

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 25-90399
	.	Chapter 11
FIRST BRANDS GROUP, LLC,	.	
	.	515 Rusk Street
	.	Houston, TX 77002
Debtor.	.	
	.	Wednesday, October 1, 2025
.	9:00 a.m.

TRANSCRIPT OF FIRST-DAY MOTIONS HEARING
BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 9:00 a.m.)

2 THE COURT: Good morning. This is Judge Lopez. I'm
3 going to call up the nine o'clock case. Today is October 1st,
4 Case Number 25-90399. If there's someone from the debtor who
5 can hit "five star", I'd ask that you please hit "five star".

6 I just unmuted someone's line.

7 MS. GEORGALLAS: Yes. Good morning, Your Honor. Can
8 you hear me okay?

9 THE COURT: Just fine. Good morning.

10 MS. GEORGALLAS: Andriana Georgallas, Weil, Gotshal
11 as proposed counsel to the debtors, First Brands. Thank you
12 for the time this morning.

13 THE COURT: Ms. Georgallas, may I --

14 MS. GEORGALLAS: As chambers is aware --

15 THE COURT: Go ahead, go ahead.

16 MS. GEORGALLAS: Thank you. As chambers is aware,
17 the debtors and their advisors are continuing to work to
18 resolve objections that have been filed. We think a little
19 more time would be useful here. And we requested that the
20 hearing be pushed by an hour to 10 Central, if that works for
21 Your Honor.

22 THE COURT: Okay. Parties want to keep talking. But
23 let's come on at 10 Central and get started. I would ask
24 everyone to please, just during the interim, just jump on the
25 Southern District of Texas homepage. You'll find a link to my



1 homepage, and you'll find a place where you can make an
2 electronic appearance.

3 I'm going to hang up the line and then open it back
4 up at 9:45 a.m. And I'm going to hang up the line and then I'm
5 going to open it back up at 9:45 a.m. Central. And then we
6 will start this first-day hearing in First Brands at 10 a.m.
7 So I'm going to hang up now.

8 Actually, I'm going to stay on. I'm going to make
9 another announcement at 9:05, Ms. Georgallas. But we will
10 adjourn this hearing until 10 a.m. Central. Parties are free
11 to log off. I'm just going to stay on for another five minutes
12 and make an announcement in a few minutes so anyone who's
13 logging in a little bit after the time period, didn't hear the
14 initial announcement, isn't surprised when the line isn't open.

15 So everyone is -- we're adjourned until 10 a.m. I've
16 got no issues with that. And then we'll take appearances at 10
17 a.m. for all parties. And we'll get started with the hearing
18 and we'll see where we go. Thank you.

19 MS. GEORGALLAS: Thank you, Your Honor. We
20 appreciate the time and flexibility. And just so you know, we
21 will be filing a notice so folks will be aware that we're
22 moving the hearing time.

23 THE COURT: Okay. Sounds great. Thank you.
24 Alrighty.

25 MS. GEORGALLAS: Thank you.



1 THE COURT: I'm just going to stay on. I'm going to
2 make another announcement in about four minutes or so. But
3 parties are free to log off.

4 Yesenia, let's keep the line open for about five
5 minutes, and then I'll make an announcement.

6 THE CLERK: Okay.

7 THE COURT: Thank you.

8 (Pause)

9 THE COURT: Good morning. This is Judge Lopez. If
10 you're dialing in for the First Brand's first-day hearing, it
11 has been adjourned to 10 a.m. Central. We're going to hang up
12 the line in a few minutes, and we're going to open the line
13 back up at 9:45 a.m.

14 If you're calling in for the First Brand's first-day
15 hearing, it has been adjourned until 10 a.m. Central. We're
16 going to hang up the line, and then open it back up at 9:45
17 a.m.

18 I forgot to say this a little earlier, but I will --
19 if you have filed a motion to appear pro hac and we haven't
20 gotten to it, you are more than welcome to appear for purposes
21 of today. There were plenty -- there were a lot of them filed,
22 and we will get to them in due course, but no need to ask me
23 for permission to appear today for purposes of today's first-
24 day hearing. We will get to the pro hacs in due course. I
25 just wanted to make sure that that announcement was made.

1 I'm going to hang up the line, and we will come back
2 on at 10 a.m. Central, but we'll open up the line at 9:45 a.m.
3 Thank you.

4 (Recess taken at 9:06 a.m.)

5 (Proceedings resumed at 10:01 a.m.)

6 THE COURT: Okay. Good morning. This is Judge
7 Lopez. I'm turning on my camera.

8 I'm going to call what was originally scheduled at
9 9 a.m., now starting at 10 a.m., first-day hearings in Case
10 Number 25-90399, First Brands Group.

11 Let me -- we've got a number of people on the line.
12 I would just ask debtor's counsel, if you're -- please hit
13 "five star." I'm going to ask people to make an electronic
14 appearance. I realize there are some parties who may want to
15 make an appearance. We're currently at about 380 people on the
16 line, so I'm going to just hear from the debtors first. And
17 then I'm going to open it up to see if anyone wishes to be
18 heard.

19 There's a 646 number.

20 MR. BARR: Good morning, Your Honor. Matt Barr with
21 Weil Gotshal, proposed counsel for the debtors. Can you hear
22 me okay?

23 THE COURT: Just fine. Good morning.

24 MR. BARR: Good morning. Thank you very much, Your
25 Honor. First, thank you very much for hearing us and for



1 giving us the hour delay. We were able to resolve three or
2 four outstanding issues in that hour, so thank you very much.

3 Here with us at Weil, Your Honor, we have a team of
4 people that will come up during the first-days to present
5 orders, motions, seeking orders for you, but we also have with
6 us Chuck Moore from Alvarez & Marsal and his team. He is the
7 CRO of the company and one of the proposed declarants.

8 We also have Tyler Cowan. Tyler is with Lazard and
9 his team this year. He is also a declarant and the proposed
10 investment banker from Lazard, as well as certain of the
11 management team are online as well, Your Honor.

12 If it's okay with you, Your Honor, what we thought we
13 would do is we would do a short presentation. Then we would
14 give Mr. Greenberg an opportunity. I know he wants to speak to
15 the Court. He represents the ad hoc group of first lien and
16 second lien lenders, as well as the proposed DIP lender.

17 And then, whatever Your Honor will do, we can jump
18 right into the agenda, move the evidence and then jump right
19 into the agenda if that works for you.

20 THE COURT: Okay. Mr. Greenberg, just before we
21 begin --

22 MR. BARR: Thank you.

23 THE COURT: -- can you hit "five star?" I know there
24 are going to be a number of people that are going to ask to say
25 something, but just so I'm going to unmute your line. I just

1 ask that you please keep it muted, so once Mr. Barr's team is
2 finished with their presentations, I'll hear from you. And
3 then I may open it up and allow some before we kind of get into
4 the agenda. If anyone has any preliminary comments, I'll do it
5 at that time.

6 But, well, I've unmuted a line. Mr. Greenberg, did I
7 get you? Oh --

8 MR. GREENBERG: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. GREENBERG: Scott Greenberg. Good, you can hear
11 me, that's fine.

12 THE COURT: Yeah. Someone tried to sneak in on the
13 line here. I just wanted to make sure. I promise I'll get to
14 everyone.

15 Mr. Barr, go ahead and continue.

16 MR. GREENBERG: All right. Thank you, Your Honor.

17 THE COURT: And I will --

18 MR. BARR: We have a computer named Weil PC Share.
19 If Your Honor is willing to allow us to share our presentation,
20 we can put it up on the screen. We did file it with the Court
21 as a demonstrative for this morning's hearing.

22 THE COURT: Okay. Thank you.

23 MR. BARR: Your Honor, can you see that?

24 THE COURT: Just fine. Thank you.

25 MR. BARR: Thank you, Your Honor. So I'm going to

1 potentially -- there.

2 So who are we? This presentation is going to go
3 through who are we, how we got here, and where we would like to
4 go during the Chapter 11 cases. So who are we? Sorry.
5 Technical. (Indiscernible) do it for me? Great. Okay.

6 Your Honor, First Brands is a leading supplier of
7 aftermarket auto parts, including brakes, filters, wipers,
8 lights, pumps, and towing solutions. It is a tremendous
9 company, Your Honor. We'll get to that in a moment.

10 It has a global network of manufacturing and very new
11 integrated distribution centers that span five continents and
12 numerous countries. It was founded in 2013 and headquartered
13 in Cleveland, Ohio. There's approximately 26,000 employees
14 globally, with the debtors employing approximately 6,000
15 employees alone in the United States. Reported total net sales
16 in 2024 was over \$5 billion, and reported EBITDA was \$1.133
17 billion.

18 Besides OEMs, original equipment manufacturers that
19 the company supplies, Your Honor, on the lower left-hand side,
20 you'll see some of our largest customers. They are people that
21 we see every day when we drive around or we turn our computers
22 on. It's the Advance Auto Parts stores, the AutoZones, the
23 O'Reillys, the Walmart, Costco, and Amazons.

24 The next slide, Your Honor, just gives you a snapshot
25 of how diverse and widespread our products are. There are



1 2,900 patents. We constantly are looking and changing with the
2 environment of the businesses that we own and the markets
3 themselves. Our R&D department roughly pumps out 5,000 new
4 SKUs each year to keep up with the markets.

5 And you can see here, Your Honor, the different
6 variety of products we have from braking to consumer,
7 filtration, and the lower part shows you the brands. And as
8 some of us know, these are brands that we see all the time if
9 we go and try to get windshield wipers or other products
10 aftermarket for our cars. As I mentioned, it's a significant
11 company with well-known products.

12 The next slide shows the global footprint that I
13 mentioned. As I mentioned, we're in five continents with over
14 26,000 employees. As you can see, in North America, Mexico,
15 and South America, we have roughly 21,000 employees with
16 multiple distribution centers and factories. In Europe and
17 Asia, 3,000, and other parts of the world as well.

18 You can see, Your Honor, how widespread our global
19 reach is and where all of our employees and facilities are
20 across the world.

21 As I mentioned, in 2013, the company was formed with
22 the original purchase of TRICO, a premium producer and
23 distributor of windshield wipers. As you can see from this
24 slide, over the next 12 years, the company was able to raise
25 significant capital, including refinancing its capital in 2021,



1 to purchase a number of well-known, and not so well-known, but
2 now well-known products. And this just shows you over the
3 years how this company was built to what it is today, as I
4 mentioned, a company with tremendous assets and lots of
5 products.

6 The next slide shows you -- and this is a very
7 simplified org chart. The org chart, Your Honor, is the size
8 of a small table, but we didn't think it made sense to put the
9 org chart on this deck for Your Honor to look at. But if you
10 look, Your Honor, there's 112 debtors. Those are the ones that
11 have the red boxes around them, and those really are some of
12 the SPV silos, as well as the U.S. and some non-U.S. but North
13 American divisions of the business.

14 And you can see that from the right-hand upper side
15 plus starting at First Brands and Viceroy and going down and
16 left. As mentioned, there's 112 debtors that have filed these
17 cases.

18 The next slide shows a snapshot of our prepetition
19 capital structure. Your Honor will see that we have
20 approximately \$227 million of the ABL. That's \$133 million of
21 borrowed money and \$97 million of LCs formal, plus interest.

22 Our term loan debt, first lien and second lien term
23 loan debt, including our pari passu sidecar term loan, loop
24 interest is approximately \$6 billion. The Gibson Evercore
25 Group represents approximately 99 percent of the first lien and



1 83 percent of the second lien debt. They were able to organize
2 almost all of our significant -- all of our term loan holders,
3 which has been very helpful, Your Honor, in these cases. And
4 we'll come to the DIP financing at 1.2, but helping stabilize
5 the business and help tell the story that we're going to tell
6 at the end of my presentation about stabilizing the business
7 and continuing business as usual on a go-forward basis.

8 We then show some of the SPV structures and the
9 borrowed money there, which is approximately \$2.4 billion.
10 Those are the Aequum, CarVal, Evolution, and Onset. Some of
11 those, Your Honor, we have seen some filings.

12 I'm happy to report that most of those we've been
13 able to resolve, but we still have some outstanding issues with
14 some of those holders that either Mr. Carlson or Mr. Singh will
15 address. But in total, with the supply chain financing
16 obligations we have, there's in excess of \$10 billion of
17 borrowed money in the capital structure.

18 The next slide is just a snapshot of -- I'm sorry --
19 is a slide that has the key parties in the Chapter 11. The
20 board of managers established a special committee comprised of
21 independent managers, Bill Transier and Neal Goldman. That was
22 in September of this year.

23 The special committee has the exclusive power and
24 authority to consider and evaluate all potential transactions;
25 to approve or reject for itself, for the company, and its



1 subsidiaries' entry into or consummation into an agreement,
2 contract, or other arrangements with respect to those potential
3 transactions; to oversee and implement the execution of a
4 potential transaction; and to conduct an investigation into
5 potential claims and causes of action that may exist in favor
6 of one or more of the debtors, which I'll get to in a few
7 moments.

8 As mentioned again, Chuck Moore, in September of this
9 year, was appointed the chief restructuring officer of the
10 company, and his delegation of authority has been pretty much
11 taking over all controls over cash, as well as working with the
12 management team on the operations of the business. Chuck is
13 completely embedded within the company.

14 Just to give you a little bit more of who's involved,
15 as I mentioned, the special committee, Neal Goldman and Bill
16 Transier, the management team, the founder and chief executive
17 officers, Patrick James, CFO Steve Graham, and senior vice
18 president of mergers and acquisitions is Shekhar Kumar.
19 Proposed counsel is Weil, Gotshal. Proposed advisor with Chuck
20 as CRO is Alvarez & Marsal, and proposed banker is Lazard.

21 Importantly, the parties that we've been dealing
22 with, some who have been extremely helpful in stabilizing the
23 company and getting us to this place today, Your Honor, and we
24 thank them for that, are on the right-hand side. And this is
25 really our material lenders, as well as our equity owners that



1 are represented by Debevoise.

2 As mentioned, the ad hoc group of term loan lenders
3 and proposed DIP, that's Gibson Dunn and Evercore. The ADL
4 lenders, which we also have an agreement with, is Winston &
5 Strawn and FTI; Evolution is Proskauer and BRG; Aequum, Blank
6 Rome; CarVal, Dechert and Ankura; Onset, Morrison & Foerster.
7 And these are just some of the parties, but the material
8 parties that we've been working with around the clock with them
9 over the last several weeks, if not days, and we thank them for
10 their efforts.

11 Your Honor, how did we get here? You can go to the
12 next slide. We'll start off with the tariffs. This is
13 something that I'm sure all of us are aware of, and I know Your
14 Honor is because you have other cases in front of you. The
15 tariffs have caused additional landing costs for goods for the
16 company, but also provided the company with an opportunity,
17 given where some of its facilities were, to try to minimize the
18 future exposure to tariffs, especially between the United
19 States and Mexico, but that required capital and reinvestments.

20 So the company had lots of orders to try to fulfill,
21 but needed to make sure it had the right capital structure and
22 the right capital, which unfortunately found we didn't have
23 enough capital to fulfill those orders.

24 Lease obligations and debt obligations started to
25 mount, in particular in May and August of 2025, with respect to



1 Onset, one of our equipment and inventory lessors. These
2 factors started to snowball and have an effect on liquidity of
3 the company, so the company started to explore potential causes
4 -- courses of action to improve its liquidity and potentially
5 restructure its obligations.

6 All of these had an effect on the operations of the
7 business, because it started to put pressure on the business.
8 We started to get default notices, we started to get threats of
9 exercise of remedies, we started to get demands for late fees,
10 and forcing the company to make short-term concessions in order
11 to preserve stability. And the company had to do that, because
12 that was in the best interest of the company, and they did do
13 that.

14 It became clear, though, that the company needed an
15 immediate cash infusion in order to get the runway to get to a
16 maximizing transaction.

17 In the next slide, Your Honor, the company
18 proactively, for a while now, was trying to address its capital
19 structure and liquidity needs. Last year, in mid to late of
20 2024, they sought to do a financing using the rest of the world
21 or non-US assets. Unfortunately, they were unable to do that.

22 In July of this year, with the assistance of
23 Jefferies, they sought to refinance \$6.2 billion of the debt on
24 their capital -- on their books through a comprehensive
25 refinancing. During that process, in August of 2025, it became

1 clear that certain of the lenders insisted on a quality of
2 earnings report, and the company started to -- or hired and
3 started an accounting firm to go through the quality of
4 earnings report.

5 However, at that same time, the company had the
6 liquidity concerns and the crunch that we just talked about.
7 So in August of this year, the company retained our firm and
8 Lazard to assist it in addressing its liquidity concerns, and
9 really engaged financing to see if we can get from where they
10 were and the liquidity that they needed to allow the quality of
11 earnings to finish in order to get to a place where potentially
12 the refinancing could occur.

13 It became clear during that process, and -- I'm sorry
14 -- and at the same time, Lazard started to reach out to buyers
15 or potential buyers about an asset sale of the company or
16 certain assets of the company. It became clear at that time
17 that there were questions in diligent sessions that needed time
18 to be answered, that needed more efforts from the company and
19 its advisors, that we didn't have the measure of time or
20 liquidity to get there.

21 It became very clear that we were going to be in a
22 much more grave liquidity crisis, and that we couldn't let that
23 process completely run out. So we immediately started to focus
24 on preserving the value of the business, stabilizing it, and
25 getting into Chapter 11.



1 It also became clear that certain of the buyers were
2 not interested in purchasing assets outside of the Chapter 11
3 process. As I mentioned, in September, the special committee
4 was appointed to do, among other things, to do an investigation
5 into any potential causes of action or claims that the company
6 may have. During this process, among other things, it became
7 clear that the company and the special committee needed to look
8 into certain issues surrounding third-party factoring,
9 factoring practices that led to approximately \$2.3 billion of
10 factoring.

11 The collection of approximately 1.9 billion of those
12 factored receivables had come into the company that had not
13 turned over to the factors. That's something that the special
14 committee will be looking at, as well.

15 The next slide is just a snapshot of the proposed
16 debtor-in-possession financing. I'm not going to spend a lot
17 of time on this, Your Honor, because Mr. Singh will go through
18 it with you in detail, but just to say that the company has
19 secured \$1.1 billion of new money financing.

20 That financing is essential to the business. It's
21 essential not only to operate the business, but it's essential
22 to send a message that we want to make loud and clear. This is
23 a significant company. It's got significant assets and
24 significant businesses. We have the financing to pay our
25 employees. We have our financing to continue our relationships

1 with our vendors and our customers, and we intend to maximize
2 the value of this business.

3 And as I mentioned, Mr. Greenberg's clients are
4 substantial, if not almost all of our prepetitioned, first lien
5 secured vendors, and they support the company through this DIP
6 financing.

7 So where are we going to go? Where would we like to
8 go? First, hopefully, Your Honor, after hearing today, will
9 help us secure, at least on an interim basis, our \$1.1 billion
10 DIP financing, \$500 million on an interim basis. That will
11 allow us to stabilize our operation, preserve our jobs,
12 preserve our vendor and customer relationships.

13 In fact, with certain of our customers, we're
14 continuing to negotiate with them, and in the interim, while we
15 decide whether or not they will continue to do business with us
16 and provide us credit, we've agreed to escrow or segregate cash
17 that might be theirs, might be their collateral, and hold it on
18 the side and figure out whether they have claims or don't have
19 claims against it, as a good faith effort to try to continue
20 our relationship with certain of these parties, and you'll hear
21 about that in a little while.

22 We're going to work with our key stakeholders to
23 explore value-maximizing options, including potential asset
24 sales or sales. We're going to work with the special committee
25 to continue this investigation, and we hope to emerge from



1 Chapter 11 as soon as practical.

2 So unless Your Honor has any questions for me, as
3 mentioned before, I know Mr. Greenberg would like to say a few
4 things.

5 THE COURT: No questions at this time. Thank you.
6 Mr. Greenberg?

7 MR. GREENBERG: Good morning, Your Honor. Can you
8 hear me okay?

9 THE COURT: Just fine. Thank you.

10 MR. GREENBERG: Okay. Thank you, Your Honor. Good
11 morning. Scott Greenberg of Gibson, Dunn & Crutcher, counsel
12 for the Ad Hoc Term Loan Lender Group and the proposed DIP
13 lenders in the case.

14 As Mr. Barr already hit on the math, our ad hoc group
15 is comprised of lenders that currently hold approximately 99
16 percent of the first lien term loan, 100 percent of the
17 debtors' first lien sidecar term loans, and 83 percent of the
18 debtors' second lien term loans.

19 Certain members of our Ad Hoc Group, Your Honor, over
20 the last several weeks have negotiated and structured the terms
21 and obtained the support from the other first and second lien
22 lenders of this proposed DIP facility, which Mr. Barr
23 mentioned, which obviously, subject to Your Honor's approval,
24 would provide the debtors with \$1.1 billion of new money to
25 fund their operations and restructuring efforts during these



1 Chapter 11 cases.

2 Your Honor, we filed our 2019 statement yesterday,
3 which obviously lists out all of our clients. That's at Docket
4 Number 119.

5 Your Honor, with your permission, I'll obviously not
6 try to be repetitive of what Mr. Barr has already covered, I
7 would like to take a few minutes to put a bit of color, at
8 least from our perspective as the ad hoc group of lenders, in
9 terms of how we got here from the lenders' purview, and
10 candidly, just given the facts and circumstances, why this has
11 been such a hard lift to underwrite the DIP.

12 But before I get into it, I will say I'll finish
13 where Mr. Barr finished, which is obviously the lenders are
14 here today supportive of this company and getting a path
15 forward once we stabilize the business to end up with the most
16 value-maximizing transaction.

17 That being said, Your Honor, I will say on a personal
18 note, I've had a lot of tough cases over my career. Obviously,
19 all of what we do for a living, by definition in some ways, is
20 an emergency, one way or the other, as a structuring
21 professional. But I will say, and I don't take this lightly,
22 this one, looking back over 23 years, at least the last couple
23 of weeks, may take the cake, and hopefully it gets better from
24 here.

25 This is not a case where we're only dealing with a



1 liquidity issue leading to a filing. As we saw in Mr. Moore's
2 declaration, the company -- Mr. Barr hit on, the company is
3 estimated to have about \$2.3 billion in aggregate off-balance
4 sheet financings, another \$800 million in unsecured supply
5 chain financings, approximately \$2.3 billion in factoring
6 liabilities. And this is all stuff we've only learned over the
7 last couple of weeks, but a portion of those off-balance sheet
8 financings have allegedly been in default, you know, prior to
9 the filing, which was news to our clients.

10 There are obviously serious questions about the
11 factoring facilities, supply chain financing, and as you heard
12 from Mr. Barr, there's now a special committee, Weil, A&M, and
13 the newly appointed CRO are just starting to peel back the
14 onion.

15 As Mr. Barr said, this special committee, among other
16 things, has been tasked with conducting an investigation into
17 potential claims against current and former insiders, and
18 matters relating to the off-balance sheet financing process.
19 And more importantly, Your Honor, we've learned from the -- and
20 we've all been learning on the fly together for what it's worth
21 with Mr. Barr and Lazard and A&M on the debtor's side.

22 The special committee is also investigating whether
23 certain of these receivables have been turned over to third-
24 party factors upon receipt, and whether certain of the
25 receivables may have been factored more than once. We're going



1 to have to let that process run its course. Obviously, we'll
2 be doing that under the purview of this Court. But there's
3 just a lot we don't know, to put it bluntly.

4 All that being said, we're here today trying to save
5 the company from what was almost a complete and immediate
6 implosion, and we're trying to do so with over a billion
7 dollars of financing to let this company operate in the
8 ordinary course.

9 It shouldn't come as a surprise to the Court, I'm
10 sure having read all the declarations and background, that from
11 our perspective, this was not an easy process, nor was it an
12 easy decision. It wasn't easy for the advisors, in the sense
13 that we're operating on far from perfect information. It
14 wasn't easy for our clients, who, you know, candidly have lost
15 significant investment dollars over the last several weeks.
16 And it certainly wasn't easy from an investment committee
17 process standpoint, with people being asked to put new capital
18 into the business to support it, despite the questions.

19 The company's financial controls are under serious
20 pressure. The go-forward business plan is obviously under
21 complete scrutiny. And there are substantially more questions
22 than answers.

23 But nonetheless, as I said, we're here supporting the
24 company with over a billion dollars of additional liquidity,
25 because we intend to work closely as we have over the last past



1 week, with the debtor's professionals to try to figure this all
2 out over the next couple of months.

3 And just to rewind the tape a little bit, Your Honor,
4 and you don't need to go back that far in time, and Mr. Barr
5 alluded to this. But as was discussed in Mr. Moore's
6 declaration, just in July of this last year, over the summer,
7 the company was out in the market with a \$6.2 billion, what I
8 would call, regular lay market process. It was a refinancing
9 designed to extend the 27 debt maturities to 2030. And
10 Jefferies launched that deal in the market in July of this
11 summer, with commitments due in August.

12 I think everyone, family, from our clients, assumed
13 that this one was going to play out the regular way and be
14 refinanced. But just one day before the commitment deadline,
15 the company had to put a pause on the process. The deal book
16 was short, and as described in Mr. Moore's declaration, and
17 Mr. Barr hit on it as well, there was concern among investors
18 in the marketplace about the company's financial disclosures,
19 and that's when Duluth was brought in to do a QOE to try to
20 assuage those concerns.

21 The QOE was delayed. At some point, concerns about
22 the company's balance sheet unfortunately started to leak into
23 the press, and the debtor's liquidity pressure came under great
24 strain, and that's when we got an outreach from the company's
25 advisors.



1 Where did that take us, Your Honor? In less than,
2 effectively, four weeks, from our client's perspective, we went
3 from an assumption that the Jefferies refinance process was on
4 track, and we were going to be refinanced at par. We got a
5 call, I got a call on September 4th, from the company's
6 advisors, which candidly caught us off guard. In fairness to
7 them, I think they were also drinking from, you know, the fire
8 hose, and they told us effectively to fasten our seatbelts
9 because they were in desperate need of capital. We were trying
10 to figure out at the time whether it was something we could do
11 out of court or in court. And at that -- at the time, at
12 least, that our clients would be required to fund no less than
13 \$600 million to keep the company's lights on.

14 Members of our ad hoc group got restricted on a
15 rolling basis beginning on September 17th. So as you can see,
16 Your Honor, a very compressed timeline. Not knowing what to
17 expect, and we and Evercore started doing as much diligence as
18 we could, based on what the company was able to provide.

19 We've been working, Evercore, and Gibson, with the
20 debtors' professionals, you know, hand in glove ever since,
21 trying to get our arms around the situation together. And I'll
22 spare you the gory details, but just to get a sense of market
23 perspective, Your Honor, over the course of less than a week,
24 as the details of concerns around the company's actual
25 performance and off-balance sheet financing-related concerns



1 came to light and the press picked up on it, the debtor's
2 prepetition secured first lien debt, which was trading at
3 nearly par a few weeks earlier, expecting to refinance, traded
4 down to \$0.36. And the second lien that our lenders owned
5 crated from \$0.91 to \$0.10.

6 And during about that same time period over the last
7 week to ten days, the DIP need, after Alvarez was able to
8 really do their work and dig in, ballooned from 600 million to
9 about 1.1 billion.

10 To put it mildly, Your Honor, our clients are funding
11 \$1.1 billion into, as well as we could protect it, and we'll
12 talk about it, but effectively a black box. Our diligence is
13 probably, you know, 10 to 20 percent of where it would
14 typically be to put together a loan of this size in complexity.
15 And as I've said a couple times, but I want to stress this for
16 the Court, Your Honor, that's no fault of the debtors'
17 advisors. I would go in the opposite direction and say that
18 Weil and A&M and Chuck and his team and Lazard have been great
19 teammates in a tough situation and have been extremely
20 transparent, even when it's not good news.

21 One thing I want to hit on, Your Honor, just to give
22 you a sense of even last week, when we were working with the
23 company in our efforts to put this company into bankruptcy in
24 as smooth of a landing as we could, there were more twists and
25 turns just days before the filing last week.



1 I think, ironically, on the Rosh Hashanah holiday, we
2 learned that the company's remaining liquidity was a little bit
3 south of \$30 million that was being used to get this company
4 into chapter this past weekend. We were seized by one of its
5 banks that had exposure to supply chain financing, and it led
6 to the company to not being able to make payroll last Friday.
7 And there were a lot of conversations going on of whether or
8 not we were just going to put this into a chapter without even
9 having a DIP finalized, given what happened.

10 I will say our clients, on less than two days'
11 notice, stepped up. They funded \$24.5 million of bridge
12 financing last week, which was used last Thursday primarily to
13 fund payroll and crucial vendor payments. And that bridge
14 financing was structured as a tranche that you'll see will be
15 repaid from the DIP facility that is before Your Honor, if
16 that's approved today.

17 Obviously, there's a bigger task at hand as well,
18 which is the \$1.1 billion superpriority DIP facility that's in
19 front of Your Honor today. To be clear, Your Honor, we didn't
20 have the luxury as we typically would, as we try to do when we
21 bring the case to you, of having the entire case mapped out.
22 This is certainly not a prepack. It's not even a pre-arranged.

23 The goal here, Your Honor, was to get emergency
24 liquidity to make absolutely critical payments to stabilize
25 this business. And obviously, we're going to have to figure



1 out a lot of what happened to get us here as we're in front of
2 Your Honor.

3 From our client's perspective, Your Honor, the goal
4 has been to make sure that vendors get as comfortable as
5 possible that no one is lending good money after bad. There
6 are obviously more questions than answers, but our clients have
7 stepped up to stop the hemorrhaging and hopefully stabilize the
8 business so we can work with the debtors, specifically their
9 CRO and independent directors, along with the company's
10 advisors, to put together, as Mr. Barr said, a value-maximizing
11 path forward.

12 So just to wrap it up, Your Honor, I'm going to
13 emphasize that in no way, as I'm sure you're already aware, to
14 downplay the fact that this case is an outlier. From the
15 refinance and debt trading at par about four weeks ago to
16 effectively a controlled crash landing into bankruptcy with
17 serious questions about how we got here and a need for \$1.1
18 billion of fresh capital.

19 It's not a routine Chapter 11 case. It's not a
20 routine DIP financing. It's a true rescue facility negotiated
21 under extreme pressure with our clients bearing outsized risk.
22 The time constraints were brutal. The uncertainty is enormous.
23 And still, our clients have stepped up and prefer the only real
24 executable capital.

25 The fee is the structure, and we'll get into it when



1 Mr. Singh makes his presentation, all reflect the real risk
2 that our lenders are taking by putting new money into a
3 distressed, unstable company with limited downside protection
4 given the uncertainty regarding the reliability of historical,
5 financial, and other governance controls.

6 So I know, Your Honor, unfortunately, I've painted a
7 picture, but it's a picture that's developed in a month and a
8 lot has happened. All that being said, and I'll say it again,
9 as Your Honor knows better than any of us, that doesn't
10 necessarily mean that we're not in for a case that stabilizes
11 this business and that results in a value-maximizing
12 transaction.

13 Obviously, that's what we're hopeful for with the
14 assistance of the debtors' advisors. That is our goal.
15 It's certainly the goal of folks putting in \$1.1 billion of
16 fresh capital.

17 And despite the intensity leading up to the filing,
18 the reality is we're here with a deal on the grip, a set of
19 milestones to work through with an RSA, and a willingness to
20 not let the past prejudge the future of this company. So I
21 appreciate you allowing me some time, Your Honor, and if you
22 have any questions, I'd be happy to address them.

23 THE COURT: No questions at this time. Thank you.

24 Let me just make a --

25 MR. GREENBERG: Thank you.

1 THE COURT: -- statement before I open things up just
2 a little bit before. We are 500 folks on the line and over 250
3 on video. There may be some folks that are trying to get in
4 that may or may not be able to. I'm going to ask. I know
5 sometimes there are some firms where everybody has their own
6 individual line open. To the extent that you can combine, I
7 would just ask for the courtesy, just so we could kind of ease
8 up the phone pressure a little bit here and maybe allow some
9 other additional people who may be trying to come in to have
10 the opportunity to dial in. I know normal protocol is everyone
11 dials in on their own, but to the extent that is possible, I
12 would just ask that we do so.

13 Let me -- just briefly, if there's any kind of brief
14 statements that anyone wishes to tell me at this time,
15 everyone's rights are reserved in connection with every
16 individual motion, but if there's kind of a big brief issue
17 that anyone wishes to highlight for me, now would be the time
18 to do so. I'll do it for about 10 or 15 minutes, and then I'll
19 turn things over to Mr. Barr and we can get right into the
20 agenda. Okay.

21 Here's a 312 number. A 312 number. Here's a 212
22 number.

23 MR. INDELICATO: Good morning, Your Honor. Can you
24 hear me?

25 THE COURT: Just fine. Good morning.



1 MR. INDELICATO: Terrific. Vincent Indelicato,
2 Proskauer Rose, LLP on behalf of Evolution Credit Partners.
3 Nice to appear before Your Honor again.

4 THE COURT: Good to see you.

5 MR. INDELICATO: With me today in the virtual
6 courtroom, my partner, Chad Dale, my colleague, Matt Koch, and
7 co-counsel from the Gray Reed firm, Jason Brookner.

8 Your Honor, if it would please the Court, I can
9 provide a brief introduction to Evolution and its relationship
10 with First Brands, maybe just to provide some context. And
11 then try to frame quickly and really put into focus for Your
12 Honor the outcome-responsive issues that we see for the next 30
13 days of the case.

14 THE COURT: Mr. Indelicato, to the extent you want to
15 add to something that was -- I know, and I'm certainly not
16 using it to frame the issue, but I've read everything that has
17 been filed, so I have a good glimpse of the issues that you're
18 going to talk about, but certainly feel free to dive in.

19 MR. INDELICATO: Terrific. I appreciate that and am
20 mindful of the time.

21 Your Honor, for the last several years, Evolution has
22 been a reliable partner to First Brands through a number of
23 different financing facilities that together approximate more
24 than \$300 million of obligations, which include mission-
25 critical secured inventory financings in the company's brake



1 division with the Starlight and Patterson SPV debtors as well
2 as exposure to the company's top customers through the
3 factoring in what had been contemplated and executed as a true
4 sale receivable purchase of First Brands accounts receivables
5 as well as suppliers through a practice known as reverse
6 factoring.

7 And so just to take a step back, when you think about
8 three buckets, Evolution finances the company's inventory, it
9 factors the company's accounts receivables with customers, and
10 it reverse factors the receivables of the company's suppliers.

11 And just to give Your Honor a sense of the
12 criticality and the magnitude of the Evolution inventory, I
13 think as the debtors highlighted in their first-day
14 declaration, we understand the sales of the brake parts
15 inventory alone approximates something like 33 percent of the
16 company's revenue, so quite meaningful to the business.

17 In the spirit, Your Honor, of Evolution's ongoing
18 partnership with First Brands, when we surfaced about a week
19 ago that First Brands may have been considering a bankruptcy
20 filing, Evolution contacted the company to express its
21 willingness to discuss how it could continue to support the
22 company's liquidity and inventory needs, including whether it
23 could support the company with a DIP facility that had the
24 benefit of providing the company with the use of Evolution's
25 collateral while also injecting new and incremental liquidity.



1 Less than 24 hours after Evolution made that proposal, Your
2 Honor, it woke up and learned that Starlight and Patterson SPVs
3 had filed petitions for Chapter 11 overnight.

4 Later that same day, on September 25th, the company's
5 advisors informed Evolution for the very first time that they
6 had discovered that Evolution's inventory collateral had been
7 transferred out of the Starlight and Patterson SPVs, where
8 Evolution is the only creditor, to an entity in the First
9 Brands credit group for no consideration. Even worse, they
10 disclosed that the transferring entity had pledged the
11 inventory, which is incumbent with the first lien to Evolution,
12 to the ADA lenders, who had then advanced funds against that
13 inventory as part of its borrowing base.

14 And Your Honor, if that wasn't enough bad news, the
15 company's advisors informed us that the customer accounts
16 factored by Evolution, and again, would have been contemplated
17 and executed as a true sale transaction, may have been factored
18 more than once by the company, leaving Evolution and customers
19 of First Brands in a state of disarray and confusion.

20 And so very simply put, Your Honor, we stand before
21 you today not just as a lender, not just as a supporter of the
22 business and the capital structure, but also as a victim.
23 Because while we don't have all the facts, what we do know,
24 Your Honor, is that someone, and we don't know who, we don't
25 know why, we don't know when, took our collateral, transferred



1 it to another entity, and then used that same collateral for a
2 loan from another lender.

3 How in the world that possibly could happen within a
4 sophisticated multibillion-dollar enterprise is a mystery to us
5 and to our client. And, Your Honor, while we commend the
6 debtors' professionals for the candor and the transparency that
7 they have exhibited to their stakeholders during this very
8 challenging time, and we have the utmost respect for the
9 debtors' legal and financial advisors, as Mr. Greenberg
10 emphasized, we still have more questions than answers.

11 And so, Your Honor, as a matter of law, we believe we
12 start these cases with a first lien against more than \$300
13 million of inventory that was inexplicably transferred for no
14 consideration from a special purpose vehicle to another First
15 Brands entity. And importantly, no one is standing up today,
16 Your Honor, to say that that purported transfer eliminated our
17 lien.

18 Indeed, as you'll hear later in the hearing, we
19 reached a consensual stipulation to permit the use of our
20 collateral for the interim period until the facts prove
21 otherwise. And my partner, Mr. Dale, can speak to that
22 agreement.

23 And again, we thank Weil and A&M and Lazard for
24 working to put that interim stipulation in place. And again,
25 over the next 30 days, we will work collaboratively with the



1 debtors to gather the facts, to identify our collateral, and to
2 sort through these issues without a necessary delay in
3 protracted litigation.

4 And to that end, Your Honor, we also had a
5 constructive call with counsel to the EBO lenders at Winston &
6 Strawn and believe they also share our desire for a
7 collaborative and swift resolution. We are optimistic that we
8 can work closely with the EBO lenders and the debtors to
9 quickly determine what the inventory is and ultimately, Your
10 Honor, who's on first.

11 We hope the debtors will continue to provide full
12 cooperation and transparency in the coming days. But given the
13 history of what happened here, especially given that our
14 bankruptcy without SPV borrowers were placed into Chapter 11
15 and a majority of insiders still remain on the board that was
16 front and center of the first-day declaration, Evolution has to
17 reserve all of its rights, Your Honor, to request the
18 appointment of an examiner or a Chapter 11 trustee and/or move
19 to dismiss the Starlight and Patterson SPV bankruptcy cases if
20 necessary.

21 And I would note, and this is important, that we
22 appreciate the debtors have retained the assistance of
23 independent directors. Under the circumstances, Your Honor, as
24 Mr. Greenberg noted, this isn't any ordinary case, and so there
25 isn't any way that anyone could take comfort in that alone as



1 the concept of independent directors who just arrived on scene
2 after the fact is not at all a panacea and should not cause
3 Your Honor to designate the special committee exclusively as
4 fact finder or investigator.

5 And I think this feels especially important here,
6 Your Honor, when we have the same estate fiduciaries, the same
7 directors, wearing both First Brands debtor hats and SPV debtor
8 hats for Starlight and Patterson as it relates to our client
9 and acting as agents for separate debtor entities that we
10 already know on the very first day of these Chapter 11 cases
11 have a direct and irreconcilable conflict between them.
12 Mr. Barr conceded just that in his opening remarks when he
13 talked about how the same set of directors is undertaking an
14 investigation of claims that one silo of debtors likely can
15 assert against another silo of debtors.

16 And so, Your Honor, in closing, for these reasons,
17 absent potentially the appointment of a trustee, we really
18 believe that this forensic examination, investigation, whatever
19 we want to call it, can only happen with the participation of
20 the agreed parties working alongside the special committee with
21 full cooperation and access. And so we look forward to that
22 process and, of course, Your Honor, we'll seek your assistance
23 as needed. But just thought it was important to highlight
24 those issues for you.

25 THE COURT: Thank you very much.



1 MR. INDELICATO: Thank you.

2 THE COURT: All right. I'm going to go to a 214
3 number and then a 212 number and then Mr. Barr. So I don't
4 know who's on the 214 or the 212, but Mr. Barr, after I finish
5 with that, I'm going to turn to you.

6 Here's a 214 number.

7 MS. PERRY: Good morning, Your Honor. Deborah Perry
8 with Munsch Hardt Kopf & Harr representing Onset Financial,
9 Inc. today. And as seen in the virtual courtroom, I have Ben
10 Butterfield who's going to make a very brief comment, and then
11 we'll hold the rest of our presentation for the DIP motion.

12 THE COURT: Okay. Thank you.

13 Let's see. Here's a 212 number.

14 Mr. Butterfield, if you could hit "five star," I just
15 want to make sure I've got you. All right. I believe I have
16 you. Well, both of you can't be Mr. Butterfield. Here's a 516
17 number?

18 MR. GRILLO: Yes, Your Honor. 516 number is me,
19 Emanuel Grillo of Orrick, Herrington & Sutcliffe.

20 THE COURT: You got it. I'll get you, Mr. Grillo,
21 but let me get Mr. Butterfield, and then I'll --

22 MR. GRILLO: Sure.

23 THE COURT: -- go from there.

24 Mr. Butterfield, did I get you?

25 MR. BUTTERFIELD: Can you hear me, Your Honor?



1 THE COURT: Yes, just fine. Good morning.

2 MR. BUTTERFIELD: Good morning. And thanks for
3 giving me a few seconds. I promise I'll keep it super short,
4 30 seconds max.

5 Look, we're going to reserve our comments for the DIP
6 motion. That's where most of our issues arise. At a high
7 level, we believe we have the exact same issues as Evolution.
8 I won't repeat, you know, what they said. We are completely in
9 the dark here. We've been a huge supporter of the company. We
10 extended a billion dollars in credit to the company, a billion
11 dollars of actual liquidity during the year prior to this
12 bankruptcy, and we've been repaid, like, a tiny sliver of that.

13 There are very complicated issues of who has liens on
14 what, who owns what, and the fact that the property is that of
15 debtor doesn't mean that that debtor's creditors have first
16 priority because under the ECC rules that we will get into down
17 the road, you know, previously liens (indiscernible) through.

18 So with -- I'll save all of that for down the road,
19 but we're very concerned about the prejudice that's taken now
20 before most of us have adequate information.

21 THE COURT: Thank you. Mr. Grillo?

22 MR. GRILLO: Yes, Your Honor. Again, Emmanuel
23 Grillo, along with my partner, Laura Metzger, on behalf of,
24 again, Orrick, Herrington & Sutcliffe on behalf of what was
25 characterized in our objections as the Raistone parties.



1 Just very briefly, Your Honor, not more than 30
2 seconds, to say that we agree with everything Mr. Indelicato
3 said. We appreciate all of the work that the professionals
4 have done. But at the same time, we reiterate his concerns
5 with respect to sort of the independence of the parties
6 involved.

7 We note, just as one additional point, that even
8 though there is a special committee that's undertaking an
9 investigation, typically we're used to seeing that being done
10 with the assistance of independent counsel. That's not the
11 case here. That increases, I think, our degree of concern as
12 far as that goes.

13 And I think the point most important to reiterate is
14 that there's been no change over in management. We have a \$2.3
15 billion accounting irregularity. Our clients, the Raistone
16 parties, have extended, you know, with their investors \$172
17 million approximately in AR facility and another \$684 million
18 in an unsecured AT facility as far as that goes.

19 So the bottom line is that our clients are a material
20 player, but we just want to say that we agree with
21 Mr. Indelicato's comments and look forward to sort of seeing
22 how this plays out. We trust the professionals. At the same
23 time, there's a lot of concern here for us.

24 THE COURT: Thank you. Okay. Mr. Barr.

25 MR. BARR: Thank you, Your Honor. Before I turn it



1 over to Mr. Singh to go through the agenda, I just want to
2 reiterate, from our perspective, and you heard it from
3 Mr. Greenberg as well, we are trying to stabilize this
4 business, stabilize the operations, save people's jobs, save
5 customer relations, and make sure that we have an asset that
6 can be maximized for all of our creditors and all of our
7 stakeholders. We'll see where that value falls. We'll see how
8 we do it.

9 We appreciate everything everybody is saying. We
10 thank them for their comments. We have a lot to figure out.
11 The special committee has started with the assistance. We're
12 happy to talk to these parties about involvement, appropriate
13 involvement and ways to figure it out.

14 Today, of course, is a heated day. We're happy that
15 we've been able to resolve a lot of these issues, because I
16 think these parties also agree that stabilization is the first
17 thing that we all should focus on to maximize value. And the
18 other stuff we absolutely need to look at and figure out.

19 So with that, Your Honor, unless you have any
20 questions for me, I'm going to cede the podium to Mr. Singh.
21 He will move in evidence and get to the agenda.

22 THE COURT: Okay. Thank you.

23 MR. BARR: Thank you.

24 MR. SINGH: Good morning, Your Honor. Sunny Singh,
25 Weil Gotshal, proposed counsel to the debtors. It's a



1 privilege to be here before you today.

2 Your Honor, what I thought I would start with is just
3 a little bit of housekeeping before we get into the first
4 motion today will be the DIP motion that I'll handle, and then
5 I'll turn it over to some of my colleagues. And maybe what
6 I'll just start with is to take tally and update you on kind of
7 where we are with the parties so you know who is still open and
8 outstanding and who we think we're resolved with. We may have
9 some issues as we go down.

10 Obviously, everybody's on the phone, on the line, and
11 they'll correct me if I get any of this wrong, but I think I've
12 got it straight. So, Your Honor, just starting with Evolution,
13 we're resolved. We have a stipulation with them that's on
14 file. I was scratching my head a little bit as Mr. Indelicato
15 was making his comments as to whether that's still an open
16 issue, but I think he agrees that they're resolved and those
17 issues are for another day.

18 Your Honor, we are resolved with CarVal, who is
19 represented by Mr. Brilliant at Dechert. CarVal is another SPV
20 lender to one of the SPV debtors, or one or more of the SPV
21 debtors, I should say. They had reached out to us. We've been
22 working with them. We have an agreed term sheet, final
23 documentation, and their review of the DIP order that we just
24 filed on the docket prior to the hearing, and the cash
25 management order remains outstanding, but I'm hopeful we can



1 just finalize language there, but I believe we are resolved.

2 Your Honor, we are also resolved with Katsumi and ING
3 Belgium. These are both factoring counterparties. Katsumi
4 filed an objection represented by Mayer Brown. ING filed a
5 joinder. We have some -- they're factoring counterparties, and
6 we put in some language into the DIP order and cash management
7 order to make it clear that any proceeds received by the
8 debtors on account of prepetition factoring will be segregated,
9 set aside, so they don't have to worry about that until we come
10 back to the Court.

11 I'm just looking at my notes here, Your Honor. I
12 think we are also resolved with Jefferies, who is represented
13 by HSF Kramer, and Grammer, who is represented by Jones Day,
14 with respect to factoring, and Grammer has its own issues
15 that's reflected in the revised DIP order.

16 I believe, Your Honor, the last one is the ABL
17 lender, represented by Winston & Strawn. I'm sure they want to
18 be heard in connection with the DIP motion. And, you know,
19 they are reviewing, and we just sent them some comments to the
20 final DIP order, which is on file. I believe they're in the
21 process of getting clients signed off, and will, of course,
22 need a chance to review the DIP order. But I expect we will be
23 resolved there, and hopefully don't have to have contested
24 hearings with those parties.

25 I'm not trying to say people can't speak, Your Honor.

1 I just wanted to give you a status update.

2 Your Honor, with that, maybe what I'll do, if it's
3 okay with you, is then move to the evidentiary portion of the
4 hearing and move into evidence our exhibits, as well as
5 declarations. Your Honor, what I would propose, with respect
6 to the declarations, is move them in now, obviously subject to
7 cross, but perhaps cross can wait for the relevant motion,
8 rather than try to do it all up front, but obviously happy to
9 proceed however you would like.

10 THE COURT: I think that makes a lot of sense.

11 MR. SINGH: Your Honor, so our exhibit -- okay.
12 Thank you, Your Honor. Sorry.

13 Your Honor, the exhibits, I'll start with, these are
14 not the declarations, so the other exhibits, and we did file
15 our exhibit list at Docket Number 136 with the Court. So
16 Exhibits 1 and 11 through 12 -- 22, excuse me, I'd like to move
17 those into evidence. These are not the declarations, but
18 documents that would be part of the evidentiary record.

19 THE COURT: Any objection to the admission of --
20 let's see. Mr. Singh, can you repeat the numbers again for me?

21 MR. SINGH: Sure. It's Exhibit Number 1, which is
22 the organizational chart.

23 THE COURT: The org chart.

24 MR. SINGH: And then it's 11 through 22.

25 THE COURT: Ah, okay. so 1 is the org chart, and



1 then 11 through 22, 11 is the DIP credit agreement. And then
2 you've got 12 is the first lien term agreement. You've got the
3 term intercreditor agreement there, the amendments, a cash
4 management schematic, and then you've got 16 through 22, which
5 are really kind of exhibits attached to other various motions
6 like utilities, insurance, critical vendor, cash man. Any
7 objection to the admission of 1 or 11 through 22, just for
8 purposes of today's hearing?

9 There's a 713 number. A 713 number?

10 MR. KELLEY: Good morning, Your Honor. Charles
11 Kelley for --

12 THE COURT: Good morning.

13 MR. KELLEY: -- Mayer Brown on (audio interference)
14 Katsumi.

15 THE COURT: Okay.

16 MR. KELLEY: I'm joined by my colleagues, Sean Scott
17 and Rich Stieglitz, who are also online and may be speaking at
18 the hearing, so I'll just go ahead and introduce ourselves for
19 purposes of the record.

20 While we thought we had reached agreement on the
21 language before the hearing, a proposal came over that
22 materially changed some of the language, so in fairness to the
23 comments made to the Court about the resolution of the Katsumi
24 objection, I just want to note that appears to be up in the air
25 at the moment. But I am not raising my hand to object to the



1 introduction of the exhibits that was proposed, and I --

2 THE COURT: Yeah.

3 MR. KELLEY: -- just want to clarify that.

4 THE COURT: Thank you. Okay. I'll admit exhibit
5 136-1 and 136-11 through 22 for purposes of today's hearing.

6 (ECF Numbers 136-1 and 136-11 through 136-22 admitted into
7 evidence)

8 MR. SINGH: Thank you, Your Honor. Your Honor, next
9 would be the declaration of Charles Moore, the debtor's chief
10 restructuring officer. This is Exhibit Number 2 to the exhibit
11 list, as well as Exhibit A, which is a simplified version of
12 the organizational chart to that declaration, which is Exhibit
13 Number 3. So if I can move in Exhibits Number 2 and 3 with the
14 evidence. Mr. Moore is here, and with respect to any relevant
15 motion, of course, he can be cross-examined.

16 THE COURT: Are you going to try to move in 2 through
17 6 too, Mr. Singh?

18 MR. SINGH: Yeah. Yeah, do you want me to just do it
19 together, Your Honor? If that --

20 THE COURT: Why don't --

21 MR. SINGH: That's fine.

22 THE COURT: Why don't I just see if anyone has an
23 objection --

24 MR. SINGH: Yeah.

25 THE COURT: -- to 2 through 6. And if anyone, you've



1 got to hit "five star," and I will unmute your line if you're
2 there.

3 MR. SINGH: Your Honor, you may as well add 6 through
4 10 to that, because those are exhibits to his declaration.

5 THE COURT: Yeah, I think that's right. So 2 through
6 10, which are --

7 MR. SINGH: Yeah.

8 THE COURT: -- declarations, both of Mr. Moore's
9 declarations that were filed on the docket, the Cowan
10 declaration, the initial DIP budget, the receivable report, the
11 compliance certificate, and the AVL inventory collateral
12 overview.

13 Anyone on the line, hit "five star." I will unmute
14 your line. Just one moment. Mr. Brilliant, I think you're
15 trying to get there. If you can, I'll unmute you. There you
16 are.

17 MR. BRILLIANT: Thank you, Your Honor. Like the
18 previous person, like -- and I apologize, I didn't realize I
19 had to hit "five star" as well as --

20 THE COURT: No worries.

21 MR. BRILLIANT: -- raise my hand to recognize. I --
22 we actually -- we -- Allan Brilliant on behalf of, you know,
23 what, you know, Mr. Singh had referred to as the carve-out
24 entities. We do believe, in fact, that we have an, you know,
25 an agreement to resolve all the issues today, subject to, you



1 know, our, you know, reservation rights on going forward.

2 We've agreed to a, you know, a term sheet, which
3 we're turning into a stipulation. The DIP order, you know,
4 needs to be, you know, revised in order to be, you know,
5 consistent with the term sheet. That's the agreement that we
6 have with Mr. Singh, as well as he mentioned the cash
7 management order. And then we agreed to make certain
8 statements in connection with other issues on the record.

9 You know, because of, you know, the fact that we've
10 been working so hard with the debtors, and we thank them for,
11 you now, spending the time in, you know, resolving, you know,
12 the issues with us, we weren't able to finalize the issues in
13 connection with the, you know, the DIP order and the cash
14 management order, so those are still open and we're, you know,
15 still working through them.

16 I just wanted to let Your Honor know what the process
17 is that we have here. You know, we believe we're --

18 THE COURT: Yeah.

19 MR. BRILLIANT: -- subject to working out language in
20 the particular orders. I would like to be heard at the time we
21 get into the DIP and tell you a little bit more about our
22 clients, what we're trying to accomplish, and to give Your
23 Honor some flavor as to what the agreement we have is, which
24 unfortunately is not on the docket yet.

25 THE COURT: Okay. I'm going to want you --



1 MR. BRILLIANT: Thank you, Your Honor.

2 THE COURT: No worries.

3 MR. BRILLIANT: Apologize for --

4 THE COURT: No, no, no worries.

5 MR. BRILLIANT: -- coming out of order.

6 THE COURT: It's completely fine.

7 Mr. Singh, what I'm going to do is just note for the
8 record that I've admitted Exhibits 1 through 22, at Docket 136.
9 (ECF Numbers 136-1 through 136-22 admitted into evidence)

10 MR. SINGH: Thank you, Your Honor. Your Honor,
11 before I go into the DIP motion, I understand that the --
12 Ms. Labovitz of Debevoise, I think, or one of her colleagues, I
13 can't find anybody on the screen, wanted to make some opening
14 remarks, if that's okay with Your Honor.

15 THE COURT: Yep. Not a problem at all. If you can
16 just hit "five star," I will unmute their line. Let's see, can
17 you do it one more time? All right. Give me a second, I'll
18 find you. You already may be unmuted is what it's showing me.
19 It's a 212 number.

20 MS. WEISGERBER: Good morning, Your Honor. Can you
21 hear me?

22 THE COURT: Just fine. Good morning.

23 MS. WEISGERBER: Good morning. Erica Weisgerber of
24 Debevoise & Plimpton on behalf of non-debtor affiliates and
25 equity holders, Global Technologies Partners, Global



1 Technologies S.a.r.L., Mayfair Enterprises, and certain
2 directors and officers of those entities.

3 Your Honor, the founder of First Brands and other
4 members of the management team built this company from its
5 infancy into the vertically integrated global manufacturer and
6 supplier of automotive parts that is here today. During that
7 time, First Brands has grown from a company that generated
8 roughly \$500 million in annual revenue in 2018 to generating \$5
9 billion in annual revenue today. A substantial amount of that
10 growth has been due to management's tireless efforts and
11 driving of operational efficiencies at the company.

12 Today the company employs roughly 26,000 people
13 worldwide and operates approximately 200 manufacturing and
14 distribution facilities. In short, First Brands is a company
15 that generates tremendous value, and my clients are committed
16 to preserving and maximizing that value through these Chapter
17 11 cases, as they have done since the company's inception.

18 As the Court has started to hear today, these cases
19 were largely precipitated by macroeconomic factors and other
20 headwinds that were outside of management's control. We've
21 also heard, and I believe we'll continue to hear, allegations
22 this morning about the company and its management. And on
23 behalf of our clients, we want to be on the record
24 categorically refuting those allegations.

25 Today is not the day to litigate the merits of those



1 allegations, but needless to say, we disagree with virtually
2 all of them, and we look forward to addressing them at the
3 appropriate time, and we'll do so. Thank you, Your Honor.

4 THE COURT: Thank you very much. All right.
5 Mr. Singh?

6 MR. SINGH: Yep. Thank you, Your Honor. Your Honor,
7 I think that brings us to the DIP motion, the debtor's motion
8 to approve the DIP financing arrangements as well as cash
9 collateral use. So I'll go ahead and present that motion now.

10 Your Honor, I think the general theme you're going to
11 hear from me today, and I don't think anyone can refute this,
12 is we absolutely need the DIP. We need the DIP proceeds, and
13 we need access to cash collateral to continue to stabilize this
14 business and get the company on the right track so we can be on
15 our path to a value-maximizing transaction.

16 So in exchange for that, we were willing to agree to
17 appropriate stipulations and consideration with the DIP
18 lenders, including the roll-up that I will talk about. But
19 those things are essential, and simply stated, Your Honor,
20 there's no DIP financing without those pieces of consideration
21 going to the DIP lenders who have stepped up to support us at
22 this time.

23 Due to the mad dash into Chapter 11, Your Honor,
24 notwithstanding those stipulations, the approach we took today
25 with respect to everything else is it's an interim DIP hearing.

1 We understand that parties are operating, including, frankly,
2 the debtors, professionals, and the special committee, just
3 given how quickly we got into Chapter 11, with incomplete or
4 imperfect information.

5 And so our goal for today is to get the essential
6 relief we need today for the next 21 to 30 days, depending on
7 which party you talk to, but roughly the next couple of weeks
8 until we all have more time to get a better understanding of
9 the facts, have time to think about the issues, and see if we
10 can work together for more permanent arrangements that would be
11 needed to put in place in connection with a final DIP order.

12 So the goal today is to not prejudice or enhance any
13 party's rights, but give ourselves the breathing room we need
14 in order to get from today into Day 30 when we come back, Your
15 Honor, or approximately Day 30 when we come back, Your Honor,
16 for a final hearing. This is all as contemplated by Chapter 11
17 and, frankly, the entire purpose, and that's the approach that
18 we took.

19 Your Honor, you know, I do want to thank all of our
20 stakeholders. I know Mr. Barr did it, but just to echo how
21 quickly, you know, they came together to understand our
22 predicament and, you know, have agreed or are trying to work
23 with us and continue to try to work with us to take a rational
24 and measured approach today to the situation and the interim
25 relief that we are seeking.

1 That doesn't just include our DIP lenders. It
2 includes our ADL lenders, the various SPV parties, the lenders
3 we've been working with, and, of course, the Office of the
4 United States Trustee. But it really has been an around-the-
5 clock effort by all of those parties to get us to where we are
6 today. And I think, although we're not at a fully consensual
7 DIP hearing, we have certainly narrowed the issues considerably
8 so that we can have a much more orderly process today to move
9 things forward and have focused issues that Your Honor needs to
10 address and decide on.

11 Your Honor, just to continue to lay out the land just
12 a little bit, as you heard earlier today, we now, today we are
13 proceeding with the DIP with the consent of 99 percent of the
14 first lien lenders, 100 percent of the sidecar lenders, and I
15 think it's 84 or 86 percent, but certainly a huge amount of
16 second lien lenders.

17 We have what we think is an interim agreement with
18 our ADL lenders, as I mentioned. They're reviewing the latest
19 version of the final -- excuse me, of the interim DIP order and
20 reviewing those recent edits. So at those levels, under -- and
21 with the ADL consent, under our prepetition intercreditor
22 arrangements, we are proceeding with the DIP-finding liens on a
23 fully consensual basis.

24 And just as a reminder, Your Honor, I know you've
25 seen this in the pleadings, but the prepetition structure, it's



1 a crisscross lien structure. And I'm going to talk just about
2 -- for a minute about the what I'll refer to as the FBG
3 debtors, the First Brands Group debtors. If you look at our
4 org chart, sort of the left side of the chart is our First
5 Brands Group operating companies, you know, where essentially
6 all the relief that we're going to talk about today for the
7 most part resides.

8 And on the right-hand side, the Carnaby SPV silo,
9 special purpose vehicle silo, those are special purpose
10 entities, as you've heard from some of them today and saw in
11 the papers. And the goal of today was, look, the FBG debtors,
12 they have liens against their assets under the ADL and the
13 prepetition credit documents. Those liens are a crisscross
14 lien structure, where the ADL has a first lien on current
15 assets, primarily inventory and accounts receivables. And the
16 term lenders have liens, first lien on the remaining assets of
17 the company, you know, equity interest in various subsidiaries,
18 including some foreign subsidiaries, IP, et cetera.

19 And the idea is, on a prepetition basis, that, you
20 know, the term lenders have a second lien with respect to ADL
21 priority collateral and vice versa. The ADL lenders have a
22 third lien. I mean, they sit behind the entire stack.

23 On the SPV side of the house, we've got a number of
24 SPV financings, right? We talked about CarVal. We talked
25 about Evolution. e talked about Onset. And then the other one



1 is Aequum. The goal of today is, with respect to the DIP liens
2 and adequate protection liens that we're providing on the FBG
3 debtors, those should not creep into the SPV debtors.

4 And likewise, the adequate protection stipulations
5 that we are agreeing to, or arrangements that we are agreeing
6 to with respect to the SPV debtors, should not creep over into
7 the SPG debtors. Your Honor, much easier said than done, but
8 that is the goal, and we're trying to get the documents exactly
9 right to make sure that they reflect and say that.

10 So, Your Honor, when my colleagues make the
11 presentations today with respect to the remaining motions,
12 wages, insurance, vendors, et cetera, it will relate to the FBG
13 debtor side of the house, because that's where operations sit.
14 And if there's on occasion something that the SPV debtors, you
15 know, may be affected, we will note that, for Your Honor. But
16 the goal is not, and the purpose of any of these motions where
17 we refer to, quote, "debtors" is not somehow making the SPV
18 entities liable on a first-day hearing all of a sudden for
19 obligations that didn't exist prepetition or authorized to make
20 payments.

21 Frankly, to send any money over to the FBG debtor
22 side of the house, Mr. Greenberg and his clients made
23 absolutely sure we couldn't do that without their consent. So
24 not a cent can even go over there.

25 So, Your Honor, with that prepetition capital



1 structure and consensual DIP priming lien structure, let me
2 just address the roll-up. Your Honor, as you saw under the
3 proposed DIP, we have requested approval of a cashless exchange
4 of the prepetition 1L debt, which includes the sidecar. That
5 is a 1L facility, it's parried, into debt claims at a 3 to 1
6 ratio.

7 So, Your Honor, just in terms of numbers, what that
8 means is if Your Honor approves the DIP today, we will have
9 access to \$500 million of new cash, new financing, and \$1.5
10 million -- \$1.5 billion, excuse me, of the prepetition 1L debt
11 will be exchanged into DIP debt.

12 In that sense, Your Honor, this is a creeping roll-
13 up. We're not asking you to approve the entire amount because
14 the balance of the DIP loan, the \$600 million that's subject to
15 final court approval, at that time, should Your Honor approve
16 it, we would get access to the incremental \$600 million, and
17 therefore, at that point in time, would the \$1.8 billion on
18 that 3 to 1 exchange ratio kick in. So it's a creeping roll-up
19 in the sense that they're only getting, quote, "rolled up" or
20 exchanged for dollars they're actually providing to the debtors
21 right out of the gate.

22 Your Honor, the other thing I would note on the roll-
23 up is the interest rate for the rolled-up amounts is the same
24 under the -- as it exists today on the prepetition debt, plus 2
25 percent for default interest. So they're not picking up



1 economics, Your Honor, in that sense. It's really just a
2 matter of DIP protections and consideration in terms of
3 treatment going forward that we've agreed to provide them, and
4 we think under the circumstances with, you know, the evidence
5 that is in now, obviously subject to cross, and the speed at
6 which this has all come together, that is more than fair, and
7 certainly they have earned it.

8 Your Honor, the other piece of the fees that I wanted
9 to highlight is what's referred to as an anchoring fee. This
10 is a 10 percent fee that's payable to certain of the DIP
11 lenders who have really anchored the DIP. And as you heard
12 Mr. Greenberg say, I think it was really honestly, I'm not even
13 sure we had two weeks. It might just be ten days where we went
14 to them and said, you know, here's the situation as described
15 in Mr. Cowan's declaration. Here's the situation we think we
16 need to immediately pivot and focus on DIP financing.

17 In that period, not only did certain -- at that point
18 we were not at 99 percent, not only did only certain of the DIP
19 lenders provide us the bridge financing that he mentioned
20 earlier of 24-and-a-half, but we only had some of them, I can't
21 recall, maybe even 50 or 60 percent of the 1Ls at the time who
22 were willing to anchor the DIP. And the idea was we would come
23 in, get that approved, and run a syndication process.

24 But to our surprise and pleasure, Mr. Greenberg, his
25 team, and the Evercore team, and their clients have been



1 running around like crazy and have now managed to basically run
2 an out-of-court syndication process and gotten a 99 percent and
3 DIP allocations agreed. So for that work that they've done in
4 about 72 hours, we think they are -- they've more than earned
5 the anchoring fee of 10 percent. But that will go to certain
6 of the lenders, Your Honor, and that's the story and how we
7 landed on that number and why I think it's appropriate for Your
8 Honor to approve it in connection with today's hearing.

9 Of course, I think if that 1 percent or less than 1
10 percent is still out there, they've committed and said,
11 including in our papers, they've allowed us to make a statement
12 that they will continue to talk to whoever that is, so those
13 parties, I think it's not an issue of the answer was no, we
14 simply just ran out of time. So if those parties emerge, I
15 know Mr. Greenberg and his team will speak to them.

16 Your Honor, with that, the other key points that I
17 wanted to highlight just around the facility, this is a 270-day
18 DIP facility. As you know or saw from the papers, there is a
19 lot of work to be done here. We expect, you know, that this
20 will go nine months. We've got extensions built in to get us
21 to a year if we need it at the debtor's discretion and then
22 further extensions with the consent of DIP lenders holding at
23 least 50 percent.

24 So this is a commitment that they've agreed to
25 provide us, not just for a couple of months or a couple of



1 weeks. Everybody appreciates and recognizes this is longer
2 term. And we've been asking them and essentially have asked
3 them to do this, as he said, without complete information and
4 probably a lot of incomplete information, to give us a massive
5 amount of dollars to go ahead and do what we need to do for the
6 next nine to twelve months.

7 Your Honor, interest rates -- just on the new money,
8 I already mentioned the roll-up. It's -- so for cash plus 155
9 bits, and then it's cash plus 845 bits is on the new money.
10 You know, fees, I think I covered the anchor premium. There is
11 an upfront premium of 5 percent pick for each draw, and I think
12 that is payable to everybody. That's not just the anchoring
13 parties, as well as the exit premium of 5 percent to the extent
14 of an exit transaction. That also is payable to all of the DIP
15 lenders, not exclusively for certain of the parties that are
16 entitled to the anchor premium. And then we've got an
17 extension fee of 75 bits to the extent that that extension is
18 requested and granted by those clients.

19 What are milestones? What we don't see, I mean, it's
20 pretty bare bones, right? We have to get a final DIP order
21 within 30 days -- excuse me, 45 days. What we are going to try
22 to do within 30 days is come to a transaction support agreement
23 with the ad hoc group.

24 As I said earlier, we are working on getting
25 information, exchanging information on both sides. So rather



1 than to have something premature before Your Honor that locks
2 us in, and parties and interests have to worry about that or
3 think about, you know, where this case is going before we even
4 know, we've agreed that we're going to try to do that over the
5 next 30 days, and obviously we'll be back to Your Honor to
6 report on that, and parties and interests will get an update if
7 we reach that agreement on what we see collectively as a value-
8 maximizing path.

9 And then, Your Honor, we're going to -- we're in
10 process of getting a quality of earnings report. I did just
11 given the prepetition issues that we've had here and some of
12 the back-and-forth that's been reported in the press, we just
13 simply need to do that. I mean, people just need to figure out
14 value and information, and that's going to happen over the next
15 75 days.

16 So that's really to get our, you know, feet under us
17 here as we go forward, to get that information and figure out
18 next steps. But really it's a pretty straightforward milestone
19 package here in the sense that we've got to be back before you
20 within 45 days to get a final DIP order, get better
21 information, and see if we can reach an agreement on a TSA.

22 I think the last point I'll just make on the DIP,
23 Your Honor, Mr. Greenberg mentioned that there is a bridge
24 repayment. That's the \$24.5 million that they provided
25 critical funding pre-filing after our, you know, remaining



1 working capital was swept unexpectedly.

2 Your Honor, let me just describe for you just
3 generally where we are with respect to or what we try to
4 achieve with respect to the ABL lenders. Big picture, I'm not
5 going to go through, you know, every last line item in the DIP
6 order. I'm sure Mr. McGuire and his colleagues will correct me
7 if I get any of this wrong.

8 You know, what we really just agreed to is a 30-day
9 use of cash collateral. You know, we don't have a borrowing
10 base. I mean, we have a borrowing base, but we haven't had an
11 opportunity to say to them, yeah, yeah, just keeping this
12 borrowing base in place, the structure that you see in many of
13 these situations is going to work because we just simply
14 haven't had the time. We're going to talk to them about those
15 issues over the next 30 days. Are there appropriate reserves?
16 Are there not? Is there cash collateralization? Should there
17 not be? All of that is on the table.

18 You know, they've agreed to work with us for 30 days
19 to give us, you know, use of cash collateral untied to a
20 borrowing base, but we understand we've got a lot of work to
21 chop with them in the next 30 days.

22 There's no priming lien on their assets, right? The
23 ABL priority lien stays senior. It's not being primed by the
24 DIP.

25 We can't move FBG debtor collateral into the SPV



1 boxes. This is a point I mentioned earlier. Assets are not
2 moving back and forth. We need to keep them separate and track
3 them, which we're going to continue to do.

4 Your Honor, they're not agreeing to the full extent
5 of the carve-out today, in the sense that there's the pre-
6 trigger notice carve-out, right, which what we've proposed is
7 essentially pipelines will give estimates of those proceeds
8 will be moved or those estimated amounts will be moved into an
9 escrow account.

10 They're fine with that, but to the extent there's a
11 post-trigger carve-out notice within the next 30 to 45 days,
12 which I really don't expect, Your Honor, but if there is, they
13 haven't had a chance to look at that. They're not agreeing to
14 be subordinated to that amount, and that's fine with us, Your
15 Honor, but at the same time, today they're not getting the 5060
16 surcharge waiver or 552(b) equity with the case exception,
17 because we'll deal with that, and, you know, there'll be a
18 committee, and we'll all figure that out going forward.

19 Your Honor, one issue I did want to point out is
20 there's supply chain financing under our ABL, provided by some
21 of our ABL lenders. So the supply chain financing, for the
22 most part, the non-ABL supply chain financing is unsecured
23 debt. There's lenders out there. They're identified in our
24 top 30.

25 I'm now talking about to the extent, the way our

1 prepetition ABL credit agreement works, to the extent supply
2 chain financing is provided by one of the ABL lenders and
3 certain documentation is executed and properly and validly
4 exchanged, then the ABL lenders that have supplied that supply
5 chain financing or fronted that supply chain financing, those
6 obligations would be secured, and that's, I think, about \$350
7 to \$400 million. So in addition to the \$230 of just regular
8 way ABL loans that we have, the LCs and the advances, it's
9 possible that that 350 to 400 is also secured on a first lien
10 basis by ABL priority collateral.

11 Now, the ABL lenders, they've shared a bunch of
12 information with us. We, frankly, haven't had the time to go
13 through and confirm whether or not that ABL supply chain
14 financing, you know, all the I's were dotted and T's were
15 crossed to make that secured. So what you'll see in the
16 stipulations and in the proposed DIP order is a reservation of
17 rights on that issue.

18 You know, we're not going to pay them cash interest
19 on that point. We're going to let it pick at the contract
20 rate, and if they turn out to be secure and only secure, that's
21 fine. If they turn out not to be, we'll be back before Your
22 Honor. But we're not agreeing to that on day one because we
23 simply don't know. And then, Your Honor, I would also say that
24 there is going to be parity of information sharing with the ABL
25 lenders.



1 Let me just switch then to the SPV deals that we
2 have, and you've heard from some of the parties already. But,
3 again, generally speaking, with respect to all four of them,
4 this is Onset, this is Aequum, this is CarVal, and this is
5 Evolution. We're only resolved with CarVal and Evolution. But
6 notwithstanding, we took the same approach to all of these
7 parties, notwithstanding that we're not resolved.

8 And Aequum and Onset have stipulations that I believe
9 they're reviewing. They're not done. They may not get done,
10 but the general theme is the same. Let's reserve rights for
11 this interim period. We're not trying to prejudice people.
12 We're not trying to move assets out of their box without making
13 sure there is a way to protect those liens and claims to the
14 extent they're senior.

15 But right now, sitting here today, the debtors and
16 their professionals simply do not know if those liens are
17 valid, if those claims are valid. On some of them, we don't
18 even have full document sets quite yet, and we're working to
19 piece all of that puzzle together.

20 So with respect to the SPV counterparties, there's no
21 agreement today or stipulations from the debtors or the DIP
22 lenders or anybody, frankly, that, you know, all of that stuff
23 is good, valid, perfected, et cetera. We'll figure that out in
24 the next couple of weeks in connection with the final order.

25 But in order to protect their asserted rights, what

1 we've said is, okay. let's just start very simply with the
2 case of Evolution because I think it's the simplest fact
3 pattern. Evolution had inventory that was, you know, at a
4 warehouse. It's identifiable. What we're saying is, look,
5 post-petition, to the extent we sell that inventory, you,
6 Evolution, will retain your asserted lien, your senior asserted
7 lien, on that inventory that goes out the door to a customer.

8 And while it sits there as an account receivable, you
9 will retain your lien. If the cash actually comes in the door
10 between now and the final, we will take that cash, we'll park
11 it in a box at your SPV debtor at a bank account. They have
12 their own separate bank accounts. And it will sit there with
13 all rights of the parties being reserved as to whether or not
14 they're secured, whether or not they're oversecured and
15 entitled to be paid fees, interest, what have you, including
16 the ABL lenders, right? You heard this morning about
17 Mr. Indelicato -- during Mr. Indelicato's comments, their
18 inventory may have been moved over to FBG.

19 So we're not going to figure that issue out today,
20 right? Hopefully we can figure it out in 30 days. My guess is
21 it's going to take longer. But whatever it is, everybody's
22 rights are reserved, and we're not saying this is, you know,
23 inventory that belongs to or the collateral is, you know,
24 property of Evolution.

25 At the same time, we're not saying it's the ABL



1 lenders. It'll sit in an account. Nobody's getting a 5060
2 surcharge waiver. Nobody's getting a 552(b) waiver. And
3 nobody is being subject to senior leave in the SPV debtor
4 boxes, that is, or CarVal. Those are TBD.

5 And so, Your Honor, it's kind of funny that I said
6 that that is the simplest one because it kind of hits,
7 notwithstanding those issues. But let's take it up a level and
8 go to basically Aequum and CarVal.

9 I'll start with CarVal since we're, you know,
10 generally agreed, or we are agreed, excuse me, I should say,
11 subject to documentation with Mr. Brilliant that he's reviewing
12 and getting authorization with his clients for final
13 documentation.

14 You know, those assets basically under the CarVal
15 facility, and he'll correct me if I get any of this wrong, but
16 generally speaking, the CarVal facility relates to raw
17 materials, right? There's raw materials that are produced and
18 made in Mexico. They make their way into the U.S. CarVal
19 retains the lien prepetition right now on those raw materials
20 until they become finished product. Prepetition, when they
21 become finished product, the FBG debtors essentially buy those
22 assets from the CarVal debtors, right? And they pay them
23 what's referred to as fair market value under the contract.

24 At that point, CarVal releases its lien under the
25 prepetition documents. You know, money has been moved over to

1 their box, or at least inventory has been replenished in their
2 box. They have borrowing bases, and they can check that. And
3 then when the FBG debtors sell that inventory, it is an AR, and
4 it is a first lien of the ABL priority collateral.

5 So what are the tweaks that we have to make to that
6 in order to continue this function, because we do need that
7 inventory? So what we've agreed to is, okay. we're not going
8 to move inventory between boxes. Let's agree to that. We said
9 that's fine.

10 What we are going to do, though, is we still need to
11 sell this -- when this raw material becomes finished product,
12 we do need to sell it to our customers. So we've agreed with
13 Mr. Brilliant's clients that we will be able to sell it, but
14 unlike prepetition where at the point of completion, the FBG
15 debtors would, you know, essentially transfer funds unless new
16 -- you know, new property, new raw materials went into those
17 boxes to keep them in compliance with their borrowing base.
18 Can't comply with the borrowing base right now. We'll kick the
19 can on that issue.

20 But essentially what we're going to do is we can't
21 then -- we will be able to sell that to the customers. His
22 clients retain a lien on that finished inventory. They retain
23 a lien on that AR. It will go and sit in a cash collateral
24 account with all rights reserved, as we've talked about
25 already. And, you know, we'll have to figure it out in the



1 future.

2 And what they're going to retain a lien on is
3 essentially the fair market value. So if we have inventory
4 that's worth \$2 that we sell for \$2 and the fair market value
5 was \$1, \$1 goes into the account of the SPV debtor subject to
6 his client's lien. Until so we figure out whether those liens
7 are valid, it's going to sit in escrow, not going to be used to
8 pay down. And the other \$1 will work its way to the FBG
9 debtors sort of up the chain as ABL priority collateral.

10 THE COURT: Can you --

11 MR. SINGH: That's the status quo stipulation.

12 THE COURT: Can you repeat that to me? Just wanted
13 to make sure -- I was taking notes.

14 MR. SINGH: Yeah.

15 THE COURT: I just wanted to make sure I got it.

16 MR. SINGH: Sure. So, Your Honor, so when we get
17 finished inventory from the SPV debtors that are subject to the
18 CarVal liens, right, there's a cost that we're supposed to pay
19 for that inventory.

20 THE COURT: Right.

21 MR. SINGH: Under the contract, that cost is defined
22 as fair market value. Right? We then sell that inventory,
23 that finished product, to our customers, and we collect a
24 margin.

25 THE COURT: Mm-hmm.



1 MR. SINGH: So if the debtors, FBG debtors, sell that
2 product and they get \$2, right, and the fair market value was
3 \$1, we're going to take that \$1, stick it in the SPV debtor box
4 that CarVal has a lien on, and it's going to sit in a cash
5 account there with all rights reserved. We're not going to pay
6 down CarVal. That other dollar, the margin in this example, is
7 going to go to the FBG debtors, right, and are going to -- and
8 that's ABL priority collateral works its way through the DIP
9 order.

10 What we've agreed to with Mr. Brilliant's clients is,
11 okay, but during this preposition period, we can't have their
12 inventory converted into more than \$20 million of collateral,
13 of AR, and we can't have AR -- we can't sell it if the AR is
14 more than 30 days, right, so we have -- excuse me, 45 days.

15 So we can't have long-dated AR on these things.
16 That's -- you know, we can't go that far, and in the aggregate,
17 we can't exceed \$20 million. Otherwise, we have to go get
18 their consent.

19 Your Honor, we're trying to work out a similar
20 structure with Aequum, so that's still a pending point. I
21 would let them comment on it.

22 And then finally, with respect to Onset, what we've
23 proposed is the following. Onset has, you know, inventory
24 financing, and then they also have equipment financing. On the
25 inventory financing, --Your Honor, Mr. Brilliant's raising his

1 hand. I'm sure I got 99 percent of that wrong. I'm sure he'll
2 correct you -- correct me --

3 THE COURT: Oh.

4 MR. SINGH: -- once I'm done. Onset on the inventory
5 side of the house, same deal as Evolution. Right? So if --
6 that we've proposed. They haven't accepted this.

7 Same deal as Evolution. If we sell Onset inventory
8 and cash comes in, we'll park it in a Onset SPV debtor cash
9 account, and, you know, they'll retain their asserted lien.
10 If, to the extent they're oversecured, they can get interest
11 and fees under 506(b), we retain 506(b) surcharge rights, and
12 so that cash will sit there until we figure out whose it is and
13 what we need to do with it.

14 They also have equipment that the FBG debtors use.
15 And frankly, whether there's an issue about is this a lease, is
16 this a financing, I don't think we need to decide that today
17 because either we owe them rent for it -- or when I say we, the
18 FBG debtors owe rent or they owe adequate protection. Either
19 way, there needs to be some compensation, we acknowledge and
20 agree, for use of that equipment.

21 To our understanding, what they've asserted is
22 there's some equipment that they, quote, "directly bought" from
23 manufacturers and have just been leasing that to the debtors.
24 Our understanding is that that is roughly \$7.4 million a month
25 in rent that they are asserting. And then there's other



1 equipment that wasn't directly bought from the manufacturers,
2 but was bought from one of the debtor entities through this SPV
3 financing structure, and, you know, their asserted amount of
4 rent is another, I think, \$13.4 million. Don't hold me on
5 these numbers, Your Honor, but roughly if you combine these
6 two, it's about \$20.8 million of, quote, "rent" that they think
7 is due with respect to the equipment.

8 So, Your Honor, what we would agree to and what we
9 propose I think makes sense is to the extent the FBG debtors
10 are using this equipment, which they are, Onset or the SPV
11 debtor that they lend to would have an administrative expense
12 claim against the FBG debtors that's not going to exceed the
13 asserted amount that they are asserting but is going to remain
14 subject to dispute and review by all parties. So we can figure
15 out what the number is. If we can't agree, we can come back,
16 Your Honor, and have a hearing on it.

17 They would have an administrative expense claim, Your
18 Honor, and because this is personal property, in our view,
19 consistent with 365(b)(5), we don't have to pay that rent until
20 60 days anyway, and so we'll agree that we'll pay it on Day 60,
21 whatever that agreed amount is, and if it's not agreed, we can
22 come in and have a dispute before the Court on that particular
23 issue.

24 And so, you know, and the other thing is we've agreed
25 to reporting with all these parties about their collateral,



1 whatever information A&M has, so people can see what's
2 happening here.

3 We think that structure doesn't prejudice them, and,
4 you know, to the extent they don't agree, that's a proposed
5 adequate protection structure for Your Honor to consider, but
6 that's where, you know, how we think the issue is learned with
7 Onset.

8 Your Honor, the last point is then on factoring. I
9 think I made this point earlier in my opening remarks. But as
10 Your Honor heard about already, and as in some of the papers,
11 prepetition, you know, the debtor factored a significant amount
12 of dollars. There's disputes as to who owns those dollars
13 because multiple factoring counterparties are asserting claims
14 to those.

15 What we propose, and language we're willing to put
16 into the DIP order and cash management order, Your Honor, is to
17 -- if we get those prepetition factored dollars, we'll park
18 them in another escrow or another sort of segregated account
19 controlled by the debtors. We can't use that cash for anything
20 until we come back to Your Honor, and the idea would be we have
21 to work out some sort of protocol that's centered around the
22 timing of this forensic exercise to figure out whose money we
23 think it is and give parties and interests an opportunity to be
24 heard on that issue. But we don't want anybody to be
25 prejudiced.



1 So if prepetition factored dollars come in, whether
2 they came in prepetition, whether they come in post-petition,
3 they're going to be set aside in this account to the extent we
4 have them. And then going forward, Your Honor, the only
5 factoring we're doing is on account of post-petition account
6 receivables, and we would be only doing that really with our
7 customer factoring counterparties, and so that will continue in
8 the ordinary course of business. And we wouldn't be required
9 to segregate those amounts.

10 Your Honor, let me pause in case you have questions,
11 or maybe at this time if other parties want to correct or
12 clarify anything I said, or, you know, just be heard generally,
13 I'm happy to pause.

14 THE COURT: Okay. Why don't I start with
15 Mr. Brilliant?

16 And then, Mr. Grillo, why don't I hear from you
17 afterwards?

18 Mr. Brilliant.

19 MR. BRILLIANT: Thank you, Your Honor. Thank you,
20 Your Honor. Alan Brilliant on behalf of the, you know, the
21 CarVal lenders and the administrative agent for the two
22 facilities.

23 I think, you know, on a 30,000-foot basis, you know,
24 Mr. Singh, you know, got it right, but it's a little more
25 complicated than that. And I think it's important that the,



1 you know, the Court and the record, you know, have a full
2 understanding of what this transaction that we entered, you
3 know, we've agreed to, you know, here to resolve our objections
4 is.

5 The -- you know, the borrowers, you know, for the
6 CarVal facilities are special purpose entities, you know, the
7 Carnaby II and III Both those entities are Delaware LLCs. And
8 what they do is, as Mr. Singh said, you know, they take raw
9 material that, you know, contracts with certain entities in
10 Mexico, you know, that are called maquiladora entities. The
11 raw materials are turned into finished goods.

12 Our borrowing base consists of raw material,
13 partially finished, you know, goods, as well as finished goods.
14 And then ultimately, prior to the petition, prior to an event
15 of default, the Carnaby entities had the right to sell that
16 inventory pursuant to a purchase and sale agreement that was
17 part of, you know, the package for the financing, sell that
18 inventory on a COD basis, you know, for cash to certain of the
19 subsidiaries, you know, on the First Brands Group, you know,
20 side of the, you know, of the, you know, corporate structure.
21 Or, you know, prior to an event of default, you know, they
22 could be sold, you know, for, you know, for goods in kind,
23 for, you know, more raw materials.

24 You know, the contracts, you know, provided that the
25 transactions had to be done on a fair market value basis, and



1 that's defined in the credit agreement as to what's a fair
2 market basis.

3 As Mr. Singh said, our concern, like all of creditors
4 here, in light of, you know, the allegations of, you know,
5 improprieties with people's perspective, you know, on a
6 collateral basis was, one, you know, we want to get into our
7 facilities. We want to, you know, audit, you know, what our
8 inventory is so we can see where we are on a buying basis.

9 And we want to, you know, find out that, in fact, we
10 are oversecured. In our first-day pleadings, you know, the
11 debtors, you know, gave, you know, amounts of, you know, for
12 our collateral, you know, as of August 2, which were, you know,
13 significantly, you know, more than \$159 million, \$160 million
14 of exposure our clients have.

15 But in the short term, you know, we want to make sure
16 that the debtors didn't use our cash collateral, that the --
17 these provisions in the DIP, which because of the fact they
18 use, you know, the words debtors, could have been interpreted
19 as being able, you know, to use our cash collateral. We don't
20 consent to that. We want to make sure that that didn't happen.

21 And we wanted to make sure that there were no more,
22 you know, sales or transfers of the inventory outside of our
23 box. So, one, you know, for cash, a fair market value cash on
24 delivery. We didn't want to provide any, you know, credit to,
25 you know, the debtors given the amount of, you know, DIP



1 financing they're asking Your Honor to approve today including
2 the roll-up.

3 We -- what we ultimately agreed to was from, you
4 know, you know, you know, from the filing of the case, you
5 know, until the date of the termination of the, you know, the
6 stipulation, you know, they agreed that they shall not sell or
7 transfer any inventory, you know, that's our collateral,
8 basically, the, you know, the quantity entities, or otherwise
9 use any other assets, including without limitation, our cash
10 collateral, you know, that is Carnaby II and Carnaby III cash
11 collateral, you know, that's been, you know, pledged to us, you
12 know, except under certain terms.

13 And then, you know, Mr. Singh generally got it right,
14 and I'm not going to read the entire agreement to you, but
15 basically what they can do in this transaction, you know, the
16 termination date will likely be, unless it's extended by the
17 parties, 21 days, you know, from today. So during this 21-day
18 period, they can sell for cash, you know, to, you know, the,
19 you know, First Brand debtor entities, you know, our collateral
20 cash on delivery that the fair market value is provided in the
21 document, they can do it for cash.

22 Or alternatively, we gave them a basket, you know,
23 for \$20 million, you know, that they could sell \$20 million of
24 inventory at fair market, you know, value, you know, so long as
25 they're going to have it immediately, you know, resold, you

1 know, to customers that have a credit rating of at least a BB
2 or equivalent from a nationally recognized credit rating
3 agency, and a tenor on the accounts receivable of no more than,
4 you know, 35, you know, 45 days.

5 And so -- and then we, you know, provide that we
6 would retain a lien in the inventory until it's sold, and then
7 we would retain a lien on the accounts receivable after it's
8 sold, and that the DIP lenders and none of the other, you know,
9 parties in the First Brands case will have any interest, second
10 lien or any interest at all in the receivables, and it will be
11 our collateral. And as Mr. Singh said, you know, when, you
12 know, it's paid, it will be put into our cash collateral
13 account.

14 So the DIP order, you know, needs to be modified to,
15 you know, provide for this. And then in addition to that, we
16 agreed that through the DIP, that the DIP will not provide any
17 indebtedness, you know, or liens, you know, whatsoever in, you
18 know, the SPVs, where our clients are, you know, the two
19 entities that are the parents of those entities, and the
20 (indiscernible), you know, entities, and any direct parent
21 entity of any (indiscernible) entity. So they're agreeing that
22 those entities will be, you know, remain, you know, separate,
23 and that the debt from the DIP won't be, you know, you know,
24 put into, you know, those entities.

25 They agreed to give us replacement liens, you know,



1 as, you know, adequate protection. And then everyone is
2 preserving their rights in the expectation that that, you know,
3 over the next 21 days, we will negotiate an agreement, you
4 know, we'll get on board, you know, with the DIP financing
5 prior to the final order, and that, you know, we'll figure out
6 some way to have this process, you know, go forward in an
7 appropriate, you know, consensual way.

8 To the extent we can't, we, you know, like
9 Mr. Indelicato, we reserve the rights to, you know, seek to
10 dismiss the Chapter 11 cases, you know, to have a -- in order
11 for -- to have a trustee appointed, you know, for additional
12 adequate protection, you know, and all other, you know, all
13 other rights that we could, you know, potentially, you know,
14 have here.

15 They've also agreed to, you know, give us certain
16 reporting and additional access to the books and records and to
17 the site, you know, you know, where our inventory is located,
18 and we are there now. We have agents there now, you know,
19 auditing, you know, our inventory. And everyone's agreed that
20 there'd be, you know, that there'd be no waiver of claims in
21 either, you know, direction at this point in time.

22 And as Mr. Singh said, you know, there's not going to
23 be any, you know, surcharging in our collateral in the short
24 term. There's not going to be any use of our cash collateral
25 or the ability to use any of our collateral outside of, you



1 know, you know, the boxes, you know, that we have unless it
2 complies with the, you know, the provision about purchasing or
3 cash or up to this, you know, cap for the accounts receivable.

4 So that's the, you know, the deal we're reaching in
5 for 21 days. And, you know, we're in the process of making
6 sure that the DIP and the cash management, you know, orders,
7 you know, comply with this so this all, you know, can, you
8 know, can work and that the separation that Mr. Singh mentioned
9 actually occurs here.

10 And, you know, we're -- we don't have any expectation
11 that we're not going to have any issues, you know, not going to
12 have anything that we can't resolve in those issues given, you
13 know, you know, or bring it here (indiscernible) but the
14 stipulation when it's, you know, finalized through Your Honor
15 for approval, you know, to, you know, sale order and, you know,
16 grant the replacement liens and, you know, have this be, you
17 know, the force of order.

18 THE COURT: Thank you very much. Mr. Grillo, and
19 then I will turn to Mr. Ottaviano.

20 Mr. Grillo, I think I've -- your line should already
21 be unmuted. Mr. Grillo, I can't hear you. You may have your
22 line on mute. I cannot. Can you hit "five star" one more
23 time? Your line should be unmuted. It may be on your end.
24 Yep. Here we go. Let's see if this works. Mr. Grillo, I
25 still can't hear you. Your line may be on -- can you check the

1 mute on your end?

2 MR. GRILLO: Is that better, Your Honor?

3 THE COURT: Yes, I do it all the time.

4 MR. GRILLO: Okay. Apologies. I kept --

5 THE COURT: No worries.

6 MR. GRILLO: -- going back and forth.

7 A couple of things, you know, and to be brief to the
8 extent possible, Your Honor. Mr. Singh talked about no
9 enhancement of rights to any of the parties. Obviously, our
10 remaining objection with respect to the DIP loan relates to the
11 roll-up that takes place.

12 Obviously, as supply chain financiers, you know, we
13 have a very substantial \$670 million unsecured claim. But he
14 characterized it as a creeping roll-up. I think we would look
15 at it more like a leaping roll-up because it takes place in two
16 jumps at the end of the day. You know, when the \$500 million
17 is drawn, even though that money is just going to be drawn and
18 then sit into escrow for some period of time, what the record
19 doesn't reflect, and, you know, we obviously have consulted to
20 the admission of the declarations, but what the declarations
21 don't say is they talk about a range of ratios that are
22 available.

23 But the bottom line is that they don't make any
24 comparison to the cases where the ratios are higher. And so as
25 we sit here today notwithstanding the debtors' burden with



1 respect to the roll-up, I think they've done very little here
2 to sort of say that this is why it was needed in this instance.

3 And so what we'd propose in the interim, frankly, is
4 to have the ceiling continued or at least until the amounts are
5 actually used by the debtors instead of being drawn into escrow
6 as far as that goes. And this way we can figure out what's
7 going on. As Your Honor is obviously aware, the papers came in
8 yesterday after, you know, in the afternoon. So going through
9 them has been somewhat, but obviously we have a series of
10 questions. This is not the time and the place.

11 But if they're going to lock in at a three-to-one
12 ratio, which is a substantial enhancement of those rates, we
13 don't know what's going to happen with the contemplating with
14 respect to the next 30 days and the PSA and the like. You
15 know, there's obviously the quality of earnings report.

16 You know, we've resolved our issues with respect to
17 cash management and resolved some of the issues here with
18 respect to the guardrails. But, for example, we don't even
19 know the answer to the question, is there really 1.9 billion
20 sitting somewhere as it sits today? You know, is there 2.3
21 billion? I haven't heard any answer to that question, you
22 know, from the debtors' advisors at this point.

23 And I think that would go a long way to sort of
24 understanding where we can get, because certainly the
25 enhancement makes sense, you know, depending on the risk



1 perhaps over a longer period of time when a committee is
2 appointed and can look at it. But sort of from here right now,
3 on less than 24 hours' notice, it seems to me we need perhaps
4 another interim hearing before that should be approved.

5 THE COURT: Thank you. Mr. Ottaviano.

6 MR. SINGH: Your Honor?

7 THE COURT: Yes. Just --

8 MR. SINGH: Sorry, I just had a question.

9 THE COURT: Go ahead, Mr. Singh.

10 MR. SINGH: Do you want me to respond objection?

11 THE COURT: No. I want to hear -- I want to -- no.

12 MR. SINGH: I'm sorry, Your Honor. I don't mean to
13 be speaking over you.

14 THE COURT: I want to hear from everyone, and then
15 I'll give you a chance to respond to everyone.

16 MR. SINGH: Okay.

17 THE COURT: Perfect.

18 MR. SINGH: Thank you.

19 THE COURT: No, no, no, I appreciate it.

20 Let me hear from Mr. Ottaviano, and then I'll hear
21 from Mr. Butterfield.

22 MR. OTTAVIANO: Good morning, Your Honor. Kenneth
23 Ottaviano on behalf of Aequum Capital Financial II, LLC. It's
24 one of the SPV lenders in this case. Your Honor, a pleasure to
25 be back in front of you so quickly. Just wrapped up another

1 one.

2 Obviously, we reserve all of our rates. We are in
3 negotiations with the debtor's counsel on a stipulation that
4 we're hopefully going to work through here either today or
5 first thing tomorrow. And I just want to make sure that our
6 collateral is not going to be used until we reach said
7 stipulation, and that the collateral will remain at the
8 warehouse.

9 THE COURT: Okay. I'm going to give Mr. Singh an
10 opportunity to respond to everything at one time, because if
11 not, we'll -- but you're so noted.

12 Mr. Butterfield?

13 And then I'll hear from Mr. Blank. Mr. Blank, I see
14 you there. Great.

15 Go ahead, Mr. Butterfield.

16 MR. BUTTERFIELD: Oh, thank you, Your Honor. Can you
17 hear me?

18 THE COURT: Just fine.

19 MR. BUTTERFIELD: Great. Your Honor, Ben
20 Butterfield, Morrison & Foerster for Onset Financial.

21 Your Honor, we filed an objection last night. Part
22 of the reason we filed the objection is because we wanted to
23 introduce Onset to the Court. I have to say, just looking at
24 the debtor's papers, there were a lot of pop shots. You know
25 what I'm saying there? For better or for worse, I get it.

1 Your Honor, we need to reach a speed in trying to figure out
2 the role that everyone is playing, you know, in the lead-up to
3 this. But, you know, to -- from our perspective, we were
4 really surprised.

5 Onset is the largest, one of the largest, if not the
6 largest single funder of the company. There are -- we have a
7 relationship with First Brands that dates back to 2017.
8 They're owed \$1.9 billion.

9 Onset is an inventory and equipment restorer. They
10 do this in several different ways. They buy inventory
11 primarily from First Brands Group and then lease it back to
12 First Brands Group. For equipment, they buy equipment from
13 First Brands Group or from other suppliers and then lease it.
14 So once this happens within really Carnaby, sometimes they
15 happen direct.

16 So, Your Honor, the chart here of transactions is
17 actually quite big for Onset. It's very complicated. I'll
18 note, just in passing, as I'm sure the Court knows that these
19 types of arrangements are incredibly common in the auto parts
20 space in particular. And they're a very efficient way for FBG
21 to, you know, its working capital needs, you know, given its
22 credit profile.

23 In the year prior to bankruptcy -- I think this is
24 very important, because we've talked a lot about the ad hoc
25 groups supporting the company and working with the company. We



1 are the pre-bankruptcy DIP lender here. In the year before the
2 bankruptcy, we loaned the company \$1 billion. And we got a
3 sliver of that back, like maybe \$50 million or less. Nothing
4 back.

5 The company has been in default to us for -- since
6 May on obligations that have (indiscernible) dates that were
7 \$860 million. We stood by because we wanted to support the
8 company through what started out as a routine refinancing
9 process, what turned into a full refinancing of the term loan,
10 what turned into a sale of a piece of the company, what turned
11 into a sale of all of the company.

12 We've been here the whole time, assume our rights,
13 allowing Onset to explore this, because we care about what --
14 we were trying to be a good partner and we care about what's
15 good for Onset -- for First Brands Group.

16 And we got no information in the months leading up to
17 the bankruptcy. We were completely in the dark. We're
18 learning things in real time, just like every other creditor in
19 the case. And frankly, it's very disappointing from someone
20 who has been supporting the company through a very difficult
21 time.

22 With respect to our transactions, look, we understand
23 that we are going to have to prove our rights. From our
24 position, we are an owner of the equipment and inventory that
25 we lease to the company. We understand that sometimes leases



1 can be re-characterized, but that's not a risk to us, because
2 we have a secure -- we have a first priority affected security
3 interest in all of our assets, in all of the assets that we
4 lease.

5 The one thing that did concern us, and I heard some
6 commentary from Mr. Singh that I think has given us more
7 comfort, is that the inventory has changed possession among the
8 parties. What I don't want people to think is that just
9 because the inventory is sitting at the credit party under the
10 first lien term loan, that now it's their collateral and stuff
11 that happens under this order is going to -- or will prime our
12 security interest or our ownership interest. It doesn't. What
13 I'm hearing from Mr. Singh is that the state of play is being
14 preserved at least through the interim period, which is good.

15 There are two things that we came into this hearing
16 wanting. And I think we're up at the five-yard line, and we've
17 had people up all night working on stipulations with Weil, and
18 we've gone back and forth three or four or five times now, and
19 I think we're almost there. But we want two things. One, a
20 full reservation of rights, a reservation of rights even if the
21 assets were transferred. It sounds like, based on the comments
22 made today, that we are there on that point, and we appreciate
23 that.

24 The second thing we need is we need adequate
25 protection. We have two things we need adequate protection on.



1 We need adequate protection on our inventory, inventory that
2 the debtors hold for sale and then sell to customers, like
3 Amazon, like AutoZone, et cetera. And the equipment that the
4 debtors use to make more inventory. We need adequate
5 protection on both.

6 I think on inventory, we are there. We've talked
7 about a concept. I won't belabor it. But the basic idea is
8 that we stay where it is and it's not primed, and then
9 transfers to the AR, and then the cash that comes in the door,
10 and then that cash goes into an account. I think that general
11 structure works for us, and we can live with it.

12 On the equipment, it's a little bit more difficult.
13 They are proposing an adequate protection claim -- sorry, an
14 adequate protection claim consisting of an administrative
15 expense claim, which means that we have to take the post-
16 petitioning debtor's credit risk.

17 Now, we have a roll-up. We have an uncertain
18 contributable, a lot of unknown. Mr. (indiscernible) said
19 there's so much that we don't know. I have not read the DIP
20 credit agreement, but I can bet that there are five different
21 ways the lenders can call default. And that puts us in a very
22 precarious situation with our admin claim as adequate
23 protection for critical equipment to the business.

24 That said, I think we're close to a construct with
25 Weil that will resolve the issue. The only concern I think

1 that we have at this point, or what we could agree on, I'll
2 give it to you in two seconds, is that the fair market value
3 for the use of the equipment will become an admin claim. So it
4 needs to be paid in 60 days. Our concern is that gains can be
5 plead to object to our arrangement and then just go away in an
6 admin claim. That's not acceptable.

7 From our perspective, our interest in the property is
8 valid until it's proven not. And so we hope that we can work
9 through this last little point with the debtors' counsel. And
10 if we do, I think we hope to have a situation signed. But at
11 this point, that's where Onset stands.

12 THE COURT: Thank you. All right. Let me hear from
13 Mr. Blank and then Mr. Rogoff. And if I've unmuted your lines,
14 great. If not, please hit "five star" and I'll do so at this
15 time.

16 Mr. Blank.

17 MR. BLANK: Your Honor, are we able to hear me?

18 THE COURT: Yes, just fine. Thank you.

19 MR. BLANK: Perfect. Good morning, Your Honor.

20 Stephen Blank from Alston & Bird on behalf of UMB Bank as
21 administrative agent under the revolving facility of Global
22 Assets LLC and Global Assets GmbH. I'm also joined in my
23 office by my colleague, William Hao. I think you see about
24 half of him in the frame there.

25 Judge, I'm really going to piggyback off of

1 Mr. Ottaviano's comments. We're also continuing to negotiate a
2 stipulation with the debtors. We've reserve all our rights.
3 And our understanding is, based on our read of the interim
4 order, is that the debtors are not looking to use any of our
5 collateral right now. They are pumping any of the issues with
6 respect to our collateral until the final, and I would just
7 like the debtors to confirm that on the record. That's all I
8 have, Judge.

9 THE COURT: Thank you. Mr. Rogoff, have I unmuted
10 you?

11 MR. ROGOFF: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. ROGOFF: I thought it might be good afternoon,
14 but Mr. Blank still made it good morning, which I appreciate.

15 THE COURT: Yeah, no. You got three minutes on my
16 end before it turns to good afternoon, so I think we're in good
17 shape.

18 MR. ROGOFF: Excellent. I'm part of the chorus from
19 today, but I'm going to have a very short solo. So for the
20 record, Adam Rogoff, Herbert Smith Freehills Kramer on behalf
21 of Leucadia Asset Management and certain related entities.
22 Mr. Singh referred to our clients earlier today, I believe, as
23 the Jefferies entities.

24 Our client is the purchaser of various of the
25 debtor's receivables, which I'll refer to as a factoring party



1 in Paragraph 42 of the interim DIP order. Like a number of the
2 other factoring parties who filed limited objections to the DIP
3 loan and the cash management, we have some of the same concerns
4 over the DIP order and the interim DIP order and cash
5 management affecting our rights to the purchased accounts
6 receivables and the proceeds thereof. So I echo a number of
7 the concerns that were raised before the Court this morning.

8 We did not file a pleading, because we reached out to
9 Weil to work out language to be put into the proposed interim
10 DIP order. As of last night, we had agreement on the language.
11 We saw this morning that the language, which is in Paragraph 42
12 of the order, was modified a bit, and so I only rise briefly to
13 say we're looking at the order. We believe our issues are
14 resolved, but we still need some time to finalize that language
15 with our client and just confirm that it's acceptable.

16 And with that, I think it's still good morning.

17 THE COURT: Yeah. Thank you.

18 Mr. McGuire, if you can hit "five star," unless I've
19 unmuted your line. There you are.

20 MR. MCGUIRE: I believe you have, Your Honor. Can
21 you hear me?

22 THE COURT: Good morning. Good morning.

23 MR. MCGUIRE: Good morning, Your Honor. Dan McGuire
24 for Bank of America, the ABL agent here.

25 Your Honor, we'd like nothing better than to say that



1 we're fully resolved and, you know, agree with the DIP
2 financing and cash collateral arrangements that were made. We
3 have made tremendous progress on that front, Your Honor.
4 Frankly, we're down to, I think, one issue, but it's an
5 important issue to us. That is, the arrangements you've
6 described of collateral are, you know, problematic for us.

7 Insofar as we're allowing current AR inventories as
8 our collateral to be used, the cash collateral generated from
9 that to be used, instead of new AR inventory that's generated
10 being our replacement collateral, and now be told that they're
11 someone else's collateral we can't have a lien on. That would
12 effectively destroy our borrowing base, which we don't even
13 know what that will be in this situation.

14 So, you know, we're looking to get this situation
15 (indiscernible) worse. This is a very messy situation, and it
16 should be -- a lot needs to be ironed out in the first 30 days,
17 and we're on board with that. But we're not on board with the
18 situation (indiscernible) a severe deterioration of the ABL
19 lender's position during this interim period due to the
20 (indiscernible) being treated. This just came up, you know,
21 this morning, in terms of it, different than what we've been
22 proposing on this side. We're hoping we can work that out here
23 with the debtors. But we aren't there yet, you know, because
24 of this one point.

25 THE COURT: Okay. Thank you.

1 Mr. Singh -- let me just tell everybody. I'll give
2 you an opportunity to respond to everything. I want to just
3 kind of tell everybody. We can probably go for another 30
4 minutes, and then we're probably going to have to take -- I've
5 got a hearing at 1 that I need to prepare for, and then we can
6 pick up at 2 Central, if that works. But I want to keep
7 working the entire time. I just want to give everyone kind of
8 a heads up on that. But let's keep working.

9 MR. SINGH: Thank you, Your Honor. Your Honor, I'll
10 take these in turn and in no particular order, but just let me
11 start with the ABL issue.

12 So the ABL does not have a lien on raw materials. I
13 think Mr. McGuire and I can stipulate to that, right? So if
14 it's sitting as raw material in the carve-out entities' boxes,
15 there's no ABL lien. We are agreeing that we're not going to
16 send any, quote, "ABL collateral," which is the FBG debtors'
17 inventory, into the carve-out boxes. So he should still be
18 good, right?

19 What we -- prepetition, what would happen is, at the
20 time that the carve-out assets converted into finished product,
21 so the raw material converted into finished product, the FBG
22 debtors would pay carve-out cash, right, at fair market value.
23 And at that point, Mr. Brillian's saying, great, thanks, cash
24 or inventory, I'm good. You can have this because my lien,
25 quote, "is either satisfied or you've given me replacement



1 collateral and I'm good to go." And at that point prepetition,
2 that finished product would become ABL collateral. But very
3 importantly, right, we, the FBG debtors, would actually pay
4 fair market value, COD, up front at that point.

5 So now what are we changing post-petition?
6 Mr. Brilliant's clients are saying, okay, fine, still going to
7 make my inventory, and I'm going to let you sell that inventory
8 to a customer without buying it from me at COD. So the FBG
9 debtors, Mr. McGuire's clients, are much better off, right,
10 because now I'm not using cash from their box to buy it from
11 Mr. Brilliant's clients to then send it out the door to a
12 customer. He's giving me float, right? And all he's saying
13 is, hey, wait a second. While that float is happening, you
14 can't discharge my lien because you haven't paid me, and he's
15 only asking for a lien up to the fair market value. He's not
16 asking for a lien up to the margin, right?

17 So the FBG debtors don't have to pay. The finished
18 inventory goes out the door to a customer, right? When the --
19 and while that inventory -- while that AR now, right, the
20 customer has bought it, we have an account receivable. When
21 that AR comes back, we're going to settle up, and at that
22 point, the fair market value will go into Mr. Brilliant's box,
23 right? He offered us the float. Thank you very much. Here is
24 the money back. It's sitting there, and Mr. McGuire's clients
25 get that margin. They get that extra dollar of AR.



1 So, you know, we're not bribing him. What we're
2 saying is we're actually not paying cash. We're not bribing
3 Mr. McGuire's ABL lenders. We're not paying cash up front.
4 And while we don't pay cash, Mr. Brilliant has to keep that
5 lien. Otherwise, we have to satisfy his lien and pay cash. So
6 this is a win-win arrangement. And when that margin, that
7 dollar in my original hypothetical, makes its way back to FBG
8 debtors, his clients have -- his clients -- that's his clients'
9 collateral. So he's better off. I don't understand how he's
10 not adequately protected.

11 I didn't take any inventory from his box and deplete
12 the value of his current box and move it over to Mr.
13 Brilliant's client. If anything, I'm adding to it, right?
14 Because now Mr. Brilliant is saying, go ahead, use 30 days'
15 float or whatever, 45 days' float, and when that inventory
16 comes in, that additional dollar is inventory that
17 Mr. McGuire's client doesn't have today. So he's actually much
18 better off because the value of his inventory is going up in
19 that arrangement without having -- without the FBG debtors
20 having to front cash up front.

21 So rather than complain about it, I think -- I don't
22 know why he wouldn't be -- I mean, from our business judgment
23 perspective, Your Honor, that's a win-win for the debtors'
24 estate. Maybe it's a confusion of how it works, but I'm
25 surprised that the ABL lenders are not, you know, jumping up



1 and down and celebrating that they've now just gotten extra
2 collateral that they didn't have to pay for as a result of this
3 arrangement.

4 Your Honor, I'll confirm the points at Aequum. I
5 forget who asked, but I think there was two or three counsel.
6 We're not moving their collateral. We're trying to get this
7 arrangement finished. Obviously, there is a reservation of
8 rights. If we don't have an agreement, you know, we may have
9 to come back, Your Honor, and prove that they're adequately
10 protected. I hope that doesn't have to happen.

11 Let me go to -- I'll come back to Onset, Your Honor,
12 but really Mr. Grillo -- you know, to me this is sort of the
13 most disturbing objection of the day. Everyone is better off
14 by virtue of getting this DIP approved. I mean, if this DIP
15 isn't approved today with the proposed roll-up, we may as well
16 all go home because the company is going to be liquidated.
17 Everybody can go fight over the assets. They can fight over
18 the collateral for the next 10 years and have no organization
19 and recover close to nothing is my guess.

20 And Mr. Grillo wanted to know, well, where is the \$2
21 billion of factoring cash, et cetera? It's not here. We don't
22 have it. Zero dollars. There's \$12 million in the bank
23 account today. That's it. There is nothing else.

24 And so if he wants to liquidate this company and
25 continue to object to the DIP and defer the DIP roll-up for

1 five days, we don't have that luxury. We have \$12 million in
2 the bank account, as Mr. Moore testified, and if we don't get
3 the DIP approved today, we are talking about a liquidation of
4 this massive enterprise.

5 So that hopefully addresses his clients' issue. I
6 was going to address the escrow point too.

7 THE COURT: Okay.

8 MR. SINGH: Your Honor, the escrow -- the reason that
9 they're getting a roll-up on the escrow is the lenders are
10 funding that amount into escrow, and it's available to the
11 debtors subject to compliance with the DIP liens -- excuse me,
12 the DIP loan documents. So it's out of their hands, right?
13 They funded it. They're not just holding it on their books and
14 records as a to-be-funded amount. It's sitting in escrow,
15 frankly, because one of the reasons is Mr. Greenberg and his
16 clients are concerned that it may get swept if we put it
17 anywhere else, just like what happened prepetition, and you've
18 got a gazillion parties who are asserting liens and we don't
19 know where it is. He wants to make sure, and frankly, we
20 agree, that that \$500 million is not going to go immediately on
21 the debtors' books and records as something more for people to
22 have a food fight about.

23 And it's going to be in the DIP escrow. They're
24 funding it, and we have conditions on which we can draw. As
25 long as we comply with those conditions, we're going to get the



1 money because they're contractually obligated to give it to us.

2 So this is not a situation where, you know, they're
3 not lending us the money. These are safety measures that are
4 being put in place, but we are getting that \$500 million day
5 one. We have to comply with the DIP documents to get it out of
6 escrow and keep this thing rolled.

7 So Your Honor -- and the last thing I would say,
8 Mr. Greenberg's clients are unsecured. Okay. This is an
9 unsecured supply chain factor he's talking about. He already
10 sits behind the \$4- or \$5 billion of debt that's in the
11 existing capital structure. I'm adding the \$1.1 billion of new
12 money cash that's going on top of it, which I believe I've
13 satisfied my burden to do. And with respect to the rollup,
14 it's subject to the challenge.

15 So if his clients or an unsecured creditors'
16 committee shows up at some point and says their liens on the
17 first lien wasn't good or there's a challenge, Your Honor can
18 effectuate whatever remedy you want in the future. But other
19 than that, this rollup needs to happen today in order to get
20 this money in. And he's an unsecured creditor who already sits
21 behind this pile of debt.

22 So I don't see how he's prejudiced. I'm not
23 increasing the interest rates. And all we're doing is getting
24 \$1.1 billion of new money. That's for the benefit of
25 everybody, including his clients.



1 Your Honor, last with respect to Onset, I don't know
2 that there's much to say. I hope we'll be in an agreement
3 pretty soon. I haven't seen the latest terms of the
4 stipulations, but, Your Honor, we agree. We're not trying to
5 ask -- we're not trying to prejudice them with respect to the
6 go-forward arrangements. I don't think he's prejudiced by an
7 administrative expense claim against the FBG debtors because
8 his claim has to be paid within 60 days if we agree. If we
9 don't agree, then I think Onset can come in and complain to
10 Your Honor that the amount is subject to dispute and needs to
11 be addressed, but we're not going to run out of \$1.1 billion in
12 60 days, Your Honor. There's going to be -- there's an
13 administrative expense claim against that estate, assuming you
14 approve the final order, even \$500 million.

15 So he's not taking -- Onset's not taking risk for the
16 entire case. I know Mr. Butterfield wasn't saying that, but I
17 just want to be clear. We're fine with the 60 days, and that's
18 why we proposed it, is that so he's not sitting out, you know,
19 sort of taking risk with respect to the case.

20 Look, if the DIP proceeds -- if there's a termination
21 event or something like that happens, I mean, that's a bad day
22 for all of us, but he's certainly going to be better off by
23 getting the DIP in and having the opportunity to actually
24 collect rent on his equipment, just like all other creditors,
25 than if he were to not get the DIP and just liquidate the whole



1 enterprise today.

2 Your Honor, I'm happy to take any questions. I think
3 I addressed all the comments. I don't know if Mr. Greenberg or
4 anybody else wants to be heard with respect to the objections,
5 but we'd like to proceed, Judge.

6 THE COURT: Let me tell you where I am. I have had
7 an opportunity to, obviously -- the declarations are in
8 evidence, which includes the proposed DIP budget and related
9 documents. I've obviously had an opportunity to read the
10 Evolution stip, and those -- that stip makes sense to me. I've
11 read it, and it worked for me, and I'd be prepared to sign that
12 stip now. I haven't done so because it didn't make sense to do
13 it before. We kind of ruled on all outstanding issues.

14 It is clear that this debtor needs financing and an
15 incredible amount of financing. It's also clear, even from
16 reading the first-day declaration, that professionals are still
17 learning and getting smarter on some issues there, and not just
18 the lender professionals. You can see it in Mr. Moore, as
19 well, as describing, for example, kind of the current
20 understanding of certain structures.

21 And, Mr. Singh, to the extent that some of the
22 descriptions are inaccurate or you learn more at the
23 appropriate time, I don't want a timetable. It's just if
24 there's better information at some point, I want kind of a
25 supplemental declaration from Mr. Moore, just kind of providing



1 me the latest understanding of the chart. Once you think you
2 know what the right answer is, if it changes, but obviously as
3 people get smarter on the issues, I don't need kind of interims
4 or latest thinkings. I just need, you know, we did our
5 research, and here's where we are at some point in time.

6 Yeah, they were -- I think when it comes to
7 financing, it's -- I appreciate that there was transparency to
8 the extent that you know about potential issues that are there.
9 Yeah, I agree. This is a hard case if one was to finance it to
10 a comp. You know, a company with, I don't know,
11 11 billion-ish, you know, 9.3 funded debt and a couple of
12 billion in additional, you know, kind of factoring-related
13 liabilities, and tell me that they had \$12 million in the bank,
14 and then tell me, you know, payroll wasn't made and someone had
15 to do bridge financing, and then now everyone's still learning,
16 and tell me that someone's going to put in a billion dollars
17 because that's what's needed. It's incredibly difficult
18 circumstances.

19 And -- but at the same time, I hear what every party
20 is telling me from the FBG side of the house and kind of the
21 SPV side of the house, which is, you know, we can't do anything
22 today that prejudices the rights because there are a lot of
23 moving pieces, literally and figuratively, here, and more
24 information is going to -- will be known.

25 The construct of the DIP, I'm comfortable approving



1 on an interim basis, subject to all rights, subject to a final.
2 I've read the papers. I know, I don't need to know the name --
3 to know the name of the bank, but it's in the (indiscernible),
4 right? Someone took \$27 million and exercised a setoff, and so
5 that creates risk as to whether the money's going to get swept
6 or where the money goes.

7 And so -- but I think the debtor's going to have
8 to -- you know, there's a lot of different accounts. It looks
9 like money's going to get parked, and what's going to be
10 important to me is that there's transparency as to where the
11 money is parked. And so if someone on the SPV side of the
12 house believes that, you know, their cash is -- or some cash is
13 put there until we figure out whose cash it is and whose rights
14 are, that there's transparency, that there's not going to be
15 any risk of commingling or any concerns there. So just kind of
16 making sure that there's transparency on the -- of where that
17 is and where the money is and how much it is. And so it's
18 probably a lot of book accounting, but it's going to be really
19 important to me that -- you know, anything that's done today,
20 because it's going to be done in a couple of different places,
21 and I want to make sure that everyone feels comfortable.

22 As it relates to what I would call the 60-day admin
23 rent, what I can tell frontside is 60 days is going to mean 60
24 days, and it won't be where someone files something on Day 59
25 and asks for kind of a, you know, push out of the day and cites

1 105. And, you know, if we're going to do it, we're going to do
2 it, and it's going to be 60 days, and there's going to have to
3 be certainty on what that is, not subject to further extension
4 of the Court based on the reasonable circumstances. If we're
5 going to give 60 -- you know, payment within 60 days on this
6 one -- and obviously I'm just talking about this deal -- that's
7 what -- it will have to be kind of something that people can
8 rely on for purposes of today, and that gives me comfort.

9 As to what I would call the ABL lender dispute, it
10 seems to me that, as described, Mr. Singh, and assuming that
11 that's the way it's as described is it would work out in
12 practice. What you're really doing is just preventing raw
13 material from sitting somewhere during this period where it
14 could be made to use money, and the lenders, these DIP
15 lenders -- you know, there's other cash that needs to be used
16 for other purposes, so you can either take the material,
17 convert it, pay for it, but someone's going to have to pay for
18 the material, and it's usually the debtor who would have to pay
19 for it on step one to then go out and try to make a margin on
20 step two. This is just getting it out and -- where someone's
21 going to allow that product to go out so that everybody can
22 make money during this period, and it's not just either sitting
23 there, or the debtor's going to not have the ability to go and
24 pay the cash because that's going to create an additional
25 burden on the estate. If that's what's happening, and



1 everybody's rights are preserved in terms of kind what you
2 would normally pay, and we're not getting into -- in other
3 words, there's an ordinary course as to what this stuff was
4 worth, and when it went out, and playing within the margins on
5 that there makes sense to me so that -- you know, there's just
6 not a lot of disagreement when \$2 comes in, where the money --
7 you know, how much normally would have gone to pay off
8 Mr. Brilliant's client, and then how much would have turned
9 into ABL collateral. There's a -- I'm just trying to -- this
10 stuff was being done prepetition. It should just continue on
11 whatever terms. And I got it, the market could change, but
12 clearly this was done before, and it should just continue for
13 the purposes of the next 30 days on whatever kind of
14 prepetition terms we were here.

15 The other stips that I've seen, or that I will see,
16 it sounds like, Mr. Singh, you're going to have to work out
17 some language, and it's subject to everyone kind of reviewing
18 it, but kind of the constructs make sense to me, and I'll
19 approve them, and I'm going to overrule any objection for
20 purposes of where we are in terms of an interim. It's clear
21 this debtor needs money, and it's clear that this is really
22 rescue financing, and it's clear that someone is lending an
23 incredible amount of money into an uncertain box. But you're
24 talking, you know I think about -- I haven't approved them yet,
25 but some of the money is going to go towards, you know, keeping

1 insurance, right, and paying employees. And folks walk off the
2 job, we've got real problems on our hands because it's going to
3 be really hard to go find stuff. And that's just the reality
4 of where we are, dealing with multiple countries, multiple
5 jurisdictions. I'm thinking about all these things that were
6 described in the declaration. To lend a billion dollars into
7 that is -- there's risk.

8 I think the roll-up, you know, and kind of -- quite
9 frankly, it's helping the ABL folks as well in kind of getting
10 to a place. Everybody's rights are reserved in connection with
11 a final. I don't think anyone should cite this case on an
12 interim as a comp to me, or, you know, as precedent in another
13 case. Like, you know, this is just different than, quite
14 frankly -- I don't think on my time on the bench I've seen
15 anything like this. And it just reflects the reality of where
16 we are, so we can -- it's where we are.

17 Mr. Singh, you know, I -- someone's going to have to
18 kind of continue to work on language, and maybe I need to call
19 balls and strikes on kind of what final language looks like on
20 some stuff, but the constructs make sense. In terms of a
21 second-day hearing, I can tell you, I know that -- I think my
22 case manager has told you all, you know, that October 30th at 1
23 Central would work. Here's what you need to think about. I
24 want the second-day hearing in person, right? We're just going
25 to just -- I don't know where it goes, and I don't know what



1 everybody learns between now and then, so anybody who's going
2 to speak or cross witnesses or -- it'll be cooler in Houston,
3 so then there'll be no complaints. You can come down to
4 Houston. I'm teaching at a law school at 5:45, and there's
5 some students that I promised that I would be there at 5:45
6 that evening, between 5:45 and 7:45. So -- but I have the 29th
7 available, and so if the 29th makes more sense, then let's do
8 it on the 29th if you think it's just going to be a few hours.
9 And I don't know, I'd rather hedge a little bit on this one,
10 and so maybe one can start on the 29th and finish on the 30th,
11 but if you just wanted the 29th, right now it's wide open, and
12 if that date would work, then you can kind of work an objection
13 deadline that would make sense from there. I don't know. You
14 would have to just think about that as you kind of think about
15 what dates and witnesses and things of that nature, just give
16 that some thought. But I'm going to want everybody here on
17 that day, and probably maybe in my new courtroom at that time,
18 but we'll see. If not, we'll be here.

19 MR. SINGH: Understood, Your Honor.

20 THE COURT: So just give that some thought, but let
21 y'all keep talking about that.

22 So I'm approving the amount, the fees, the interest,
23 the -- you know, the use of cash collateral, and those terms,
24 subject to final language. Obviously, this is subject to final
25 term, but the construct makes sense, the proposed lenders, the



1 statements that are made there -- the reservations, all the
2 reservations of rights are approved, and they really are
3 reservations of rights, both in connection with the final
4 hearing. It's an interim order, right, and so there's going to
5 be a final hearing. But, again, what you hear me saying is,
6 you know, this order is different because this order creates a
7 bunch of escrow and buckets and things of that nature, and
8 there's just going to have to be a lot of transparency and
9 certainty that goes along with every one of these stips. And
10 if there's more stips, I'm comfortable signing. I'm
11 comfortable with the Evolution stip, but I think what I'd like
12 to do is sign a DIP order and then sign the stip so that
13 Evolution isn't kind of placed in a position where I've signed
14 something.

15 And then -- so I'd like to do it all at the same
16 time. I don't know when it makes sense. Maybe we can use kind
17 of the 12:30 to 2 period to talk about kind of what makes sense
18 in terms of the next hearings.

19 I'm going to steal some thunder. I'm going to
20 approve the -- you know, let me just take a look at what we
21 have here. No, I don't want to do that. I don't want to do
22 that. Let's just come back at 2.

23 Mr. Singh, at two o'clock, what would make sense for
24 me is an update as to kind of where we are on the DIP, kind of
25 order and other stips of that nature, and then we can move to

1 kind of the other matters at that time. And then kind of let
2 me know what you want in terms of second-day hearing, whether
3 it's the 29th, because I'm going to have to fill it in, I
4 suspect, for some of the other interim orders at that time.
5 And we'll go from there. But everybody's rights are preserved,
6 and keep working.

7 It sounds like you all are going to be working while
8 you're eating, but nothing new. You would have been stuck in a
9 hallway outside here, otherwise, if we would have had a first
10 day out here. So why don't you keep working, and then let's
11 just come back on at 2 p.m. and see where we are.

12 All right. Thank you.

13 MR. SINGH: That makes sense, Your Honor. Thank you.

14 THE COURT: All right.

15 (Recess taken at 12:25 p.m.)

16 (Proceedings resumed at 2:13 p.m.)

17 THE COURT: Okay. Good afternoon, everyone. This is
18 Judge Lopez. Back to First Brands.

19 I think I'm -- what I would just ask is if parties
20 who had already made appearances, can you please hit "five
21 star" again? You don't need to make an appearance again. I'm
22 just going to unmute a bunch of lines and just ask that you
23 please just monitor your own emails. I'll just give it a
24 second. I'm unmuting lines, so please be careful. You can
25 just mute your lines.



1 Let's see. Is there anyone from debtors' counsel on
2 the line?

3 MR. SINGH: Yes, Your Honor. There's -- Sunny Singh.
4 I don't know if you can hear me, Your Honor.

5 THE COURT: I can hear you.

6 MR. SINGH: Oh, good.

7 THE COURT: Oh, there you are. All right.

8 MR. SINGH: Okay. Good afternoon again, Your Honor.
9 Sunny Singh, Weil Gotshal, proposed counsel to the debtors. I
10 think we're ready to proceed and pick up back on the DIP
11 motion, a couple of the open points. I can give you a status
12 report of where we are.

13 But first, Your Honor, I think just for scheduling
14 purposes, I think we would take you up on October 29th to
15 start, preferably in the afternoon if you could, Your Honor.
16 And then if we needed to, we could carry over to the 30th if
17 necessary.

18 THE COURT: Let's do October 29 at 1 p.m. Central.

19 MR. SINGH: Great. Okay. Thank you, Your Honor.

20 Okay. Just let me, with that, just report kind of
21 where we are with each of the parties. So carve-out,
22 Mr. Brilliant's clients, the stipulation is done. It's in the
23 process of being filed. There was some additional language Mr.
24 Brilliant sent over to the DIP order that we're incorporating
25 right now that basically just says -- you know, it's expanding



1 the "for the avoidance of doubt" paragraph that was in there
2 that makes it clear that, you know, DIP liens are not being
3 granted against the, quote, "carve-out assets" that are
4 identified in the stipulation DIP or adequate protection liens,
5 which obviously I think I said multiple times on the record
6 today and in the case. So we were happy to incorporate that
7 change. So you'll see that in a revised order. So I think
8 that takes care of carve-out.

9 The ABL lenders, Your Honor my understanding from
10 Mr. McGuire was they wanted some clarification in the
11 stipulation that's set in, in the carve-out stipulation or
12 order that says you know, when the sort of premium after fair
13 market value is paid comes back to the FBG debtors, it's ABL
14 priority collateral because it was AR. You know, rather than
15 go and wordsmith a stipulation with a third party in the order,
16 I think I've made this statement multiple times on the record.
17 I'm happy to just stipulate on the record that that is the
18 case. And hopefully that's acceptable to the Court so we don't
19 have to keep holding on to the order and making more changes.

20 Your Honor, Onset, I think we're done. I don't know
21 if Mr. Newton or Butterfield is on the line. I don't see them,
22 but I see people are joining. We sent them the stipulation.
23 It's essentially the same form as Evolution plus dealing with
24 the inventory -- excuse me, the equipment point that I outlined
25 on the record. So we -- they're just looking at the stip. As



1 soon as that's done, it'll get filed shortly.

2 Aequum, I believe we have an agreement subject to
3 client approval, at least without the client approval on the
4 Aequum. They're basically going to follow the carve-out
5 format. But they're going to give us a cap of \$30 million.
6 That basket -- that carve-out is 20. \$30 million for the two
7 facilities, 65-day payment terms, and it must be sold to a list
8 of customers that we will provide, and it can be supplemented.
9 So the same sort of point, and I'm happy to confirm again
10 before Mr. McGuire asks that the ABL priority liens attach
11 after we have paid off -- after we have paid down or deposited
12 into the account the Aequum dollar amounts.

13 That stipulation, Your Honor, they're reviewing with
14 their client, so hopefully they can get back to us. Maybe
15 there's a few tweaks, but hopefully that can be done and we can
16 get that on file.

17 I think -- and we're done with all the factoring
18 reservation of rights. All of those parties, whether they file
19 joiners or reservations of rights, to my knowledge, have
20 accepted the language. If anybody is still out there, they can
21 obviously speak up and be heard.

22 So, Your Honor, I would propose that it's critical
23 that we get this order entered today. Payroll needs to go out
24 tomorrow. So I would propose that we give people just a little
25 bit of time here to finalize their stipulations. If for some



1 reason it takes longer or can't get done Your Honor, frankly,
2 with respect to Aequum or Onset, I hope we're never going to
3 get here. The debtors would propose that we simply just insert
4 the -- sort of the terms that I laid out on the record that
5 resemble Evolution or (indiscernible) and ask Your Honor to
6 approve them over any objections for the next interim period.
7 Because I'd really, you know, love to continue to negotiate
8 more with these counterparties through the end of the night,
9 but we really have to get done and get the DIP over on file so
10 we make payroll tomorrow.

11 I think that's it, Judge.

12 THE COURT: Okay. Let me just see if anyone wishes
13 to be heard before we --

14 MR. MCGUIRE: Yeah.

15 THE COURT: Yes.

16 MR. MCGUIRE: Yes, Your Honor. Dan McGuire on behalf
17 of the ABL lenders.

18 THE COURT: Mr. McGuire, yes, sir.

19 MR. MCGUIRE: If you will so order what Mr. Singh
20 said on the record so that it's actually in front of the Court
21 as opposed to (indiscernible) relative to these things being
22 ABL priority collateral. I think we can live with that not
23 being in the documents so they can enter (indiscernible).
24 That's perfectly fine. But (indiscernible) reporting, just cut
25 off (indiscernible) arrears (indiscernible) October 31st. But

1 with that, Your Honor, we would be (indiscernible) today.

2 THE COURT: Thank you so much. It is so ordered on
3 the record, Mr. McGuire. Thank you.

4 MR. MCGUIRE: Thank you, Your Honor.

5 THE COURT: Mr. Blank.

6 MR. BLANK: Your Honor, I'll actually let
7 Mr. Ottaviano go first, and then I'll piggyback on what he has
8 to say.

9 THE COURT: Okay. I'm sorry. Can you repeat that?
10 I was taking notes here. Mr. Blank.

11 MR. BLANK: Your Honor, I said I would let Ken
12 Ottaviano go first, and then I'll piggyback on what he has to
13 say.

14 THE COURT: Got it. Mr. Ottaviano, are you

15 MR. OTTAVIANO: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. OTTAVIANO: Ken Ottaviano for Aequum Capital
18 Financial as an SPV lender.

19 Your Honor yes, we are in agreement. We are working
20 through the language, but I would ask the Court not to just
21 insert some language into the order without us. If he can't
22 come to the deal, it's not fair to insert some language into an
23 order. I think we should reappear in front of Your Honor and
24 be heard regarding the language, as Your Honor, earlier in this
25 hearing, so stated.



1 THE COURT: You will, but on a final. So if you
2 leave it up to me, I'm going to insert language that gets this
3 over the language that I think is appropriate under the law.
4 I'll give you all some time, but if not, I'll enter the order
5 and everybody will have whatever rights they have. But when --
6 and we'll see each other on October 30th. Just don't leave it
7 to the judge. I will -- I'll answer the question if the
8 question is presented as to -- y'all can tell me what you think
9 both of you are proposing, and I'll pick one or come up with
10 one on my own. No, that's going to be the answer. You know, I
11 don't know if any of one of you are going to want what I write,
12 but there will be an answer.

13 MR. BLANK: And Your Honor, Steve Blank from Alston
14 on behalf of UMB. Just to that point, I was a little bit
15 confused only because the debtors have mentioned on the record
16 previously that the language already in their proposed order
17 was effectively punting the issues with respect to UMB and
18 Mr. Ottaviano's client. So now to -- we are working as fast as
19 we can to get some language with the stipulation, but they
20 already have language saying this is going to get punted to the
21 final hearing. And so just getting jammed is -- we're working
22 as fast as we can. (Indiscernible)

23 THE COURT: Well, I guess I'm just trying to figure
24 out -- you guys -- Mr. Singh, what's the -- I don't want to
25 kind of get into the specifics of it, but on a high level,



1 what's the outstanding issue? Mr. Singh?

2 MR. SINGH: Your Honor, did you ask me?

3 THE COURT: Yes, sir.

4 MR. SINGH: I didn't know you were asking.

5 THE COURT: Yes, sir. I'm just trying to figure out
6 kind of what's the --

7 MR. SINGH: Your Honor, I think they're just
8 confirming that they're good with the 30 million cap and the 65
9 days on terms from the debtors' perspective. If Your Honor's
10 ordered that, I'm good with it. But if they are confirming
11 that with their client, I'm happy to wait a little bit. But
12 other than that, we don't really have an issue.

13 THE COURT: Mr. Blank or Mr. Ottaviano.

14 MR. OTTAVIANO: Yeah, Your Honor, we confirmed the 65
15 days payables and confirm the list of customers. And we just
16 need to see the language. We did discuss a few other minor
17 issues that I don't think would require the Court's
18 intervention. But just blanketly agreeing to agree against
19 their language is just fundamentally unfair.

20 THE COURT: No, no, no, I think --

21 UNIDENTIFIED: Your Honor --

22 THE COURT: Yeah. I think you're going to see the
23 language. I don't -- I didn't mean to imply. I'm just saying
24 if we get to a logjam, that's when I'll come in and make the
25 call. But I do think -- I'm not just -- they're not just going



1 to upload something to me and then I'll sign it or insert my
2 language. I think they're going to send you something and try
3 to continue to work on stuff. And at some point, if things
4 just get too tight, I'll just -- I'll make the call on the
5 language. That's where I'm going. But I do agree that you
6 should see language, and you will.

7 MR. SINGH: Yeah. Your Honor, and I'm happy to
8 confirm that, one, we're sending them a redline; two, any -- if
9 we can't agree, the language we will submit would -- will
10 mirror the carveout language with the modifications to the
11 numbers and amounts we just recited. So that would be our
12 proposal, so there's no surprises. I believe that stipulation
13 is being filed on the docket momentarily. And so we're not
14 trying to pull any surprises. We just -- we can't wait any
15 longer for interim approval of the DIP.

16 MR. BLANK: And Your Honor, the only point I would
17 make is because there was already language in the proposed DIP
18 pushing this issue, if this fell through, this issue shouldn't
19 hold up the DIP. And our stipulation could always come
20 tomorrow. It doesn't seem as though that would be prejudicing
21 given that there was already language punting this issue in the
22 order.

23 THE COURT: Mr. Singh.

24 MR. SINGH: Well, Your Honor, I would clarify. The
25 language in the order or motion said that we are working to try

1 to get stipulations with these parties. To the extent we
2 don't, we believe we've shown adequate protection. I believe
3 that's in our motion. And Your Honor now has uncontested
4 evidence in the record. So, you know, as much as I'd love to
5 negotiate this tomorrow, I really wouldn't.

6 THE COURT: Yeah, I think you all are going to get
7 there. You hear what I'm saying. So let's just get -- Mr.
8 Singh, what I would ask is once you feel you've either gotten
9 to the point or you've gotten sign off -- and I know that
10 there's a bunch of folks who are going to need to look at it --
11 kind of upload an order, let my case manager know. If there's
12 disagreement on language, then I'm going to ask that that
13 party, whoever it is, file something immediately and tell me
14 because I'm going to sign an order today on the DIP.

15 MR. SINGH: Thank you, Your Honor.

16 THE COURT: But it could be late that I sign it. I'm
17 just --

18 MR. SINGH: Understood, Your Honor. That's fine. We
19 just have to close tomorrow morning to make payroll. That's
20 understood.

21 THE COURT: No, no. Okay.

22 MR. SINGH: Thank you.

23 THE COURT: All right, folks. Where do we go next?

24 MR. SINGH: Your Honor, I don't know if anybody else
25 has any issues with what I've said. But other than that, I

1 think we're done with the DIP. And I will turn it over to my
2 colleague, Jason George, to handle the next motion on the
3 agenda.

4 THE COURT: Okay. Thank you.

5 MR. SINGH: Thank you.

6 MR. GEORGE: Good afternoon, Your Honor. For the
7 record, Jason George.

8 THE COURT: Good to see you.

9 MR. GEORGE: Good to see you as well, Your Honor.
10 I'll present the cash management employee and customer programs
11 motion. If it's okay with the Court, I'll start with the cash
12 management.

13 THE COURT: Okay.

14 MR. GEORGE: Thank you. The cash management motion
15 was filed at Docket Number 17. Pursuant to the motion, the
16 debtors request authority to continue their existing cash
17 management system in the ordinary course, including maintaining
18 the existing bank accounts, continuing to perform under
19 intercompany transactions in the ordinary course, continue
20 their credit card programs, and pay prepetition obligations in
21 connection therewith, and an extension of time to comply with
22 Section 345 of the Bankruptcy Code.

23 As set forth in the motion, the debtors operate a
24 centralized cash management system consisting of 173 bank
25 accounts at 11 different banks. The majority of these



1 accounts, including the debtors' main concentration account,
2 are maintained at Bank of America. The debtors also maintain
3 various collection accounts where receivables generated from
4 operations are deposited. These are zero-balance accounts that
5 are swept into the main concentration account on a daily basis.
6 Due to the size and the complexity of the debtors' cash
7 management system, it would be extremely burdensome and
8 disruptive to the debtors to be required to open all new
9 accounts. Accordingly, the debtors seek authority to maintain
10 their current cash management system in the ordinary course.

11 Of the debtors' 173 bank accounts, 22 of those are
12 maintained at banks that are not authorized depositories. The
13 debtors intend to discuss accommodations with the U.S.
14 Trustee's Office in respect of these accounts and are
15 requesting a 45-day extension of time to have those
16 conversations. We understand the United States Trustee is
17 amenable to that request.

18 In addition, Your Honor, the debtors seek relief with
19 respect to their corporate credit card programs. The debtors
20 currently owe approximately \$250,000 under those programs and
21 seek to honor those obligations and continue the programs in
22 the ordinary course. As was mentioned earlier today, there
23 were two objections filed to the motion. One was filed by
24 Katsumi at Docket Number 118 and the other by Raistone at
25 Docket Number 137. ING Belgium and Arab Banking Corporation,



1 also filed joinders to those objections.

2 Both Katsumi and Raistone entered into what we refer
3 to in our papers as third-party factoring arrangements with the
4 debtors. Under these arrangements, when a factored receivable
5 comes into the account -- or comes due, excuse me, the customer
6 pays the receivable over to the debtors, which is then supposed
7 to turn the funds over to the factor. This is different than
8 the customer receivables that were also mentioned earlier
9 today, where in those arrangements, the receivable comes
10 into -- or when the receivable comes due, the customer that
11 owes the receivable pays it over directly to the factor and the
12 funds don't come into the debtors' possession.

13 As Mr. Singh mentioned, the debtors were able to
14 resolve these objections prior to the hearing by adding
15 language to the proposed interim order stating explicitly that
16 the funds on account of third-party factoring arrangements will
17 be segregated. We've since filed a revised proposed order at
18 Docket Number 182. The relevant paragraphs are numbered 9
19 through 11. I'd be happy to take the Court through those, but
20 I also have a couple clarifications. We received an email from
21 CarVal's counsel, as well as Jefferies' counsel during the
22 hearing, and there's a couple additional clarifications to make
23 to the order.

24 THE COURT: Keep going.

25 MR. SINGH: Okay. Otherwise, Your Honor, we did



1 share the draft of the motion with the U.S. Trustee's Office
2 and the DIP lenders. Their comments have been incorporated
3 into the proposed order. Unless Your Honor has any questions,
4 we'd respectfully request the motion be granted.

5 THE COURT: Anyone wish to be heard with respect to
6 this motion? And if I haven't unmuted your line already,
7 please hit "five star" and I will do so.

8 MR. KELLEY: Yes, Your Honor. Charles Kelley from
9 Mayer Brown --

10 THE COURT: Yes, sir.

11 MR. KELLEY: -- on behalf of Katsumi, one of the
12 objecting parties. Good afternoon, Your Honor.

13 We have worked out language with the debtors, so it
14 is our understanding it's been incorporated in the orders. I
15 haven't actually seen the filing, but we will confirm that in
16 the upload. But I thought now would be a brief opportunity to
17 introduce my client.

18 My client, Your Honor, Katsumi Servicing LLC -- we
19 call it KS Servicing -- is the buyer representative with
20 respect to receivables that were purchased in the course of
21 business. These are true sale transactions, and we service and
22 act on behalf of a number of other investors. But
23 fundamentally, as of the petition date, there were
24 approximately 210,000 outstanding purchased receivables with an
25 aggregate net balance of approximately \$1.75 billion, or



1 roughly \$9,000 outstanding per receivable.

2 We are working with limited information. We are
3 appreciative of the information that the debtors have shared
4 with us. We understand there is an open issue as to what may
5 have occurred prepetition with respect to others receivables
6 have been sold to us or others. It's unclear. But we
7 understand there's a special process of investigation that is
8 ongoing. We obviously support the debtors going through the
9 normal process to assess and evaluate these issues.

10 An item that I would just note, because we view the
11 purchased receivables and the proceeds as separate property,
12 not property of the estate, but property that we have acquired,
13 we have slightly different interests than many of the other
14 equity-related transactions. And so while we appreciate the
15 special committee's process and investigation, we intend to
16 work closely with the debtors. They have put language in about
17 updating this weekly, which we are grateful for. And we intend
18 to stay carefully attentive. But needless to say, while we
19 know these processes take a while, we are hopeful the process
20 will move quickly so we can receive proceeds and not see them
21 held in accounts for any length of time. But for the interim
22 period, we understand what the debtors want to do, and we've
23 agreed to the language.

24 Our rights have been reserved with respect to that.
25 But we are interested in understanding the true nature of the



1 receivables we purchased and whether or not they've been
2 compared or otherwise affected some of the disclosures that
3 occurred prepetition. But with that, we are appreciative of
4 the efforts that have occurred. It's a significant amount of
5 receivables that we represent, at the \$1.7 billion. And we
6 will be probably active shortly after the first-day hearings
7 with the debtors to get as much information as we can. So with
8 that, I appreciate the opportunity to sort of introduce the
9 client (indiscernible) and to let you know that we are working
10 cooperatively with the debtors where we can, and we hope to
11 continue doing so. But we need to get our hands around what
12 occurred with respect to ourselves.

13 THE COURT: Thank you.

14 MR. GEORGE: (Indiscernible).

15 THE COURT: Thank you very much. Does anyone else
16 wish to be heard?

17 MR. BRILLIANT: Your Honor, Allan Brilliant on behalf
18 of CarVal.

19 THE COURT: Yes, on CarVal, and then I'll turn to Mr.
20 Doherty.

21 MR. BRILLIANT: Yes, Your Honor. Your Honor, as I
22 mentioned earlier, we had said that we had some issues on the
23 cash management order. As counsel said, we sent a few minor
24 clarifying comments earlier today. (Indiscernible). With
25 that, we have, you know, no objection to the entry of the

1 order. Thank you.

2 THE COURT: Thank you.

3 Mr. Doherty?

4 MR. DOHERTY: Good afternoon, Your Honor. I'm --
5 Dentons US LLP. We represent Factofrance, S.A. also known as
6 the factoring party. I've been in communication with Mr.
7 Kelley and his colleagues and the debtors' colleagues, and the
8 lender's colleagues this morning were on emails. We're also
9 reserving rights. We believe that the issues have been taken
10 care of and agreed language. I haven't seen the order
11 (indiscernible). I have no reason to think it won't be in
12 there. I just wanted to, you know, make an appearance on the
13 record for our client. We share a lot of the same concerns
14 that Mr. Kelley and others have spoken about. Thank you, Your
15 Honor.

16 THE COURT: Thank you.

17 So there was an order that was filed with respect to
18 cash management at 182. Is that the order we've been talking
19 about? Or is there another order? I just want to make sure.

20 MR. GEORGE: Your Honor, that's the revised order we
21 filed earlier today. It covers a lot of the issues for the
22 factoring counterparties.

23 THE COURT: Uh-huh.

24 MR. GEORGE: We -- (indiscernible) all of them. But
25 Mr. Brilliant's comments came subsequent to that, and we still



1 have to incorporate those into the order.

2 THE COURT: Okay. So you're going to upload a
3 revised order?

4 MR. GEORGE: Yes, Your Honor, we can do that.

5 THE COURT: Oh, no, no, I'm asking. Yes, I am
6 asking. Go ahead and do it, just so I'm clear, because I don't
7 -- and just, you know, if there's any attachments to the
8 order, if there's a proposed -- let's -- I guess I ought to set
9 an objection. Is this an interim? It is an interim, right?
10 If we're doing October 29, can we do October 22nd as the
11 objection deadline?

12 MR. GEORGE: Works for the debtors, Your Honor?

13 THE COURT: And let's do 5, 5 p.m. Central. And can
14 you -- if you could just plug in everything and just kind of a
15 revised order, and I'd ask Mr. Singh to do it as well when the
16 DIP gets uploaded, just kind of have it all ready to go. And
17 then, we'll take a look at that one, and I'll get them signed.

18 MR. GEORGE: Will do, Your Honor.

19 THE COURT: Thank you. Where do we go next?

20 MR. GEORGE: Next, Your Honor, is employee --

21 THE COURT: Go ahead. Let me just note, there's a
22 number of parties listening, and I should make a note. I think
23 there's, like, 330 parties on the line.

24 I'm approving the cash management motion, which
25 allows the debtor to ease into the Chapter 11 process by



1 maintaining existing bank accounts that have certain agreements
2 that have been made with respect to how the money moves. And
3 so I'm going to honor those. But the purpose is to allow the
4 debtor to maintain its existing bank accounts to avoid the
5 disruption that would happen in connection with a Chapter 11
6 case. Sometimes bank accounts close. Sometimes there are
7 requirements to open up new bank accounts and then change the
8 names of the bank accounts. This motion just allows the debtor
9 to ease into the process without administrative problems. And
10 there's a lot of money moving, but there's still transparency
11 in the process. So everybody knows where the money is going,
12 where the money is going to be parked, if it's going to get
13 parked somewhere.

14 So this motion really provides very little, what I
15 would say, in terms of substantive relief. This really just
16 allows the debtor to ease into the Chapter 11 process without
17 having to open up new bank accounts, change names on banks, but
18 still provides transparency that the debtor can still use those
19 existing bank accounts without running afoul of any other
20 provisions of the Bankruptcy Code. So I will authorize those.

21 I'll authorize an extension under what is called
22 Section 345 of the Bankruptcy Code. There are certain
23 authorized depository banks. And if not, then there could be a
24 motion that could be raised as to kind of move the money from
25 one bank into another.



1 Here, there's going to be an extension of time that
2 is authorized under the Bankruptcy Code to allow additional
3 discussions to occur on those points. Everybody's rights are
4 reserved with respect to that. There's going to be an uploaded
5 order, and I'll sign it when it hits the docket. But I've
6 approved the cash management motion.

7 Where do we go next?

8 MR. SINGH: Thank you, Your Honor. The employee
9 wages motion is filed at Docket Number 16. Pursuant to the
10 motion, the debtors seek authority to pay prepetition wage and
11 benefit obligations and continue their benefit program in the
12 ordinary course.

13 The total relief sought by the debtors in the motion
14 is approximately \$34 million, including approximately \$11
15 million of accrued leave and PTO, for which there should be no
16 remittable cash outlays, just employees taking time off. The
17 debtors do not believe that any wages are owed to any employees
18 in excess of the priority cap. I have included language in the
19 proposed order stating that any workforce compensation
20 obligations owed to employees above the priority cap requires
21 notice and consent from the U.S. Trustee, any statutory
22 committee appointed, and the DIP lenders.

23 As part of the relief, the debtors also seek to pay
24 bonuses to a select number of rank and file employees. These
25 bonuses are on account of the 2024 calendar year. They're part



1 of the employee's normal compensation package, were promised to
2 the employee's and have already been delayed due to the
3 company's liquidity situation. The total amount to be paid is
4 approximately eight-and-a-half-million dollars. Importantly,
5 no bonus will be paid to any insider or anyone on the debtors'
6 executive management team or executive payroll.

7 Finally, the debtors are also seeking authority to
8 honor certain prepetition severance agreements. It's a
9 relatively modest amount. The debtors owe approximately
10 \$790,000 under those agreements. It is important to the
11 debtors that these outstanding obligations, both the bonuses
12 and the severances, are honored, along with the other
13 prepetition obligations owed to employees. The debtors are
14 rightfully concerned with retention at this time and the
15 potential ramifications if they start picking and choosing, you
16 know, which benefit programs to honor.

17 In advance of the hearing, we discussed the relief
18 requested with the U.S. Trustee and the DIP lenders. They're
19 in support of the proposed order.

20 Unless Your Honor has any questions, we'd also
21 request that this motion be granted.

22 THE COURT: Anyone wish to be heard with respect to
23 the employee wage motion?

24 Okay. I'm going to consider a motion to pay
25 prepetition wages, salaries, employee benefits, and other



1 obligation to continue compensation and benefit programs in the
2 ordinary course.

3 For those who may not be familiar with the bankruptcy
4 process, the Bankruptcy Code provides a priority rank for
5 certain wages earned by employees within a certain amount of
6 time before the case was filed. That -- this order allows the
7 debtor to pay kind of accrued but unpaid pre-bankruptcy
8 employee wages up to the amount, which is what they were
9 calling the cap that is provided in the Bankruptcy Code. It's
10 going to allow for certain bonus payments that were promised to
11 these employees. It continues the -- allows them to continue
12 and pay work compensation and employee benefit programs in the
13 ordinary course so that employees can feel comfortable. They
14 can continue to do the work that is required on a day-to-day
15 basis in connection with this case.

16 No insider, no CEO, no CFO bonuses are going to be
17 paid in connection with this. This is to pay -- you know, we
18 consider the employees the lifeblood of this company and to
19 make sure that they can feel comfortable. It goes without
20 saying, today is October the 1st and bankruptcy judges are well
21 aware that today is the day rent is due, mortgage payments are
22 due, and people want to make sure that their kids have health
23 insurance and that they have health insurance for themselves
24 and that it will continue and that they're allowed to take a
25 day off and they're not worried about getting fired. So this



1 is all really important. I've reviewed the proposed order.

2 Is the one at 16 the one that we're still signing?

3 MR. SINGH: Yes, Your Honor.

4 THE COURT: Okay. I'll get it signed and on the
5 docket. Thank you.

6 Where do we go next?

7 MR. GEORGE: Thank you. Last, Your Honor, for me, is
8 the customer programs motion. It's filed at Docket Number 15.
9 Pursuant to this motion, the debtors seek authority to continue
10 their existing customer programs to honor prepetition
11 obligations related thereto. The debtors also seek to continue
12 their customer factoring program with respect to any
13 post-petition accounts receivable. The debtors estimate that
14 as of the petition date, they have accrued approximately \$252
15 million of outstanding obligations related to their customer
16 programs. These obligations relate to, among other things,
17 discounts and rebates granted to customers in connection with
18 volume purchases and signing new contracts, return programs for
19 customers that have excess inventory, and customer compliance
20 programs that require the debtors to compensate customers if
21 they fail to meet certain order rates.

22 Each of these programs is integral to the debtors'
23 business, including maintaining customer loyalty and generating
24 new sales. Certain programs, such as the customer compliance
25 program, are also required by the debtors' customers to



1 continue to do business with them. Accordingly, the debtors
2 seek to continue honoring those programs in the ordinary
3 course.

4 With respect to the factoring program, the debtors
5 are only seeking to continue their customer factoring program
6 and not the third-party factoring. I explained the difference
7 earlier on in my presentation. But the customer factoring
8 program really relates to the debtors' mass retail customers.

9 As set forth in the motion, this program or these
10 programs are very similar in the automotive parts industry.
11 Many of the customers have extended payment terms, sometimes up
12 to 360 days, and therefore the debtors need to factor the
13 receivables to ensure access to near-term liquidity. If
14 they're unable to do this, the debtors will have very limited
15 operating receipts in the near term, considering they're
16 segregating all the third-party factored receivables. And the
17 DIP budget also contemplates that the debtors will continue
18 this practice in the post-petition period.

19 As with the other motions, the United States Trustee
20 and the DIP lenders have signed off on the proposed form of
21 order. So unless you have any questions, we'd also request
22 that the Court enter this order.

23 THE COURT: Anyone wish to be heard with respect to
24 the request for interim relief with respect to honoring
25 customer programs?



1 Okay. The purpose of this motion is to allow the
2 debtor to --- as counsel indicated, to continue programs that
3 are in effect to its customers, to allow customers to continue
4 to -- you know, encouraged to continue to do business with the
5 debtor. So if there's kind of incentives or kind of rebates
6 that are in effect, that this just allows everything to
7 continue in the ordinary course of business. It's just an
8 interim order. Everybody's rights are reserved to a final.

9 Can you confirm for me? I said October 29th at 1 for
10 the hearing, right? Did I get that right?

11 MR. GEORGE: Yes, Your Honor.

12 THE COURT: I'm really good at giving dates, really
13 bad at remembering which ones I said. So I just -- I will get
14 this order signed, and it'll hit the docket shortly.

15 MR. GEORGE: Thank you, Your Honor. I'll turn the
16 podium over to Mr. Barlow.

17 MR. BARLOW: Good afternoon, Your Honor. For the
18 record, Jared Barlow of Weil Gotshal, proposed counsel for the
19 debtors.

20 The next item on the agenda, item number six, is the
21 debtors' critical vendors motion. This was filed at Docket
22 Number 13. By this motion, the debtors are seeking interim
23 authority to pay certain prepetition claims of critical
24 vendors, non-U.S. vendors, lien claimants, and 503(b)(9)
25 claimants. Specifically, the debtors are requesting authority



1 to pay in the interim period up to \$39 million in critical
2 vendor claims, \$26 million in non-U.S. vendor claims, \$2
3 million in lien claims, and \$12 million in 503(b)(9) claims for
4 a total of \$79 million in the interim period.

5 The debtors are not requesting authority to pay that
6 amount as a lump sum. The debtors would intend to pay those
7 amounts as they come due in the ordinary course and only after
8 the debtors have determined in their sound business judgment
9 that payment to a particular vendor is necessary to avoid
10 immediate harm to their business. The debtors also request
11 authority to pay and confirm the administrative priority of
12 vendors who have issued purchase orders prior to the petition
13 date that will not be fulfilled until after the petition date.

14 In advance of the hearing, we previewed the relief
15 requested with the U.S. Trustee's Office and understand that
16 there's no objection to the relief requested, and additionally,
17 the debtors' DIP lenders are in support of the relief request
18 as well.

19 The debtors have a capital-intensive business that
20 relies on the cooperation and services of their vendors and
21 trade claimants every step of the way, so the debtors believe
22 that the relief requested is reasonable and supported by
23 business judgment and is in the best interest of the debtors,
24 their estates, and in the interest of their stakeholders.
25 Unless the Court has any questions, we respectfully request the



1 entry of the interim order.

2 THE COURT: Anyone wish to be heard with respect to
3 the critical vendor motion?

4 Alrighty. Which is then -- oh, can you hit "five
5 star," sir? I just want to make sure that I can hear you,
6 Mr. Garcia. You hit "five star" on your phone and -- oh, there
7 you are. Mr. Garcia.

8 MR. GARCIA: Thank you very much. I am one of those
9 critical vendors, non-U.S. vendors as well, and we have not
10 seen any of this information before, and you have here some
11 amounts of 79 million, but we don't know if it's going to be
12 enough for us, for all the critical vendors that are -- been
13 supplying for all these year and we have not received any
14 payments from the companies.

15 My company is a small business, and I think it's very
16 unjust that, of course, here I am with a lot of important
17 lawyers, big companies, but we are a small company as well, and
18 we would like to see a list of when we are going to get paid
19 and that it's going to be not just that amount that the
20 companies are going to discretionarily distribute when they
21 need only the parts that they don't have in inventory to
22 continue producing. But they need to honor the commitments
23 that we have been supplying month after month of the important
24 raw materials that you need to produce the final goods. And
25 that is all that I have to say.



1 THE COURT: Mr. Garcia, thank you very much for
2 your -- what is the name of your company?

3 MR. GARCIA: My company is Polypack (phonetic). We
4 are a polybag. We produce packaging, and I supply two of the
5 debtors in (indiscernible).

6 THE COURT: And which companies do you provide
7 business to? Which debtors? Do you know the name of the
8 companies that you --

9 MR. GARCIA: Tridonex.

10 THE COURT: Uh-huh.

11 MR. GARCIA: Yes, Tridonex and Trico.

12 THE COURT: Okay.

13 MR. GARCIA: It is not much, probably \$150,000, but
14 for us, it is a significant amount.

15 THE COURT: No, it's -- I -- what I am approving
16 today is for the debtor to have an amount of money to then to
17 go out and reach out to vendors to be able to -- so they can
18 start to -- the law -- the bankruptcy law prevents them from
19 making any payments on amounts that are due as of right now.
20 And what I am doing now is being asked to authorize the debtor
21 to have a certain amount of money for which they can go out and
22 reach out to vendors. So what I am going to ask the debtors to
23 do is -- and their professionals -- to make sure -- I don't
24 know if you are on this, but I am going to ask that someone
25 reach out to you and to have -- at least have a line of



1 communication with you so you can explain who you are and the
2 amounts that are owed. Okay?

3 I can't -- I am not here to -- they exercise their
4 business judgment as to what it is, but you appeared today, and
5 I very much appreciate you taking the time. And I know that
6 you were here earlier, and you have been listening to the
7 hearing. So thank you very much, Mr. Garcia.

8 MR. GARCIA: Thank you very much, Your Honor. I
9 really appreciate it.

10 THE COURT: Thank you.

11 Mr. Daniel, can you hit "five star," and I will
12 unmute your line. Mr. Daniel, I can't hear you. Can you --

13 MR. DANIEL: Can you hear me?

14 THE COURT: Yes, I can hear you now. Very much.
15 Thank you.

16 MR. DANIEL: Okay. So I just want to get a
17 clarification from counsel for (indiscernible). You mentioned
18 that critical vendors by definition -- and I have got my
19 general counsel online and also our bankruptcy lawyers also
20 just to make sure that we understand exactly what is going on.
21 So we are owed about \$1.2 million. We supply about 7 or 8
22 (indiscernible) transportation services.

23 Now, just to put things in perspective, you can -- I
24 am not sure if you have come across the United States Code for
25 the Bills of Lading Act. So anyways, I will leave that with



1 you.

2 THE COURT: I can --

3 MR. DANIEL: I'm sure you know exactly what that is.

4 THE COURT: I am familiar with it, but I would --
5 you know, to tell you that I, you know, spend plenty of time
6 with it, I --

7 MR. DANIEL: Okay.

8 THE COURT: -- that would be -- I'm being
9 intellectually honest and telling you I am aware of it. I am
10 aware of some provisions, but certainly not probably to the
11 extent that you are, sir.

12 MR. DANIEL: I am not an expert at it. I am not -- I
13 am not lead counsel, but I do rely on the expertise of my
14 advisors.

15 But anyways, putting that aside. So I mean, just in
16 its simplicity, obviously, you know, we have all the rights to
17 go after (indiscernible) shipper or consignee supplier or
18 customer should we not be paid. But I do not think that is the
19 relevant answer. What I am trying to get clarification on from
20 counsel is -- and maybe I missed this and just -- you know,
21 there is just a ton of language going on. You mentioned that
22 critical vendors, which were clearly being defined, and we have
23 got a prepetition amount of approximately \$1.2 million. And in
24 the ordinary course of business, of course, we are going to be
25 paid over time. But you mentioned that payments will be judged



1 based on the potential harm to the business should a vendor,
2 you know, I guess, stop supplying services or whatever the case
3 may be. Is there going to be some kind of a split? Like, are
4 you -- is there going to be some vendors that are not going to
5 be paid and some vendors are going to be paid depending on
6 whether, you know, whether management feels that they are a
7 critical supplier or not? Or is it -- because we are a
8 transportation, we have provided supply chain solutions. You
9 know, we have trucked a lot of product to and from the company
10 and to numerous customers over the last -- well, the
11 receivable's about 120 days old. So --

12 THE COURT: Here is what I can tell you, Mr. Daniel,
13 is that --

14 MR. DANIEL: (Indiscernible).

15 THE COURT: -- the amount that is -- so there is an
16 interim relief request, and then there is kind of a total
17 relief. So what they are asking for is about \$79 million now
18 into certain buckets between what they call critical vendor
19 claims, non-U.S. vendor claims, some folks who have liens, like
20 suppliers and warehousemen, someone who may have like a
21 mechanic's liens, those types, and then there are certain
22 suppliers who provided goods within 20 days before the
23 bankruptcy, and I do not want to get into specific who they
24 are, but they are -- the Bankruptcy Code gives certain parties
25 priority. So you got to have these four buckets of claims. It



1 is being requested 79 on an interim basis, and then at the
2 October 29th hearing would be for the remainder of the amount
3 that would be included.

4 So, you know, I think about another \$41 million will
5 be asked for at the final hearing. So they are not -- so, I
6 think just by definition, there are some vendors -- the debtor
7 is going to have to take a hard look and then figure out what
8 it believes it needs over the next 20 to 30 days, and it will
9 begin discussions with the parties about a payment in order --
10 you know, kind of a payment on the pre-bankruptcy in order to
11 continue based on an agreement to do it, you know, in the
12 ordinary course of business. Sometimes that is a total
13 payment; sometimes, it's a partial payment. Sometimes, you
14 know -- it just depends on kind of the debtors' business
15 judgment, and that is what the ask is. So it's, like, 79
16 million now and then 120 in total at the end.

17 So by its very nature, there is going to be some --
18 what they are asking for now are kind of buckets of cash that
19 they can then get with management, get with the team, get with
20 the business folks, and then figure out how -- the best way to
21 use the amount of money that I am going to -- that they are
22 asking me to utilize in the ordinary course, which is -- but
23 just by definition, I am not sure everyone is going to get paid
24 in full under one of these orders, but it certainly leads for
25 discussion between the parties, and that's what I am being



1 asked for in the motion. I think that's the most I am going to
2 probably be able to tell you because that is really what I can
3 authorize at this time.

4 MR. DANIEL: So, Your Honor, do you mind me asking --
5 I am curious, how do they come up with the number? Do they
6 take the total payable to vendors, or are they coming up with
7 just, you know, a portion of that? You know, how does that --
8 and I guess my other question is will the company, you know, I
9 guess, take the risk that if we don't know in the meantime
10 whether or not we are going to get paid, then I think that
11 certain transportation companies are going to put potentially
12 suppliers and customers on notice for the possibility of being
13 held liable for freight payments under the Bills of Lading Act.

14 THE COURT: Yeah. I think the answer is --

15 MR. DANIEL: So I think that --

16 THE COURT: I don't think anybody is going to tell
17 you right now, but I suspect your bankruptcy lawyer is going to
18 reach out to their bankruptcy lawyers, and that's what happens.
19 That's what these discussions kind of take place, to be honest.
20 It's --

21 MR. DANIEL: It sounds like a plan.

22 THE COURT: What I'm here to do is just authorize the
23 use, but -- which I am going to do. I think it certainly, from
24 listening to Mr. Garcia and Mr. Daniel, there are critical
25 vendors out there, and there is a need. if they're showing up

1 on a first day. And so I think they have, quite frankly,
2 established the need, in addition to the declarations, for the
3 relief requested, and so I am going to grant the interim order
4 and allow debtors' counsel and the business folks to start
5 having those conversations in terms of how the money gets
6 allocated. I do not make findings on that today.

7 What I am authorizing is the payment of
8 pre-bankruptcy claims, which normally people would have to wait
9 until the end of a case to get, which creates issues and avoids
10 disputes with respect to the automatic stay in terms of seeking
11 collection against the debtor because parties cannot seek to
12 threaten the debtor or exercise self-help remedies with respect
13 to debtors because that violates the automatic stay. And so
14 this allows a bucket of money for the debtor to be able to use
15 on an interim basis to allow the debtor to pay and legally be
16 authorized to pay certain creditors and to engage in a
17 conversation where the debtor and the creditors can have a
18 conversation. Other than that, the automatic stay would have
19 went into effect and it would have been limited in the types of
20 discussions that could have been made with respect to
21 pre-bankruptcy payments. So I think it makes sense.

22 Is the order at 13 still the one that I am supposed
23 to sign, Counsel?

24 MR. BARLOW: Yes, Your Honor. That is correct.

25 THE COURT: Okay. I will get it signed and on the



1 docket. Where do we go next?

2 MR. BARLOW: All right. I will cede in the podium
3 for my colleague, Angeline Leggiero.

4 THE COURT: Actually, let me just make sure I have
5 got that right. It's the order -- yes, at 13, right?

6 MR. BARLOW: Yes, that is correct, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. BARLOW: Thank you.

9 MS. LEGGIERO: Good afternoon, Your Honor. Can you
10 hear me okay?

11 THE COURT: Just fine. Good afternoon.

12 MS. LEGGIERO: for the record, Angeline Leggiero of
13 Weil Gotshal on behalf of the debtors. I will be addressing
14 items one and five on the agenda, the insurance motion, and
15 creditor matrix motion. If it would be okay with you, Your
16 Honor, I would like to start with the insurance motion.

17 THE COURT: Okay.

18 MS. LEGGIERO: Thank you. The insurance motion is
19 item number five on the agenda, filed at Docket Number 10. By
20 this motion, the debtors seek authority to continue their
21 insurance policies and programs, surety bond program, and
22 letters of credit. The debtors also seek to continue their
23 workers' compensation program in the ordinary course, grant
24 relief from the automatic stay to permit employees to proceed
25 with their workers' compensation claims, and for the insurance



1 carriers to administer such claims in the ordinary course.

2 As set forth in the motion, the debtors have a wide
3 variety of insurance policies that provide coverage for various
4 business risks. For many of the insurance policies, the
5 debtors have entered into premium financing arrangements to
6 cover the cost of those policies. By the motion, the debtors
7 seek to honor their obligations under those financing
8 arrangements and to continue to enter into financing
9 arrangements in the ordinary course.

10 I don't believe we've received any opposition to the
11 relief sought in the insurance motion. We did receive comments
12 from the U.S. Trustee's Office and the DIP lenders that have
13 been incorporated into the proposed orders.

14 Unless Your Honor has any questions, the debtors
15 respectfully request that the Court grant the requested in the
16 insurance motion.

17 THE COURT: Okay. Anyone wish to be heard with
18 respect to the insurance motion?

19 Okay. I'm going to just note this is an important
20 request because it allows the debtor to continue to make
21 payments to insurance providers to maintain its insurance
22 coverage. And it is actually required under U.S. Trustee
23 guidelines, but it also helps preserve value for the estate.

24 I have reviewed the proposed order, and I will get it
25 signed and on the docket. Counsel.



1 MS. LEGGIERO: Thank you, Your Honor. Next is agenda
2 item number one, which is the creditor matrix motion filed at
3 Docket Number 5.

4 With this motion, the debtors request authority to
5 file a consolidated creditor matrix and a consolidated list of
6 the debtors' 30 largest unsecured creditors. As Your Honor is
7 aware, there are 112 debtors in these cases, and the
8 preparation of separate lists of creditors for each debtor
9 would be expensive, time-consuming, and administratively
10 burdensome.

11 Second, the debtors seek authorization to redact
12 personal information of the individuals included in the
13 debtors' filings.

14 Third, Your Honor, the debtors seek approval of the
15 form and manner of notifying the creditors of commencement of
16 these Chapter 11 cases and the scheduling of the 341 meeting of
17 creditors.

18 In advance of this hearing, we shared a draft of this
19 motion with the U.S. Trustee, who did not have any comments.
20 Unless Your Honor has any questions, the debtors respectfully
21 request that the Court grant the relief requested in the
22 motion.

23 THE COURT: Okay. Let me -- just give me one moment.
24 Anyone wish to be heard with respect to the creditor matrix
25 motion? And this is more of an administrative motion. Let's



1 see.

2 I meant to tell you on the -- I think it was on the
3 insurance motion, or was it the creditor matrix motion? You're
4 going to see my name signed really small. It will still have
5 the same effect. I just can't -- I'm prohibited from signing
6 pages when they're just blank, and my name, just so somebody
7 doesn't cut and paste it and add it somewhere else, or the
8 concern would be. So you'll have a shrunken Chris Lopez
9 signing the order, but it works just fine. All right. But I
10 will grant the creditor matrix motion. It -- quite frankly, it
11 just provides a large protection for parties to make sure that
12 personal identifiable information isn't just disseminated
13 because the company filed for Chapter 11 bankruptcy.

14 So I'll get that signed and on the docket. Let me
15 just make sure. Okay. Where do we go next?

16 MS. LEGGIERO: Thank you, Your Honor. With that, I'm
17 going to turn the podium over to my colleague, Thomas Palisi.

18 THE COURT: All right. Good afternoon.

19 MR. PALISI: Good afternoon, Your Honor. For the
20 record, Thomas Palisi of Weil Gotshal & Manges on behalf of the
21 debtors.

22 Today, I will be presenting two motions on today's
23 agenda. First, the motion to extend time to file the debtors'
24 schedules and SOFAs, which can be found at item number two on
25 the agenda and filed at Docket Number 6. And then second, the



1 taxes motion, which is item number four on the agenda, and can
2 be -- and it was filed at Docket Number 8. And I will proceed
3 in that order, unless Your Honor prefers otherwise.

4 THE COURT: Okay. Thank you. Please proceed.

5 MR. PALISI: So first, the schedules and SOFA
6 extension motion. For this motion, the debtors request the
7 authority to extend the deadline by which the debtors must file
8 their schedules of assets and liabilities and statements of
9 financial affairs and also the initial reports of financial
10 information as set forth in Bankruptcy Rule 2015.3. The
11 debtors request to extend the deadline to file these schedules
12 and reports through and including November 21st without
13 prejudice to their ability to request additional extensions for
14 cause shown.

15 As described in the motion, cause exist for granting
16 the extensions requested based on the size and complexity of
17 the debtors' business. There's 112 entities. And because of
18 that, collecting the voluminous information necessary to
19 prepare these schedules and reports would require a significant
20 amount of time and effort for the debtors' employees and
21 advisors, and their time and effort would be best spent
22 stabilizing the debtors' business in these early days.

23 The motion was reviewed by the U.S. Trustee prior to
24 filing, and the U.S. Trustee had no comments. Unless Your
25 Honor has any further questions, the debtor submits the relief



1 requested as necessary, appropriate, and consistent with cases
2 of similar size.

3 THE COURT: What is similar to this size? This is
4 pretty bit. I -- no, I got it. Let's U.S. Trustee see. Just
5 give me one moment. Let's see.

6 I don't mean to keep you in suspense. I will grant
7 the relief requested. If there's any -- these schedules need
8 to be filed under penalty of perjury, and so accuracy is
9 incredibly important, especially in this case. And so I will
10 grant the relief requested.

11 It's -- I know that much has been said about the
12 investigation, and that there are independent managers looking
13 into this, and I'm sure if Mr. Goldman and Mr. Transier want
14 counsel, they'll get it. So I am -- today, I'm just being
15 asked to approve an extension of the time to file the
16 schedules. I think it's appropriate in this case, and the time
17 they request is appropriate, and I will grant the relief
18 requested. Thank you.

19 MR. PALISI: Thank you, Your Honor. And next, the
20 taxes motion. By this motion, the debtors seek authority to
21 pay taxes and fees to various local, state, and federal taxing
22 authorities that arose prior to the petition date.

23 As described in the motion, the amounts provided are
24 good faith estimates based on the debtors' books and records,
25 so they remain subject to audits and other adjustments. The



1 debtors generally pay six types of taxes: property taxes;
2 income taxes; sales and use taxes; customs and import duties;
3 franchise, business, and other related taxes; and finally
4 government fees and other miscellaneous taxes. In total, the
5 debtors seek authority to pay an estimated \$22.29 million in
6 accrued and unpaid taxes and assessments.

7 Your Honor, if unpaid, the taxing authorities may
8 take actions that would interfere with the debtors' transition
9 into Chapter 11 and potentially impose costs on the debtors'
10 estate. For example, personal liability against D's and O's,
11 the potential assertion of liens, or the occurrence of interest
12 and penalties. Moreover, because certain tax -- certain of
13 such tax claims may qualify as priority claims, the relief
14 requested should not prejudice general unsecured creditors.

15 This motion was also reviewed by the U.S. Trustee, as
16 well as the DIP lender, prior to filing. We implemented all
17 their comments as was discussed, and unless Your Honor has any
18 further questions, the debtors respectfully request the Court
19 enter their order granting the tax motion. Thank you.

20 THE COURT: Granted. Pay your taxes.

21 MR. PALISI: Sounds good. Thank you, Your Honor.

22 And now I'll cede the podium to my colleague, Nate McCabe.

23 MR. MCCABE: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. MCCABE: Nate McCabe of Weil, Gotshal & Manges.



1 Good afternoon. Proposed counsel for the debtors.

2 Your Honor, I will be addressing items number three
3 and seven on the agenda, which are the utilities motion and the
4 automatic stay motion, respectively. Unless Your Honor has any
5 objection, I will proceed in that order.

6 THE COURT: Okay.

7 MR. MCCABE: Your Honor, the debtors utility motion
8 was filed at Docket Number 7, and by this motion, the debtors
9 request entry of an order approving the proposed form of
10 adequate assurance of payments to utility companies,
11 establishing procedures for resolving objections by utility
12 companies, and prohibiting utility companies from altering,
13 refusing, or discontinuing service.

14 The debtors require standard utility services to
15 operate their business effectively. Based on the monthly
16 average for the past 12 months, the debtors estimate that the
17 cost of their utilities for the next 30 days would be
18 approximately \$3.4 million. To provide the utility companies
19 with adequate assurance pursuant to Section 366 of the
20 Bankruptcy Code, the debtors propose to deposit cash in the
21 amount of two-week utility services into a segregated account
22 maintained for the benefit of the utility companies. Here, the
23 total amount of that deposit would come to \$1,705,219. We have
24 also proposed certain adequate assurance procedures that we are
25 asking Your Honor to approve today, and if the debtors do



1 receive any additional demand, we will proceed in accordance
2 with those procedures.

3 Your Honor, preserving utility services on an
4 uninterrupted basis is essential to the debtors' ongoing
5 operations, and therefore critical to the success of these
6 chapter 11 cases.

7 This motion was reviewed by the U.S. Trustee and DIP
8 lenders prior to filing. The U.S. Trustee had no comments, and
9 the DIP lenders are supportive of the relief requested. So,
10 unless Your Honor has any questions, the debtors would
11 respectfully request that the Court enter the utilities order.

12 THE COURT: Anyone wish to be heard?

13 And before I forget, let me just publicly thank the
14 Office of the United States Trustee who are -- you know, they
15 always read everything that I read, but they read it before I
16 do and give comments, and they're just incredible, the amount
17 of work that they do, and I very much appreciate them working
18 here.

19 I've reviewed the proposed utilities motion, and for
20 those that may be listening -- and we still have about 300
21 people on the line -- the utilities under the Bankruptcy Code
22 are provided for in a section all to themselves, Section 366,
23 and the debtor must put forth adequate assurance of the ability
24 to pay to perform. If not, there's a certain amount of time
25 the utilities can actually stop providing services, so you're



1 talking about no internet, no phone, which can lead to very
2 serious consequences, obviously. So on the first day, the
3 debtor comes in and provides a proposed form of adequate
4 assurance, which is typically two weeks in a deposit form for
5 them, so they can look to it. But the utilities, if they want
6 to, they can come back if they don't think it's enough.

7 I'm going to mute someone's line here.

8 They can always come back, so the debtor gets to
9 comply with the Bankruptcy Code, and the utilities can come
10 back if they feel the need to do so, and parties can always
11 talk. So I've reviewed the proposed order, and it looks good
12 to me. It is customary, and I will grant the relief requested.

13 MR. MCCABE: Thank you, Your Honor.

14 So with that, I will turn to our last item on the
15 agenda, which is item seven, the automatic stay motion filed at
16 Docket Number 14.

17 By this motion, the debtors request entry of an order
18 enforcing the protection of Section 362, 365, 525, and 541 of
19 the Bankruptcy Code to help ensure that the debtors' global
20 business operations are not disrupted. As explained in the
21 critical vendors motion, many of the debtors' vendors are not
22 based in the U.S. Because international parties may be less
23 familiar with the global and self-effectuating nature of these
24 provisions, the debtors simply seek a comfort order reiterating
25 the effect of these sections.



1 The United States Trustee has also reviewed this
2 motion and did not have any comments. So, unless Your Honor
3 has any questions, the debtors would request that the Court
4 enter the comfort order.

5 THE COURT: Can you remind me which Docket Number --
6 oh, it's 14, right?

7 MR. MCCABE: That's correct, Your Honor.

8 THE COURT: Okay. I did get a chance to look at
9 this. This is what is called a comfort motion because it's
10 just to -- it's an order that I sign that restates what is
11 property -- excuse me, what is the automatic stay and the
12 effects of it. And we're doing nothing here but kind of
13 re quoting what the automatic stay is. But it allows the
14 debtors to show it to parties who may not be familiar with it,
15 certainly foreign companies in terms of what it requires and
16 certain other sections, including property of the estate, which
17 I'm not talking about anymore today.

18 So, I will grant the relief requested. I reviewed
19 the order to make sure that it doesn't say anything more than
20 what the Code already provides. And I'm comfortable that that
21 has been accomplished. So, I will sign that order as well.

22 MR. MCCABE: Thank you, Your Honor. That's all for
23 me, so now I'll cede the podium back to my colleague, Jason
24 George, for some final remarks.

25 THE COURT: Thank you.



1 MR. GEORGE: Your Honor, we don't have anything
2 further for the Court today other than to thank Your Honor for
3 your time and hearing us on short notice. The debtors very
4 much look forward to using the relief granted today to
5 stabilize their business and run a process that will maximize
6 the value of their enterprise.

7 THE COURT: Okay.

8 MR. GEORGE: Thank you.

9 THE COURT: Thank you. And I would just ask again
10 that you just reach out to Ms. Saldana once those orders have
11 been uploaded. If you get a really fancy title like the one
12 that you put in there, it means she entered it. If it just
13 says something like DIP order, you can tell it was me that
14 signed it. So that's the code. You can tell who actually
15 entered the order.

16 So having all said, I very much appreciate anything.
17 Let me just open it up. Does anyone else wish to be heard on
18 anything before we conclude for today? I very much appreciate
19 it. I look forward to seeing everyone in Houston at the end of
20 the month. Everyone's rights are preserved. And I know much
21 has been said, but we take every case like we always do, one
22 day at a time, one motion at a time, and we'll consider
23 everything as it comes up. I very much appreciate it.

24 Anything else we need to talk about today? Anyone
25 else have any additional matters before the Court in this case?



