

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

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IN RE: CASE NO. 08-10928-BKC-JKO

TOUSA, INC., et al.,

Debtors.

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ALL MOTIONS ON THE CALENDAR

(CP628), (CP694), (CP82), (CP663)

April 9, 2008

The above-entitled cause came on for hearing before the HONORABLE JOHN K. OLSON, one of the Judges of the UNITED STATES BANKRUPTCY COURT, in and for the SOUTHERN DISTRICT OF FLORIDA, at 299 East Broward Blvd., Fort Lauderdale, Broward County, Florida, on Wednesday, April 9, 2008, commencing at or about 9:30 a.m., and the following proceedings were had:

Reported By: Margaret Franzen

1 APPEARANCES:
2
3 BERGER SINGERMAN, by
4 PAUL S. SINGERMAN, ESQUIRE
5 and
6 KIRKLAND & ELLIS, by
7 M. NATASHA LABOVITZ, ATTORNEY-AT-LAW, by
8 JOSHUA SUSSBERG, ESQUIRE
9 on behalf of the Debtors
10
11 AKIN GUMP STRAUSS HAUER & FELD, by
12 PHILIP C. DUBLIN, ESQUIRE
13 and
14 STEARNS WEAVER, by
15 PATRICIA A. REDMOND, ATTORNEY-AT LAW
16 on behalf of the Committee of Unsecured Creditors
17
18 CHADBOURNE & PARKE, by
19 JOSEPH H. SMOLINSKY, ESQUIRE
20 and
21 STICHTER RIEDEL BLAIN & PROSSER, by
22 RICHARD PROSSER, ESQUIRE
23 and
24 SMITH HULSEY & BUSEY, by
25 STEPHEN D. BUSEY, ESQUIRE
on behalf of CitiBank North America, Inc.,
as agent for the D.I.P. loan
BILZIN SUMBERG BAENA PRICE & AXELROD, by
MATTHEW I. KRAMER, ESQUIRE
and
BRACEWELL & GIULIANI, by
KURT MAYR, ESQUIRE (Via Telephone)
on behalf of the Second Lien Holders
and Wells Fargo, as successor administrative agent
WILKIE FARR & GALLAGHER, by
ROBIN SPIEGEL, ATTORNEY-AT- LAW (Via Telephone)
on behalf of KPMG, LLC
Continued.....

1 ECKERT SEAMANS, by
2 KAREN LEE TURNER, ATTORNEY-AT-LAW (Via Telephone)
3 on behalf of Zurich American Insurance Company
4
5 MARKOWITZ DAVIS RINGEL & TRUSTY, by
6 ROSS HARTOG, ESQUIRE
7 on behalf of BMHC Holdings
8
9 PROCOPIO CORY HARGREAVES & SAVITCH, by
10 GERALD P. KENNEDY, ESQUIRE (Via Telephone)
11 on behalf of SC Design
12
13 WEIL GOTSHAL & MANGES, by
14 ROBERT LEMONS, ESQUIRE (Via Telephone)
15 on behalf of GMAC Model Homes
16
17 JEFFREY BAST, P.A., by
18 JEFFREY BAST, ESQUIRE
19 and
20 FORRESTER & WORTH, by
21 S. CARY FORRESTER, ESQUIRE (Via Telephone)
22 on behalf of Red River, Eldorado 6500, LLC and
23 Rancho Sierra Vista, LLC
24
25 OFFICE OF THE UNITED STATES TRUSTEE, by
STEVEN SCHNEIDERMAN, ESQUIRE
Attorney/Advisor
on behalf of the United States Trustee

1 THE COURT: Good morning, folks.
2 Please be seated. Welcome to the penultimate
3 session in this courtroom.
4 Ms. Redmond, you always make a good
5 entrance, some are better than others.
6 MS. REDMOND: It was Mr. Schneiderman who
7 took my bag away, your Honor.
8 THE COURT: He unbalanced you, I
9 understand.
10 Mr. Singerman, do we have people who
11 are attending by phone?
12 MR. SINGERMAN: Your Honor, I don't
13 know the answer to that question. I know
14 that ---
15 THE COURT: You sound like I did last
16 week.
17 MR. SINGERMAN: Well, I hope I'm on the
18 tail end of it, your Honor. I'm sorry you were
19 last week.
20 THE COURT: Let me see if I can call in
21 and find out if there's anybody who's here.
22 (Thereupon, the Court called into the
23 conference call, after which the following proceedings
24 were had:)
25 THE COURT: Good morning. This is

1 Judge Olson. Is there anyone on the line?
2 MR. FORRESTER: Yes, sir. This is
3 Cary Forrester.
4 MR. MAYR: Yes, your Honor. This is
5 Kurt Mayr of Bracewell & Giuliani on behalf of
6 the second lien lender group and Wells Fargo, as
7 second lien agent.
8 THE COURT: Thank you.
9 MR. KENNEDY: Good morning, your Honor.
10 Gerald Kennedy from Procopio Cory Hargreaves &
11 Savitch on behalf of SC Design Group.
12 MS. TURNER: This is Karen Turner of
13 Eckert Seamans on behalf of Zurich American
14 Insurance Company.
15 MR. LEMONS: Your Honor, it's
16 Robert Lemons from Weil Gotshal & Manges on
17 behalf of GMAC Model Home Finance, LLC.
18 THE COURT: Very good. Anyone else?
19 MS. SPIEGEL: Robin Spiegel from
20 Willkie Farr & Gallagher on behalf of KPMG, LLP.
21 THE COURT: Okay.
22 MR. HARTOG: Good morning, your Honor.
23 Ross Hartog of Markowitz Davis Ringel & Trusty
24 on behalf of BMHC Holdings.
25 THE COURT: Okay. Let me take

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1 appearances in the courtroom.
2 MR. SINGERMAN: Good morning, your
3 Honor. May it please the Court, I'm
4 Paul Singerman from Berger Singerman. Our firm
5 is co-counsel to Kirkland & Ellis in the TOUSA
6 cases. I expect to be joined by Ms. Labovitz and
7 Mr. Sussberg when, apparently, traffic permits.
8 THE COURT: Oh, boy.
9 MR. SINGERMAN: Thank you, your Honor.
10 MR. KRAMER: Good morning, your Honor.
11 Matt Kramer of Bilzin Sumberg on behalf of the
12 informal committee of second lien term loan
13 lenders and Wells Fargo.
14 MR. DUBLIN: Good morning, your Honor.
15 Phil Dublin, Akin Gump, on behalf of the
16 committee.
17 THE COURT: Mr. Dublin, good morning.
18 MR. SMOLINSKY: Good morning, your
19 Honor. Joe Smolinsky, Chadborne & Parke, on
20 behalf of CitiBank North America, as agent.
21 I have with me Stephen Busey, Smith
22 Hulsey & Busey, on behalf of the prepetition
23 agent and Dick Prosser from Stichter Reidel on
24 behalf of the postpetition agent.
25 THE COURT: Good morning.

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1 MS. REDMOND: Good morning, your Honor.
2 Patricia Redmond, local counsel for the committee
3 and your Honor already noted my entrance into the
4 courtroom.
5 MR. BAST: Good morning, your Honor.
6 Jeffrey Bast from Jeffrey Bast, P.A. on behalf of
7 secured creditors Red River, Eldorado 6500, LLC
8 and Rancho Sierra Vista, LLC and my co-counsel,
9 Cary Forrester, is also on the phone.
10 THE COURT: Very good.
11 MR. SCHNEIDERMAN: Steven Schneiderman,
12 your Honor, for the U.S. Trustee and for the
13 record, I did not trip Ms. Redmond.
14 MS. LABOVITZ: Your Honor,
15 Natasha Labovitz, here with my colleague,
16 Josh Sussberg, on behalf of the debtors.
17 THE COURT: Good morning to all of you.
18 Mr. Schneiderman, me thinks thou
19 protests too much, but I'm not sure. I'll find
20 out the scoop from Ms. Redmond at the ABA
21 meetings, I'm sure.
22 Okay. I understand that once again we
23 have an agenda that is virtually meatless and
24 that you have all been working hard to resolve
25 that which looked like it was going to be

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1 exciting.
2 So, Mr. Sussberg, what have we?
3 MR. SUSSBERG: Good morning, your
4 Honor. I apologize for being late.
5 THE COURT: Oh, please don't.
6 MR. SUSSBERG: I'm used to walking and
7 the Florida traffic is a little different than
8 the New York City foot traffic.
9 In any event, we have done our best to
10 resolve everything that may have been exciting.
11 The first item on the agenda is the motion for
12 relief from stay from Bank of Florida. I'm happy
13 to report that we have agreed upon an order as
14 between the debtor, the creditors' committee, and
15 Bank of Florida to permit Bank of Florida to go
16 ahead and foreclose on the property.
17 TOUSA actually has no interest in the
18 property that Bank of Florida seeks to foreclose
19 upon by virtue of rejection of an option
20 agreement back in March. Bank of Florida had a
21 first mortgage on the property. TOUSA had
22 entered into an option agreement with the obligor
23 on the note, which subsequently defaulted. TOUSA
24 thereafter rejected the option agreement.
25 We've entered into an order to permit

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1 Bank of Florida to foreclose with a release of
2 claims mutually between the parties. I will
3 upload an order after the hearing.
4 THE COURT: Very good. It sounds like
5 a perfectly appropriate resolution.
6 MR. SUSSBERG: Yes, thank you.
7 THE COURT: Ms. Redmond.
8 MS. REDMOND: Yes, your Honor. This is
9 Stearns Weaver's application to be retained as
10 local counsel for the creditors' committee. We
11 have disclosed each of our connections with the
12 debtors, their creditors, equity holders and
13 parties in the case.
14 To my knowledge, there's been no
15 objection.
16 THE COURT: Absent objection, I will
17 happily approve the application.
18 MS. REDMOND: Thank you, your Honor.
19 I'll upload an order.
20 THE COURT: Thank you, Ms. Redmond.
21 MR. DUBLIN: Good morning again, your
22 Honor. For the record, Phil Dublin, Akin Gump,
23 on behalf of the committee.
24 Your Honor, the next matter on the
25 agenda is the committee's application to retain

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1 the Garden City Group as its information agent
2 nunc pro tunc to February 27th.
3 As your Honor may recall, at the last
4 hearing on March 20th, the committee sought
5 approval and obtained approval of an information
6 protocol, commonly referred to as the Revco
7 protocol, in order for the committee to get a
8 better understanding from the Court as to its
9 obligations under Bankruptcy Code Section
10 1102(b)(3) and to implement procedures to comply
11 with those obligations.
12 As my partner, Daniel Golden,
13 foreshadowed at the hearing, the committee had
14 retained Garden City Group to assist us in
15 complying with those obligations. The services
16 that the Garden City Group will provide, and has
17 been providing since February 27th, are set forth
18 in the application and the attached engagement
19 letter to the application.
20 Their primary function is creating and
21 maintaining a website to provide for the
22 information provided by the protocol.
23 THE COURT: What's the URL of the
24 website?
25 MR. DUBLIN: It's Tousacommittee.com.

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1 Since the website went live on March 21st, we've
2 had over 100 visitors to the website that have
3 viewed thousands of pages of information.
4 THE COURT: One hundred?
5 MR. DUBLIN: Over a hundred. We
6 believe that ---
7 THE COURT: Probably including each of
8 the people in this courtroom --
9 MR. DUBLIN: Probably multiple times.
10 THE COURT: -- perhaps no one else.
11 Okay.
12 MR. DUBLIN: Your Honor, we believe
13 that the Garden City Group is well qualified to
14 provide these services. They have provided them
15 in a number of large Chapter 11 cases, including
16 Calpine, Boise & O'Sullivan.
17 Attached to the application was an
18 affidavit of disinterestedness from Jeffrey Stein
19 of Garden City and we request that Garden City be
20 compensated as an administrative professional,
21 similar to the debtors' claims agent, without the
22 requirement to submit fee applications.
23 Your Honor, I will note that prior to
24 the hearing I spoke with Mr. Schneiderman, who
25 raised two issues with respect to the

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1 application, one with respect to a limitation of
2 liability provision and the other with respect to
3 a choice of law provision.
4 I advised Mr. Schneiderman that I
5 thought resolving those issues would be no
6 problem at all and that we would settle an order
7 with him and then submit it to the Court.
8 THE COURT: Okay. Any other
9 objections? Hearing none, I'll grant the
10 application subject to your working out those two
11 terms with Mr. Schneiderman.
12 MR. DUBLIN: Thank you, your Honor.
13 THE COURT: Thank you. Debtors' motion
14 to extend time to remove. Ms. Labovitz, good
15 morning.
16 MS. LABOVITZ: Your Honor, this item is
17 one that we previewed with the Court at the last
18 hearing. The debtors have a substantial number
19 of actions pending outside the Bankruptcy Court.
20 We believe that many of those will be addressed
21 and resolved as part of the claims process.
22 To the extent that they're not, the
23 debtors may think that it makes sense to remove
24 some of those actions, but it doesn't make sense
25 to review and address all of them now and,

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1 therefore, we simply seek an extension of the
2 period to remove civil actions until those issues
3 are addressed.
4 THE COURT: To whom did you give
5 notice? Did you give notice to all the
6 counter-parties?
7 MS. LABOVITZ: Your Honor, we gave
8 notice to everyone on the 2002 list. We did not
9 give notice to all of the counter-parties to the
10 litigation actions. We did give notice, however,
11 to everyone who has requested notice in the
12 bankruptcy cases.
13 THE COURT: Well, I suppose that the
14 rubber will meet the road when you seek to remove
15 something past the 90 days and we find out if
16 somebody has some kind of an objection.
17 I certainly will happily enter the
18 order, but without making any kind of a judicial
19 determination that you can actually do this.
20 There is case law that permits this
21 extension?
22 MS. LABOVITZ: There is absolutely case
23 law that permits the extension. It's something
24 that the New York and, I believe, Delaware judges
25 have been doing in cases on a relatively routine

1 basis.
 2 I think, Judge, in light of your
 3 comments, what may make sense is for us to serve
 4 the order on the counter-parties in the various
 5 pending litigation cases.
 6 THE COURT: I just don't want you to
 7 get yourselves caught in a trap.
 8 MS. LABOVITZ: Well, we appreciate the
 9 observation.
 10 THE COURT: Okay.
 11 MS. LABOVITZ: So we'll do that, Judge,
 12 and as cited in the motion, this kind of order
 13 has been entered in other significant cases
 14 before. So we will submit the order according to
 15 the standard procedures.
 16 THE COURT: Very good.
 17 MS. LABOVITZ: The next matter on the
 18 agenda, your Honor, is also something we
 19 previewed for the Court at the last hearing.
 20 It's a motion to grant relief from the automatic
 21 stay, to the extent that it's necessary, to allow
 22 one of the debtors' insurers under its several
 23 insurance policies covering directors and
 24 officers to advance some defense costs while a
 25 securities litigation is pending.

1 Judge, as we previewed, there is still
 2 some question as to whether we will file a motion
 3 to stay the litigation, but given the status of
 4 the litigation right now, it doesn't seem like
 5 the right time for me to address that and we may
 6 very well address it in the future.
 7 Judge, I'll be very happy to walk
 8 through the relief requested in the motion, but
 9 before I get there, let me say that the order
 10 that we would present to the Court today is an
 11 interim order that allows for payment of defense
 12 costs that have been incurred to date, but is not
 13 blanket authorization to pay defense costs that
 14 may be incurred in the future depending on what
 15 happens with the stay motion that I just
 16 mentioned.
 17 THE COURT: How much money is
 18 implicated in the proposed interim order?
 19 MS. LABOVITZ: The number I have at the
 20 moment, your Honor, is approximately 780,000.
 21 There may be some invoices from defense counsel
 22 that haven't come in and haven't been included,
 23 and to the extent that they do come in, we would
 24 certainly update the creditors' committee, who
 25 are the ones who have requested that this apply

1 only retroactively at this time and not
 2 prospectively.
 3 THE COURT: Okay. Let me hear from the
 4 committee on this one.
 5 MR. DUBLIN: Your Honor, the committee
 6 has been evaluating the insurance policies, as
 7 well as the securities litigation, and believe
 8 that come May 7th we will be in a position to
 9 take a formal position on the relief that the
 10 debtors are requesting to enable the defendants
 11 to access the first \$15 million layer of a
 12 \$100 million tower of insurance.
 13 The relief that is being granted today
 14 we believe is reasonable, as it limits the
 15 reimbursement of fees and expenses that have been
 16 incurred to date by numerous professionals,
 17 including Kirkland & Ellis, in connection with
 18 overseeing and synthesizing the defense of the
 19 various parties so that undue costs are not
 20 incurred.
 21 We are comfortable with the limited
 22 relief being sought today. We are continuing to
 23 discuss with the debtors whether it's appropriate
 24 to seek a stay of the action at this time, as
 25 well as analyzing whether the estates have causes

1 of action similar to those that have been raised
 2 in the Durgen (phonetic) class action and the
 3 ability of the debtors or a party, such as the
 4 committee, to access those insurance proceeds in
 5 accordance with the provisions of the policies to
 6 the extent such an action is brought.
 7 THE COURT: Okay. Okay.
 8 MS. LABOVITZ: I just got a quick
 9 update. I've been informed that some of the
 10 invoices I was referring to did come in late last
 11 night and early this morning and, in fact, the
 12 number is closer to a million dollars for the
 13 pre-March 31st relief.
 14 THE COURT: Okay. Well, I'll approve
 15 it on an interim basis and we'll look forward to
 16 hearing from everyone on the substance of what
 17 we're going to do, I guess, with -- or what
 18 you're going to try to do with the D and O claims
 19 next month.
 20 I suspect, by the way, that that little
 21 rattling you're hearing back and forth is them
 22 moving stuff from storage to install in the
 23 courtroom. I don't complain about construction
 24 noises in this building.
 25 MS. LABOVITZ: We understand, Judge.

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1 For a minute I thought it was me causing
2 interference with the microphone, that's why I
3 was walking around, but I guess I can't claim
4 such power.
5 Your Honor, then we'll present to the
6 Court, again, an interim order that is agreed
7 with the creditors' committee. I should also
8 note that we did not receive any objection, but
9 received an inquiry from the plaintiff's counsel
10 in the securities action. They also have not
11 objected to the limited relief that's going
12 forward today, but we will be working with them,
13 as well as with the creditors' committee, in
14 preparation for the May 7th hearing.
15 THE COURT: Okay.
16 MS. LABOVITZ: They've indicated they
17 may have some further questions.
18 The next item on the agenda, Number 6,
19 is the debtors' motion to authorize a contingency
20 fee arrangement with KPMG. As your Honor may
21 recall from your questions at the very first
22 hearing in this case, the debtors have at least
23 two accounting firms that provide tax services to
24 them.
25 The first is E&Y. They are retained in

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1 the case already pursuant to Section 327 of the
2 Code and they're doing the debtors' significant
3 tax work, including the preparation of their
4 federal tax return that was recently filed.
5 KPMG works with the debtors' Newmark
6 subsidiaries in Texas to do state and local tax
7 work there. Some of their work is done on an
8 hourly fee arrangement and, your Honor, that
9 should fit comfortably within the ordinary course
10 professionals' fee cap and, in fact, KPMG was
11 retained as an ordinary course professional, but
12 they also have an arrangement with the debtors to
13 do after the fact analysis of the debtors' tax
14 returns to see if there are any refunds that
15 could be claimed.
16 Basically, Judge, they're looking to
17 see if the debtors missed anything. This is work
18 that right now the debtors don't have the person
19 power to do on their own. So if they didn't
20 bring KPMG or some other firm in to do this kind
21 of work, any potential refunds that are out there
22 would just go unclaimed. So anything that does
23 come in is essentially found money for the estate
24 at this point.
25 KPMG does this work at no up front

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1 costs. It's on a contingency fee basis and the
2 contingency fee here is 35 percent. We don't
3 know if amounts that would become due during the
4 Chapter 11 case would or would not exceed the
5 ordinary course professionals' fee cap, but based
6 on our discussions with Mr. Schneiderman and the
7 creditors' committee, we thought the right thing
8 to do was to bring it to the Court's attention
9 before the fact, get the arrangement approved.
10 Based on discussions with the
11 creditors' committee, we agreed on a fairly
12 comprehensive process for that approval where
13 contingency fees under a certain amount would go
14 through one approval process and contingency fees
15 over a certain amount would go through another
16 approval process and all of that was reflected, I
17 believe, in a revised order that was presented to
18 the Court under a notice.
19 THE COURT: Any comments or objections,
20 Mr. Schneiderman?
21 MR. SCHNEIDERMAN: Yes, your Honor, I
22 think Ms. Spiegel is on the phone for KPMG. We
23 worked out several changes to the proposed order.
24 I will also let the Court know that I made an
25 inquiry as to the initial returns that were

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1 filed, whether or not KPMG had filed those
2 returns, because it seemed strange to me to pay
3 them a contingency fee on a return after a
4 process that they had already been paid to file
5 the return and I have been assured that KPMG did
6 not do the initial work.
7 Your Honor, there have been changes, a
8 carve out of the indemnification language that's
9 consistent with other orders that have been
10 entered and will be discussed with Mr. Sussberg
11 today regarding Lazard, and the time records with
12 respect to the contingency fee above a certain
13 dollar amount will be kept in a general narrative
14 manner because those fees will be subject to a
15 different standard of review if they exceed a
16 certain amount of money on the contingency.
17 THE COURT: Okay.
18 MR. SCHNEIDERMAN: Thank you.
19 THE COURT: Thank you. With those
20 comments, and with the assumption that the order
21 has been vetted with the U.S. Trustee, and is
22 acceptable to KPMG, then I'll approve the
23 application or this motion.
24 MR. HARTOG: Your Honor, this is
25 Ross Hartog on the telephone.

1 THE COURT: Yes, sir.
 2 MR. HARTOG: This is not a matter
 3 that's specific to Item 6. I just want to let
 4 you know that as Mr. Schneiderman, indicated,
 5 Ms. Spiegel is on the phone on behalf of KPMG and
 6 in connection with our office, they filed a
 7 motion to admit Ms. Spiegel pro hac vice, which
 8 we had signed on as -- to vouch for her and
 9 that's pending.
 10 THE COURT: Okay. I haven't -- I
 11 emptied my e-orders inbox yesterday, so at least
 12 as of late yesterday afternoon I hadn't seen it,
 13 but I will, of course, approve that application.
 14 MR. HARTOG: We'll follow up and make
 15 sure the order was uploaded properly.
 16 THE COURT: It may have -- it may have
 17 stopped on one of several stops that are on the
 18 way between thee and me.
 19 MR. HARTOG: Understood, understood,
 20 but it was just filed yesterday --
 21 THE COURT: Okay.
 22 MR. HARTOG: -- so it may have been done
 23 late in the day and I want to make sure it gets
 24 to you.
 25 THE COURT: I'm sure it will,

1 on that motion this morning. We're asking for
 2 that motion to be considered by the Court on
 3 May 7th and in the interim, your Honor, we seek
 4 to make the contract payments, not settlement
 5 compromise payments, but the ordinary contractual
 6 obligation payments that are due between now and
 7 then with a full reservation of rights on behalf
 8 of the debtors to seek to recover that money in
 9 the event the settlement is not approved and the
 10 debtors advance the recharacterization and other
 11 arguments that have been asserted in the
 12 objection that the debtors filed to the GMAC stay
 13 relief motion.
 14 During that period, your Honor, we will
 15 work in an effort to apprise the committee of the
 16 rationale for the settlement, let the committee,
 17 perhaps, inquire. Committee counsel has asked
 18 this morning about cooperation discovery in the
 19 event the committee deems it appropriate and we
 20 expect to work through those matters with the
 21 committee in advance of the May 7th hearing.
 22 THE COURT: Okay. Very good.
 23 Mr. Lemons, anything you want to add to that?
 24 MR. LEMONS: No, your Honor. I think
 25 that succinctly summarized where things are from

1 Mr. Hartog, and if it hasn't appeared in the next
 2 few days, then call Chambers and see if we can
 3 find out where it stopped.
 4 MR. HARTOG: We'll do. Sorry to
 5 interrupt.
 6 THE COURT: No problem. No problem.
 7 It's nice to have you join us, Ms. Spiegel.
 8 MS. SPIEGEL: Thank you, your Honor.
 9 THE COURT: Mr. Singerman.
 10 MR. SINGERMAN: May we proceed, your
 11 Honor, with the GMAC motion, your Honor?
 12 THE COURT: Yes.
 13 MR. SINGERMAN: Docket Entry 304. Your
 14 Honor, late last evening we filed, on behalf of
 15 the debtors, a motion to approve a settlement and
 16 compromise with GMAC.
 17 THE COURT: I have that motion. I read
 18 the first couple of pages and then got into the
 19 single space and decided that I would let you
 20 tell me that which I needed to know this morning.
 21 MR. SINGERMAN: Yes, sir. For purposes
 22 of this morning, your Honor, while we are happy
 23 to apprise the Court of the essential terms of
 24 the settlement, I don't think it's necessary, and
 25 the reason is that we are not asking to proceed

1 our view also.
 2 MR. SINGERMAN: With your Honor's
 3 permission, we would upload an interim order
 4 allowing for the interim payments to which I
 5 referred, and reserving rights and setting the
 6 matter for May 7th.
 7 THE COURT: Mr. Busey and Mr. Dublin.
 8 Mr. Busey, you got to your feet first.
 9 MR. BUSEY: Your Honor, I just wanted
 10 to alert the Court to what may seem obvious.
 11 THE COURT: Would you use the mike,
 12 Mr. Busey, just so the people on the phone can
 13 pick it up?
 14 MR. BUSEY: Yes, your Honor.
 15 THE COURT: Thanks.
 16 MR. BUSEY: On behalf of Citicorp, as
 17 the agent for the senior prepetition facilities,
 18 we have not had an opportunity to see the
 19 agreement and I just wanted to alert the Court
 20 that it may have an impact on our collateral
 21 position, therefore, we have an interest in it
 22 and you may be hearing from us at or before the
 23 May 7th hearing.
 24 THE COURT: Okay. I consider myself
 25 forewarned.

1 MR. DUBLIN: Your Honor, the committee
2 is fine with the hearing for May 7th on this
3 matter. We did advise the debtors, when we found
4 out this motion was being filed yesterday, that
5 we would not consent to an expedited hearing,
6 which was their initial intent. We are happy
7 that they agreed to have that on the regularly
8 scheduled May 7th hearing.

9 We would request an opportunity to
10 review the proposed order before it is uploaded.

11 THE COURT: That makes good sense to
12 me.

13 MR. SINGERMAN: Of course, your Honor,
14 we'll accommodate that request.

15 THE COURT: Probably Mr. Busey, too.

16 MR. SINGERMAN: Yes, sir.

17 MR. LEMONS: And, your Honor, this is
18 Robert Lemons. We'd also, of course, like to
19 have an opportunity to review the order.

20 THE COURT: Sure. This is a case in
21 which I expect that pretty much every order I see
22 is going to be -- will have been vetted past all
23 those who are potentially affected.

24 Okay. D.I.P. financing, roll one more
25 time, Mr. Sussberg?

1 MR. SUSSBERG: Your Honor, we're going
2 to go forward and seek to have the entire
3 financing approved.

4 THE COURT: That will cause a bit of a
5 stir in a number of places.

6 MR. SUSSBERG: The one item that we do
7 want to discuss with your Honor, and I'm thrilled
8 to report, that we have an agreement with respect
9 to Red River and the objection that we discussed
10 at length at the March 20th hearing.

11 This related to a covenant that was
12 recorded and runs with the land, as well as the
13 deed of trust on the property. We have a
14 comprehensive stipulation that we've entered
15 into, along with Citicorp and the first lien
16 lenders in their capacity as D.I.P. lenders, as
17 well. The agreement provides that during this
18 interim period, which is the period prior to the
19 entry of a final order, we will work to resolve
20 this issue in connection with the final order,
21 but during this interim period the debtor has
22 agreed not to construct homes on the property in
23 Arizona, which we had no intention of doing.

24 There will be no priming on an interim
25 basis, and Red River has agreed that any sale or

1 foreclosure of the property will not result in a
2 payment obligation to Red River, but instead, the
3 covenant and the deeds of trust will continue and
4 they will run with the land and in connection
5 with the first retail sale of the property in
6 accordance with the terms of the purchase
7 agreement, the obligation to Red River will be
8 triggered whenever that is, if it's five years or
9 15 years.

10 As I mentioned, we'll seek to include a
11 resolution of this on a final basis in connection
12 with any final D.I.P. order that's presented to
13 the Court between now and the time the interim
14 commitment is extended through.

15 Just so it's clear, the stipulation
16 provides that this is not an assumption or
17 ratification of the purchase agreement and all
18 parties, including the creditors' committee, have
19 reserved the right to challenge the validity,
20 enforceability, priority or extent of the
21 covenants, deeds of trust and the purchase
22 agreement.

23 This agreement has been reviewed by all
24 parties involved, including the creditors'
25 committee. We will execute it today and upload

1 it for your Honor's consideration.

2 THE COURT: Okay. Mr. Bast or
3 Mr. Forrester.

4 MR. FORRESTER: I have nothing to add
5 to that, your Honor. This is Mr. Forrester.

6 THE COURT: Thank you. Mr. Smolinsky.

7 MR. SMOLINSKY: Your Honor, just one
8 clarification. The signatory to the stipulation
9 is Citicorp in their capacity as postpetition
10 agent and lender. The prepetition didn't sign
11 off. This is solely an issue of priming.

12 MR. SUSSBERG: That's correct.

13 THE COURT: Okay. Well, I'll approve
14 that agreement, which looks to me like an arm's
15 length stand still, effectively, but makes pretty
16 good sense.

17 Are we anticipating, Ms. Labovitz or
18 Mr. Sussberg, going forward with a real hearing
19 on the D.I.P. motion next month or is that
20 something that is in the category of manana,
21 manana, y manana, as we say in South Florida?

22 MS. LABOVITZ: I think, Judge, the
23 answer is it's too soon to give any definitive
24 answer on that yet.

25 As Mr. Basta explained at the last

1 hearing, the company is working on developing a
2 business plan to address some of the changes in
3 the markets that have occurred since the end of
4 January when the cases were filed and the debtors
5 anticipate being ready to discuss that plan with
6 the key creditor constituencies before the next
7 hearing, before May 7th. It is probably -- it is
8 probable that the May 7th hearing will come too
9 soon after those discussions for there to be any
10 real movement, but I can't predict that for
11 certain.

12 THE COURT: Well, let me ask you a
13 couple of questions that occur to me and,
14 perhaps, I'm the only one in the courtroom who
15 doesn't know the answer to, has there been a draw
16 on the D.I.P.?

17 MS. LABOVITZ: There has been no draw
18 on the D.I.P. facility.

19 THE COURT: What are the fundamental
20 changes in the company's real estate markets
21 since the end of January?

22 MS. LABOVITZ: Without wanting to
23 preview some issues that we would be happy to
24 share with the Court, but unfortunately would not
25 be so happy to share with reporters who may be on

1 the phone, your Honor, I think it's fair to say
2 that the housing industry continues to face
3 tremendous difficulties.

4 Our observation since the petition date
5 has been that it would be, I think, perfectly
6 possible for the debtors to meet and exceed all
7 of their sales and delivery projections, the
8 problem is that the thing it would take to do
9 that would be to cut the sales prices so much
10 that they might even be selling at a loss, and I
11 don't think anyone thinks that's a very good
12 idea.

13 So the debtors are evaluating pricing
14 and what they expect to be pricing trends in all
15 of their markets and making decisions about
16 whether they even want to continue to meet sales
17 targets in that situation.

18 THE COURT: It is hard to lose money on
19 every transaction and make it up in volume.

20 MS. LABOVITZ: It's something my mother
21 tried to explain to me when I had a lemonade
22 stand when I was a child. I think by now I've
23 learned ---

24 THE COURT: You only had to sell one
25 glass at that price, though, Ms. Labovitz.

1 MS. LABOVITZ: Somehow I never
2 understood that I was taking in all the quarters
3 and she was buying the lemonade.

4 THE COURT: Well, if cost of goods sold
5 is zero, that's terrific, but that's a little
6 hard to arrange.

7 MS. LABOVITZ: Exactly. Your Honor,
8 we're, at this point, trying to bring -- trying
9 to make decisions as between volume and actual
10 profit and work with the various creditor
11 constituencies to understand what that means for
12 the direction of the business, the size of any
13 borrowing need and what should happen with D.I.P.
14 financing.

15 Again, too soon to know whether we'll
16 be ready to bring that before the Court at the
17 May 7th hearing, I tend to think not, but that
18 depends, in part, on whether there is an
19 extension of the existing interim D.I.P.
20 facility, which absent some further consent would
21 expire at the end of April.

22 THE COURT: My recollection from the
23 last hearing is that the company's cash position
24 was a hundred million dollars.

25 What is it now?

1 MS. LABOVITZ: I don't know the precise
2 number, your Honor. It has not changed
3 significantly, except that as the company has
4 worked through the process with the banks and the
5 creditors' committee for approval of payment of
6 some of the prepetition lien claims under the
7 first day orders, those claims are now being
8 paid.

9 The estimated total amount of those
10 were about, I believe -- the estimated total
11 amount of those in the motions were about
12 \$40 million, but I think it will come in less,
13 and those are being paid. The number that was
14 just handed to me as the current cash balance is
15 \$128 million.

16 THE COURT: Okay. Very good. I just
17 don't want us to be in a position where
18 collectively those of you who are working this
19 case, and I, are surprised, if surprises are
20 unfortunate, so I appreciate your keeping me up
21 to speed on those kind of things.

22 MS. LABOVITZ: We appreciate that, your
23 Honor, and we'll make sure going forward to have
24 that cash number.

25 In addition to liquidity, your Honor,

1 we're also paying attention to issues like the
 2 borrowing base, obviously, and other issues.
 3 THE COURT: Okay. Mr. Prosser. It's
 4 an interesting day when I hear from Mr. Smolinsky
 5 and Mr. Busey and you, Mr. Prosser.
 6 MR. PROSSER: Team Citi, your Honor.
 7 THE COURT: Well, all fulfilling your
 8 separate roles, I'm sure.
 9 MR. PROSSER: Judge, just as a general
 10 reminder, while we may be in discussions with
 11 respect to the extension of the D.I.P., there is
 12 no agreement as we stand here today beyond
 13 April 30th with respect to the D.I.P. or use of
 14 cash collateral.
 15 THE COURT: And that's said with a
 16 smile.
 17 MR. PROSSER: Yes, sir.
 18 THE COURT: Okay.
 19 MS. LABOVITZ: That leads, your Honor,
 20 into one of our housekeeping points, which is to
 21 talk about upcoming hearing dates.
 22 We had been in contact with the Court
 23 about the possibility of preserving April 30th as
 24 a hearing date for D.I.P. matters or other
 25 matters, if it becomes necessary, and, in fact, I

1 believe we will be seeking to go forward with
 2 approval of the 2007 deferred compensation motion
 3 on the April 30th date.
 4 THE COURT: Okay.
 5 MS. LABOVITZ: If that's all right?
 6 THE COURT: That's fine. I still have
 7 that date blocked. I assume that you won't need
 8 more than the morning, if all of that?
 9 MS. LABOVITZ: I believe, your Honor,
 10 that it should be a very quick hearing if all
 11 that is up is the 2007 deferred compensation. As
 12 I've said, although I agree and freely concede
 13 that there is currently no authorization to use
 14 cash collateral or for the interim D.I.P.
 15 facility beyond April 30th, we are hopeful that
 16 we wouldn't need to take up the Court's time with
 17 that on April 30th.
 18 THE COURT: You wouldn't need to take
 19 up my time in the sense that you would be
 20 presenting a rollover order presumably?
 21 MS. LABOVITZ: I don't think we would
 22 be presenting a rollover order on April 30th or
 23 in any other way seeking to address cash
 24 collateral.
 25 THE COURT: Won't you need a rollover

1 order? Isn't authority extended currently
 2 through the 30th?
 3 MS. LABOVITZ: I believe the authority
 4 that's extended currently is for the existing
 5 amendment to the D.I.P. facility, which provided
 6 for an extension through April 30th, and then at
 7 the discretion of CitiBank, a further extension
 8 through, I believe, May 30th.
 9 MR. SUSSBERG: Yes.
 10 MS. LABOVITZ: So to the extent that
 11 CitiBank consents, we wouldn't need any further
 12 relief from the Court to put that into effect, it
 13 would go into effect automatically per the
 14 previous order.
 15 THE COURT: Okay.
 16 MS. LABOVITZ: So, in that sense, we
 17 wouldn't need to take up time if things are going
 18 the way I hope that they will.
 19 THE COURT: Three weeks is plenty of
 20 time to negotiate the --
 21 MS. LABOVITZ: All the big issues in
 22 the case.
 23 THE COURT: -- all the big issues in
 24 the case, right.
 25 MS. LABOVITZ: That's what we think.

1 THE COURT: Well, if you think that,
 2 then you have a better understanding of the
 3 economy than anyone in Washington seems to.
 4 MS. LABOVITZ: Your Honor, we're doing
 5 the best we can. Washington doesn't, at the
 6 moment, seem to be bailing us out.
 7 THE COURT: I understand the president
 8 thinks there may be a rocky patch in the economy.
 9 MS. LABOVITZ: I'm glad he let us know.
 10 I've been trying to explain to my husband why I'm
 11 working so hard.
 12 THE COURT: Some of us who, you know,
 13 follow SEC football think that a rocky patch is
 14 something located in southeastern Tennessee.
 15 Those of you who don't follow SEC football, talk
 16 to somebody else in the room.
 17 MS. LABOVITZ: I'll try to get them to
 18 catch me up later. So, your Honor, we have
 19 April 30th, May 7th. Looking ahead, we have a
 20 May 22nd hearing date. If the Court doesn't
 21 mind, I think it might be helpful for those of us
 22 who try to book hotels, to set another hearing
 23 three weeks after that in June.
 24 THE COURT: So you would be aiming for
 25 something like June 12th?

1 MS. LABOVITZ: Something around there.
 2 THE COURT: Okay. That will be fine
 3 with me. I will block off the day, except for a
 4 judge's meeting in the middle of the day.
 5 MS. LABOVITZ: Okay.
 6 THE COURT: I can tell you with a
 7 reasonable amount of certainty that we should be
 8 in the new courtroom by the May 22nd hearing.
 9 MS. LABOVITZ: Well, that's exciting.
 10 We'll look forward to that.
 11 THE COURT: Yeah, especially if you saw
 12 the condition of the room right now, it's
 13 exciting.
 14 MS. LABOVITZ: Okay.
 15 THE COURT: Okay.
 16 MS. LABOVITZ: Thank you, your Honor.
 17 THE COURT: You're welcome. Thank you.
 18 MR. DUBLIN: Your Honor, I would just
 19 like to note one issue. For the April 30th
 20 hearing on deferred compensation, we're awaiting
 21 information from the debtors as to the actual
 22 relief for the people that will be involved in
 23 that motion.
 24 We're hopeful that any issues we have
 25 can be resolved if we have any issues. To the

1 extent that we believe that the hearing may take
 2 time beyond what Ms. Labovitz mentioned, we will
 3 contact Chambers directly.
 4 THE COURT: Okay. That's fine and
 5 similarly, if you all work everything out, I
 6 don't see a particular point in dragging you all
 7 down here for the sheer joy of appearing. If
 8 it's all resolved, we can do a telephonic hearing
 9 or we can do no hearing at all, but make sure
 10 everybody is on board.
 11 MS. LABOVITZ: Thank you, your Honor.
 12 We will let the Court know what happens. We'll
 13 be delivering the information Mr. Dublin
 14 requested this afternoon, I believe. So
 15 hopefully we would be able to proceed
 16 telephonically.
 17 THE COURT: Okay. Well, that's fine.
 18 Look, I'm trying to do this as efficiently as I
 19 can and in a way that saves the estate as much
 20 money as it can.
 21 MS. LABOVITZ: We appreciate that.
 22 THE COURT: I recognize how fast the
 23 meeter spins even when we're at half speed or
 24 half complement, as we are today.
 25 MS. LABOVITZ: Indeed, your Honor --

1 THE COURT: Thanks.
 2 MS. LABOVITZ: -- we appreciate that.
 3 THE COURT: Okay. Mr. Schneiderman.
 4 MR. SCHNEIDERMAN: Your Honor, only two
 5 comments. One, if there is an agreement with the
 6 lender on the D.I.P. financing, I would hope that
 7 they would file a notice of that extension for
 8 the 30-day period so nobody is guessing and would
 9 ask the Court to direct that.
 10 Secondly, your Honor, with respect to
 11 the deferred compensation, I just want to make
 12 sure that there's no KERP issues violative of the
 13 new provisions in the Code. I will not be here
 14 on that date, your Honor. I will be out of the
 15 country for approximately ten to 14 days starting
 16 April 21st.
 17 THE COURT: I hope it's a vacation.
 18 MR. SCHNEIDERMAN: Yes, sir.
 19 THE COURT: Good, good, good.
 20 MR. SCHNEIDERMAN: Mr. Singerman
 21 advises me that's why they set it that day.
 22 THE COURT: Oh, I have no doubt.
 23 MR. SCHNEIDERMAN: I don't think
 24 there's an issue, but I'm going to try to resolve
 25 it beforehand, before I leave, obviously, with

1 Ms. Labovitz, your Honor.
 2 I'd ask that if it needs to be
 3 continued for that issue, or reserving that issue
 4 may be the best way to go, just so that there's
 5 no violation of that particular ---
 6 THE COURT: Okay. I certainly hope
 7 that there's no violation of it either or if it's
 8 something that's marginal and if there's a
 9 dispute about it, obviously then I would like a
 10 hearing and if you're not going to be present,
 11 then perhaps we can push it off a week, but I
 12 don't know what the timing issues are from
 13 Ms. Labovitz' perspective.
 14 MR. SCHNEIDERMAN: I don't anticipate
 15 that there are any because I previewed this with
 16 them when they first filed the case, the motion
 17 was first filed, but a lot has happened since
 18 then and I just want to make sure that we're all
 19 still on the same page and there's no change of
 20 information.
 21 Now that the committee is on board,
 22 they may be able to assist in that determination,
 23 but I just want to advise the Court that I won't
 24 be here on that April 30th day.
 25 THE COURT: Okay.

1 MR. SCHNEIDERMAN: Thank you.
 2 THE COURT: Thanks, Mr. Schneiderman.
 3 MS. LABOVITZ: Your Honor, I think we
 4 may be a bit optimistic to say the committee is
 5 on board so far, so I'll save Mr. Dublin from
 6 standing up and having to say that, but we do
 7 hope to bring them on board.
 8 In terms of the KERP issue, nothing has
 9 changed with respect to the relief requested that
 10 would implicate the KERP issue. This continues
 11 to be a motion solely to pay compensation that
 12 was already earned before the Chapter 11 case was
 13 filed based on policies that were in place at
 14 that time.
 15 But we will work with Mr. Schneiderman
 16 to answer any other questions that he has before
 17 April 30th and we will advise Chambers as to any
 18 particular timing concerns that may suggest that
 19 we would need to go forward on that date.
 20 THE COURT: Okay. Fine, thank you.
 21 MS. LABOVITZ: Thanks, Judge.
 22 THE COURT: Now we have a number of
 23 matters that you list in the program as
 24 adjourned. Is there anything about any of them
 25 that we need to talk about?

1 MS. LABOVITZ: A wise question. The
 2 cash management motion, your Honor, is adjourned
 3 simply because I think there are still some
 4 logistical issues that need to be worked through
 5 with the U.S. Trustee's Office in terms of
 6 compliance with opening bank accounts and closing
 7 bank accounts and making sure that we have done
 8 what we have conceptually agreed with the U.S.
 9 Trustee's Office that we would do.
 10 It will remain sort of on an interim
 11 basis until we get that done, but I don't think
 12 there are any particular issues with respect to
 13 that motion.
 14 The customer programs motion ---
 15 THE COURT: Hold on a second,
 16 Mr. Dublin may want to add ---
 17 MR. DUBLIN: On the cash management
 18 issues, your Honor, we believe that it is
 19 intricately intertwined with the D.I.P. and how
 20 intercompany claims will be treated, subject to,
 21 of course, we have the likelihood that we'll have
 22 a litigation with respect to the validity of the
 23 liens of the first and second lien holders and
 24 how intercompany claims are implicated in that
 25 litigation.

1 THE COURT: You mean that's why
 2 Mr. Busey and Mr. Prosser keep showing up here?
 3 MR. DUBLIN: I believe so.
 4 THE COURT: Not just to say a few words
 5 to me in the course of the hearing?
 6 MR. DUBLIN: So we will likely seek
 7 modification to the cash management system and we
 8 have advised Mr. Smolinsky, at least, that we
 9 will seek modification to how the cash management
 10 system works with respect to intercompany claims
 11 to ensure that value is protected for the various
 12 debtor entities.
 13 THE COURT: Thank you, Mr. Dublin.
 14 MS. LABOVITZ: So, Judge, that will be
 15 one of the motions that sort of carries
 16 through --
 17 THE COURT: Okay.
 18 MS. LABOVITZ: -- on the agenda while
 19 we work through those issues.
 20 THE COURT: Fair enough.
 21 MS. LABOVITZ: The customer programs
 22 motion I hope we'll be able to address by the
 23 time of the next hearing.
 24 As we had mentioned to the judge, I
 25 think a couple of hearings back, we have been

1 engaged in a dialogue with the creditors'
 2 committee about what is ordinary course of
 3 business for these debtors and what level of
 4 oversight would be appropriate for the committee
 5 to have.
 6 I believe -- we had agreed conceptually
 7 with respect to customer programs, that the right
 8 answer would be for the debtors to make a
 9 reporting to the creditors' committee as to what
 10 kinds of customer incentives are being offered so
 11 that the committee can review what's happening.
 12 This sort of goes to, Judge, the issue that I
 13 pointed out before, that selling homes is
 14 fantastic, but it would be nice to sell them at a
 15 profit. The committee, I think appropriately,
 16 wants to be able to monitor that the company is,
 17 in fact, doing what it says it's doing with
 18 respect to that.
 19 The debtors have proposed a form of
 20 reporting to the creditors' committee and I
 21 believe haven't heard back yet on that, but we
 22 think we'll agree on a form of reporting and
 23 hopefully with that present an agreed final
 24 customer programs motion to the Court.
 25 THE COURT: Okay.

1 MS. LABOVITZ: The next item on the
2 agenda, Number 11, is the Kazowitz (phonetic)
3 objection to the D.I.P. lender's claims. That
4 also will be addressed in the context of the
5 D.I.P., but, again, Judge, I think it's our view
6 that there may be an appropriate time and way to
7 consider that, but this objection is probably not
8 the right forum for those issues to be addressed.

9 THE COURT: The creditors' committee is
10 of the view that it is really the proper party to
11 raise those questions?

12 MR. DUBLIN: That is correct, your
13 Honor, and last week we sent a letter to the
14 debtors requesting they consent to our standing
15 to pursue the claims and causes of action
16 addressed in the Kazowitz objection and
17 elsewhere.

18 We expect to hear back from the debtors
19 by the end of this week and we envision filing a
20 motion for court approval to pursue those actions
21 in the near term.

22 THE COURT: Okay.

23 MS. LABOVITZ: To be clear, the debtors
24 have not yet consented to the fact that the
25 creditors' committee would have standing, but

1 we'll be working with the committee to review and
2 address those issues.

3 THE COURT: I recognize that in a
4 posture like that, the debtor is in a difficult
5 position to assert the claims that are made for
6 any number of reasons.

7 MS. LABOVITZ: Yes, Judge, and the
8 position we find ourselves in may, in fact,
9 depend on whether there's a D.I.P. order entered
10 that looks like the one that is currently in
11 place or whether it looks different or doesn't
12 get entered.

13 So, Judge, I think once again those
14 issues are all bound up together.

15 THE COURT: Uh-huh.

16 MS. LABOVITZ: Item 12 on the motion --
17 on the agenda is the deferred compensation
18 motion, we addressed that. Item 13 is a motion
19 to assume or reject certain executory contracts.
20 The debtors haven't decided whether to assume or
21 reject that contract yet and don't think that it
22 should be compelled to decide until some later
23 time, but, you know, at a very minimum until the
24 new business plan process is worked through.

25 Builders Specialties has been amenable

1 to adjourning that motion and, frankly, Judge, I
2 would hope and expect that it would be adjourned
3 beyond May 7th.

4 THE COURT: Okay.

5 MS. LABOVITZ: The Jeffries retention
6 application, the debtors have suggested certain
7 modifications to the terms of the retention and,
8 Judge, those in very broad terms go towards
9 asking that the monthly fee be credited against
10 any future success fee after a certain point.

11 This would in some way parallel what
12 other professionals have been asked to do,
13 clarifying that ---

14 THE COURT: That's essentially what the
15 deal you made with -- restructured with Lazard
16 was.

17 MS. LABOVITZ: That's exactly right,
18 your Honor.

19 Another change that's been requested is
20 to clarify that a success fee would only be
21 earned upon confirmation of a plan that isn't a
22 liquidating plan. In other words, success means
23 success.

24 Another change that I believe has been
25 requested by Mr. Schneiderman relates to the

1 indemnification provisions. Judge, I don't
2 believe Jeffries has yet agreed to any of those
3 changes and that is still being discussed and
4 currently is set to be presented on May 7th.

5 THE COURT: Okay.

6 MR. DUBLIN: Your Honor, Jeffries has
7 its own counsel in connection with this matter,
8 so I'll just respond briefly.

9 We are working with the debtors and the
10 U.S. Trustee to try to resolve a number of their
11 issues. Some of the issues raised by
12 Ms. Labovitz are, as happened with Lazard, was
13 crediting for monthly fees and the like, a little
14 different for a creditors' committee, where we
15 don't necessarily control the pace of the case
16 and how long the restructuring will take.

17 Defining what a success is in the home
18 building industry may be different than other
19 cases and having a confirmed plan of
20 reorganization that provides for stock in a
21 reorganized company to go to certain parties, as
22 far as a financial advisor's form of retention is
23 concerned, may not actually be the type of
24 success that we would all envision.

25 It's possible that this company is sold

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1 at some point with cash proceeds to go to
2 unsecured creditors with a liquidating plan to
3 follow or some type of other transaction, whether
4 the cases be dismissed or converted, that does
5 not necessarily mean we do not have a success.
6 We will continue to work with the
7 debtors to try to address those issues.
8 THE COURT: Okay. Mr. Schneiderman.
9 MR. SCHNEIDERMAN: Your Honor, with
10 respect to Jeffries, and this goes back to what I
11 was talking about earlier with Lazard, it was an
12 oversight, your Honor, and I'll take blame for
13 that.
14 On the Lazard order, it has been the
15 practice to eliminate or strike the
16 indemnification language where there is a limit
17 on the cap or a cap of the contribution made by
18 the professional to the extent that their --
19 breach of fiduciary duty, self dealing, gross
20 negligence, et cetera, et cetera, the exceptions,
21 and that was not included in the Lazard order.
22 I'm working with Mr. Sussberg and
23 Lazard to submit an amended order, which will
24 include that language. There's also a couple
25 other issues that we're discussing, which have

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1 not been agreed to. The same issue would be with
2 Jeffries, your Honor, with respect to removing a
3 cap on the limitation -- on the contribution made
4 in the event of an act in which Jeffries or
5 Lazard would be liable.
6 THE COURT: Okay. I assume that you're
7 similarly working with the committee and Jeffries
8 on those issues?
9 MR. SCHNEIDERMAN: Yes, sir.
10 Mr. Golden and I have been on the phone quite
11 often.
12 THE COURT: Very good. Is there
13 anything else that we need to talk about this
14 morning, anything that anybody wants to alert me
15 to that's something I should be thinking about or
16 worrying about?
17 MR. SCHNEIDERMAN: Your Honor, I don't
18 know if you're ---
19 THE COURT: Other than your vacation,
20 Mr. Schneiderman, which I do worry about.
21 MR. SCHNEIDERMAN: I didn't know if you
22 were adopting my recommendation that a notice be
23 filed on April 30th if that cash collateral was
24 being extended?
25 THE COURT: Yeah, I think that's

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1 actually a very good suggestion and I would hope
2 that as soon as you reach such an accommodation,
3 it would be far better for all the parties in the
4 case to get a notice than for us to learn what
5 happened from reading Bloomberg, however good
6 they may be in distributing information.
7 MS. LABOVITZ: Sometimes they even beat
8 us to the punch, Judge.
9 To the extent that there is an
10 extension under the existing agreement, I agree
11 it makes sense to file a notice and we'll
12 undertake to do that.
13 Then just to expand on that point, to
14 the extent that the extension takes the form of
15 an amendment, we would look to the provisions of
16 the D.I.P. order regarding amendments. If an
17 order were required, obviously we would be before
18 the Court seeking that and if it's the kind of
19 amendment as to which just a notice needs to be
20 provided, we would provide that notice, as well.
21 THE COURT: Okay. That sounds
22 sensible.
23 Anything else, anybody? Then we are
24 adjourned.
25 (Thereupon, the hearing was concluded.)

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1
2 **CERTIFICATION**
3
4 STATE OF FLORIDA:
5 COUNTY OF DADE:
6
7 I, Margaret Franzen, Shorthand Reporter
8 and Notary Public in and for the State of Florida
9 at Large, do hereby certify that the foregoing
10 proceedings were taken before me at the date and
11 place as stated in the caption hereto on Page 1;
12 that the foregoing computer-aided transcription is
13 a true record of my stenographic notes taken at said
14 proceedings.
15 WITNESS my hand this 16th day of
16 April, 2008.
17
18
19
20 _____
21 Margaret Franzen
22 Court Reporter and Notary Public
23 in and for the State of Florida at Large
24 My Commission Expires: April 14, 2010
25