtor, Your Honor,  
13 from the Pachulski Stang firm. With me is my partner Ken Brown.  
14 In addition I'd like to introduce to the Court Andrew Cardonick  
15 and David Baddley from the Greenberg Traurig firm.

16 THE COURT: Good afternoon.

17 MR. FIERO: *Pro hac* application – *pro hac vice*  
18 applications from these gentlemen are on file with the district  
19 court and I ask that they be provisionally admitted for the  
20 purposes of today's hearing.

21 THE COURT: They will be, sure.

22 MR. FIERO: Thank you.

23 THE COURT: Other court appearances.

24 MS. DAMONTE: Good afternoon. Ana Damonte, Pillsbury  
25 Winthrop Shaw Pittman, on behalf of creditor Bank of America,

1 who is agent for itself as well as Citibank. My colleague Leo  
2 Crowley is on telephonically.

3 THE COURT: I'll let all the lawyers on the telephone  
4 identify themselves. Ms. Damonte, we bounced back on to you  
5 today the *pro hac vice* application.

6 MS. DAMONTE: Yeah. And I'll take care of that this  
7 afternoon.

8 THE COURT: You didn't pay your bill to the district  
9 court.

10 MS. DAMONTE: I'll take care of that this afternoon.  
11 Thank you.

12 THE COURT: Anyone else in court want to make an  
13 appearance?

14 I knew we'd get someone from the United States  
15 Trustee.

16 MS. LOO: Good afternoon, Your Honor. Minnie Loo for  
17 the United States Trustee.

18 THE COURT: Good afternoon.

19 Good afternoon.

20 MS. STENFELDT: Lillian Stenfeldt from Sedgwick,  
21 Detert, Moran and Arnold, appearing on behalf of the landlord at  
22 333 Bush, Your Honor. And also Mr. Brody.

23 THE COURT: Good afternoon, Mr. Brody.

24 MR. BRODY: Co-counsel Michael Brody, Ellman, Burke,  
25 Hoffman and Johnson, appearing for 333 Bush, landlord.

1 THE COURT: Appearances on the phone, please.

2 MR. HANSEN: Yes. You've got George Hansen from The  
3 Claro Group.

4 THE COURT: Thank you, Mr. Hansen.

5 MS. LINDMAN: This is -

6 THE COURT: Are you an attorney, Mr. Hansen?

7 MS. LINDMAN: - Linda Lindman.

8 THE COURT: Mr. Hansen, are you an attorney?

9 MS. LINDMAN: I'm sorry.

10 MR. HANSEN: This is George Hansen speaking. I am not  
11 an attorney. I am a principal of the firm.

12 THE COURT: You don't need to make your appearance.  
13 You're welcome to listen, but I can't let you appear for your  
14 company.

15 All right. Other counsel on the phone, please?

16 MS. LINDMAN: Yes. This is Linda Lindman for CB  
17 Richard Ellis.

18 THE COURT: Can't hear you.

19 MS. LINDMAN: Linda Lindman for CB Richard Ellis.

20 THE COURT: Thank you.

21 MR. WISEBLOOD: Good afternoon, Your Honor. David  
22 Wiseblood of Seyfarth Shaw on behalf of MEPT St. Matthews LLC,  
23 better known as the Washington, D.C. landlord.

24 THE COURT: Thank you, Mr. Wiseblood.

25 MR. COSCINO: Good afternoon, Your Honor. This is

1 Vince Coscino and Michael Greger of Allen Matkins. We're  
2 appearing today on behalf of 333 South Hope Company, LLC, the  
3 downtown Los Angeles landlord, as well as Columbia Center  
4 Property, LLC, the Seattle, Washington landlord.

5 THE COURT: Thank you. Other appearances?

6 MR. CROWLEY: Your Honor, good afternoon. It's Leo  
7 Crowley at Pillsbury, Winthrop, Shaw, Pittman for the Bank of  
8 America as agent and lender. As my colleague indicated, I've  
9 got a *pro hac* application, which we're filing today -

10 THE COURT: Okay.

11 MR. CROWLEY: - and I would request -

12 THE COURT: Got it.

13 MR. CROWLEY: - that I be heard during the hearing on  
14 that basis.

15 THE COURT: Mr. Fiero, there are just a couple of  
16 housekeeping chores.

17 MR. LANDERS: Your Honor, could I make an appearance?

18 THE COURT: Please.

19 MR. LANDERS: Yes. Jonathan Landers, counsel for  
20 Citibank, of Gibson, Dunn and Crutcher.

21 THE COURT: Good afternoon, Mr. Landers.

22 MR. LANDERS: Good afternoon, Your Honor.

23 THE COURT: Mr. Fiero, -

24 MR. BROMME: Your Honor, this is Jeff Bromme from  
25 Arnold and Porter. We are counsel to Williams Lea, one of the

1 unsecured creditors.

2 THE COURT: Okay. Thank you.

3 One second. Mr. Bromme.

4 Mr. Fiero, housekeeping. You uploaded an application  
5 to designate Mr. Benvenutti responsible officer or individual.  
6 I assigned an order and then you uploaded another application by  
7 the same name. Was that just in the flurry of -

8 MR. FIERO: Your Honor, I'll look into that.

9 THE COURT: That's okay. I just wanted - it's the  
10 same -

11 MR. FIERO: I don't think he could wear two hats, but  
12 I think it'll be just fine if he wears one.

13 THE COURT: Okay. Well, that - that's one  
14 housekeeping chore. And I guess I need to find out if there's  
15 opposition to the motion. So let's start with the easiest  
16 motion, that I assume would be the maintain the bank account  
17 motion. Are you aware of any opposition to that motion?

18 MR. FIERO: Your Honor, I'll let Mr. Cardonick handle  
19 the substance of these matters, but we did have some questions  
20 from the United States Trustee. And if she still has concerns,  
21 we can address them.

22 THE COURT: Well, Ms. Loo, do you want to speak to  
23 that?

24 MS. LOO: Your Honor, the United States Trustee wanted  
25 to clarify that in the motion the debtor said that the U.S.

1 Trustee guidelines require that the checks be imprinted with the  
2 "debtor-in-possession" name. That's not what the guidelines  
3 require. We need that in the signature card. And we requested  
4 whether the Bank of America, which is an authorized depository,  
5 would be able to convert the existing accounts into  
6 debtor-in-possession accounts, and that was the question that  
7 was posed to counsel.

8 THE COURT: Yes, Mr. Cardonick, is that a problem?

9 MR. CARDONICK: No, not a problem, Your Honor. We  
10 will be able to have that done. We confirmed with Bank of  
11 America today.

12 THE COURT: Okay. Well, does anyone on the phone or  
13 in court want to be heard on the motion to maintain the bank  
14 accounts? That seems to be a pretty routine motion.

15 MR. CROWLEY: Your Honor, Leo Crowley for Bank of  
16 America, if I may. Just a comment, and I've already indicated  
17 this to the debtor's counsel via email, is they will need to  
18 issue stop orders on all checks drawn before the petition date,  
19 to make sure – since they're going to keep the same account  
20 number and redesignate it as debtor-in-possession account, they  
21 do need to stop prepetition checks.

22 THE COURT: So are there any checks outstanding that  
23 are covered by the request to pay some of the prepetition wages?  
24 Those are not, as I understand it, right? I mean as I read your  
25 papers, the motion for prepetition wages and retention, that's

1 all prospective, that's not at all covering any prior checks.

2 MR. CARDONICK: That is correct, Your Honor. That is  
3 all prospective, but I do believe there are some checks  
4 outstanding.

5 (Mr. Cardonick confers briefly with counsel.)

6 MR. CARDONICK: There are vendor checks outstanding,  
7 Your Honor.

8 THE COURT: Well, and is there – there's no request to  
9 honor those checks?

10 MR. CARDONICK: Not at this moment, no.

11 THE COURT: So I guess what I'm hearing Mr. Crowley  
12 saying is you've got to stop the payment on all those checks.

13 MR. CARDONICK: Your Honor, there are also, I'm  
14 advised, some employee reimbursement payment checks. Those are  
15 – there are – is a request today to allow those checks to clear.  
16 That will be taken up as part of the employee motion.

17 MR. CROWLEY: Your Honor, just as – Leo Crowley – I  
18 apologize. But as a housekeeping matter, what the bank would  
19 really prefer is to stop all of the prepetition checks. And  
20 then if there are permitted postpetition payments of prepetition  
21 expenses, such as the employee expenses, those should be paid by  
22 checks cut from the account once it is designated a  
23 debtor-in-possession account.

24 THE COURT: I guess that seems – I mean it may create  
25 a little bit of a disruption of a modest amount for some

1 employees, but properly – I mean assuming I grant the motion, at  
2 least that portion of the motion.

3 MR. CARDONICK: If – Your Honor, if the bank insists.  
4 I'm not quite sure why we have to go through the rigmarole, but  
5 if they insist we'll do that. I agree with you, it'll cause  
6 some disruption to the employees, but –

7 THE COURT: I think I know why. I think it's how  
8 you're going – how is – however they process the checks, how do  
9 they know which ones they're supposed to honor, which ones  
10 they're not supposed to honor. If you just close the account  
11 and replace it, I mean you're not going to – as you said, you're  
12 not asking permission to pay the vendor checks. So –

13 MR. CARDONICK: As I understand it, though, they're  
14 actually not closing the account. They're going to use the same  
15 account.

16 THE COURT: Well, stopping payment on it. I mean I  
17 guess in a layperson's term, stop it.

18 Is that right, Mr. Crowley?

19 MR. CROWLEY: Yeah. I mean they can either close the  
20 account. We thought we were doing them an accommodation by  
21 saying leave the same account number open just redesignate it as  
22 a DIP account.

23 THE COURT: Okay. But if I'm a vendor, my check's  
24 going to bounce.

25 MR. CROWLEY: Correct.

1 THE COURT: If I'm an employee, my reimbursement  
2 check's going to bounce, but hopefully that employee will get a  
3 replacement check.

4 MR. CROWLEY: They will get a replacement assuming you  
5 grant that other motion, -

6 THE COURT: Right.

7 MR. CROWLEY: - but it's going to bounce no matter  
8 what. They either have to close the account or they have to  
9 issue a stop order on the outstanding checks.

10 MR. CARDONICK: We will do that, Your Honor.

11 THE COURT: Okay. Look, why don't - I'll authorize  
12 and grant the motion to use - I mean to use the - maintaining  
13 the cash management system, but perhaps there just needs to be  
14 some freedom to do it however you want you do it. In fact, do  
15 we need to modify the order at all, change the order that deals  
16 with this question that Ms. Loo -

17 MR. CARDONICK: Mr. Crowley, do you think we need to -  
18 that deals with the - I'm not sure that we do. I mean we've  
19 said on the record that -

20 MR. CROWLEY: I think it's clear on the record, Your  
21 Honor, they can either open a different account or they can  
22 issue stop orders.

23 THE COURT: No. But Ms. Loo's comment was - I guess  
24 she was just taking issue with something that was said in the  
25 motion rather than in the form of the order.

1 MR. CARDONICK: Yes.

2 THE COURT: Okay. Well, then hearing no other  
3 objection – and, once again, anyone in court or on the phone who  
4 wants to be heard, I'll go ahead and – unless you have a good  
5 reason, I'm going to go ahead and enter the order that approves  
6 the motion for cash management.

7 MR. CARDONICK: Thank you, Your Honor.

8 THE COURT: I don't think you uploaded one on those  
9 yet, did you?

10 MR. CARDONICK: The motion on cash management or the  
11 order?

12 MR. FIERO: The order was attached –

13 THE COURT: You gave me proposed orders in the paper,  
14 but I don't think one was uploaded yet.

15 MR. FIERO: No, we haven't uploaded one. We'll do  
16 that when we get back. And we'll just leave on the record the  
17 issue – we won't modify the order in any way. Just leave the  
18 record to speak for itself with regard to stop payment.

19 THE COURT: Okay, that's fine.

20 MR. CARDONICK: Your Honor, I do believe there are  
21 going to be, at a minimum, comments and I think also objections  
22 on either of the two motions, so –

23 THE COURT: Why, what a surprise.

24 MR. CARDONICK: So –

25 THE COURT: I may even have some.

1 MR. CARDONICK: Why don't I back out for a minute,  
2 give you a brief introduction to how we got here today, and then  
3 I will go through the cash collateral motion. I'll ask my  
4 colleague, Mr. Baddley, to go through the employee motion.

5 THE COURT: You can give me the background for the  
6 sake of the people in the courtroom or otherwise. I've read all  
7 the papers and I think have the background, but if you want to  
8 make a statement for the record, that's fine.

9 MR. CARDONICK: Thank you, Your Honor.

10 As Mr. Fiero said, I'm here today on behalf of the  
11 debtor Heller Ehrman. My name is Drew Cardonick. Mr. Baddley  
12 is my colleague at Greenberg Traurig, and Mr. Fiero is our  
13 co-counsel. Before I begin, I'd actually like to take a moment  
14 to thank the Court to allow us – for allowing us to appear *pro*  
15 *hac vice* on such an accelerated basis.

16 THE COURT: No problem.

17 MR. CARDONICK: And also to thank the Court and its  
18 staff for accommodating us. We filed this case at the end of a  
19 holiday weekend, no less, and were allowed to file it on a  
20 Sunday night, and we really appreciate it.

21 THE COURT: We're always open.

22 MR. CARDONICK: Thank you, Your Honor.

23 THE COURT: I hope you got the Court order last night.

24 MR. CARDONICK: We did. And –

25 THE COURT: I'm always open.

1 MR. CARDONICK: - we hope never to abuse the  
2 privilege. You'll understand why we - or the record - you  
3 probably already do. The record will understand why we had to  
4 file the case when we did.

5 The - because this was done on such an accelerated  
6 basis, we're only going to ask the Court today for relief which  
7 we believe is necessary to allow the firm to continue its  
8 efforts to maximize value for creditors over the next few weeks.

9 It goes with the territory a bit, Your Honor, but I  
10 would say that it's always a sad day when we have to appear in  
11 court on the first day of the case and tell the Court that the  
12 debtor before it is not going to survive to reorganize but,  
13 instead, will be liquidating its business. This case is even  
14 sadder than usual because the business being liquidated is that  
15 of some of our finest colleagues in the bar, the shareholders of  
16 Heller Ehrman.

17 For 116 years Heller Ehrman was a proud international  
18 law firm with a sterling reputation and an ever-increasing  
19 footprint throughout the world. At its recent zenith, the firm  
20 had grown the more than 730 attorneys in offices all across the  
21 United States and in Europe and Asia, including offices in New  
22 York City; Los Angeles; Washington, D.C.; London; Hong Kong;  
23 Beijing; and Singapore.

24 As 2007 began Heller Ehrman looked forward to a future  
25 of continued growth and prosperity. Beginning in that year,

1 however, concurrently with the overall decline in the economy,  
2 and like many other law firms, Heller Ehrman began to experience  
3 modest declines in its revenue. Towards the end of 2007, some  
4 significant revenue-generating shareholders began to leave the  
5 firm. That attrition began as a trickle, but as 2008 – as 2007  
6 turned into 2008, it accelerated quickly, resulting in further  
7 and more significant declines in revenue.

8           Unfortunately the firm had anticipated growth over the  
9 course of the 2007 period and beyond and had significantly  
10 increased its overhead in anticipate thereof. Because that  
11 overhead was in the form of long-term space commitments, Heller  
12 Ehrman was unable to reduce it when the growth failed to  
13 materialize and, in fact, the business went in the other  
14 direction.

15           As a result, beginning in 2008, Heller Ehrman was  
16 forced to engage in merger discussions with two different law  
17 firm partners. But when the bulk of the firm's intellectual  
18 property practice group left the firm to go to Covington and  
19 Burling this summer, the last of those merger efforts fell  
20 through, and the firm was left with what it was, at best, a  
21 seriously distressed and, at worst, a nonviable financial model.  
22 The firm simply had too little revenue coming in from too few  
23 people to support its overhead and produce a sustainable level  
24 of income for its remaining shareholders.

25           In order to explain what happened in this next, I need

1 to back up just a bit. Pursuant to a 1991 prepetition credit  
2 agreement and various amendments to that agreement, including  
3 one as recently as this past July, Heller Ehrman obtained \$60  
4 million in revolving and term loans and up to \$20 million in  
5 letter-of-credit commitments from Bank of America, as the agent  
6 for a bank group that consisted of Bank of America and Citibank.

7 Heller Ehrman's obligations under that credit  
8 agreement and related documents were purportedly secured by a  
9 security interest in and lien upon substantially all of its  
10 personal property in favor of the agent. That security interest  
11 purported to cover, among other things, all or substantial -  
12 substantially all of Heller Ehrman's cash, which at least in  
13 recent years was located in bank accounts at the agent.

14 The agent purported to perfect its security interest  
15 in Heller Ehrman's assets by filing a UCC financing statement  
16 with the California Secretary of State on January 3rd, 1991.  
17 Over the years that initial financing statement was amended and  
18 continued by numerous UCC - subsequent UCC filings. However, on  
19 August 3rd, 2007, the agent filed a financing statement that  
20 clearly and unequivocally terminated its original financing  
21 statement, and thus its perfection in Heller Ehrman's assets.

22 On September 19th, 2008, with Heller Ehrman's merger  
23 negotiations having terminated, the agent seized all of the  
24 firm's cash, which was located in the firm's accounts at the  
25 agent.

1 THE COURT: What date?

2 MR. CARDONICK: September 19th, 2008.

3 Coming on the heels of the failed merger discussions  
4 and loss of a major group of its lawyers, the agent seizure of  
5 cash sounded the death knell for the firm. Thus, effective  
6 September 26, 2008 at 11:59 p.m. San Francisco time, the firm  
7 adopted a plan of dissolution to effect an orderly winding-up of  
8 its affairs. And under the management and direction of a  
9 four-member dissolution committee appointed pursuant to the plan  
10 of dissolution, our affiant today, Peter Benvenuti, is a member  
11 of that dissolution committee and is sitting in the courtroom  
12 directly behind counsel's table.

13 THE COURT: I recognize him.

14 MR. CARDONICK: I figured that you would, Your Honor.

15 Under the guidance of the Dissolution Committee,  
16 Heller Ehrman immediately began to wind down its operations.  
17 Among other things, the firm has been collecting its accounts  
18 receivable, selling and otherwise disposing of its other assets,  
19 paying or otherwise discharging claims against the debtor,  
20 negotiating and/or vacating leased premises, and securing and  
21 transitioning client files and business records.

22 Shortly after the plan of dissolution was enacted – or  
23 adopted – excuse me – the agent lenders appear to have first  
24 recognized that the agent's security interest in Heller Ehrman's  
25 assets had or may have become perfected as a result of the

1 filing of the August 2007 termination statement. Thus, over a  
2 year after the August 2007 termination statement was filed, the  
3 agent purported to file what it called a "correction statement"  
4 on October 1st, 2008, which stated that its August 2007  
5 termination statement "was filed in error and as a result of a  
6 clerical error" and purported to continue the original 1991  
7 financing statement.

8 The next day, on October 2nd, 2008, the agent filed a  
9 new UCC financing statement, purporting to cover the debtor's  
10 assets.

11 Through the hard work and dedication of many of the  
12 firm's former shareholders and remaining employees over the past  
13 three months, Heller Ehrman has had great success in collecting  
14 its accounts receivable. The firm believes that it will have –  
15 continue to have success collecting the tens of millions of  
16 dollars in outstanding receivables remaining during the  
17 postpetition period and that operating under this Court's  
18 auspices will enhance its efforts with respect to a few of the  
19 more difficult receivables.

20 On the expense side Heller Ehrman has had a similar  
21 level of success since the dissolution plan was adopted. The  
22 firm has negotiated favorable agreements to exit nine of its  
23 leased facilities and to otherwise reduce its ongoing expenses.  
24 In addition, on October 2nd, 2008, the day the agent filed its  
25 new UCC financing statement, Heller Ehrman owed the agent and

1 lenders \$58.3 million. Since that date, and notwithstanding the  
2 apparent defect and the perfection of the agent's lien against  
3 it, the firm has paid the agent \$52.6 million on account of  
4 those loans, reducing its debt balance to \$5.7 million – \$4.2  
5 million of which constitutes standby and thus unfunded exposure  
6 on undrawn letters of credit. Moreover, as I'll discuss more  
7 fully in connection with the cash collateral motion, the firm  
8 anticipates being able to provisionally pay the remainder of the  
9 bank debt and fully cash collateralize the undrawn letters of  
10 credit on a provisional basis no later than – no later than  
11 three or four weeks from today.

12 In fact, Your Honor, as of today, which was quite the  
13 collections day, Heller Ehrman has \$5 million in cash sitting in  
14 the bank.

15 THE COURT: So that's up a million and a half from  
16 yesterday?

17 MR. CARDONICK: It is up \$1.2 million from yesterday.

18 THE COURT: One point two, right.

19 MR. CARDONICK: And we expect that the next two days,  
20 the 30th and 31st, the last two business days of the year, last  
21 two days of the year, will be extremely good collection days, as  
22 they tend to be from year to year.

23 Indeed, Your Honor, it's important to point out that  
24 the Dissolution Committee's decision to file this case was not  
25 prompted by the firm running out of money or some lack of

1 success in the dissolution process. Indeed, the Dissolution  
2 Committee had strongly hoped that it would be able to wind down  
3 the firm's business and treat all creditor claims outside of the  
4 jurisdiction of this Court, to avoid the administrative and  
5 other bankruptcy-related expenses that will necessarily reduce  
6 the distributions available to the debtor's creditors. Despite  
7 that and notwithstanding the success of the dissolution process  
8 to date, the committee decided that this Chapter 11 was in the  
9 best interests of Heller Ehrman, its creditors, and other  
10 parties-in-interest for two primary reasons.

11 First, as I discussed or at least inferred earlier,  
12 the firm believes that the agent's liens on the collateral – on  
13 its collateral are unperfected as a result of the August 2007  
14 termination statement filed with respect to thereto. The agent  
15 attempted to remedy that defect in early October by filing  
16 financing statements on the 1st and the 2nd.

17 THE COURT: Well, you said – you said the – I don't  
18 want to turn this into a minitrial on the avoidance. You said  
19 that the bank filed a corrected statement on the 1st but then a  
20 new UCC-1 on the 2nd. Did the debtor sign that new UCC –

21 MR. CARDONICK: Debtor signed neither statement.

22 THE COURT: Did.

23 MR. CARDONICK: Did not.

24 THE COURT: Did not sign the new statement.

25 MR. CARDONICK: Did not sign either statement.

1           Those statements were filed October 1st and 2nd. This  
2 case was filed yesterday, on the eighty-eighth day after the  
3 first of those two filings. That filing obviously – this – that  
4 timing, excuse me, obviously is not a coincidence. Rather, the  
5 debtor filed the case within the 90-day preference period, in  
6 order to preserve the ability of the estate and/or a committee  
7 to seek to avoid the agent's October filings and, therefore, the  
8 agent's liens on the assets. If those liens are avoided, the  
9 agent and the lenders would not be entitled to receive  
10 distribution on its claims any greater than a pro rata amount  
11 distributed to the debtor's general unsecured creditors, as the  
12 Court is well aware, meaning that those creditors would be  
13 substantially better off than they otherwise would have been if  
14 the agent's liens are perfected.

15           Over the weekend and until literally hours before the  
16 filing, the debtor attempted to reach a settlement with the  
17 agent and lenders to avoid having to file this case, but was  
18 unable to reach one that it believed would generate a better  
19 result for the estate and its unsecured creditors than the  
20 filing of the case and either Mr. Fiero or the committee attempt  
21 to avoid the agent's liens.

22           Second, while as discussed earlier, the firm has been  
23 able to negotiate exits with respect to many of its leased  
24 premises, it has not been able to successfully conclude a  
25 settlement at this juncture with its largest landlord, the San

1 Francisco landlord, the name of which is 333 Bush Associates.  
2 Mr. Brody and his colleague represent them. That was not for  
3 lack of effort.

4 Over the past few months, the Dissolution Committee  
5 and the firm's professionals have devoted – and Mr. Brody as  
6 well – have devoted extensive efforts in attempting to negotiate  
7 a settlement with the San Francisco landlord. As of the middle  
8 of this month, those efforts had not been fruitful, and 333 Bush  
9 Associates filed a suit against the debtor in San Francisco  
10 Superior Court. In that lawsuit, over the firm's objection, the  
11 San Francisco landlord was able to obtain a writ of attachment  
12 from the court in the approximate amount of \$48 million. That  
13 writ crippled the firm's ability to do anything other than pay  
14 payroll and pay the claim of the agent and lenders.

15 Although subsequent thereto Heller Ehrman was able to  
16 negotiate a settlement with the landlord on terms that we  
17 believe would be highly beneficial to the bankruptcy estate, the  
18 firm wasn't able to convince the agent and the lenders to permit  
19 it to timely make the initial cash payment to the landlord that  
20 the proposed settlement agreement required. As a result, and  
21 with the attachment still in place, the firm simply had no  
22 choice but to file for bankruptcy. It could not continue  
23 outside of bankruptcy.

24 This case of course offers the ability to avoid the  
25 attachment obtained by the San Francisco – obtained by the San

1 Francisco landlord just days ago, and the possibility of  
2 restarting those negotiations with the debtor from a much  
3 stronger bargaining position than it was in prior to the filing  
4 of this case.

5 As of yesterday, the debtor has – as of today,  
6 actually, the debtor has \$5 million in cash in the bank and  
7 accounts receivable with a face amount – a face amount of  
8 roughly \$55 million, not including some potentially lucrative  
9 contingent-fee arrangements.

10 On a going-forward basis, under the auspices of this  
11 Court, the firm intends to continue to attempt to aggressively  
12 collect those accounts receivable with this Court's help, if  
13 necessary, to liquidate its furniture, fixtures, and equipment  
14 for the highest possible value and to either itself or through  
15 the committee prosecute any appropriate avoidance actions.

16 As of yesterday, as discussed previously, the firm  
17 owes the agent and Citibank, the other lender, \$5.7 million,  
18 including \$4.2 million in undrawn letter of credit commitments.  
19 In addition to the claims of the San Francisco and other  
20 landlords, the firm has \$10 million in accounts payable, owes \$4  
21 million in taxes, and is liable for an as yet undetermined  
22 amount of claims from former employees for deferred  
23 compensation, vacation pay, and pension obligations.

24 THE COURT: The papers didn't even give a range there.

25 MR. CARDONICK: It is still being calculated.

1           THE COURT: I mean is it eight figures, nine figures,  
2 seven figures? I mean, you know, you're making all these  
3 allusions to how you're going to avoid these liens, and then on  
4 the face of it you've got a solvent debtor and haven't indicated  
5 what the exposure on the leases is.

6           MR. CARDONICK: Your Honor, I think that we believe  
7 that it would be a homerun if we ended up with a solvent debtor,  
8 but that we are not likely to end up with a solvent debtor.  
9 When all the exposure on the leases is taken into account, I  
10 think we haven't calculated the full amount of the former  
11 employee claims, but I don't think it's a game-changing amount,  
12 Your Honor. But I do believe that once the – when the  
13 receivables are liquidated and all the – the various landlord  
14 claims, which are large, are finally determined, we believe that  
15 while we won't be able to – it would be a homerun to get to a  
16 hundred percent.

17           THE COURT: Well, the round numbers, and leaving aside  
18 the tables and chairs and the computers –

19           MR. CARDONICK: Right.

20           THE COURT: – and miscellaneous things, you've showed  
21 me about \$46 million of assets.

22           MR. CARDONICK: That's correct.

23           THE COURT: And based upon your statement, a couple of  
24 those ARs have turned into cash just in the short time that's  
25 gone by. But the liabilities against that are quantified in the

1 20. If one landlord got a \$48 million attachment, there must be  
2 a very substantial potential claim there.

3 MR. CARDONICK: There is, as there are some of the –  
4 that's the biggest, but there are some other leases. And  
5 obviously 502(b)(6) is going to cap that number –

6 THE COURT: Well, but you told me that – yes. But you  
7 told me you reached tentative settlements with a number of other  
8 landlords, but you didn't quantify them. Are you able just to  
9 put a round number on that?

10 MR. CARDONICK: On the –

11 THE COURT: Again, it's better for me to get an  
12 overall perspective, in part –

13 MR. CARDONICK: Right.

14 THE COURT: – because – because you want to pay some  
15 prepetition nonpriority claims today. So I need to – I need to  
16 see how it all plays out in a broad sense.

17 MR. CARDONICK: Can you excuse me for just one moment,  
18 Your Honor?

19 THE COURT: Sure.

20 (Counsel confer.)

21 MR. CARDONICK: Thank you, Your Honor. I apologize  
22 for that. As Your Honor saw, I just went back and spoke with  
23 our affiant Mr. Benvenuti. It's our belief that the landlord  
24 claims in the aggregate will total probably, after cap under  
25 502(b)(6), will total probably roughly \$30 million.

1           We think the employee claims could be as high as \$20  
2 million and the vendor claims are \$10 million. So -

3           THE COURT: Yeah. You - that's what you call accounts  
4 payable. I assume those were the -

5           MR. CARDONICK: Yeah, yes. Yes, yes.

6           THE COURT: - the traditional outside vendors -

7           MR. CARDONICK: Yes, yes. Yes, correct.

8           So Your Honor is - Your Honor is correct to point out  
9 that you could take what I said as saying that the estate is  
10 solvent, but I think once all the claims are finally determined  
11 it's going to require either a homerun on the accounts  
12 receivable or a homerun on a contingency-fee case -

13           THE COURT: It's okay. Listen, all I'm getting at is  
14 in terms of your overall use of cash, you made the point of  
15 three line items are assets and three line items for liabilities  
16 with numbers, but then there was a blank, a question mark, and  
17 then nothing about landlords. And so -

18           MR. CARDONICK: That's correct, Your Honor. That's  
19 correct.

20           THE COURT: - you've answered my question.

21           MR. CARDONICK: We have been - with respect to the  
22 landlords, it has been a moving target over the course of the  
23 last three months. We have been -

24           THE COURT: I'm not surprised.

25           MR. CARDONICK: As Mr. Brody can attest, we have -

1 there have been more emails than you can possibly hope to – hope  
2 to imagine over the course of the last few weeks, trying to –  
3 trying to resolve as many of these claims as possible.

4 THE COURT: Well, there's no rule against settlements  
5 now.

6 MR. CARDONICK: That's correct, Your Honor. That's  
7 absolutely correct. In fact, we hope that we'll be able to  
8 accomplish all of that, to settle all of the various different  
9 claims, to collect all of the assets, and to confirm a plan,  
10 making a significant distribution to unsecured creditors all  
11 within the course of hopefully not more than six months.

12 I indicated earlier, Your Honor, that – that because  
13 of the expedited nature of this we were really only asking for  
14 the things that we felt like we absolutely had to have on the  
15 first day of the case. We only filed three first-day motions.  
16 There was a whole lot of standard first-day motions that I'm  
17 sure Your Honor has seen in the PG&E case or in many other cases  
18 before you –

19 THE COURT: You think I remember them?

20 (Laughter.)

21 THE COURT: I think I've seen a few.

22 MR. CARDONICK: Well, I hope you're not going to ask  
23 me to actually tell you what they are, because I'm not sure I  
24 remember them. Those motions will be filed in due course, but  
25 we didn't want to take advantage of the Court's hospitality or,

1 particularly given how little notice we were able to provide of  
2 this to our creditors, to attempt to do things -

3 THE COURT: I want to interrupt you. The one thing  
4 that I haven't seen from the docket was how well this - today's  
5 hearing was noticed. Obviously the mere presence of so many  
6 counsel in the courtroom or on the phone means the word's gotten  
7 out, but I didn't - I didn't see - maybe Mr. -

8 (Noise from the telephonic connection.)

9 THE COURT: - filed something, but I didn't see the -  
10 when I looked at the electronic docket maybe an hour and a half  
11 ago, I didn't see any proof of that.

12 MR. FIERO: Your Honor, -

13 THE COURT: Can you just make a representation to me -

14 MR. FIERO: I had the - I had the same concern before  
15 I walked over here. And I asked my secretary and she pointed  
16 out to me that if you look at docket number 19 there's a  
17 certificate of service showing service both of number 17 and  
18 number 15, which is the notice on the telephonic hearing. And  
19 you'll see from that that every person that we had an email  
20 address for, we sent email notice to. Everyone else, we did  
21 have a fax number, and we sent fax notice.

22 THE COURT: Okay, that's fine. I don't have my PC on  
23 now. I'll take your word for it. Docket number 19.

24 Yeah. No, I understand. Of course the wage one and  
25 the use of cash. Which one do you want to start with?

1 MR. CARDONICK: Your Honor, let's start with the cash,  
2 because I'm going to be presenting that, and then I can turn the  
3 podium over to my colleague.

4 THE COURT: Well, let me – let me make a preliminary  
5 comment.

6 MR. CARDONICK: Sure.

7 THE COURT: The problem I have is the motion is one  
8 thing. The order asks for a lot more than the motion asks for,  
9 and the order reads like an agreed order. It doesn't read like  
10 an unagreed order, so –

11 MR. CARDONICK: The order is now agreed.

12 THE COURT: If it's agreed, but I'm not so sure I'm  
13 willing to go into replacement liens and carve-outs and drop  
14 deadlines and so on, none of which are really important for  
15 today. And, tell me, in four weeks the bank's going to be out,  
16 so –

17 MR. CARDONICK: Your Honor, on an interim basis the  
18 order – I received comments from the banks today on the order.  
19 The order, as – unless Mr. Landers and Mr. Crowley says  
20 otherwise there on the telephone, I believe the order is agreed  
21 – the – there is one provision of the order which gets to the  
22 heart of this, the dispute between us and the lenders at this  
23 point that is not really an ordering provision. It's more to  
24 the substance of the business deal, which I can address. But –  
25 and that question is whether the lender should be bound by – or

1 the debtor should be bound by a specific budget. We say no,  
2 they say yes. I'll explain why we say no, but I believe that  
3 the order itself save for that is actually agreed at this point.

4 THE COURT: Well, it's agreed, but it's more than the  
5 motion asks for. See, that's the problem.

6 MR. CARDONICK: Which parts of it in your view, Your  
7 Honor, would –

8 THE COURT: Well, the motion itself says nothing about  
9 replacement liens.

10 MR. CARDONICK: Well, the –

11 THE COURT: The memorandum does, but the motion  
12 doesn't. The motion just says, 'We want to use cash per the  
13 budget.' The memorandum goes into things like carve-outs. And  
14 the first thing I looked at is why do we need a carve-out if  
15 there's going to be no bank debt in four weeks. And you have to  
16 really dig into the – into the budget to find the reference to  
17 carve-outs. And then there's this in 180 days nobody can  
18 challenge the banks. That's never been a popular concept for  
19 me, particularly when – and this is no criticism of the banks.  
20 They're not giving you anything here today.

21 MR. CARDONICK: Your Honor, let me make – make a  
22 couple –

23 THE COURT: I could – I could turn this into a  
24 contested motion and in four weeks you'd have them paid for.

25 MR. CARDONICK: Actually we might have them paid for

1 in four days, Your Honor.

2 THE COURT: Right. So my point is this: On a – you  
3 know we're not even 24 hours into the case. I'd be inclined to  
4 grant the use of cash in language that's agreed, but I'm not  
5 prepared to go to all these other things, in part because I  
6 don't think they're necessary. I mean why do we have to have  
7 things like carve-outs and replacement liens if there's no lien  
8 to replace?

9 MR. CARDONICK: Your Honor, the – well, first of all,  
10 let me – let me make a couple of comments. First, I do think  
11 the – with all due respect, Your Honor, I do think the motion to  
12 request what the order does – the motion in fact in the – in the  
13 wherefore provision specifically asks for the Court to authorize  
14 the debtor to use cash collateral substantially in the form and  
15 substance as the proposed form of order attached.

16 THE COURT: No, I'm sorry. That's what the memorandum  
17 says. The motion doesn't say that. And the motion says, "The  
18 debtor respectfully requests the Court grant this motion and  
19 enter the order: 1, authorizing the debtor to use the cash on  
20 an interim basis in accordance with the budget; and 2,  
21 scheduling deadlines and noticing requirements."

22 MR. CARDONICK: So you're saying – you're drawing a  
23 distinction, Your Honor, between the motion and the memorandum –

24 THE COURT: And the memorandum –

25 MR. CARDONICK: – that was filed that was – I mean –

1 THE COURT: I am drawing that distinction because I  
2 don't see a need to do it. As I say, I wouldn't be hung up on  
3 formalities here -

4 MR. CARDONICK: Uh-huh.

5 THE COURT: - if there was something that was needed.  
6 And if you're telling, well, the bank without agree without my  
7 doing all these other things, I'd say fine. I'll overrule the -  
8 I'll grant the motion as a contested motion.

9 MR. CARDONICK: Your Honor, it's our - let me -

10 THE COURT: I mean I will. And don't do "with all due  
11 respect." I don't want to hear that.

12 MR. BENVENUTTI: With all due respect, Your Honor, may  
13 I consult -

14 THE COURT: I have a response to that.

15 (Laughter.)

16 MR. CARDONICK: There are about four people here who  
17 want to pull me back, so -

18 THE COURT: Mr. Benvenutti knows that I respond to  
19 "with all due respect" with "in my humble opinion," so we're  
20 both lying. I don't -

21 MR. BENVENUTTI: Is that permissible, Your Honor?

22 THE COURT: Sure. Fine.

23 I mean my point is that - no, I don't see a need to do  
24 it at this point.

25 (Pause in the proceedings.)

1 MR. CARDONICK: Your Honor, let me make two comments.  
2 First, with respect to the replacement liens. The – you're  
3 correct, that we shouldn't have given them replacement liens if  
4 there are no liens to being with. And in fact, actually, the  
5 replacement lien language is limited to the same extent and  
6 priority as the existing liens –

7 THE COURT: I realize that. If you spend a hundred  
8 dollars today on supplies and that's a hundred dollars of  
9 collateral that perhaps the bank should have a hundred dollars  
10 more, if there is any postpetition new property. But I mean  
11 that's not nearly as big a deal. But I do stick with my point  
12 about the motion, the fundamental rule is you don't grant on a  
13 default basis more than is asked for. And I have to take the  
14 more narrow view, but I'm not going to be hung up on the  
15 replacement lien.

16 MR. CARDONICK: Your Honor, let me – let me say this.  
17 We reached an agreement with the banks on the form of an order.  
18 The form of the order contains the provisions that it contains.  
19 We are prepared to stand by the deal that we reached with the  
20 banks. Obviously the most important thing for us today, Your  
21 Honor, is that we do get the use of cash collateral that we're  
22 requesting.

23 I think probably under the circumstances it's  
24 appropriate for either Mr. Landers or Mr. Crowley to make their  
25 arguments as to why they believe they need the things that are

1 contained in this motion, notwithstanding the equity cushion  
2 that they have and the fact that we're going to pay them down  
3 over the course of the next few weeks.

4 But I will say again for the record, Your Honor, we  
5 made a deal and we're prepared to stick by the deal that we made  
6 with them. And I'll leave it to Mr. Crowley and/or Mr. Landers  
7 to address Your Honor's comments beyond that.

8 THE COURT: Okay. Do either of you want to speak to  
9 that?

10 MR. LANDERS: Your Honor, this is Jonathan Landers,  
11 counsel for Citibank, and I want to make it clear I speak only  
12 for Citibank. We would be amenable to going ahead with the  
13 order with the provision for replacement liens deleted.  
14 Obviously the provision for a carve-out does not affect us, but  
15 we'd certainly be willing to go without that provision as well.

16 As Mr. Cardonick said, we have a problem with the  
17 scope of the budget authority, which we do have – which we will  
18 request the Court to address, but as I understand it that issue  
19 is not on the table now.

20 THE COURT: Well, as I say, when I read the papers  
21 this morning I had no clue that this was going to be an agreed  
22 order until I read the order. And the order reads like an  
23 agreed order. Now I got the – I was provided with a blackline  
24 or redline and I saw there has been some changes in the order.

25 I don't have a strong feeling one way or the other on

1 the budget issue, and I appreciate your responsiveness to my  
2 concerns about carve-out and replacement liens. But, Mr.  
3 Landers, I also have a concern about this Provision 7, of having  
4 an artificial 180-day statute of limitations when Congress gave  
5 the debtor two years to challenge liens. And I don't see any  
6 reason to change what Congress gave the debtor.

7 MR. LANDERS: Your Honor, this provision was not  
8 placed in the order at the instance of the banks. It was in the  
9 original draft Mr. Cardonick submitted. I have to say I've  
10 never been a fan of those 180-day provisions because my  
11 experience is that as a practical matter you run up against them  
12 and then you've got to deal with extensions and otherwise the  
13 debtor is forced to file litigation it might be able to settle.  
14 So on behalf of Citibank again we would have no problem in  
15 deleting the 180-day provision to the normal statute of  
16 limitations.

17 MR. CARDONICK: Your Honor, if they don't want it,  
18 we'll take it out.

19 THE COURT: Well, you gave it to them.

20 MR. CROWLEY: This is Leo Crowley, Your Honor, -

21 MR. CARDONICK: We were trying to reach a deal, Your  
22 Honor.

23 THE COURT: Let's see what Mr. Crowley says.

24 MR. CROWLEY: Yeah. Your Honor, to be clear, the  
25 order, although the order attached to the motion may have read

1 like an agreed order, it was actually not filed as an agreed  
2 order. It was simply -

3 THE COURT: No, I know it wasn't. I -

4 MR. CROWLEY: So a lot of what Your Honor is pointing  
5 out are points - are things that the debtor put in, the  
6 replacement liens and the 180-day provision or the 180-day  
7 provision, the wording is changed but the concept was always in  
8 there.

9 Certainly the replacement liens and the carve-out, as  
10 far as I'm concerned, is a nonissue. The replacement liens I  
11 think are not really what we were looking to for adequate  
12 protection. And the carve-out obviously runs to the benefit of  
13 the debtor's professionals, not us.

14 THE COURT: Right.

15 MR. CROWLEY: The 180 days, I will say that I would be  
16 - if Your Honor chooses to disapprove it, I would be extremely  
17 disappointed if we - if this - the issue that the debtor's  
18 counsel alluded to earlier about the agent's liens was an extant  
19 issue 179 days from now. It should either be resolved by then  
20 or -

21 THE COURT: You're free to file an adversary  
22 proceeding this afternoon for a dec. relief on the validity of  
23 the lien -

24 MR. CROWLEY: Oh, we might. I mean I've done that in  
25 other cases, Your Honor, -

1 THE COURT: Yeah.

2 MR. CROWLEY: - and I wouldn't rule that out here.

3 THE COURT: I understand, but my point is that there's  
4 got to be a reason, and I don't like these artificial deadlines.  
5 And I haven't seen a reason, so.

6 MR. CROWLEY: Okay.

7 THE COURT: I mean, again, I know this is not a deal  
8 breaker, but I think the record should reflect never in the  
9 history of Chapter 11 have two lenders complained about all the  
10 goodies the debtors gave them that they didn't even ask for and  
11 they don't even want anymore.

12 MR. CROWLEY: Well, Your Honor, I'm not complaining  
13 about them.

14 MR. CARDONICK: Your Honor, I wish you had been on the  
15 phone call with me this afternoon because they weren't willing  
16 to give them up two hours ago.

17 MR. CROWLEY: Your Honor, these are not - these are  
18 not complaints. We're - I think you should interpret it as us  
19 acceding to the Court's wishes -

20 THE COURT: Well, let me - let me say this. I need to  
21 hear from - from obviously any creditor because I'm not - I have  
22 no money invested in this debtor and a lot of folks on the phone  
23 and in the courtroom through their counsel have millions of  
24 dollars at stake. But I'm prepared, unless there is someone who  
25 wants to set forth an objection, to approve the cash collateral

1 matter, subject to clarifying this budget issue, but taking out  
2 of the title and the text anything about replacement liens and  
3 anything about carve-outs and anything about a 180-day deadline  
4 for seeking the determination of the validity of the lien.

5 MR. CROWLEY: Your Honor, there is one other point –  
6 Leo Crowley again for Bank of America – that I don't think  
7 debtor's counsel alluded to, which was there an item in the  
8 budget which I think they agreed with us in discussions earlier  
9 this afternoon to withdraw from the budget, but I don't know if  
10 that's actually been stated –

11 MR. CARDONICK: I haven't gotten there yet, Your  
12 Honor.

13 MR. CROWLEY: Okay.

14 MR. CARDONICK: Let me – let me explain our position  
15 on the budget. We believe –

16 THE COURT: One second. Can you wait one second?

17 MR. CARDONICK: Yeah, of course. Sure.

18 THE COURT: I want to get up –

19 MR. CARDONICK: Of course.

20 THE COURT: – with the budget. The budget's –

21 MR. CARDONICK: I'm hoping if I stand here long enough  
22 you'll do some more negotiating for me.

23 THE COURT: No, the budget's an attachment to the  
24 motion, right?

25 MR. CARDONICK: The budget is an attachment to the

1 motion.

2 THE COURT: Okay, I got it.

3 MR. CARDONICK: Okay. Your Honor, the secured lenders  
4 in this case, the agent I suppose, has the right to seek  
5 adequate protection pursuant to a cash collateral order or some  
6 finding in this Court. In our view, Your Honor, the agent in  
7 this case and the lender and the other lenders, for that matter,  
8 is adequately protected by an extraordinarily large equity  
9 cushion.

10 THE COURT: Right.

11 MR. CARDONICK: There are \$57 million in face amount  
12 of receivables and the debt is \$5.7 million. That's a thousand  
13 percent, or something along those lines. Even looked at  
14 conservatively, it's 5- or 600 percent if you draw the number  
15 down.

16 THE COURT: Yeah. No, I understand.

17 MR. CARDONICK: We actually - we've given them a  
18 number of other protection, some of which you've just taken  
19 back, which is great. And - but we believe that the equity  
20 cushion by itself, even without any of the protections of the  
21 order, adequately protect the lender.

22 In many cases when the lenders are extending new  
23 financing, when there is some question about the impairment of  
24 the lender's claim, you will see a budget pursuant to which the  
25 debtor agrees to be bound determining either an interim or final

1 period. This is not one of those cases. There is no question  
2 that the lenders are going to be at least provisionally repaid  
3 in full. That will happen within the next few days, or so.

4 THE COURT: Can I - I'm sorry for interrupting you,  
5 but -

6 MR. CARDONICK: Sure.

7 THE COURT: - is the - do the banks agree to the 4.2  
8 of just the collateralization of the LC exposure and that -

9 MR. CARDONICK: The banks - yes. As far as I know.  
10 I'm not sure what else we would do.

11 THE COURT: I mean you can replace them. I mean it's  
12 effectively paying the debt, but -

13 MR. CARDONICK: Anything the banks want to do to deal  
14 with the \$4.2 million letter of credit, as long as it's  
15 provisional it's fine with us.

16 THE COURT: Okay.

17 MR. CARDONICK: What we want to do is get them  
18 provisionally out of the way.

19 MR. CROWLEY: Can I just - I'm sorry to interrupt.  
20 But I believe one of the LCs is in the process of being drawn  
21 under a request that was made about a week ago and it may be -

22 THE COURT: Well, but if it's drawn then -

23 MR. CROWLEY: Yeah.

24 THE COURT: - in effect it's effectively as though it  
25 becomes a different facility and you've got collateral for it.

1 MR. CARDONICK: It will be provisionally repaid.

2 THE COURT: The debtor says, 'We're going to pay it  
3 off.' I mean you keep saying -

4 MR. CROWLEY: I just wanted to be -

5 THE COURT: - provisionally, and I understand your  
6 point. At this moment in time the bank has a valid perfected  
7 lien on the collateral.

8 MR. CARDONICK: Just trying not to waive anything,  
9 Your Honor.

10 THE COURT: Not waiving anything. And if you are able  
11 to negotiate or by litigation set aside, that's fine. But the  
12 presume is in favor at the moment.

13 MR. CARDONICK: Right.

14 THE COURT: Okay.

15 MR. CARDONICK: Okay. The - notwithstanding that  
16 presumption, as a result of the equity cushion, we believe  
17 they're adequately protected. And we believe that it doesn't  
18 really matter, as long as their - their right is to seek  
19 adequate protection. As long as you find that they're  
20 adequately protected and as long as we agree only to use cash  
21 collateral to pay ordinary course expenses under Section 363, we  
22 don't believe they get to have a budget.

23 THE COURT: But you made the motion saying, 'We want  
24 to live in accordance with the budget.'

25 MR. CARDONICK: No. We - we -

1 THE COURT: I'm reading it, "Authorizing the debtor to  
2 use cash in substantial in accordance with the budget."

3 MR. CARDONICK: But again, Your Honor, I will go back  
4 to what I said before, which is that the order itself clearly  
5 says that we're going to use – the budget is illustrative.

6 THE COURT: But, Mr. Cardonick, we better have a –

7 MR. FIERO: It's substantial –

8 THE COURT: – clarification on day one here. Debtors  
9 get what they ask for in motions, not in proposed orders.

10 MR. CARDONICK: So let me see if I can find another  
11 way around this, Your Honor. The – I'm happy to make an oral  
12 motion to amend the initial motion right now. And if Your Honor  
13 believes that's not on good notice, we can come back here  
14 tomorrow morning and we can hold the hearing on the order that  
15 we're actually requesting. Whatever is the Court's pleasure.

16 I understand completely what you're saying, but I  
17 believe that that once – I believe that unless the – unless the  
18 banks believe that – that they're not adequately protected and  
19 can make that argument, we have the right to use cash collateral  
20 – to use cash to pay ordinary course expenses without any motion  
21 of the Court. We don't even –

22 THE COURT: Yes, I agree with you. But, you know,  
23 you've also made a motion to use cash today that maybe you  
24 didn't have to make a motion to ask to use cash.

25 MR. CARDONICK: Well, we did because it's still part

1 of the bank's collateral at this point.

2 THE COURT: Right. But in four weeks or four days or  
3 somewhere in between in your projection, -

4 MR. CARDONICK: Um-hum.

5 THE COURT: - there will be no secure debt.

6 MR. CARDONICK: There may never be a final hearing on  
7 the use of cash collateral.

8 THE COURT: But that doesn't mean you can't be asked  
9 to live under a budget.

10 MR. CARDONICK: That's correct, Your Honor. And what  
11 would - what will happen I anticipate in this case is that a  
12 committee will be appointed promptly and we will talk to the  
13 committee and we will determine whether - we will work with the  
14 committee to attempt to determine whether a budget is necessary  
15 and hopefully we'll reach an agreement.

16 THE COURT: But for that reason -

17 MR. CARDONICK: Um-hum.

18 THE COURT: - what's wrong with a budget - I mean what  
19 - what I'm hearing is, 'We don't need a budget,' even though you  
20 offered one -

21 MR. CARDONICK: We offered it for illustrative  
22 purposes only. What we're going -

23 THE COURT: But that isn't what the motion says. I  
24 don't know how many times I have to say that, but -

25 MR. CARDONICK: You've said it. You've said it enough

1 times. I understand completely what you're saying, Your Honor.

2 THE COURT: But what's wrong with living under the  
3 budget for a short term?

4 MR. CARDONICK: Because, Your Honor, we believe that –  
5 the budget is our best estimate of what we believe the expenses  
6 are going to be over the course of the next two- or three-week  
7 period. The budget goes out a little bit longer, but there will  
8 be a final hearing before we ever get to the end of the budget.  
9 And we – it is our intention to attempt to spend money only as  
10 set forth on the budget, but we don't want to guarantee to any  
11 of the creditors at this point that that's what we're going to  
12 do.

13 We're not going to make any expenses that are out of  
14 the ordinary course of business. Your Honor has already said no  
15 carve-outs, so we're not going to spend any carve-out moneys.  
16 All we're going to do is pay payroll and make ordinary course.  
17 Otherwise –

18 THE COURT: But on January 23rd you're projecting \$3.6  
19 million for a tail policy (phonetic) –

20 MR. CARDONICK: And that's the last issue to come to,  
21 Your Honor, which is that we have agreed with the lender – the  
22 lender has raised an objection as to that amount of money. And  
23 we have agreed with the lender that we will not spend that money  
24 before a final hearing on the use of cash collateral. Or, if  
25 there isn't one, before we're back in court another time.

1 THE COURT: Well, I think what I would prefer would be  
2 hold you to a budget at least as long as the debt is secured.

3 MR. CARDONICK: Um-hum.

4 THE COURT: When you get to the point where – again,  
5 we'll use the word "professional." When the 5.7 is paid over or  
6 whatever the figure is, by then there may be a committee in  
7 place. I don't want to sit here and tell the debtor what to  
8 spend. I want a creditors committee to sit at the table with  
9 you and say, 'Pay the tail. Don't pay the tail. Pay this, pay  
10 that.' I'm not qualified to make the right answers. But in a  
11 case that's 23 hours old, I'm not prepared to say just spend at  
12 will.

13 MR. CARDONICK: Well, Your Honor, I think we've got a  
14 pretty good history of not just spending at will.

15 THE COURT: No, I know that, and I don't mean to sound  
16 – and please don't get the impression that I think this is not a  
17 well thought-out approach to this. But the budget as I looked  
18 at it seemed to be completely understandable. If there was  
19 anything that was modest was the contingency item. I'd give you  
20 a much larger contingency item. And I have enough confidence in  
21 Mr. Benvenuti personally, the debtor, the debtor's counsel that  
22 people are not going to go off and do what the law doesn't  
23 permit. And I don't want you to say, 'Oh, my gosh, the AT&T  
24 bill is \$5200, we can only pay 5,000.' That's insane.

25 So give you a business contingency and operate for a

1 few days or a few weeks and then get a committee around the  
2 table and talk about what the game plan -

3 MR. CARDONICK: I understand, Your Honor. Then if the  
4 committee says, 'You guys don't need to have a budget,' then  
5 you're okay with that -

6 THE COURT: Yeah, if the commit- - I'm not  
7 independently going to impose a budget on your. At the moment,  
8 whether you say the bank is secured six times or no times, there  
9 is a tradition of saying how you're going to spend somebody  
10 else's collateral. And a factual predicate for me to make the  
11 finding of adequate protection, and I'm prepared to make it, and  
12 I don't hear - obviously don't hear the bank saying you  
13 shouldn't be spending some of these moneys.

14 But I've never - I mean I actually - there have been  
15 other cases where the secured creditor is out early. And I  
16 don't feel it's my role to get into the details about what's  
17 spent. But a creditors committee will play that role, will say,  
18 'Wait a minute, I don't know why you're doing, you know, this  
19 thing or that thing or some other thing,' and they'll resolve it  
20 or bring it to my attention if necessary.

21 MR. CARDONICK: Well, excuse me for just one second,  
22 Your Honor.

23 (Counsel confer off record.)

24 MR. CARDONICK: Your Honor, on behalf of the  
25 Dissolution Committee Mr. Benvenutti has informed me that the

1 firm, the debtor will be – would be willing to live with a  
2 budget as it's presented with essentially an aggregate  
3 25-percent variance factor, so that it couldn't go more than 25  
4 percent in the aggregate above this – above what's actually on  
5 here for the budget for each particular week. The one –

6 THE COURT: That's still subject to obviously ordinary  
7 course of business –

8 MR. CARDONICK: Of course.

9 THE COURT: I mean whatever the ordinary course of the  
10 liquidating law firm is.

11 MR. CARDONICK: Of course, Your Honor. Of course  
12 we're only making ordinary course expenditures.

13 The one comment that I would have, though, is that  
14 again, Your Honor, I understand there is – I do a lot of bank  
15 work myself and I understand that generally even in cases which  
16 the banks end up getting out early or provisionally out early,  
17 they want to see a budget. I don't believe the banks – I don't  
18 believe the banks need a budget here for adequate protection. I  
19 believe the aggregate amount in and of itself that we've  
20 committed to spend is enough, and I don't want to get into a  
21 debate about whether we're going to spend this \$5,000 item or  
22 this \$200,000 item with the banks about it. We've committed to  
23 the total amount.

24 THE COURT: Okay. But I do think it's important as  
25 this case progresses that you be mindful that I take the motions

1 literally and under – and I start with a premise that you never  
2 grant more than was asked for.

3 MR. CARDONICK: I understand completely.

4 THE COURT: The very second page of the very first  
5 document, the debtor says: I'd like to spend per the budget.

6 MR. CARDONICK: I understand, Your Honor.

7 THE COURT: And an order that goes beyond that either  
8 could – some would say is overreaching in drafting an order.  
9 Others would say it's a backdoor way to sneak something in. I'm  
10 not going to accuse anybody. I'm saying the unsecured creditors  
11 have to get to the table and get to play this game.

12 MR. CARDONICK: I completely understand what you're  
13 saying, Your Honor. I will say that we apologize for the error.  
14 I will say that we were certainly not trying to sneak anything  
15 in. I think read in the aggregate our papers made pretty clear  
16 what we were asking for. But you are correct that the motion  
17 itself does not ask for the order to be entered. It asks for  
18 the use of cash collateral in accordance with the budget. That  
19 was our error, but there was – if you look at the papers in  
20 their entirety, there was clearly no attempt to sneak anything  
21 in. It was –

22 THE COURT: And I just gave you what some cynics may  
23 say. I didn't use the word as my own verb.

24 MR. CARDONICK: The order was clearly – the order was  
25 attached and it had all these provisions in it, so.

1           THE COURT: I know. And if I used you for a hundred  
2 dollars and took your default, you wouldn't be happy if I  
3 entered a judgment. I've got a judgment entered for a million  
4 dollars and a permanent injunction and attorney's fees and  
5 punitive damages.

6           MR. CARDONICK: Point taken, Your Honor.

7           THE COURT: Okay. Ms. Stenfeltdt, I guess we want to  
8 hear from at least a creditor.

9           MS. STENFELDT: Yes.

10          THE COURT: And then we'll hear from anyone else.

11          MS. STENFELDT: Yes, Your Honor. And we appreciate  
12 the comments that you've made so that we did not need to, but we  
13 are the – 333 Bush Street Associates is the largest creditor as  
14 far as we know. And we – we had those issues and we do  
15 anticipate becoming involved in the creditors committee. And we  
16 would be looking for a budget and we would be looking for more  
17 communication from the debtor than what we have had.

18                 We have not had a chance to really comb through the  
19 budget or the employee motion and would like time to do that.  
20 So we are hoping for the minimum in terms of a budget going  
21 forward. And we appreciate your efforts.

22          THE COURT: Well, but what I've heard in oral  
23 modification are two things. One is to delete from the budget  
24 the \$3.6 million item that appears in the fourth week for a no  
25 tail. At least take it out for now, whether the debtor seeks to

1 spend -

2 MS. STENFELDT: Right.

3 THE COURT: - that money or chooses to spend it is  
4 another story later. And also to pencil in, in a sense, a  
5 25-percent variance for contingencies per week. And, again,  
6 that seems high to me, -

7 MS. STENFELDT: That's fine, Your Honor.

8 THE COURT: - but it seems acceptable. Is that  
9 acceptable?

10 MS. STENFELDT: Yeah, it would be acceptable with the  
11 proviso that they do consult with the committee once formed and  
12 with us as the largest creditor, Your Honor.

13 THE COURT: Well, Ms. Stenfeltdt, this is not my  
14 business, it's really the U.S. Trustee's business, but do you  
15 accept the debtor's characterization that your attachment lien  
16 is gone as a matter of law and you're not a secured creditor - I  
17 mean that's been my understanding, but it's not -

18 MS. STENFELDT: Yeah.

19 THE COURT: - I'm not -

20 MS. STENFELDT: It - we know the law, Your Honor, and  
21 unfortunately our attachment will go by the wayside.

22 THE COURT: Yeah. Okay. Well, again, I'm not -

23 MS. STENFELDT: Yeah.

24 THE COURT: - taking sides here. I know the law as  
25 you do, but if you decided to hang tough and say we have an

1 attachment lien, then I think you'd talk yourself off the  
2 creditors committee.

3 MS. STENFELDT: Yeah. Agreed. Agreed, Your Honor.  
4 Okay. Thank you.

5 THE COURT: Anyone else wish to be heard on the cash  
6 collateral motion? Start with any counsel in the courtroom?

7 All right. On the telephone, anyone want to be heard  
8 on the modified cash collateral motion?

9 MR. CROWLEY: One point of clarification, Your Honor.  
10 Maybe debtor's counsel can clear this up first, -

11 THE COURT: That's -

12 MR. CROWLEY: - but they are already line items -

13 THE COURT: Is that Mr. Crowley again?

14 MR. CROWLEY: It's Leo Crowley, Your Honor. I  
15 apologize. I should have identified myself at the outset -

16 THE COURT: Okay.

17 MR. CROWLEY: - when I started speaking again.

18 There are two line items already in this budget for -  
19 one for miscellaneous and another for contingencies. Maybe we  
20 could get some clarification as to whether those are of the 25  
21 percent is -

22 THE COURT: Well, I saw one, 20,000. What's the other  
23 one?

24 MR. CROWLEY: It's about halfway up. There's in  
25 between "Travel" and "Reimbursables" and "U.S. Trustee," there's

1 a line called "Miscellaneous."

2 THE COURT: Miscellaneous.

3 MR. CROWLEY: I'm just not sure how they propose to  
4 compute this 25 percent. It sounds to me like they're going to  
5 get 25 percent multiplied by a base, and the base is already  
6 going to include contingencies and miscellaneous -

7 THE COURT: Well, how about - how about, Mr.  
8 Cardonick, we take that 30 out and give you a big 25 -

9 MR. CARDONICK: That's fine, Your Honor.

10 THE COURT: - percent of the -

11 MR. CARDONICK: Do you see now why I didn't want to  
12 agree to a budget?

13 THE COURT: - of the adjusted balance? Well, no, but  
14 I mean the fact is I -

15 MR. CARDONICK: That's fine, Your Honor.

16 THE COURT: - I told you - okay. So -

17 MR. CARDONICK: That's fine.

18 THE COURT: All right. Mr. Crowley, then -

19 MR. CROWLEY: Thank you, Your Honor.

20 THE COURT: - the, quote, approved budget for this  
21 interim order will have those two items x'ed out but replaced by  
22 a 25-percent variance.

23 MR. CARDONICK: Okay. The variance will actually  
24 appear in the text. It will be easier just to write it that  
25 way, Your Honor. So if I understand correctly, the Court's

1 order is that – let me see if I can phrase this as carefully –

2 THE COURT: Well, let me see if there's any other  
3 party on the phone.

4 MR. CARDONICK: Oh, sorry.

5 THE COURT: Any creditor on the telephone want to be  
6 heard on this motion?

7 MR. COSCINO: Your Honor, this is Vince Coscino –

8 THE COURT: Yes.

9 MR. COSCINO: – for both the Seattle landlord and the  
10 Los Angeles landlord. I just wanted to speak briefly.

11 My two clients are among the top ten of secured  
12 creditors and since there's no committee –

13 THE COURT: I'm having a little trouble hearing you.  
14 Can you speak up a bit?

15 MR. COSCINO: Yes, Your Honor.

16 THE COURT: That's better.

17 MR. COSCINO: I was saying that my two clients are two  
18 of the top ten unsecured creditors as identified by the debtor.  
19 And even after application of the 502(b)(6) we'll have  
20 significant multi million dollar claims. And since there is not  
21 a committee in place yet, you know, I just wanted to express  
22 some concern over the aggregate amount of the budget that's  
23 being proposed here for a relatively short period of time.  
24 Without deduction or elimination of the 3.6 million, they're  
25 proposing to spend 7.5 million plus up to another 25 percent,

1 nearly nine and a half million dollars over the first money of  
2 this case to attempt to collect or generate revenue of roughly  
3 sixteen and a half million dollars, which there's no evidence in  
4 front of the Court to indicate whether that sixteen and a half  
5 million dollars of projected revenue collections has any basis  
6 or what basis it has in reality especially in a postbankruptcy  
7 world or how it even relates to the prebankruptcy collections  
8 and kind of how those collections may have been ramping up or  
9 ramping down as the liquidation has taken place.

10           So they're proposing a staff here at over 50  
11 employees, even after the reduction of some nine employees at a  
12 monthly expense of, according to my calculations, something more  
13 than \$1.3 million just for the month of January.

14           And, again, there's really nothing in the papers other  
15 than kind of a 'trust me' to indicate why or whether those are  
16 necessary expenses or why that size of a staff is required in a  
17 liquidation.

18           I would also raise the issue of what is really  
19 ordinary course in the context of a law firm liquidation, which  
20 is primarily in the business of collecting, you know,  
21 outstanding accounts receivable, at least that's what it appears  
22 from the debtor's papers. So I just raise those concerns. I  
23 guess they will be picked up by a committee which may or may not  
24 include one or both of my clients. But it just seems to us to  
25 be awfully aggressive in terms of cost benefit and not really

1 supported by any real evidence as to the benefit we could hope  
2 to see from this.

3 I would also identify the fact that the debtor's  
4 proposing its other motion to pay prepetition wages and benefits  
5 to employees, and I know we'll get to that motion next, as well  
6 as stay bonuses and the like, which we do have some issues with,  
7 but at least I can't tell from this budget as to whether or not  
8 those additional expenditures are included in the budget or not  
9 included or are what portion of this budget. So maybe that can  
10 be at least cleared up.

11 Lastly, Your Honor, I see that the only rent item  
12 included in the budget is for the January San Francisco rent and  
13 note that at least with respect to 333 South Hope, the Los  
14 Angeles landlord, that lease is not terminated. The debtor  
15 still is maintaining personal property in those premises. And  
16 it's our position that that client will be entitled to  
17 postpetition rent at least until that lease is rejected and  
18 possession returned. And that's another \$250,000 a month give  
19 or take.

20 So I guess another question is, is what type of  
21 administrative claims could be accruing during this period of  
22 time that aren't identified in this budget, because apparently  
23 the debtor doesn't propose to actually pay them, which may or  
24 may not satisfy the requirements of 365, but to the extent that  
25 there are potentially significant if not on a line item basis or

1 creditor-by-creditor basis but maybe on an aggregate basis that  
2 there are significant additional postpetition administrative  
3 claims that are accruing here that are further eating into what,  
4 you know, benefit may be provided by these – by the expenditure  
5 that's indicated in the budget. Again, whatever net benefit we  
6 might hope to see, you know, may not be really real.

7 THE COURT: Well, let's come back to the employee wage  
8 issue when we address that motion.

9 Can you – do you want to respond, Mr. Cardonick, to  
10 the other issues –

11 MR. CARDONICK: Sure, Your Honor. I can – I think  
12 I've got all those points. Let me address them.

13 First there is only one location indicated with  
14 respect to rent, because we only intend to pay rent at one  
15 location. With respect to – I'm sorry, I didn't catch the name  
16 of the lawyer on the phone, Your Honor.

17 THE COURT: Mr. Coscino, he represents the Los Angeles  
18 landlord.

19 MR. CARDONICK: With respect to the Los Angeles  
20 location, there is a business deal that will resolve the  
21 landlord's claim. If they are saying that they're walking away  
22 from that deal, that's fine, we'll reject the lease. Otherwise  
23 I believe there's a business deal to actually deal with that  
24 particular lease.

25 THE COURT: You mean it's already been negotiated?

1 MR. CARDONICK: It's already been negotiated.

2 THE COURT: That's one of the ones -

3 MR. CARDONICK: Right.

4 THE COURT: - you might resolve.

5 MR. CARDONICK: Other than with respect to the San  
6 Francisco and D.C. landlords, with respect to which negotiations  
7 are ongoing, the debtor intends to either complete settlements  
8 with each of the landlords that will resolve those claims or  
9 reject the leases.

10 THE COURT: Well, okay, but it's true, isn't it,  
11 though, that the budget doesn't contemplate any other rent.

12 MR. CARDONICK: The debtor will - the debtor is not -  
13 other than professional fees, which now because there's no  
14 carve-out we will be accruing, the debtor does not intend to  
15 incur administrative expense claims that - that are not on this  
16 budget. The debtor intends to pay things as they occur. Not to  
17 - not to have a time bomb of administrative expenses that the  
18 creditors are going to get stuck with at the end of the case, or  
19 at some point during the case.

20 THE COURT: Well, but don't - I mean please don't  
21 confuse the carve-out with the professionals. I expect that  
22 from a business point of view, just from a planning point of  
23 view, the debtor will share with the creditors committee its  
24 belief on its professional obligation - its professional budget  
25 and the committees own professionals.

1 MR. CARDONICK: Of course.

2 THE COURT: But it's not – and so it's not as though  
3 it's going – it disappears because there's no carve-out. It  
4 would be the same if there was a carve-out –

5 MR. CARDONICK: My point is that it's not on the  
6 budget.

7 THE COURT: Not on the budget.

8 MR. CARDONICK: My point is that it won't be – it was  
9 on the budget, and that actually would have been – and so the  
10 numbers were there. Now it's going to come off the budget  
11 because the Court asked that we take it off the budget, –

12 THE COURT: Okay.

13 MR. CARDONICK: – so there will be accruing  
14 professional fees –

15 THE COURT: There will be –

16 MR. CARDONICK: – not on the budget.

17 THE COURT: – accruing professional fees. But that  
18 didn't – but Mr. Coscino didn't address that as much, and so on  
19 the rent, I guess my – from my point of view you're either going  
20 to get that L.A. lease resolved and buttoned up –

21 MR. CARDONICK: Or reject.

22 THE COURT: – on you're going to reject it –

23 MR. CARDONICK: And get out of there.

24 THE COURT: – and get out of there. And you got this  
25 postpetition issue of admin rent accruing at the rent rate, to

1 deal with it. You got to deal with it -

2 MR. CARDONICK: We intend to deal with the leases as  
3 quickly and as forthrightly as possible. As I've said, we've  
4 already resolved nine of the -

5 THE COURT: Are the - are the deals you've made with  
6 other landlords, are they - are they fully executed or are you  
7 going to have to do a notice motion of settlement with them?

8 MR. CARDONICK: I think, Your Honor, with respect to  
9 some of them they're fully executed. With respect to some of  
10 them, possibly the San Francisco landlord, we can get to an  
11 agreement, I think we're going to have to do a notice of motion  
12 and approve the settlement.

13 THE COURT: Okay.

14 MR. CARDONICK: We are paying - the one - I want to  
15 come back to the total amount of money being spent, because I  
16 understand the way Mr. Coscino's looking at it, but I think  
17 that's a distorted way of looking at it.

18 First of all, we're not paying the \$3.6 million, which  
19 is a large chunk of what was actually on here. So that - for  
20 the next three weeks, in any event, I get \$2.9 million. Of  
21 that, \$741,000 is the rent to the San Francisco landlord. We're  
22 there. We have 50 employees. We've got to pay the rent until  
23 we work out a deal with them. So that is one large expenditure  
24 that's going to come up over the course of the next three weeks.

25 In addition, there's a \$433,000 payment to AFCO. What

1 that is, is it is a payment for malpractice insurance. Now you  
2 might ask, Your Honor, why are you paying malpractice insurance,  
3 you're not paying – you're not practicing law anymore. There's  
4 an administrative issue about transferring client funds, but the  
5 real reason is that it's a claims-made policy. And as a  
6 claims-made policy it effectively gives us tail insurance  
7 through April, which is when the policy expires.

8           And so we don't want to – if we – if we don't make  
9 that payment, we run the risk that claims made between now and  
10 April will further dilute the estate, or be setoffable against  
11 the receivables if that's appropriate under applicable law.

12           So a large chunk of the expenses that are being  
13 incurred are as a result of two fixed – two fixed expenditures  
14 that have to be paid over the course of the next three weeks in  
15 order for us to be able to maintain assets and a location that  
16 are important to us, at least for the time being.

17           With respect to the rest of the expenses, I heard Mr.  
18 Coscino made a bunch of comments about the employees, I would  
19 submit two things, Your Honor. The first is that we have  
20 collected tens of millions of dollars of receivables over this  
21 period of time. We've managed to get our secured creditor paid  
22 almost entirely in full. We've negotiated deals with a  
23 substantial number of landlords and resolved claims. This  
24 process was going along incredibly smoothly. And the only  
25 reason we're in court today or the only two reasons really, the

1 two main reasons we're in court today are because of the  
2 preference period and because of the \$48 million landlord  
3 attachment.

4 I'm not blaming Mr. Brody or his colleague. They got  
5 – they exercised their rights, they got what they got, but I'm  
6 just stating a fact. We couldn't do anything. Without the –  
7 with the \$48 million attachment sitting there and not settled,  
8 we just couldn't do anything anymore.

9 The second thing I will say, Your Honor, is that if  
10 you want to hear evidence about what employees are still at the  
11 business and what employees are necessary to collect  
12 receivables, our affiant Mr. Benvenuti is here. We can take a  
13 brief recess, we can put him on the stand –

14 THE COURT: I think his declaration says what it says.

15 MR. CARDONICK: Right. That's correct.

16 THE COURT: I didn't hear Mr. Coscino doing anything  
17 more than expressing concerns. I didn't hear him asking that I  
18 disapprove the motion. I didn't hear him asking me to do a blue  
19 pencil on the budget. I'm just heard him throwing out issues.  
20 Unless I misread him – I've known Mr. Coscino in other cases,  
21 and he's never bashful about saying what he wants, and he didn't  
22 say he wants me to disapprove it.

23 MR. CARDONICK: Well, then we're all fine.

24 THE COURT: But he did ask another question, though,  
25 and that is if I were to approve the wage motion –

1 MR. CARDONICK: Um-hum.

2 THE COURT: - as submitted, is that reflected in this  
3 budget?

4 MR. CARDONICK: The wage motion as -

5 THE COURT: I mean in all of its aspects, the vacation  
6 - I can't tell either.

7 MR. CARDONICK: It is. It is. It is, and what I'd  
8 like to do, Your Honor, is table that issue until discussion of  
9 the employee - of the wage motion. We can have that discussion  
10 all in one place. So -

11 THE COURT: Yeah.

12 MR. CARDONICK: - if I'm understanding correctly, and  
13 let me try to summarize all of this, the cash collateral order  
14 as written is approved with the following changes: One is to  
15 take out the carve-out. Two is to -

16 THE COURT: Well, the first thing is to change the  
17 title.

18 MR. CARDONICK: To change the -

19 THE COURT: Granting liens. Take out the granting -

20 MR. CARDONICK: I was going to say take out - I was  
21 going to say take out the concept of replacement liens and all  
22 related -

23 THE COURT: Okay.

24 MR. CARDONICK: - provisions. That's second, the  
25 replacement liens and all related provisions.

1 Third, to remove the 180-day date.

2 Fourth, to make the order subject to a budget with the  
3 caveats that we are taking out the \$3.6 million for the time  
4 being, we are taking out the miscellaneous and contingency  
5 numbers, and we're adding a 25-percent variance in the aggregate  
6 for each week – subject to the employee issues that we're going  
7 to discuss in – when we get to that motion.

8 THE COURT: Yeah, that's right. The one thing that –  
9 again, as I told you when I read this motion originally, I  
10 couldn't tell whether this was an agreed order. It now is an  
11 agreed order. So what started out as a potentially contested  
12 motion to use cash has morphed into an agreement for the use of  
13 cash.

14 MR. CARDONICK: That happens sometimes.

15 THE COURT: Under our guidelines we require a  
16 certification from counsel –

17 MR. CARDONICK: Okay.

18 THE COURT: – as to any sleepers, so that in case  
19 somebody isn't reading this as quickly as the judges in the, you  
20 know, page of exhibit – of the definitions, –

21 MR. CARDONICK: Um-hum.

22 THE COURT: – you need to certify to me whether  
23 there's a departure from our guidelines on there.

24 MR. CARDONICK: I will be here all night. We will  
25 look at the guidelines again to make sure there isn't –

1 THE COURT: And all I'd like you to do – Mr. Fiero  
2 knows the guidelines. And all I'd like you to do is to upload  
3 an order that's consistent with what we said, and support that  
4 with a declaration of counsel.

5 And, again, they're guidelines. You can depart from  
6 them, you just can't hide the departure.

7 MR. CARDONICK: I don't believe we have, Your Honor.

8 THE COURT: And I don't know that you are –

9 MR. CARDONICK: I read them before I prepared the  
10 order, –

11 THE COURT: Right.

12 MR. CARDONICK: – so I don't believe we have. Ms.  
13 Viera (phonetic) provided them to me –

14 THE COURT: I read it quickly, but, as I say, given  
15 this – given this distinction between what could have been a  
16 contested motion – frankly, I didn't imagine the banks were  
17 going to contest it, but I couldn't tell until I read the order.

18 But, yes, Mr. Coscino, did I understand correctly, you  
19 have not asked me to disapprove this motion?

20 MR. COSCINO: I have not, Your Honor. I just wanted  
21 to point out the issue that I pointed out before.

22 THE COURT: Okay. And is there any other counsel on  
23 the phone who –

24 MR. COSCINO: As I said, I think ultimately this will  
25 be issues that the committee will have to look at, which will

1 hopefully be organized in advance of the final hearing.

2 THE COURT: Is there any other counsel on the  
3 telephone who wishes to speak in opposition to this motion?

4 Okay. Then, yes, Mr. Cardonick, I'm prepared to do it  
5 that way and we'll sign the order -

6 MR. CARDONICK: Thank you, Your Honor. We will -

7 THE COURT: Let me take this opportunity to ask Ms.  
8 Loo: Do you have any sense, given - given the fact that this  
9 case is now probably 24 hours old and it comes between two major  
10 holiday weekends, when you'll have a committee in place?

11 MS. LOO: Your Honor, we're planning to have an  
12 organizational meeting on Monday, the next week.

13 THE COURT: Next Monday, the 5th?

14 MS. LOO: Next Monday. Yes.

15 THE COURT: January 5th.

16 MS. LOO: Yes.

17 THE COURT: Okay. Well, I would assume that given the  
18 attention this case with attract and the heavy role of the major  
19 - I mean, look, you got two of the major creditors participating  
20 here and maybe the others are equally major, there probably will  
21 be a committee in place.

22 If somebody, a creditor individually thinks that  
23 there's some budget item that shouldn't be paid notwithstanding  
24 everything we've talked about today, I guess you better - that  
25 creditor better come forth. And I have in my - I have no view

1 one way or the other on whether the – I mean my sense is the  
2 insurance policy probably should be paid, but if some creditor  
3 thinks otherwise, they better act accordingly, because you're  
4 being authorized to spend per that revised budget.

5 MR. CARDONICK: Thank you, Your Honor. To – just one  
6 follow-up and then I have one question about something we need  
7 to add to the order.

8 First, we are in significant amounts of contact with  
9 our major creditor constituencies. We are – in talking to the  
10 San Francisco landlord and the D.C. landlord, which are the two  
11 remaining largest leases, up until this weekend Mr. Landers and  
12 his partner Mr. Minnick, Mr. Crowley is subbing for today, we're  
13 in nearly constant contact with my partners in New York. We  
14 weren't in contact with them until yesterday about the filing,  
15 largely because they had swept the cash before and we had a lot  
16 of money in the bank account and we didn't want to tell them  
17 until – we filed the case on a Sunday because we didn't want  
18 them sweeping the cash again. We know there was a lot of cash  
19 in the account. So some of the messiness with respect to the  
20 cash collateral order is a result of that weekend, but I would  
21 expect we were in contact today when you negotiated the terms of  
22 the order –

23 THE COURT: I fully understand it's a moving target.

24 MR. CARDONICK: – and I would expect it to happen  
25 again.

1           THE COURT: And as I reviewed some of these papers  
2 last evening, I also wondered why the timing was the way it was,  
3 but you fully explained it in your papers. And you know these  
4 things aren't easy, so I'm not complaining.

5           MR. CARDONICK: I wish that the banks had refiled  
6 their UCC on November 1st. It would have made it a lot easier  
7 to -

8           THE COURT: How about if they hadn't even refiled at  
9 all; wouldn't that have even been better?

10          MR. CARDONICK: That would have been good, too. That  
11 would have been fine, too.

12          The second comment, Your Honor, is that I don't know  
13 that we're ever going to need a final cash collateral hearing.

14          THE COURT: Well, that's right, I don't think we are  
15 either.

16          MR. CARDONICK: I don't know, so if I could ask the  
17 Court to tentatively set one for Friday, January 16th.

18          THE COURT: I think I can do that. But, as I say, we  
19 - it may be better to have a status conference or something -

20          MR. CARDONICK: Between now and then?

21          THE COURT: No, no. I mean on then. I mean I've  
22 never thought about it, what happens if you don't have any  
23 secured debt by the time of the final hearing. It seems to me  
24 you shouldn't bother having one, -

25          MR. CARDONICK: That's right.

1 THE COURT: - because you're not - you're not using  
2 anybody's money. And, as I've already said, I expect a  
3 creditors committee to squeak and squawk if they don't like the  
4 way the money's being spent.

5 MR. CARDONICK: Right.

6 THE COURT: That's a whole different issue. So -

7 MR. CARDONICK: That could lead to a different type of  
8 hearing, so maybe we ought to set a date and time.

9 THE COURT: Well, what I could do if you'd like, and  
10 I'm a fan of status conferences, but I don't have them just to  
11 have them, but maybe this case is so unique because of this - A,  
12 the timing, the holidays, and the replacement of the committee  
13 by - I mean the exit of the banks and the presence of the  
14 committee, maybe just a status conference on the 16th to talk  
15 about where we're going, but be prepared to deal with anything.  
16 Is that -

17 MR. CARDONICK: That's fine, Your Honor.

18 THE COURT: And you and your colleagues are more than  
19 welcome to appear by phone also. I mean -

20 MR. CARDONICK: Thank you, Your Honor, I appreciate  
21 that.

22 THE COURT: I mean at some point, this is not a today  
23 item, but you're going to have to address whether the debtor  
24 really needs two law firms.

25 MR. CARDONICK: Yeah. Your Honor, well, I can tell

1 you that I love this city, but I'm not going to fly out here for  
2 every hearing. I don't think it makes sense under the  
3 circumstances, which is why we have able and – extremely able  
4 and competent co-counsel. So January 16 –

5 THE COURT: We're good on the 16th, aren't we?

6 THE CLERK: Yeah. We could do this at two o'clock.

7 THE COURT: Is that –

8 MR. CARDONICK: Could we do – any chance we could do  
9 it in the morning?

10 THE COURT: By phone that would be 4:00 for you and  
11 you're in Chicago, right? Or are you in New York?

12 MR. CARDONICK: Yes, but I'm actually going to be on  
13 the West Coast that week, so if we could do it in the morning,  
14 it would be better, but the afternoon, if we have to, that's  
15 fine.

16 (The Court and Clerk confer off record.)

17 THE COURT: Yeah, let's do it at 11:30 on the 16th?  
18 How's that? Does that work? Does anyone have a problem with  
19 that?

20 MR. CARDONICK: 11:30 on the 16th.

21 THE COURT: Okay. Then that's – I'll tell you what,  
22 you're sanguine about getting the bank out in a matter of days.  
23 In case it doesn't happen, we'll calendar this as a final  
24 hearing on use of cash –

25 MR. CARDONICK: Fine.

1 THE COURT: - on a cash collateral stip., but if the  
2 bank's out we'll just call it a status conference.

3 MR. CARDONICK: That's fine, Your Honor.

4 THE COURT: And I - if I - but it's that only. If  
5 somebody wants me to act on something, then they -

6 MR. CARDONICK: File a motion.

7 THE COURT: You know, get the motions and -

8 MR. CARDONICK: But we don't need to file a motion on  
9 cash collateral. We've already got them - or do you want me to  
10 amend the motion?

11 THE COURT: No, I don't.

12 MR. CARDONICK: Okay.

13 THE COURT: So.

14 MR. CARDONICK: Okay.

15 MR. FIERO: Your Honor, if I might interrupt for one  
16 moment. Shall we give a separate notice of the status  
17 conference to the 2002 parties and the 20 largest, et cetera?

18 THE COURT: No. Let's just stick with - I mean not -  
19 okay, when you said a 2002 party, you mean the special notice  
20 people?

21 MR. FIERO: Yes, Your Honor.

22 THE COURT: Yeah, let's do that, just to continue -  
23 the final hearing on the motion to cash, or if not, if there is  
24 no need for such a final hearing, it will be a status  
25 conference.

1 MR. FIERO: Got it.

2 THE COURT: Yeah. And it may be that there's nothing  
3 to do. I mean I don't - I really don't want teams of lawyers to  
4 have to assemble to tell me -

5 MR. CARDONICK: No.

6 THE COURT: - there's nothing to tell me.

7 MR. CARDONICK: Your Honor, let me just clue the Court  
8 into something that has been going on for months, that maybe  
9 explains a little bit of some of the other things that are going  
10 on before the Court. My partner, Les Corwin from our New York  
11 office, was engaged by Heller by the Dissolution Committee to  
12 assist them with the dissolution. And they - our firm out of  
13 our New York and Chicago offices has been working hand in hand  
14 with the Dissolution Committee over the course of the past three  
15 months to liquidate the assets, to negotiate deals with  
16 creditors. We continue to be intimately involved in those  
17 negotiations and we are hopeful that this will all wrap itself  
18 up in a nice neat bow with all of the claims, the major claims  
19 having been resolved and responded to promptly.

20 My firm has a policy is that we will not commence  
21 matters - we have a lot of bank clients - we will not sue banks,  
22 essentially. Mr. Fiero's - was brought into the case not simply  
23 because he's an excellent lawyer but also because they have no  
24 such policy. And I expect that if the debtor is going to bring  
25 the avoidance action lawsuit, it will be either Mr. Fiero or the

1 creditors committee that actually brings that lawsuit. So  
2 there's a bit of division of responsibility here. I hear Your  
3 Honor completely, you don't want there to be team so forth  
4 lawyers here on a regular basis and we're going to make it so.

5 THE COURT: I have no problem with – teams, that's not  
6 a complimentary term. I have no problem with multiple lawyers  
7 on such an important hearing as the first day motion, like  
8 today. Don't worry about that. What you just summarized is  
9 probably a very good explanation to put into the applications  
10 for employment.

11 And then a separate question is: I don't want any  
12 lawyers here on a conference to tell me they have nothing to  
13 tell me.

14 MR. CARDONICK: Of course.

15 THE COURT: So if we have just a very minimal presence  
16 – I mean seriously a phone appearance or –

17 MR. CARDONICK: Sure.

18 THE COURT: – local counsel just to come in and talk  
19 about what's going on, that's fine.

20 MR. CARDONICK: I appreciate the flexibility, Your  
21 Honor, actually.

22 THE COURT: As the lawyers know me from larger cases  
23 know, at some point I need to get a sense about whether we  
24 should set aside calendar days for events that are coming up, as  
25 many people here and on the phone were involved in the Brobeck

1 case, as I have, we had a whole special calendar for Brobeck  
2 matters. It may be that we won't have them in this case. And  
3 you don't have to answer that today, but perhaps that's the kind  
4 of thing we'll talk about on the 16th, about whether we should –  
5 if you anticipate claims objections or APs. All these things  
6 have plenty of time, but what I found is that – and I understand  
7 in larger cases in the eastern time zones they do this the same  
8 way, they dedicate segments of the calendar for everything that  
9 comes up in the case as distinguished from, you know, relief  
10 from stays on one day and –

11 MR. CARDONICK: Right.

12 THE COURT: – motions on another day. And so –  
13 anyway, let's get to the employee order. That's of great  
14 concern, I'm sure, to a lot of –

15 MR. CARDONICK: Let me – let me introduce my  
16 colleague, David Baddley.

17 THE COURT: Okay. Mr. Baddley.

18 MR. BADDLEY: Good afternoon, Your Honor. I'm glad we  
19 do have the opportunity now to talk about some of the employees  
20 who have been coming up tangentially so far in the proceedings.  
21 And over the past few months the debtor has downsized  
22 significantly from several hundred employees, upwards of a  
23 thousand employees, down to its remaining staff of 54.

24 And what they've been doing –

25 THE COURT: You know, I added up the employees on

1 Exhibits 2 and 3, and I only got 53. Did I miscount? I got  
2 nine on – nine who are being – whose terms end this week, and  
3 then there were 44 on Exhibit 2. It's not a big deal –

4 MR. BADDLEY: I think the exhibits are the more  
5 accurate, so if –

6 THE COURT: Okay.

7 MR. BADDLEY: – it's 53,

8 THE COURT: One person, it's not – one nonperson.

9 MR. BADDLEY: Even less people to share with the  
10 burden of the task.

11 And what they've been doing, they've been doing a  
12 large number of very critical tasks. First and foremost is the  
13 billing and collections of accounts receivable, entering all the  
14 unbilled time, generating and delivering invoices, pursuing  
15 collections.

16 As Mr. Cardonick, explained, they've collected tens of  
17 millions of dollars in the last few months, paid over \$50  
18 million to the lenders all while also being able to satisfy all  
19 of the ongoing operational expenses.

20 The employees have been closing out and transferring  
21 files to the clients and to new law firms; handling office  
22 closures; negotiating and working with landlords and other  
23 creditors; handling issues for former employees; maintaining IT  
24 network; providing ongoing technical support; and dealing with  
25 all the accounts payable: Payroll, employee benefits, and other

1 HR matters.

2 And also over the past several weeks many have had the  
3 added responsibility of assisting the lawyers in the preparation  
4 of this case. We have not engaged any outside consultants or  
5 advisors for this. This was all done by the employees. And  
6 going forward, they will continue to work with us in the  
7 administration of the case.

8 Me, personally, I've had the privilege of working with  
9 a large number of these employees over the last few weeks. Many  
10 times on weekends and holidays, and I can tell you that they are  
11 an extremely dedicated group of people. And although they have  
12 accomplished a lot in just a few short months, there is still a  
13 lot of critical work that's left to do. And their continued  
14 employment will be vital to those efforts.

15 I also want to just discuss briefly what I think the  
16 employee mindset is right now. They are a very dedicated group  
17 and they do understand their role, but lately I think they have  
18 had some cause for concern. The firm has ceased all operations  
19 and they know that this partnership is going to be dissolved.  
20 They have seen a substantial number of their friends and  
21 colleagues leave. In many instances, the result is added  
22 responsibilities for the remaining employees.

23 And a few weeks ago they saw the agent for the secured  
24 lenders sweep all the money out of the debtor's accounts,  
25 leaving no money to pay even basic expenses, including payroll.

1 Several of the employees even had their own checks bounce.

2 And, finally, they know that whatever work there is  
3 left to do it's going to be of a short duration. And within a  
4 few months they're going to be out looking for their own jobs  
5 again. Despite this environment of added responsibility, added  
6 concern, and added pressure, they continue to perform their jobs  
7 in a professional and dedicated manner.

8 Turning to the relief that we seek in the motion, I  
9 think it'd probably be easiest if I could break it into three  
10 components.

11 THE COURT: Again, I just – I think I've done it.  
12 You're welcome to summarize it for the benefit of others, but  
13 I've done my homework.

14 MR. BADDLEY: Okay. The first is the regular payroll  
15 and vacation. Second is employee benefits. And the third is  
16 the retention bonuses.

17 First, getting to payroll and vacation, the debtor  
18 utilizes a two-week payroll system that's paid one week in  
19 arrears. So, specifically, we filed this case at the end of a  
20 two-week payroll.

21 THE COURT: Right.

22 MR. BADDLEY: That's for the period from December 15th  
23 through yesterday, December 28th, and it's due to be paid on  
24 Friday, this Friday, January 2nd, but I'm actually told it needs  
25 to be funded tomorrow if we're going to use the automatic –

1 automated payroll service.

2 We're asking for the Court to approve making that  
3 payroll so that the employees will receive their checks in the  
4 ordinary course of business. We have provided a breakdown by  
5 employee of the January 2nd payroll on Exhibit 2 to our motion.  
6 Excluding taxes, we believe it should be a little bit south of  
7 \$200,000, and with the taxes around \$218,000.

8 One individual who is the dissolution manager, but not  
9 a member of the Dissolution Committee, is owed outstanding wages  
10 in excess of the priority cap of \$10,950. This individual is a  
11 key leader of the team. And although his wages exceed the cap,  
12 largely because of the unfortunate timing of needing to file  
13 this at the end of a complete pay cycle, we believe it is  
14 important that we still be able to pay him the full amount of  
15 wages as earned.

16 Another component of the wages is the vacation and in  
17 most workplaces – as in most workplaces, the employees of the  
18 debtor accrue vacation time based on things such as length of  
19 service and the position or level with the company.

20 In the beginning stages of the dissolution, the  
21 Dissolution Committee adopted a policy for the remaining  
22 employees. And that policy was that vacation that is accrued  
23 after October 11th, 2008, would be cashed out upon termination.  
24 Again, this is only for vacation that's accrued after October  
25 11th and for employees who remain with the firm. Any vacation

1 that's been accrued prior to October 11th will not be paid upon  
2 termination and the employees are free to assert whatever claims  
3 they think they're entitled to based on –

4 THE COURT: But am I correct, the Exhibit 3,  
5 employees, those are the nine employees – those are the only  
6 ones on today's motions for payment of vacation?

7 MR. BADDLEY: Well, the vacation is only paid when the  
8 employees terminate.

9 THE COURT: Those nine people will leave this week?

10 MR. BADDLEY: Right.

11 THE COURT: They will be paid their wages and their –

12 MR. BADDLEY: Right. And for everyone else, they –  
13 you know, they also have accrued vacation from October 11th  
14 until December 28th that would ultimately need to be paid when  
15 they're terminated –

16 THE COURT: When they're terminated.

17 MR. BADDLEY: Right, when they're terminated.

18 THE COURT: But – unless they leave under  
19 circumstances that somehow – I don't know, maybe they can't.  
20 But that – that latter piece isn't part of the motion, right?

21 MR. BADDLEY: Well, we're asking for authority to  
22 honor those – that accrued vacation when it becomes due. I do  
23 have a separate list that would itemize just the accrued  
24 vacation –

25 THE COURT: Well, I'm assuming that it's the same –

1 it's the same people obviously -

2 MR. BADDLEY: That's correct.

3 THE COURT: - here on Exhibit 2, and there's some  
4 amount of money. But what I - without focusing on any  
5 individual employee, what I may have missed in the motion was  
6 the quantification of what pieces, and maybe I just overlooked  
7 it.

8 In other words, you've said that the - that you just -  
9 you just said a moment ago that the two-week pay period, which  
10 includes essentially 13 days prepetition, that's \$218,000, but I  
11 don't see a dollar figure for the vacation attributable to those  
12 employees.

13 MR. BADDLEY: The -

14 THE COURT: In other words, I see a \$56,600 for the  
15 nine people who are being terminated.

16 MR. BADDLEY: The complete accrued and unused vacation  
17 is \$84,000, and I don't know if that's only for the people on  
18 Exhibit B or if that also includes the people on Exhibit C - or  
19 2 and 3, I forgot -

20 THE COURT: Well, it must be only, because if nine  
21 people have \$56,000 accrued vacation, 44 people are going to  
22 have a lot more, right?

23 MR. BADDLEY: Perhaps the exhibit wasn't clear. The  
24 nine people who are going to be paid on December 31st, that is  
25 for their wages and their vacation.

1 THE COURT: Yes, I understand –

2 MR. BADDLEY: The vacation portion is only around  
3 12,000, the wages is around 43,-.

4 THE COURT: Got you. Got you. Yeah, all right. You  
5 know, the spreadsheet's I don't think had totals – oh, yeah they  
6 did. I beg your pardon. I'm sorry, you're correct. The total  
7 vacation for the nine departing employees, you're right, just  
8 under 13,000.

9 Okay. So – so what you're saying is the accrued  
10 vacation for the continuing employees is either 84,- or 84,-  
11 minus 13,-?

12 MR. BADDLEY: Correct. And if you add in, if you add  
13 in the accrued vacation, so you now have accrued pay and accrued  
14 vacation, then that adds two more individuals to the list who  
15 would be in excess of the \$10,900 –

16 THE COURT: People you've named in the paper.

17 MR. BADDLEY: That's the director of technology and  
18 the director of human resources, who's also serving as deputy  
19 dissolution manager –

20 THE COURT: But some of that by definition for those  
21 people, not the nine on Exhibit 3, but for everyone else, that  
22 will be postpetition vacation accruals as well as prepetition  
23 accruals?

24 MR. BADDLEY: As much as I'd like to say yes, what –  
25 what I tried to focus on is what exactly has accrued but then

1 unpaid as of the petition date. And if you look at wages and  
2 vacation pay, then you now have three individuals who exceed the  
3 10,950. But the last two who come in, one is 11,500 told, the  
4 other one is 13,300 -

5 THE COURT: No, I saw that and I saw that one of them  
6 is just literally a few hundred dollars over the top, I think.

7 MR. BADDLEY: That's right.

8 THE COURT: Yes. You know what, you did state - I  
9 misinterpreted. I thought that 4,000 - never mind.

10 MR. BADDLEY: Well, you had to learn in several hours  
11 what took me several weeks, so -

12 THE COURT: I understand - I understand it now.

13 Well, let's stop at that point -

14 MR. BADDLEY: Okay.

15 THE COURT: - and let me see if there is any creditor  
16 who objects to the payment of the accrued pay and accrued  
17 vacation of the employees, either those that are being  
18 terminated this week or those that are going to stay for various  
19 terms. Is there any - first of all, any creditor in the  
20 courtroom who opposes that motion?

21 All right. How about on the phone?

22 MR. COSCINO: Your Honor, this is Vince Coscino again.

23 THE COURT: Yes.

24 MR. COSCINO: And let me just start by saying that  
25 certainly we are very sympathetic with the employee situation

1 even though we obviously haven't -

2 THE COURT: You got to speak up again.

3 MR. COSCINO: Sorry, Your Honor. I said I wanted to  
4 start by saying we're sympathetic to the plight of the  
5 employees, not only the ones that are still there but all the  
6 employees that have been let go even though we have obviously  
7 not been involved in the process.

8 And we would not raise an issue with respect to the  
9 prepetition wages and benefits but for one factor and that is  
10 the debtor's own motion identifies the fact that just a few days  
11 ago the debtor paid some \$935,000 of, you know, prorated  
12 retention bonuses to the employee group, I guess kind of  
13 calculated on, you know, how much of their overall retention  
14 bonus would have been earned as of the petition filing date or  
15 some other specific date that was just recently.

16 And it would appear that - that that payment would  
17 constitute - or may well constitute an avoidable preference or  
18 maybe even a fraudulent transfer in that according to the  
19 debtor's papers the retention bonuses aren't earned until a  
20 number of conditions precedent are satisfied, including the fact  
21 that the employee actually stays until whenever their date of  
22 termination is, which for these 53 employees who are remaining,  
23 is left to be seen.

24 And if you - if you divide that 935,000 by the number  
25 of employees you get an average payment to employees that

1 exceeds the priority wage cap just in and of itself. To the  
2 extent those payments are avoidable, these employees would not  
3 be entitled to a payment on account of any prepetition claim,  
4 priority or otherwise, unless they repaid the avoidable transfer  
5 that they received. And so taken together with that prepetition  
6 payment, we can't do the math because we didn't get a schedule  
7 from the debtor indicating which employees received – or what  
8 employees received what in terms of these retention bonuses, but  
9 the – but it would appear that, if not all, a vast majority of  
10 the employees have already, taken together with the postpetition  
11 – or with the amounts they're requesting here essentially as  
12 priority claims be paid together with what's been paid on the  
13 retention bonuses, they would all exceed the priority cap – or,  
14 if not all, again we don't have the math, but quite likely, you  
15 know, a vast majority of them.

16           So we believe that creates, you know, a real issue  
17 with respect to paying the prepetition wages and benefits. And  
18 we're not necessarily requesting that the Court deny this  
19 request today on the basis of just, you know, this very-quickly  
20 organized hearing, but at least continue this hearing until  
21 after the committee is formed and maybe the Court could use this  
22 existing January 16 date, so that the committee can be formed  
23 and the committee can take a look at these issues and determine  
24 whether it makes financial sense or practical sense to oppose or  
25 try to negotiate something different with respect to these

1 payments.

2 THE COURT: Okay. So if I got you right what you're  
3 saying is because this 935,000 went to some employees under the  
4 guise of a prepayment or early payment of retention bonus, they  
5 haven't even earned their retention bonus, arguably?

6 MR. COSCINO: That's one argument. The other one -  
7 the other argument is to the extent the Court might somehow  
8 determine they're equitably entitled to it, notwithstanding the  
9 fact they didn't stay until the ultimate time of their  
10 termination, it's likely that those payments would be a  
11 preference.

12 THE COURT: Okay. But if the debtor chose just to  
13 increase people's pay and pay it in the ordinary course, that  
14 would be a different analysis, wouldn't it?

15 MR. COSCINO: I would question whether or not you  
16 could really argue that would be ordinary course -

17 THE COURT: No, I mean in the past. Yes, I am now. I  
18 meant a week ago or ten days ago or two weeks ago. I mean  
19 something different. But your point is then maybe there was a  
20 payment to one or more of these people that shouldn't have been  
21 made and, therefore, why should we now pay them again under a  
22 priority basis.

23 MR. COSCINO: Well, if you believe the debtor's  
24 papers, it sounds like they were - these payments were made to  
25 all of the current - all the employees including the nine.

1 That's certainly my interpretations of the debtor's papers. If  
2 that's incorrect, I suppose they could correct it. But even if  
3 you just take a look at Exhibit – I'm sorry, Your Honor –  
4 Exhibit 4, I think, it says in the far right column, "Estimated  
5 retention" – "Estimated remaining retention bonus," so the clear  
6 implication from the debtor's papers is that everyone that's  
7 there now receive some proportionate or pro rata retention bonus  
8 payment just within the last few days. And that number, again  
9 if you just divide by the number of employees, which I know is  
10 not accurate because this was based on how much everybody's  
11 actually making, the retention bonus was supposed to be a  
12 hundred percent I guess of their – of their post-October 20  
13 income, so it's not the same for everyone, but just if you did  
14 an average basis it exceeds the priority wage cap for each of  
15 them. And we don't have that – we don't have that specific  
16 payment information here.

17 My point is that – that if that had been due and owing  
18 as of the time of the petition, then most if not all of these  
19 requested postpetition – these payments of prepetition wages and  
20 benefits would exceed the priority cap.

21 THE COURT: I got you. I understand.

22 Response?

23 MR. BADDLEY: Yeah. I want to respond directly to the  
24 retention stuff, but also Your Honor's question was purely about  
25 payroll and vacation pay. And –

1 MR. COSCINO: Right, I'm not dealing with – I'm not  
2 addressing the retention issue. That's a separate issue.

3 MR. BADDLEY: Okay. I don't know if this was an  
4 objection to the retention, if we were getting off base here,  
5 but I will address what happened with these – with these  
6 retention payments. I think Mr. Benvenutti laid out the  
7 circumstances behind those in his declaration.

8 Quite frankly, for anyone who stays till the end, this  
9 is not an issue of giving something that they wouldn't haven't  
10 otherwise gotten. It's just –

11 THE COURT: Well, what I heard was slightly different.  
12 Suppose employee X got \$5,000 as a so-called retention bonus on  
13 December 22nd and the case is made that that was a fraudulent  
14 transfer – I know you're going to say it wasn't, but just  
15 suppose it was. And suppose I ultimately said to X, 'You have  
16 to pay back the 5,000,' X shouldn't – couldn't even have an  
17 allowed claim until he paid back the 5,000.

18 So if we pay X his pay now on a prepetition basis,  
19 we're in effect paying a claim that might be disallowed if there  
20 is – would have been a recovery. I think that's the analysis.  
21 I mean it's a little bit –

22 MR. BADDLEY: Right, and that would probably happen in  
23 many instances. I mean I would still say that under the  
24 circumstances of this case, Judge, we have – we believe, the  
25 Dissolution Committee strongly believes there is no option not

1 to not pay these people – to not pay these people. At least  
2 their payroll and wages. And to get to the point of where the  
3 retention bonuses may fit into this, you know, I guess in any  
4 case you could always have an employee that has a potential  
5 avoidance action against him. And whenever you're granting  
6 first-day relief, there's always that risk, that if there's some  
7 claim –

8 THE COURT: But you agree with me, don't you, that if  
9 I took a hard line here and didn't authorize the payment of any  
10 prepetition debt today, priority or not, and I said, 'Stand in  
11 line, file your proof of claim,' and X filed a proof of claim  
12 for his or her prepetition priority wages, there may be under  
13 the bankruptcy law a basis to object to that claim not that it  
14 wasn't owed, but that it can't be allowed if there's not a –  
15 excuse me – a surrender of a preference.

16 MR. BADDLEY: Because of the potentially-avoidable  
17 transfer.

18 THE COURT: I mean that's –

19 MR. BADDLEY: Yeah, I would imagine that could happen.

20 THE COURT: Is that a correct analysis, Mr. Coscino?  
21 Is that the way you're teeing this up?

22 MR. COSCINO: Yes, Your Honor, that's correct.

23 MR. BADDLEY: But, again, in every case employees  
24 receive many transfers during the 90-day period which are, I  
25 guess, potentially avoidable. There's always a risk that an

1 employee, you know, is subject to some sort of avoidance  
2 action -

3 THE COURT: But a current payroll in the normal course  
4 would probably be preference proof for that very reason. It's  
5 ordinary course. Ordinary course payment.

6 But I think what Mr. Coscino is saying is this  
7 retention bonus wasn't ordinary. And either it's preferential,  
8 as out of the ordinary, or it was a fraudulent transfer in the  
9 sense that it was paid before it was even earned, because the  
10 retention bonus, as I understand it, is an inducement to stay  
11 onboard, not - you know, and these - and you get paid when you  
12 leave. Isn't that the whole point of the program here?

13 MR. BADDLEY: That's correct. And why I think there's  
14 not a fraudulent-transfer issue here is because the Dissolution  
15 Committee modified the retention program and paid the bonuses in  
16 accordance with the modified plan, so it's not that the  
17 employees received some sort of payment that wasn't consistent  
18 with what the program was or what the agreements were. The  
19 Dissolution Committee in its business judgment at the time after  
20 the agent swept the accounts and employees were having their  
21 checks bounced, obviously there was a critical time. You have  
22 attorneys in the office preparing bankruptcy papers, there was a  
23 strong business judgment supporting modifying the retention  
24 program to give these people the prorated amount that they  
25 needed.

1           And really the way we looked at it is these people are  
2 going to end up staying to the duration anyway and it's really  
3 not a matter of giving them something that they're not entitled  
4 to, it's just moving it up. If they stay to the end, they're  
5 getting exactly what they would have received anyway, assuming  
6 that the Court approves us.

7           And, again, if it's approved by the Court, again  
8 arguably none of this is an avoidable transfer anyway because  
9 they're getting something that they would have received anyway  
10 had it not paid, again, if the Court were to approve the  
11 retention bonuses now as a first-day matter.

12           THE COURT: Okay. But, Mr. Coscino, you're – if I  
13 heard you correctly, you are objecting essentially now even to  
14 the payment of the prepetition priority wage claims?

15           MR. COSCINO: Yes, Your Honor, and –

16           THE COURT: And you want me just to defer it for the  
17 time being?

18           MR. COSCINO: My request for today is not that you  
19 deny it, it's just that you defer your decision with respect to  
20 it until again perhaps this January 16 hearing date that you've  
21 already set, but to permit the committee to be formed and to  
22 take a look at it and have an opportunity to weigh in on it.

23           THE COURT: And you make that request even with  
24 respect to the nine employees who will be ending their  
25 employment this week?

1 MR. COSCINO: I do, Your Honor. I don't see a legal  
2 distinction between them. In fact, as a practical matter you  
3 might say approving payment to them is less critical on a time  
4 basis – a timing basis than with respect to the others in that  
5 their services are being terminated effective, I guess, right  
6 away. And so it's not – especially with respect to them, it's  
7 less critical that the Court make this decision immediately.

8 MR. BADDLEY: Your Honor, –

9 THE COURT: Before I – before I go any further, is  
10 there anyone else on the phone that wants to take a position on  
11 this request?

12 No? This is slightly related, Mr. Baddley, but Mr.  
13 Benvenuti's declaration says what it says, but it doesn't seem  
14 to say what Rule 6003 now says must be said before any  
15 prepetition claim, priority or not, is paid, at least within the  
16 first 20 days. And that is immediate and irreparable harm. And  
17 I realize he says all the right things. And I – again, my  
18 comments are not, and I'm sure Mr. Coscino doesn't mean to be  
19 critical of any of the loyal employees, but I don't see  
20 immediate and irreparable harm in the declaration. That's what  
21 the rule says.

22 And certainly, you know, to the extent that – well,  
23 the rule doesn't distinguish between priority and nonpriority.  
24 I agree with you, we only have three people who presumably are –  
25 or maybe five – no, three that go over that priority cap. But

1 even payment of the priority claims requires that showing. So  
2 where is that showing?

3 MR. BADDLEY: Well, to begin, I do believe that the  
4 declaration does explain the urgency for needing to pay them,  
5 but if the Court does need additional evidence on that, then Mr.  
6 Benvenutti will be able to testify to that. I mean I think it –

7 THE COURT: Do you want to make an offer of proof?

8 MR. BADDLEY: To the extent it's not in the  
9 declaration, absolutely.

10 THE COURT: Well, you know, I realize that the rule  
11 drafters said what they said, and I look for those words.

12 MR. BADDLEY: I believe that Mr. Benvenutti would  
13 testify if called that if we go back to the office and inform  
14 employees that we are not going to be able to pay their accrued  
15 wages and we are not going to be able to honor the obligations  
16 and the benefits that them and their family have been receiving  
17 prior to this Chapter 11, that it would cause serious and  
18 irreparable harm injury to the estate in a matter that would  
19 greatly outweigh the cost of paying these obligations.

20 Among other things, there is no realistic alternative  
21 to bringing in new employees here. There is no one to interview  
22 and hire and train replacement personnel. Not only is there no  
23 one to do it, there is probably not – despite the economic  
24 conditions, there's probably not very many qualified individuals  
25 out there who would come and work for a company that is in

1 Chapter 11 that they know the duration of the employment is  
2 probably going to be a matter of just a few months.

3 So if we do not retain these employees and if the  
4 employees do not receive their payroll and wages and benefits in  
5 the ordinary course, we believe that there is a substantially  
6 likelihood that we would have if not a mass departure a  
7 significant departure of critical personnel that would cause  
8 damage to the estate that greatly outweighs the amount that  
9 we're seeking today.

10 THE COURT: Okay. But it sounds to me like the way  
11 you're expressing it, that maybe we could defer a decision on  
12 this \$535,000 retention bonus. That's - that's the other piece.  
13 And we can perhaps table that a short term. Because for the  
14 most part. Except - I mean for the most part all those people,  
15 I don't think there's a single employee on Exhibit 4 whose  
16 scheduled date of departure is before the 16th of January.  
17 Maybe the 15th, I mean very close.

18 MR. BADDLEY: There are a handful that are in the  
19 first week or two of January. So -

20 THE COURT: Well, there's one January 2nd person and  
21 there's -

22 MR. BADDLEY: January 5th on the first page, of  
23 January 5th. Go on the ninth.

24 THE COURT: But isn't - oh, yeah, okay.

25 MR. BADDLEY: So let me make sure I understand: Your

1 Honor is suggesting allowing the debtor to meet payroll  
2 obligations and honor benefits, but just hold off on the –

3 THE COURT: What I'm suggesting: I'm take your offer  
4 of proof. If I looked at Mr. Benvenutti and I say are you  
5 prepared to testify that this will cause immediate and  
6 irreparable harm, and he's going to say 'Yes,' so I'll take it  
7 as an offer of proof. And so I don't really have a problem with  
8 authorizing – but for Mr. Coscino's comments, and I want to  
9 address those. I don't have a problem with authorizing the  
10 priority payments. Because of – in my colloquy earlier with  
11 your partner, it wasn't clear to me from the papers whether we  
12 had a solvent estate here, and it sounds to me like we don't.

13 And so to the extent that three employees, when we  
14 take into account their vacation and their pay, are over the  
15 top, the question is whether – whether it's necessary to pay  
16 those three at this point they're nonpriority portion.

17 And so as much as I understand Mr. Coscino's argument  
18 and if he's right – if he's right, he's right, and the law is  
19 what it is. I'm prepared in the interest of maintaining the  
20 stability that you have described, to say I'll take that risk  
21 and authorize the payment of all the moneys to the employees  
22 listed on Exhibit 3 – those are the nine who are scheduled for  
23 being terminated – their pay and their vacation.

24 And as to the employees on Exhibit 2, it seems to me  
25 although there's a risk it's a slight one and I would say

1 authorize payment of the their pre and postpetition payroll, and  
2 related – related amounts. But I don't know that we have to go  
3 beyond the priorities at this point. That's all.

4 And so I'm asking you – I mean it's really only one  
5 person. I don't really mean to single that person out. I have  
6 no doubt that he's indispensable. But the question is can he  
7 wait a couple weeks to see if he gets that extra amount. You  
8 know, if we're not –

9 MR. BADDLEY: If – if –

10 THE COURT: I don't want to put him on the spot. I  
11 don't even know if he's in the courtroom, but – and it's not  
12 pleasant to sort of pick an individual who is not an insider,  
13 not an attorney I presume, not anything except a valuable  
14 employee for this process, and say, 'We've got these problems,  
15 let's let the major creditors take a look at it.'

16 MR. BADDLEY: If we're capping everyone at the 10,950  
17 and we're talking about wages and vacation, then there are three  
18 individuals, –

19 THE COURT: Right.

20 MR. BADDLEY: – but the other two, we're literally  
21 talking a hundred, few hundred dollar, or in the other instance  
22 just a thousand or two.

23 THE COURT: Right.

24 MR. BADDLEY: So Your Honor would be suggesting to cap  
25 everyone at the ten nine five, including –

1 THE COURT: For now.

2 MR. BADDLEY: For now. For now.

3 THE COURT: For now. And send a message to those  
4 three individuals that this is not the negative and not to send  
5 them an adverse message, but rather to let the creditors whose  
6 money this is have a voice in it. One creditor spoke up, and I  
7 can't ignore it. I mean I realize the other creditors didn't  
8 speak up. That's implicit nonopposition. But the fact is it's  
9 – you know, these are large sums out of money. And I'd like to  
10 think that that would be acceptable. I mean I'm not trying to  
11 negotiate. I'm trying to say –

12 MR. BADDLEY: I understand.

13 THE COURT: – you tell me what would happen if I did  
14 that and then I then said, 'Fine. You can go ahead and maintain  
15 the normal course of business on the medical and the  
16 reimbursement and the insurance and the worker's comp and all  
17 that and even the retirement plan,' but defer the retention  
18 bonus, the 535,000 item, until the committee's had an  
19 opportunity to weigh in on that as well.

20 MR. BADDLEY: So we'd be deferring the retention bonus  
21 and then any other payments in excess of priority?

22 THE COURT: No. I would authorize the payment of the  
23 ongoing employee-related things. Those are really essentially  
24 postpetition anyway, right?

25 MR. BADDLEY: Yes, they are.

1 THE COURT: I mean those -

2 MR. BADDLEY: Maybe a few reimbursements, I'm not sure  
3 where those play out -

4 THE COURT: Well, I wrote down 7500 in expenses.

5 MR. BADDLEY: That's what we had in the -

6 THE COURT: Now I would authorize that. That gets de  
7 minimis and it's big money for people who would like their  
8 expenses back. And so all I'm really doing is saying let's  
9 revisit this question of the retention bonus and the nonpriority  
10 portion of the three employees whose money's at stake here.

11 Now, again, if you want to check with Mr. Benvenuti  
12 and get his take on that, please do.

13 MR. BADDLEY: One second, Judge.

14 (Counsel confer off record.)

15 MR. BADDLEY: That's fine, Judge. We'll defer on the  
16 retention bonuses and the nonpriority. We don't think that  
17 should be an issue for the employees who are there.

18 THE COURT: Well, I hope it's not an issue for them.  
19 As I say, the worst thing from a personal point of view would be  
20 they, from either in the courtroom or back at the office, get  
21 this message that the Judge has got it in for them or that the  
22 creditors have it in for them. I don't think either - I know  
23 the former is not the case.

24 MR. BADDLEY: If there is a problem we may be coming  
25 back.

1           THE COURT: Okay. Well, so, Mr. Coscino, to the  
2 extent that you're objecting to payment of the priority amounts,  
3 I'm going to overrule that objection. I understand your point  
4 and I – if you're right, then I guess the remedy is to try to  
5 cover from anyone who shouldn't have received what was paid some  
6 days ago, but I – you know, the notion of taking a paycheck out  
7 of someone's hand under these circumstances, they don't sit well  
8 with me.

9           And I think – frankly, I suspect but for the running  
10 of those 88 days you probably – might have been able to delay  
11 the filing a little bit to cover this payroll because, as I say,  
12 my first reaction was why in the world did they not wait three  
13 more days and fund this thing.

14           MR. BADDLEY: It would have been nice.

15           THE COURT: And you explained why, so okay.

16           MR. BADDLEY: Judge, one other item that relates to an  
17 issue that came up earlier about checks that are in float. We  
18 found out today that there are nine checks to seven employees  
19 that were terminated last week. The aggregate amount of those  
20 checks is \$9,223 roughly. The payments are for the accrued  
21 wages as well as because they were terminated, it also included  
22 their vacation pay, and I believe for one person a little  
23 portion of a retention bonus. But the aggregate amount of those  
24 is 9,223 roughly.

25           THE COURT: Does that include the tax portion – or the

1 - that's just to -

2 MR. BADDLEY: That was the face amount of the checks.

3 THE COURT: The checks, so there's a liability for  
4 some employer contribution?

5 MR. BADDLEY: Yeah. We -

6 THE COURT: Ninety-two hundred and twenty-three  
7 dollars are the checks to seven human beings have bounced?

8 MR. BADDLEY: Correct, or if they haven't they soon  
9 will. We would ask for authority to be able to reissue those  
10 payments to those employees.

11 THE COURT: Is there any objection to that by anyone?

12 All right. That's fine. You can do that. I think  
13 what I'd like you to do, however, Mr. Baddley, is just - just so  
14 the record is clear, would you submit a very simple ex parte  
15 application to do that. You don't have to name the people, but  
16 put in a written record the facts: Seven employees, nine checks  
17 issued on or about this time period, accounts closed, and just  
18 pray for an order authorizing the payment, and upload an order,  
19 a separate order. That way our public record will reflect what  
20 was happening rather than just the colloquy here on the  
21 electronic record.

22 MR. FIERO: Your Honor, this is John Fiero. We can  
23 reference check numbers and amounts, we'll just leave out names.

24 THE COURT: I don't care. It's up to you. I don't  
25 need to spread out on - well, certainly that's fine, but I don't

1 even care about check references.

2 MR. FIERO: Okay.

3 THE COURT: I take your word for it. Okay, so that's  
4 a separate order. Then I'll get an order that authorizes the –  
5 grants the motion to pay prepetition wages. And to the extent  
6 that we've talked about it, it's going to take a little crafting  
7 of the order, and simply deferring – not denying, but deferring  
8 consideration of nonpriority wage-related matters and then the  
9 retention bonus approval.

10 MR. BADDLEY: And shall we defer this to the January  
11 16th hearing as well?

12 THE COURT: Yeah, I mean unless it has to come before  
13 me sooner. I'm not – if you – realistically, with the holidays  
14 and everything else, you're going to get a committee in place  
15 probably, as you heard Ms. Loo say, whatever that should be, a  
16 first priority course of business, but there will be a lot of  
17 stuff to do. So for calendaring purposes, I'll continue that  
18 portion of this motion to that date.

19 So the first motion of today was the cash management,  
20 that's gone. The cash collateral is continued for final  
21 hearing. And the prepetition wage motion is granted in part and  
22 deferred in part.

23 Okay. Covered all the – everything we have to cover?

24 MR. BADDLEY: I believe that's it.

25 MR. LANDERS: Your Honor, this is Jonathan Landers.

1 If I could make a very short statement of about something that  
2 has been talked about today.

3 THE COURT: Sure.

4 MR. LANDERS: Just for the record. Both Mr. Cardonick  
5 and Mr. Baddley have made various statements about what gave  
6 rise to this case and the conduct of the banks and why we're  
7 here and the like. And I just wanted to state for the record  
8 that we believe there's another side to that story that's very  
9 important and that hasn't been told. And I just wanted to tell  
10 the Court and put on the record that there is that other side  
11 and that it will come out and be told at the appropriate time.

12 THE COURT: Okay. That's fine, Mr. Landers. No  
13 surprise that you said that. I wasn't going to make any  
14 findings about anything. I took that all as attorney rhetoric  
15 and I want equal time for other attorneys' rhetoric.

16 MR. LANDERS: Thank you, Your Honor.

17 MR. CROWLEY: Your Honor, Leo Crowley for Bank of  
18 America. Obviously I endorse those comments.

19 I'm a little bit unclear, Your Honor, and I'm not sure  
20 if this is the right time to raise this, but there was a  
21 separate issue that we had with the employee motion and I'm not  
22 sure if you're completely done with the motion or just -

23 THE COURT: I thought we were. What did we not get  
24 to?

25 MR. CROWLEY: There's a provision - well, it's a

1 little bit peculiar because again this is one of those things  
2 that's not mentioned in the motion. It's actually not mentioned  
3 in the order, but it is mentioned in the memorandum of points  
4 and authorities, which is a provision in which they seem to  
5 contemplate making – seeking authority I guess for what would be  
6 significant payments on account of a worker's compensation  
7 program that we're not sure, based on the record before us,  
8 necessarily makes any sense.

9           If you look at page 8 of the Memorandum of Points and  
10 Authorities –

11           THE COURT: Okay.

12           MR. CROWLEY: – in Support of the Motion, I mean I  
13 can't quite tell whether they're seeking your approval to do  
14 what's called for in here or not. Nor can I tell whether what  
15 is called for in here would result in using postpetition assets  
16 to pay self-insured obligations in respect to prepetition  
17 worker's compensation claims, et cetera. I think this is  
18 something that ought to be kicked forward to the 16th, because I  
19 don't think you have anything in the record that supports this.  
20 And I don't even think the motion actually seeks authorization  
21 of this.

22           THE COURT: Well, can you –

23           MR. BADDLEY: The motion does seek authorization to  
24 continue to pay worker's compensation premium and to continue  
25 the benefits. And the worker's compensation – with respect to

1 paying the self-insured portion, if those payments are not made,  
2 then Hartford Insurance, who is the worker's comp provider, will  
3 simply draw on the half million dollar letter of credit that the  
4 bank has provided – or that has been provided through the bank.  
5 We think that those payments need to continue to be made, also  
6 in order to be able to reach the limits.

7           Regarding the premiums, there's actually I think a  
8 correction on that that's going to be favorable to the estate.  
9 We had put in there that the ongoing premiums were going to be  
10 roughly 18,-, \$19,000. That was what the last payment was made  
11 for on the December policy.

12           There is a new policy that has gone into effect  
13 beginning 12-10-08. The annual – what I understand to be the  
14 annual premium on that is \$10,870. We already paid \$18,000 for  
15 a policy in December which terminated early in order to kick in  
16 the new policy that begins on the 10th. We believe, and we're  
17 going to talk with Hartford tomorrow, that they are hopefully  
18 going to just apply the \$18,000 payment that we already made to  
19 cover the \$10,000 annual premium that's due on the new policy,  
20 so there may be actually no new out-of-pocket expenses on the  
21 premiums. If there are, they should only be \$10,870.

22           But, again, getting back to the not paying the  
23 self-insured limits, Hartford again has a half million dollar  
24 letter of credit. If that's not paid, it's going to be drawn  
25 upon anyway, and it's going to be something that we're going to

1 have to pay to the bank. I don't see a net difference.

2 MR. CROWLEY: Yeah. Well, I guess - Your Honor, Leo  
3 Crowley again - I guess part of the problem is we don't have any  
4 of this on the record. This is the first I heard that there was  
5 some issue with an LC in favor of Hartford. Nor do we know what  
6 the self-insured exposure is. I mean it's possible that they're  
7 undertaking an exposure larger than half a million dollars,  
8 because we don't know what the current claims -

9 MR. BADDLEY: I think it's capped at -

10 THE COURT: I'm completely confused now about this.

11 MR. BADDLEY: I understood the objection to be not  
12 authorizing the debtor to be able to continue making payments  
13 under his worker's compensation system.

14 THE COURT: Well, to me when a debtor says I'm going  
15 to continue my business sort of like I have been, that includes  
16 paying worker's comp insurance. And, frankly, when I saw  
17 worker's comp in there I didn't think much about it.

18 If you were just a regular employer paying insurance  
19 to a worker's comp carrier, you'd just pay the monthly premiums.  
20 I don't understand what - I don't fully understand what the deal  
21 is with Hartford, but I think Mr. Crowley's point is well taken.  
22 There's nothing in the written record about LCs or half a  
23 million dollar Hartford funds or anything. So is this something  
24 that has -

25 MR. CARDONICK: Your Honor, I understand that Mr.

1 Crowley's point is well taken, but his client issued the letter  
2 of credit. I'm not sure how he can say he doesn't know anything  
3 about it. Bank of America issued the letters of credit -

4 MR. CROWLEY: Because, Your Honor, the case was filed  
5 24 hours ago and I got engaged in this case about 18 hours ago  
6 and I'm doing the best I can.

7 THE COURT: Well, you and I are on the same track -

8 MR. CARDONICK: With all due respect to Mr. Crowley,  
9 his firm has been engaged for a long time -

10 THE COURT: Never mind that.

11 MR. CROWLEY: But the -

12 THE COURT: Just translate it to me. Go ahead, Mr.  
13 Crowley.

14 MR. CROWLEY: Your Honor, if I could just continue for  
15 a moment. The issue is not necessarily the letter of credit,  
16 but they're undertaking to cover up to, as I understand it, the  
17 self-insured component on this is up to \$2 million on account of  
18 what could be prepetition losses.

19 MR. BADDLEY: It's \$350,000, Judge.

20 MR. CROWLEY: That's per event.

21 THE COURT: Well, no, but it says per event and two  
22 million in the aggregate. That's what the papers say.

23 MR. CROWLEY: And if this -

24 THE COURT: We got this dilemma about getting  
25 information in one document and not in another. But translate

1 this to me, what does this mean? In other words, if I sign the  
2 order that authorizes the maintenance of the wage and employee  
3 related benefits other than the retention one and the  
4 nonpriority, what does it mean? What am I authorizing regarding  
5 worker's comp?

6 MR. BADDLEY: Well, we think we need to be able to  
7 have a policy in place, -

8 THE COURT: Right.

9 MR. BADDLEY: - so we do need to be able to pay that  
10 premium. And, as I had pointed out, that may not require any  
11 new expenditures in any event. If the question is what happens  
12 if we don't pay claims for incidents, I don't really know -

13 THE COURT: Well, if there's been an incident in the  
14 past, then you're either paying it, which you haven't asked  
15 permission to pay any pre-existing claims, so Hartford's going  
16 to pay it and you subrogate it to the position of the employee.

17 MR. BADDLEY: Well, we tried to - I think the motion  
18 does set forth that we estimate that we pay roughly \$10,000 a  
19 month in incidents, and we wanted to continue that practice.

20 THE COURT: Okay. It does. It says, "Debtor  
21 estimates on average it will pay 10,000 per month on account of  
22 incidents falling within the self-insured limits."

23 Let's try it this way. If you paid \$10,000 for  
24 January and someone suffers a catastrophic injury on the job and  
25 has \$300,000 worth of claims, who pays the \$300,000, Heller

1 Ehrman or some insurance company?

2 MR. BADDLEY: I think it depends on where we are in  
3 the self-insured limits.

4 THE COURT: Well, I just gave you my hypothetical -

5 MR. BADDLEY: Well, I mean but I don't know how much  
6 has already been applied against the self-insured limits. When  
7 we're going to have - when we would hit -

8 THE COURT: Well, if you go down the street to a  
9 worker's comp insurance company and pay worker's comp for the  
10 short-lived term of this thing, and they will cover all the  
11 claims, why is there any - why should there be any risk to the  
12 estate of having some significant claim?

13 If - right. I mean, again, we're talking about an  
14 insolvent estate and obviously that's not engaged in business  
15 like electing - erecting power lines, where we had some  
16 self-insured issues, but someone could be injured. And so I'm  
17 not hearing -

18 MR. BADDLEY: Would it be better if we put a cap in  
19 the order on the amount of the worker's comp claims that we're  
20 allowed to pay if we left it at the 10,000 or gave some room  
21 there so that was not -

22 THE COURT: Well, you know, the company has to comply  
23 with California law. It must maintain proper worker's comp  
24 insurance, so I'll put the question back to you.

25 If, God forbid, an employee of Heller Ehrman gets

1 injured on the job and has a \$300,000 claim and it all happens  
2 postpetition, who's paying the 300,000, the estate or some  
3 insurance company? That's a two-part – it's a multiple-choice  
4 question, but there are only two choices.

5 MR. BADDLEY: My understanding is it would be the  
6 estate as long as it's within the –

7 THE COURT: Why is that a good thing?

8 MR. BADDLEY: It's not.

9 THE COURT: So why not just get standard worker's comp  
10 coverage; is that impossible?

11 MR. BADDLEY: With no self-insured exposure?

12 THE COURT: You know in bankruptcy land self-insured  
13 means not insured. I mean –

14 MR. BADDLEY: The problem is I don't know – I don't  
15 know how that's going to affect the premiums.

16 THE COURT: Well, it's a fact of life. Self-insured  
17 means not insured, right? It means we're taking a risk. But  
18 I'm not sure that – does classify law authorize that.

19 In other words, and I don't expect you to give me an  
20 opinion on California law, but we'll ask Mr. Benvenuti.

21 Mr. Benvenuti, is the debtor-in-possession in  
22 compliance with California law as far as coverage of its  
23 employees?

24 MR. BENVENUTTI: Your Honor, I certainly believe it is  
25 right now, but I could not tell you what the precise answer to

1 the Court's question is about the interplay of the self-insured  
2 limitations. A deductible. I do not – I am not intimately  
3 familiar with the details of the insurance program and,  
4 therefore, I don't know, in answer to Your Honor's question,  
5 whether if somebody were to be hurt on the job today the estate  
6 would be on the hook for \$350,000 or some lesser portion of  
7 that.

8 I am aware that there are interrelationships of  
9 coverage, but I just don't know the specifics here –

10 THE COURT: Well, my understanding, again – and it's  
11 funnier that someone earlier mentioned PG&E, and PG&E's  
12 relatively dormant, but the case that went to the Supreme Court  
13 and back is back before me and it has to do self-insurance  
14 program. And PG&E had a slightly different situation, as you  
15 will recall, it was 4,- to \$5 billion solvent and it received  
16 authority to pay all worker's comp claims in the ordinary  
17 course. And the – but to be self-insured it had to have a bond  
18 in place. And it had a \$100 million bond that has never been  
19 drawn on.

20 Here we don't have a solvent estate and I don't hear  
21 your asking for permission to honor. – well, if I am hearing,  
22 asking permission to honor employee disability or compensation  
23 claims on your own nickel, it seems like it's a terrible risk  
24 and there ought to be a simple solution of purchasing some short  
25 term worker's comp coverage.

1           MR. BENVENUTTI: Your Honor, we will definitely look  
2 into that. I have the suspicion that the letter of credit that  
3 Mr. Baddley referred to backstops the self-insured portion of  
4 the worker's compensation program.

5           THE COURT: But the amounts – the amounts don't seem  
6 to match up. If the letter of credit is 500,000, –

7           MR. BENVENUTTI: Correct.

8           THE COURT: – but there's a \$200,000 aggregate  
9 coverage, then there may be a gap.

10          MR. BENVENUTTI: I think it's a 2 million aggregate  
11 coverage.

12          THE COURT: Right.

13          MR. BADDLEY: It protects them on the per-current  
14 spaces.

15          MR. BENVENUTTI: Three hundred and fifty thousand  
16 dollars per occurrence as I understand it.

17          THE COURT: Right. Right. But, look, why don't we  
18 agree on this. If you're satisfied that by paying the  
19 equivalent of a premium, whether it's a premium to an insurance  
20 company or some cost of maintaining the LC, or whatever it is,  
21 that protects the estate against the huge amount of the claim,  
22 fine. But you can't go bear, because that would violate  
23 California law.

24          MR. BENVENUTTI: Right.

25          THE COURT: So the question is how to – how to comply

1 with California law without exposing the estate to the whole  
2 exposure of the claim. I think -

3 MR. BENVENUTTI: I understand the issue.

4 THE COURT: And the question is - I mean I guess I  
5 better toss this back to you and say let's defer that. Not that  
6 I'm authorizing the debtor to ignore California law, but I think  
7 it's just unclear. If we can get it straightened out, we need  
8 to take care of it, obviously right away.

9 MR. BENVENUTTI: Right. Your Honor, as I stand here,  
10 I have no reason to think we haven't taken care of it. It's  
11 just I can't tell you precisely how we've taken care of it.

12 THE COURT: Okay. Well, -

13 MR. CROWLEY: Leo Crowley, Your Honor. I think the  
14 problem is they may be in literal compliance with the law with  
15 this letter of credit, but that may be an imprudent way from the  
16 estate's standpoint to manage the risk, because the estate is  
17 still liable. The letter of credit is just, in effect, a  
18 guaranty.

19 MR. BENVENUTTI: We'd be happy to take that up with  
20 the creditors committee, Your Honor.

21 THE COURT: Well, I guess the question is what we need  
22 to do is - I need to sign the order that lets all these other  
23 things that pertain to the employees be maintained without  
24 interpretation.

25 MR. BENVENUTTI: Right.

1 THE COURT: But I also don't want you going back to  
2 the firm, Mr. Benvenuti, and telling the staff, 'You're not  
3 covered if you're injured.' That's not a good thing either,  
4 because they should be.

5 MR. BENVENUTTI: I completely agree.

6 THE COURT: So how would you like me to handle this as  
7 far as an order is concerned?

8 MR. BADDLEY: I think the only thing that we would  
9 need to pay perhaps before the next hearing on this would be if  
10 we need to recut a check to Hartford for the premium on the new  
11 policy. Again, we think that they may apply the payment that we  
12 made to them to it. We'll find out tomorrow. But in order just  
13 to make sure that there is a policy in place, we would like to  
14 be able to go ahead and make that premium payment, if necessary.

15 THE COURT: Okay. Mr. Crowley, are you okay with  
16 that?

17 MR. CROWLEY: Yeah, certainly. I have no objection to  
18 payment of the premium. And, in fact, the import of what I'm  
19 suggesting might be that they end up paying a larger premium to  
20 buy first dollar coverage.

21 THE COURT: Yeah. Okay. Well, I think - I think -

22 MR. CROWLEY: But I'm not sure we've really dealt with  
23 the prepetition issue and it may be that that has to be dealt  
24 with down the road as well, because if there's a prepetition  
25 claim in which a person's physical condition worsens, you know,

1 because the disabilities worsens over time, -

2 THE COURT: Well, do you know, Mr. Benvenutti, is the  
3 firm paying any existing prior worker's compensation -

4 MR. BENVENUTTI: Your Honor, I'm afraid I don't know  
5 the answer to that question. And I wasn't being flippant when I  
6 said that I think this is an issue that we ought to take up with  
7 the creditors committee.

8 THE COURT: Right. No, I understand.

9 MR. BENVENUTTI: Not the banks.

10 THE COURT: Okay. Then for the moment then I'm not  
11 authorizing payment of any prepetition claims that arise out of  
12 injuries. I'm not - I haven't been asked to. And I'm  
13 authorizing the debtor to pay the current premiums and issue a  
14 new check if necessary to cover whatever Hartford has. And I'm  
15 encouraging the debtor and its counsel to close the loop with  
16 whomever you want to make sure the estate isn't exposed for some  
17 future postpetition claim that may arise. And I don't feel  
18 qualified to tell you how to do it and you know what the  
19 problems are and what to do about it, so.

20 MR. FIERO: Your Honor, this is John Fiero. Should  
21 Hartford decide its remedy is to hit the LC and make BofA pay,  
22 nothing in your order would prevent that, right?

23 THE COURT: Do what - nothing in the order would  
24 prevent that.

25 MR. FIERO: Yes. Thank you.

1 THE COURT: Right, I don't know why it would. I don't  
2 know where I'd get authority to do that.

3 All right. Have we covered all the bases?

4 MR. FIERO: Thank you, Judge.

5 THE COURT: Apparently not. Mr. Cardonick.

6 MR. CARDONICK: Not done with me yet, Judge. I only  
7 have one small question actually about the cash collateral  
8 order, just because I want to make sure we get this right the  
9 first then when we submit it. We are taking out the carve-out  
10 in the cash collateral order. There is a budget line item for  
11 professional fees in the budget for \$200,000 in each of two  
12 weeks. Am I taking that line out as well or is that okay?

13 THE COURT: I mean it's meaningless to leave it in  
14 there because you can't spend it anyway, so take it out.

15 MR. CARDONICK: Right. But – so if I'm taking it out  
16 my question is: Does the Court have any objection to us putting  
17 a provision in the cash collateral order that says that we are  
18 accruing professional fees during this period?

19 THE COURT: I mean you're just stating the obvious. I  
20 mean to put it in an order –

21 MR. CARDONICK: You just said that, Your Honor. I  
22 don't need to put it in the order.

23 THE COURT: Well, unless you're waiving all your  
24 fees –

25 MR. CARDONICK: Wanted to make sure it was on the

1 record. Well, I mean I don't - you know, we're going to be  
2 accruing professional fees and someone spoke earlier today  
3 about, you know, sort of a ticking time bomb of things that  
4 aren't in the budget. I wanted to make clear that we're  
5 obviously accruing professional fees under the circumstances -

6 THE COURT: Yeah, I don't think anybody questions - I  
7 certainly don't and I don't think any of the experienced  
8 creditors' counsel believe that this is a part of your firm's  
9 pro bono program and that there are fees being accrued.

10 By the way, I do interpret 6003 pretty literally on  
11 that, too, so don't worry. I mean I don't - I hope I won't see  
12 engagement orders in the first 20 days, but I won't leave you  
13 hanging out to dry, and the practice in this district -

14 MR. CARDONICK: Appreciate it.

15 THE COURT: - is get them in as soon as we're done. I  
16 mean if you really have to, we'll do it, but though that's what  
17 the rule says, immediate and irreparable. And I don't think for  
18 the routine bankruptcy work that fits in that category, but I  
19 think you can rest assured you're not going to get trouble from  
20 me or the U.S. Trustee on day 21 to say the first 20 days are on  
21 the house. I mean we don't do that to you.

22 MR. CARDONICK: I appreciate, Your Honor, that I don't  
23 needing anything in the order. And unless Your Honor has  
24 anything for us, I believe we are done. I want to thank you  
25 again for doing this on such an expedited basis and taking so

1 much time with us today. We appreciate it.

2 THE COURT: I have another surprise for out-of-town  
3 counsel, and Mr. Benvenutti and the others know this, they lock  
4 our elevators at 4:30, so you may not be able to get out of here  
5 till tomorrow.

6 (Laughter.)

7 THE COURT: So.

8 MR. CARDONICK: Well, that's not good because both Mr.  
9 Benvenutti and I have planes to catch tomorrow morning.

10 THE COURT: Try to make arrangements to have the  
11 elevators work to get you out.

12 MR. CARDONICK: Thank you. We will submit an order  
13 tonight. Appreciate it.

14 THE COURT: Thanks very much.

15 MR. FIERO: Your Honor, John Fiero. Not to pile on,  
16 and I want to let you get off the bench, but I did want to  
17 remind the Court that we had - the funding of that payroll needs  
18 to occur tomorrow, so -

19 THE COURT: 24/7, Mr. Fiero.

20 MR. FIERO: We appreciate it. Thank you.

21 THE COURT: Yeah. You don't need a docketed order by  
22 then, do you?

23 MR. FIERO: Pardon me, Your Honor?

24 THE COURT: Just an entered order, is that sufficient  
25 - I mean a signed order, have an order with my name on it or do

1 you need it docketed?

2 MR. FIERO: Oh, sure, I think that will be fine.

3 THE COURT: Well, if -

4 MR. FIERO: As long as BofA will let us use the  
5 account, Your Honor.

6 MR. CROWLEY: Yeah, I'm going to send - I'm going to  
7 let the client make sure that they're ready to go with that  
8 payroll, Your Honor.

9 THE COURT: Well, Mr. Fiero, that order obviously will  
10 get high priority in your end -

11 MR. CROWLEY: Right. Okay.

12 THE COURT: - and my sense is I'll probably be signing  
13 it in the morning. And I'll just have my law clerk fax you a  
14 hard copy of it.

15 MR. CROWLEY: That would be great. Thank you very  
16 much.

17 THE COURT: Because you won't get it on electronic  
18 notice until the staff docketed it, so we'll - and if for some  
19 reason somebody wants a docketed order, you'll probably have it  
20 a little later in the day.

21 MR. CARDONICK: We'll take any piece of paper you send  
22 us, Your Honor.

23 THE COURT: Okay. Thanks. And thank you, Mr.  
24 Fiero, -

25 [COUNSEL]: Thank you, Your Honor.

1 THE COURT: - for getting us the complaint binders to  
2 prepare for the hearing.

3 MR. FIERO: You're welcome, Your Honor.

4 THE COURT: Thank you. All right. Good night,  
5 everyone. Happy holidays, happy New Year.

6 (The hearing was adjourned at 4:50 p.m.)

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County of San Joaquin                )

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Dated January 13, 2009