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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: Chapter 11  
QUEBECOR WORLD (USA), INC., Case No. 08-10152 (JMP)  
et al, (Jointly Administered)  
Debtors. New York, New York  
Wednesday, January 23, 2008  
2:02 p.m.

TRANSCRIPT OF FIRST-DAY HEARING  
BEFORE THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 2:02 p.m.)

2 THE COURT: Be seated, please.

3 Mr. Canning, I think we should probably start with  
4 you.

5 MR. CANNING: Good afternoon, Your Honor, and thank  
6 you for accommodating us today on relatively short notice for a  
7 first day hearing on our first day motions.

8 As you are well aware, we have a number of motions  
9 today that we would like the Court to entertain and I think we  
10 have some time constraints so I will give a brief overview of  
11 sort of the company and how we got here and then move quickly  
12 into the motions, if that's acceptable.

13 THE COURT: That's fine. When you say we have some  
14 time constraints, are you talking about the debtors' time  
15 constraints, the time constraints of witnesses, or other --

16 MR. CANNING: No -- yes -- well, what I'm talking  
17 about is primarily the DIP financing that we're here to seek  
18 today, Your Honor. We've got a commitment from Credit Suisse  
19 and Morgan Stanley and that has a five o'clock deadline, after  
20 which the commitment is no longer valid unless they would agree  
21 to extend it; and as I will explain to the Court, that's really  
22 critical to the company.

23 We are seeking a billion-dollar facility between this  
24 proceeding and the proceeding in Canada and we're really at a  
25 point where we really need to have that financing as quickly as

1 possible; indeed, we need to have it by tomorrow or we won't be  
2 able to maintain payroll and our operations will start to  
3 deteriorate.

4 THE COURT: Okay.

5 MR. CANNING: So that's -- I mean, that's the time  
6 constraint on that.

7 What I'd also like to do, Your Honor, today is  
8 probably modify the agenda of the -- of matters that we have  
9 before the Court today. Some of the preliminary ones I'd like  
10 to address are like the joint administration, but then probably  
11 from there I go to what I think are the three most important  
12 motions that we would like to have heard: employee wages, the  
13 DIP financing, and the cash management.

14 THE COURT: Fine.

15 MR. CANNING: And then maybe finish up with the rest  
16 of the motions.

17 THE COURT: We can take this in any order you consider  
18 appropriate.

19 MR. CANNING: Okay. Great.

20 Your Honor, the debtors, there are fifty-three debtors  
21 here in the United States. They are --

22 THE COURT: You don't expect me to be able to see  
23 that, do you?

24 MR. CANNING: Yeah, let's -- do we have some of those  
25 forms?

1           THE COURT: I have a form. I appreciate the chart,  
2 but it's fairly hard to read, even when it's close up.

3           (Laughter.)

4           (Counsel confer.)

5           MR. CANNING: We have smaller versions that we can  
6 make available.

7           THE COURT: Now, just so it's clear, what you have on  
8 the easel is a slightly blown-up version of a corporate  
9 structure chart that was included with the binders that were  
10 delivered to my chambers this morning.

11          MR. CANNING: That's correct.

12          THE COURT: And that's this document?

13          MR. CANNING: That is correct, Your Honor.

14          THE COURT: Okay.

15          MR. CANNING: And we have copies of that available, to  
16 the extent we can pass those out to people.

17          (Counsel confer.)

18          THE COURT: Now I know why so many people came today.

19          (Laughter.)

20          (Counsel confer.)

21          MR. CANNING: Your Honor, I guess while we're getting  
22 that passed out, I would like to introduce to you some of my  
23 colleagues who will be participating today and then some  
24 representative of the company, just to have you meet them.

25                 First of all, from the company we have two of our

1 senior leaders here, Jeremy Roberts, who is on our left, I  
2 guess, from Your Honor, whose declaration was filed in support  
3 of the first day motions. Mr. Roberts has been with the  
4 company for some time, is the senior vice president of  
5 corporate finance and treasurer for both Quebecor World, Inc.,  
6 which is the Canadian parent that is the subject of the CCAA  
7 proceeding; and also holds the same position for Quebecor World  
8 (USA), which is a leading U.S. subsidiary and sort of the  
9 dominant debtor, if you will, in the U.S. structure.

10           And sitting next to him is Doron Grosman, who is an  
11 officer of Quebecor (USA) as well and heads up its magazine  
12 division here in the States, so they are here today for the  
13 debtor.

14           Also, I think maybe it's appropriate, since we'll be  
15 referring to the Canadian proceeding throughout the course of  
16 the afternoon, that if I introduce the monitor who has been  
17 appointed in the Canadian proceeding, who may become a frequent  
18 participant in these proceedings, Murray McDonald. If he could  
19 stand up --

20           THE COURT: Welcome.

21           MR. CANNING: He's with ENY in Canada and is a  
22 monitor.

23           Also, my own colleagues, Joel Gross and Charles Malloy  
24 and Rosa Evergreen; and sitting next to her are two corporate  
25 partners who worked for a number of years for Quebecor, John

1 Willett and Chris Rogers. So that's our team here today.

2 THE COURT: You've obviously been very busy.

3 MR. CANNING: Turning back to the chart, if I could,  
4 Your Honor, as is evident at the top of the chart and in  
5 yellow, for those who have -- is Quebecor World, Inc., which is  
6 the Canadian parent.

7 Quebecor World, Inc., then owns a company Quebecor  
8 World Holdings Printing, which is the -- sort of the  
9 intermediate company between Quebecor World, Inc. And Quebecor  
10 World (USA). And again, as I mentioned earlier, Quebecor World  
11 (USA) is the lead subsidiary here in the U.S. and it sort of  
12 branches down from there.

13 The debtors, the U.S. entities, operate seventy-eight  
14 facilities, Your Honor, in twenty-nine states. It's the second  
15 largest printing company here in the United States. It's  
16 responsible for magazines such as Time, Inc., Cosmopolitan, it  
17 does ESPN The Magazine, Forbes; does a lot of inserts for, you  
18 know, your Sunday newspapers and the like; for companies such  
19 as CVS and Sears and JC Penney's.

20 It has catalog operations for customers such as  
21 Williams Sonoma, Kia, and Bass Pro, and it does books for  
22 McGraw Hill, Scholastic, Simon & Schuster, and others.

23 So as you can see, it is a very, very extensive  
24 operation, it's a very prominent operation, and a very  
25 important operation in its industry.

1 THE COURT: Can you help me with the color coding of  
2 this?

3 MR. CANNING: Yes, Your Honor. Let me -- I think that  
4 would be --

5 THE COURT: There's yellow, blue, pink, and green, and  
6 white.

7 MR. CANNING: Indeed. The yellow, of course, is  
8 Quebecor World, Inc., which is sort of the parent of all of the  
9 operations.

10 The blue, which runs down in the two columns below  
11 Quebecor World, Inc., those are the fifty-three -- or the  
12 fifty-two other debtors in these proceedings. Those are all  
13 subsidiaries, direct or indirect, of Quebecor World (USA).

14 The pink over there, the one Lone Ranger -- and that  
15 would be called Quebecor World Finance, was a special-purpose  
16 entity that was a component of the securitization program that  
17 both Quebecor World, Inc. and Quebecor World (USA) used to do  
18 their securitization of their receivables. And that's a non-  
19 debtor. And later on when we explain a little bit about what  
20 we're doing in the DIP financing, it will become important to  
21 understand what QWF's role was, so hence, we've sort of set  
22 them apart with a very notable color there.

23 THE COURT: You should know that while I have not been  
24 able to read each and every line of the papers that you  
25 submitted, given the brief time that I had to deal with the

1 materials, I am generally familiar with the papers that you've  
2 submitted, including the affidavit in support of the first days  
3 and the somewhat repetitious but helpful background that  
4 appears in each of the motions, so I'm generally familiar with  
5 what's going on, including the proposal that the securitization  
6 device be unwound as part of your financing.

7 MR. CANNING: Thank you, Your Honor. Okay. That's  
8 very helpful.

9 Then I guess just to set the stage a little bit more,  
10 the three entities on the far left in green are non-debtor  
11 entities. And they are entities that the companies use for  
12 purposes of consolidating their purchasing in one hand of their  
13 ink supplies; and in the other to keep in place insurance and  
14 workers' compensation insurance.

15 And as you may have noted in reading the background  
16 materials, Your Honor, and as I can explain more fully if it  
17 would be helpful, this is really a structure that has a lot of  
18 shared services and a lot of centralized management.

19 The beauty about Quebecor World and why it has been so  
20 successful and a leader in the industry is because it has been  
21 able to replicate its printing capability in multiple  
22 jurisdictions all simultaneously. And for a company like Time  
23 Magazine where you need to have it hit the newsstand on the  
24 same day at the same hour, it's able to have printing  
25 operations scattered throughout the states, throughout Canada,

1 and it also had operations in Latin America and Europe.

2           So they have a separate entity for each of these  
3 operations, you know, printing operations and the like, but in  
4 order to be most efficient and also to achieve a great deal of  
5 cost savings, they centralize most of their major purchases of  
6 ink and paper and their other supplies and they do it, you  
7 know, sort of initially in the U.S. upstream to (USA) and run -  
8 - they'll buy in bulk and in ink they use the entity at the top  
9 there on the left in green, Quebecor, S.A., QWSA, which is a  
10 company that -- a Luxembourg company that actually purchases  
11 all of the ink and other supplies to be delivered sort of  
12 worldwide for the structure.

13           They also achieve significant savings in connection  
14 with their insurance and their workers' comp obligations by,  
15 again, aggregating all of that through these two other non-  
16 debtor entities that are again highlighted over there on the  
17 left in the green.

18           So to the extent that throughout the morning as we  
19 talk about certain of the motions, I thought it would be  
20 helpful to just sort of highlight, you know, what the baskets  
21 are of these entities that we're dealing with. Okay.

22           THE COURT: One point of clarification, a small point.

23           MR. CANNING: Yeah, sure.

24           THE COURT: It says as of June 20, 2007 in the upper  
25 left-hand corner of the document, and this is prepared by Legal

1 Corporate Services as of 1/22/08. Is it correct that the  
2 document reflects the corporate structure as of the petition  
3 date?

4 MR. CANNING: To the best of my knowledge, and my  
5 partners may be able to correct me, but I believe that to the  
6 extent that we're talking about the relevant debtors and its  
7 relationships with Quebecor World, Inc. and with these three  
8 non-debtor entities, that is absolutely correct. I'm not sure  
9 that I can't certainly say that if off in Latin America or in  
10 Europe, whether there have been changes since June 30.

11 (Counsel confer.)

12 MR. CANNING: Apparently, Your Honor, there were some  
13 minor consolidations of entities for purposes of -- was it  
14 consolidating the U.S. and Canadian?

15 (Counsel confer.)

16 THE COURT: Your colleague is completely inaudible to  
17 the recording device --

18 MR. CANNING: Yes. I'm sorry, Your Honor.

19 THE COURT: -- so that we'll have a strange transcript  
20 here.

21 MR. CANNING: What she was saying, for certain tax  
22 reasons, Canadian tax and U.S. tax, there were a couple of  
23 companies that the functions -- and I'll stand corrected, but  
24 the functions were performed by U.S. entities in order to  
25 address certain tax concerns. When those tax laws were changed

1 and there was no longer a need to have it done in sort of two  
2 entities, one in the U.S. and one in Canada, there was a  
3 consolidation for business purposes.

4 THE COURT: All right. But for purposes of the fifty-  
5 three debtors that were filed in this court this week, and the  
6 related non-debtors that are in green and pink respectively on  
7 the chart, this reflects the relationship of the entities as of  
8 the petition date?

9 MR. CANNING: That is correct, Your Honor.

10 THE COURT: All right.

11 MR. CANNING: And again, just to give you a little bit  
12 of the highlights, the company structure, as I just said sort  
13 of in summary, really does reflect sort of a global reach,  
14 geographic coverage so that the company is able to deliver  
15 product to its respective marketing places, you know,  
16 simultaneously, efficiently, and very economically.

17 It's really a very flexible manufacturing platform.  
18 They have great economies of scale. They're able to provide  
19 services to their customers that they otherwise never could.

20 It's the result, Your Honor, in many respects of years  
21 of mergers and consolidations. I certainly don't know all of  
22 the history, but I think it's fair to say that there were any  
23 number of smaller printing operations, both here and in the  
24 States, that were purchased and acquired or merged into or  
25 added onto the company as it expanded; with the most notable

1 being, I guess, around 1999 or 2000 when it merged with World  
2 Color Press, which was also a very large printing company at  
3 the time.

4           They consume a lot of raw materials, Your Honor. It's  
5 probably \$2.4 billion a year in raw materials to run their  
6 operations. It's a very, very significant operation and they  
7 have a lot of cash needs and a lot of expenses that they have  
8 to meet.

9           Just maybe a little bit about the pre-petition  
10 indebtedness, some sort of a capital structure, because we're  
11 going to be talking today about maybe three or four big  
12 facilities or creditor groups that are going to be impacted by  
13 what we -- today and will be impacted a lot as we go forward in  
14 the case.

15           The company has a number of note issuances,  
16 bondholders that aggregate in excess of \$1 billion. Those are  
17 unsecured obligations. Primarily Wilmington Trust Company I  
18 think is the trustee in three or four of them and we have Bank  
19 of New York as one of them.

20           In addition to the bondholders, we have a syndicate of  
21 banks that has made a facility available to the company. And  
22 when I say "the company" there, Your Honor, I mean both  
23 Quebecor World, Inc. and Quebecor (USA), obligors on the banks'  
24 syndicate.

25           Earlier, I guess it was in the third quarter of last

1 year in connection with the restructuring of the syndicates  
2 facility, in addition to Quebecor (USA) and QWI as borrowers,  
3 virtually all of the debtors, all of the other debtors here  
4 entered into guarantees, upstream guarantees in support of  
5 that.

6 That facility at that time was also collateralized to  
7 the extent of about \$135 million. There were liens granted in  
8 support of that, of those upstream guarantees, by the other  
9 subsidiary debtors. There was also liens placed on the hard  
10 assets, if you will, the inventory and the equipment of one of  
11 the entities, Quebecor World Memphis, QW Memphis, as well as a  
12 couple of its subsidiaries. And there were liens that were  
13 placed upon the shares, the stock ownerships downstream of all  
14 of those entities.

15 So at the moment, Your Honor, the syndicate -- it was  
16 a seven-hundred-and-fifty-million-dollar facility that is  
17 almost fully advanced. It is secured to 135 million. It has  
18 liens that were granted for 135 million. The reason for the  
19 limit is there were some covenant restrictions under the  
20 bondholder instruments that preclude debt of this type, secured  
21 debt of this type, in excess of 170 million. So the bank has  
22 got 135 million of that.

23 One of the other significant credit facilities, if you  
24 will, is a facility that's Societe Generale operates for the  
25 company where it does a lot of the equipment financing. And

1 they also agreed to the restructuring last fall, and as part of  
2 that they also received a security interest to the tune of  
3 about 35 million, so that the aggregate of the one thirty-five  
4 for the banks and the thirty-five for Societe Generale  
5 aggregates to one seventy, which is what the limit of permitted  
6 indebtedness is under the bondholder group, so that's sort of  
7 the relationship between the bonds and the syndicate.

8           The other significant piece which we're already  
9 alluded to a little bit is the securitization of the company's  
10 receivables. That started -- historically Quebecor World  
11 (USA), again, the lead debtor here, entered into this facility  
12 in 1999, 2000, where Quebecor World (USA) and a number of the  
13 other debtor sellers entered into an agreement with the SPV  
14 where they sold all of their receivables as they were created  
15 down to the SPV.

16           The SPV, Quebecor World Finance, our lonely ranger  
17 there in pink, entered into a simultaneous transaction with ABN  
18 Amro as agent for another group of banks where it sold on, if  
19 you will, those receivables in return for, you know, cash  
20 representing some percentage of the face value of those  
21 receivables.

22           It was over-collateralized, which becomes important in  
23 our DIP motion when we describe how we're buying back those  
24 receivables. It was over-collateralized so that, just  
25 hypothetically, if ABN Amro's group is going to advance seventy

1 on account of a batch of receivables, the face of those  
2 receivables may be a hundred. So there was intended to be an  
3 immediate advance from ABN Amro to the SPV of let's say the  
4 seventy. They would then take the receivables and they would  
5 collect on those receivables until they recovered their  
6 advance, plus some agreed-upon rate of return; and then any  
7 excess, if you will, would stay in the collection account for  
8 the benefit of Quebecor World Finance.

9 And so that would then recycle again the next month  
10 and be another batch that would come down. These sold  
11 basically daily, but -- so it was a continuing revolver in the  
12 four-hundred-to-four-hundred-and-fifty-million-dollar range.

13 So those were the, I think, three biggest constituents  
14 in terms of our credit structure, the roughly billion four in  
15 bonds, the roughly \$750 million from the bank syndicate, and  
16 the four hundred to \$450 million from the securitization of the  
17 receivables.

18 Just briefly, Your Honor, sort of how we got here  
19 today and then I think we can probably turn to the motions,  
20 unless Your Honor has any specific questions.

21 I don't think it's a surprise that the printing  
22 industry has been under some stress over the last several years  
23 with the rise of importance and accessibility of internet. The  
24 print business has had some stresses and with competition from  
25 existing printing companies, it has made it more and more

1 difficult for your debtors to accommodate its existing capital  
2 structure and debt structure.

3           This was a structure that was put in place years ago.  
4 If you look at the start dates for most of these facilities,  
5 they go back quite some time, when the world was a little  
6 different. When the print business was a little stronger, it  
7 didn't have the competition from the internet that it has  
8 today.

9           Hence, it enjoyed for -- almost forever in its  
10 existence an investment grade of significantly high credit  
11 rating. Hence, why it was able to have, you know, in excess of  
12 \$1 billion of unsecured notes and why it was able to have,  
13 until the third quarter of last year, an unsecured, you know,  
14 bank syndicate because it did enjoy a great credit rating.  
15 Again, for the reasons that I've stated, over the last couple  
16 years that has started to erode.

17           So it's a company that has terrific business. It's  
18 got great employees. It's got great management. It's very  
19 successful at what it does. It has a global network that is  
20 almost without peers in its ability to deliver its product and  
21 its type of product to the market in so many places.

22           But the capital structure, the debt structure is just  
23 too great for what the operations will support. So we believe  
24 that this is the time and the right time for this company to  
25 come and, with the assistance of the Court and the cooperation

1 from its creditor constituencies, to bring that structure into  
2 place with respect to what its operations will support.

3           So this is not an issue where we have a business model  
4 that doesn't work, where we have operations that are not  
5 successful, where we have, you know, management that is  
6 problematic; this is simply a situation where a very good  
7 business, very viable operations is matched with a debt  
8 structure that it just doesn't work anymore.

9           So with the benefit of Chapter 11, it's our intention  
10 to work with these creditor constituencies and try to rectify  
11 that imbalance so we can put the company back on a solid  
12 footing as it goes forward.

13           So that was sort of my general overview, Your Honor,  
14 of the company. The last thing I would say is aggressive  
15 efforts have been made before we got here to try to fix it  
16 outside of bankruptcy. There was an effort to do quite a bit  
17 of restructuring of its debt. We tried to do some sale  
18 leasebacks of some of our significant printing facilities.  
19 There was a contract that had been entered into to sell your  
20 European operations that was supposed to close, as I mentioned  
21 in my papers, and when that didn't happen, and a couple of  
22 other things that the company had intended to do didn't work  
23 out from a timing standpoint, we found ourselves in violation  
24 of our covenants with our bank group and with Societe Generale  
25 on the equipment financing and for the last sixty days there

1 has been a series of extensions and a series of waivers. There  
2 was an attempt to get rescue financing to see if we could get  
3 the capital we needed and the financing we needed outside of  
4 bankruptcy.

5 And as you probably have read in the press, Your  
6 Honor, those efforts really sort of failed right at the end of  
7 last week. It was really, you know, Friday night of last week  
8 when the company, both in Canada and in the U.S., really had to  
9 face the fact that they were not going to be able to do this  
10 outside of bankruptcy.

11 Accordingly, on Monday of this week, Quebecor World,  
12 Inc. filed for protection under the CCAA in Canada and Murray  
13 McDonald was appointed as the monitor in that procedure with  
14 his counsel, Ogilvy Renault, and then we've prepared and filed  
15 yesterday the petitions for the U.S. parent, Quebecor World  
16 (USA), as well as the fifty-two subsidiaries that are now the  
17 debtors here today.

18 THE COURT: You've been very busy.

19 MR. CANNING: We have indeed, Your Honor. We have  
20 indeed.

21 Unless you have any further questions, I know you said  
22 you read the background and it's somewhat -- I'm sure I've been  
23 repetitious of a lot of that.

24 THE COURT: No, you've been actually very helpful in  
25 summarizing and explaining.

1           Just in terms of where we are today, it's a fairly  
2 packed courtroom, both in front of the bar and behind it. I'd  
3 like to have some preview as to whether we're dealing with  
4 contested first day motions with the exception of the  
5 utilities.

6           I did receive this afternoon from Kelley Drye an  
7 objection on behalf of the clients they represent to the  
8 utilities motion, but that's the only written objection I'm  
9 aware of to any of the first day relief.

10           So question one is, other than that, do we have a  
11 contest as to any of it?

12           MR. CANNING: We do have some issues with respect to  
13 the DIP motion and the proposed DIP order. I'm actually  
14 pleased that in light, you know, given the fact that we filed  
15 in excess of twenty motions and we did it relatively quickly --

16           THE COURT: That means they haven't all been read.

17           (Laughter.)

18           MR. CANNING: I did give some thought to how the  
19 timing of -- I should have shot those out, Your Honor, but no.

20           We only had a couple -- we had a couple comments and a  
21 couple questions and requested changes for the cash management  
22 order, how that worked; and we were able to accommodate Bank of  
23 America, which raised a couple of clarifications that they  
24 wanted to have inserted into the order and we accommodated them  
25 and we will have available a black-lined copy of those changes

1 when it's appropriate, Your Honor.

2 And other than that, the only significant discussions  
3 that we have had are with counsel who is here today on behalf  
4 of the bank syndicate with respect to language in the order.  
5 And I expect that we'll have to take some time on that and  
6 we're going to have to work through that.

7 Other than that, I think all of the orders that we  
8 have posed to the Court we will be able to offer and hope to  
9 offer without changes. And I look to my colleagues to see if  
10 that's correct, but I believe that that's the case.

11 THE COURT: Let me look to the office of the U.S.  
12 Trustee first before the others who are so anxious to speak say  
13 anything.

14 MR. VELEZ-RIVERA: Good afternoon, Your Honor. Andrew  
15 Velez-Rivera for the United States Trustee.

16 To follow up with Your Honor's last question, there  
17 may be an issue, assuming we get there before the close of  
18 business, with respect to Arnold & Porter's employment  
19 application. Your Honor unfortunately may be the test judge on  
20 Rule 6003 which was issued last month. It precludes the entry  
21 of relief concerning employment applications within the first  
22 twenty days of the case. I'll leave the particulars for when  
23 we get there.

24 THE COURT: All right. I'll be the test judge.

25 MR. VELEZ-RIVERA: And if I may, Your Honor, just give

1 you a couple of sentences on the status of the organizational  
2 meeting of creditors, we do expect to have a committee in place  
3 by the end of next week. The organizational meeting will take  
4 place next Thursday, a week from today, so hopefully by the  
5 close of next week we'll have a committee in place.

6 THE COURT: Great.

7 MR. VELEZ-RIVERA: Thank you.

8 THE COURT: You wanted to say something?

9 MR. LEVY: Yes. Good afternoon, Your Honor. Rick  
10 Levy from Latham & Watkins on behalf of Royal Bank of Canada,  
11 which is the agent for a syndicate of lenders that Mr. Canning  
12 referred to, pre-petition lenders that are primarily unsecured  
13 at the U.S. subsidiary level, although we do have limited liens  
14 and are secured to a limited extent.

15 We actually have had extensive discussions the last  
16 few days concerning the DIP financing order. I think we have  
17 considerably narrowed the issues and we will be in -- but there  
18 are some significant issues that we're going to have some  
19 discussion about before Your Honor. But we have -- I want to  
20 assure you that we've made an effort to narrow it to what we  
21 consider to be the important unresolved items.

22 And in that regard, I would say that the -- there's a  
23 significant what I'll call "inter-company issue" in terms of  
24 the treatment of inter-company claims, how they -- who is the -  
25 - you know, who has got contribution claims for, you know,

1 disproportionate use of DIP proceeds; other inter-company  
2 transfers, either among the debtors or to non-debtors. And we  
3 do have a grave concern about how those are being addressed in  
4 the DIP order.

5           It will also be implicated in the cash management  
6 order. We don't have really any substantive objection to the  
7 cash management order other than with respect to the manner in  
8 which it treats inter-company claims, but that dovetails into  
9 our concern on the DIP so we can take it all then.

10           THE COURT: Mr. Levy, I appreciate your remarks, which  
11 I take to mean that you're reserving your rights to see  
12 language that's satisfactory to your clients before any order  
13 is entered. Is that correct? Or is it more than that?

14           MR. LEVY: It's more than that because we have  
15 tendered -- in fact, will be prepared to tender you, Your  
16 Honor, proposed language that was acceptable to us to address  
17 these inter-company issues and a few other matters, which have  
18 been unacceptable to both the debtor and perhaps the DIP  
19 lenders.

20           So I think it's fair to say that we're at odds with  
21 respect to certain issues. We have proposed language, they  
22 have rejected it, so we will be looking to you to resolve that  
23 issue.

24           THE COURT: Okay. And have you articulated this in  
25 the form of -- not that I'm holding you to written pleadings at

1 this point because of the short notice, but have you  
2 articulated your concerns in writing, such that the debtors'  
3 team is well aware of what you claim to need?

4 MR. LEVY: Well, the debtors' team, we didn't receive  
5 copies of the actual DIP order until yesterday, so we haven't  
6 had -- we really have been scrambling around trying to resolve  
7 the issues.

8 We have tendered to them actually last night the  
9 markup that we're going to present to you this afternoon.  
10 They've had a chance to review it and we've had discussions and  
11 they've indicated what their response has been to particular  
12 changes, some of which they accepted, but, you know, some of  
13 the substantive ones they did not.

14 So they are fully -- I don't think that they would  
15 deny that they're fully informed of what the issues are, but  
16 they are unresolved.

17 THE COURT: Okay. Well, without prejudging the  
18 shadowboxing that's going on right now because I don't know  
19 what you're talking about, I only know in the most general way  
20 what you've said, given an alleged five o'clock deadline for  
21 the DIP facility, which is the lifeguard for an organization of  
22 some significance, both here and in Canada, and given that  
23 that's two hours and twenty-five minutes from now, we should  
24 focus on solving the problem and not deferring it to the end.

25 But if it is the existing lender's position that the

1 Court is to resolve this, it's not going to happen in a vacuum.  
2 It's only going to happen with a full presentation of argument,  
3 evidence, and some record. I'm not going to become the  
4 arbitrator of a drafting dispute.

5 You'll either reach an agreement on the language or  
6 you won't, but I'm not going to act as a drafting policeman.  
7 That's not what I do. I used to do it; don't do it anymore.

8 MR. LEVY: I understand. This is not a drafting  
9 dispute, these are substantive issues.

10 THE COURT: Okay. I suspect that for purposes of an  
11 interim order you'll be able to come up with language, but if  
12 you can't, you can talk to lender's counsel and maybe get an  
13 extra fifteen minutes out of them. I'm not going to be,  
14 without a full record, someone who is calling the balls and  
15 strikes in a vacuum.

16 Why don't we proceed with -- are there any other  
17 comments from interested observers?

18 MR. ROSENBERG: Yes, Your Honor. Andrew Rosenberg,  
19 Paul, Weiss, Rifkind, Wharton & Garrison.

20 We were retained late this morning by the majority  
21 holders of the four series of public notes, so we're somewhat  
22 behind the banks, obviously, in reviewing everything. I think  
23 we have -- we are supportive of the DIP being entered. I think  
24 we have, you know, as a general matter we understand and  
25 believe the company needs additional financing.

1           We also want to take a look at the cash management  
2 final order because we have some concerns about the inter-  
3 company and while our views I think are less developed, we  
4 have, you know, I think we have the same generalized sense  
5 that, you know, obviously a lot of money is going through non-  
6 debtors and things like that and hopefully we can work out with  
7 the banks and the debtor language that, at least on an interim  
8 order, will preserve everything, without asking Your Honor to  
9 be the umpire or the caller of balls and strikes.

10           THE COURT: Let me just inquire as to whether you are  
11 representing the entire set of bond issues that are outstanding  
12 on behalf of all holders as a fiduciary, or if you are acting  
13 simply on behalf of the majority holder in each of these  
14 various issuances?

15           MR. ROSENBERG: We are not representing all holders as  
16 a fiduciary, we are representing a committee that was formed  
17 this morning which has on it collectively the holders of the  
18 majority of the issue.

19           THE COURT: And are you in a position as a result of  
20 direct trustee action?

21           MR. ROSENBERG: We should be. Your Honor, it has been  
22 represented to us by the holders that, based on the account,  
23 that we have the majority of each series. Obviously this was  
24 only this morning, so we need to tally, but based on the number  
25 of people on the phone this morning, I'm highly confident that

1 it's the majority of each series.

2 THE COURT: Okay. Thank you.

3 MR. COLEMAN: Your Honor, if I may? Ken Coleman of  
4 Allen & Overy.

5 THE COURT: Were you deliberately tripped on the way  
6 to the podium?

7 MR. COLEMAN: It seems that way.

8 (Laughter.)

9 MR. COLEMAN: I'll note it was counsel for one of the  
10 banks, Your Honor.

11 (Laughter.)

12 MR. COLEMAN: We represent Ernst & Young who are  
13 appointed as monitor in the Canadian proceeding and to the  
14 extent it's relevant to Your Honor, your comments just now  
15 sounded very similar to those made by the Canadian judge in  
16 connection with the DIP financing, who deferred and I think  
17 invited the banks to bring a motion at a later date to deal  
18 with a variety of matters, including inter-company claim  
19 issues.

20 One of the motions before Your Honor I believe is for  
21 approval of a protocol, which includes provisions regarding  
22 court-to-court communication. And we invite Your Honor of  
23 course to be in communication with the Canadian judge, but  
24 would like to point out that I think many of these issues were  
25 raised and the DIP financing was approved without including the

1 language which the banks are seeking today, but to be clear,  
2 the judge invited them to bring a motion such that in the  
3 fullness of time there could be evidence to consider these  
4 points I think very much along the lines that Your Honor was  
5 heading in your comments a few moments ago.

6 THE COURT: Mr. Coleman, just a couple of comments  
7 before you try to safely return to your seat.

8 (Laughter.)

9 THE COURT: First, I did review in a cursory fashion  
10 the materials that were filed online today by your office,  
11 which included excerpts from the Canadian proceedings that  
12 cross-border protocol, the in-line report, and some other  
13 items.

14 As to the cross-border protocol, I'm previewing  
15 something that would come up at the time this is presented by  
16 Mr. Canning. I am absolutely prepared to enter an appropriate  
17 order consistent with the cross-border protocol that appears to  
18 have already been entered in Canada.

19 But given the speed with which this is happening, and  
20 given the fact that the binders did not make it to my chambers  
21 until this morning, through nobody's fault, and given the fact  
22 that I've had a tremendous amount of reading to do, the only  
23 comment that I have to make with respect to the cross-border  
24 protocol is that I'm absolutely prepared to enter it.

25 I don't know that I'm ready to enter it today, for

1 several reasons: One, I haven't had a chance to study it  
2 fully; two, I don't know that everybody else has had a chance  
3 to study it fully; and three, as it relates to the issue of  
4 court-to-court communication, I might want to pick up the phone  
5 and talk with my counterpart in Montreal about the cross-border  
6 protocol and things we might want in it or not in it. Things  
7 that play an interest, including the Creditors' Committee,  
8 might want in it or not in it.

9           And I'm prepared to do it and I'm prepared to do it  
10 promptly, but I may not be prepared to do it before the close  
11 of business today.

12           MR. COLEMAN: Understood, Your Honor. Thank you.

13           MR. WILAMOWSKY: Good afternoon, Your Honor. Steven  
14 Wilamowsky of Bingham McCutchen, LLP, on behalf of Bank of  
15 America.

16           I just wanted to say with reference to the cash  
17 management order, we do appreciate the efforts that counsel for  
18 the debtors has made to try to resolve the issues. We were  
19 retained at about quarter of noon today. There are still at  
20 least one, maybe two issues that have not been resolved, so I  
21 just wanted to state that for the record.

22           THE COURT: Okay.

23           MR. HILL: Your Honor, Allan Hill of Phillips Lytle  
24 representing National Fuel Resources, Inc.

25           I understand that this Court's primary and first focus

1 is probably going to be the DIP and cash collateral issues. I  
2 just wanted the Court to know that with respect to the utility  
3 motion we are objecting and when the time comes to speak to  
4 that, we would like to be heard with respect to that.

5 THE COURT: Sure. As it relates to the utility motion  
6 objection that I adverted to right at the beginning, given the  
7 shortness of notice of today's hearing, I'm not standing on  
8 ceremonies and if a party in interest is present with counsel  
9 and wishes to be heard with respect to one of the proposed  
10 first day orders, you'll be certainly free to say what you wish  
11 to say, consistent with good order, so you don't have to  
12 reserve rights to do that.

13 MR. HILL: Thank you very much, Your Honor.

14 THE COURT: It's like a receiving line here.

15 MS. GOLDSTEIN: It is like a receiving line, Your  
16 Honor. And because there has been some reference to the cash  
17 management order, I thought it was a good time to make an  
18 appearance on behalf of Quebecor, Inc. Marcia Goldstein, Weil  
19 Gotshal.

20 Quebecor, Inc. is not on the chart. It is the parent  
21 of Quebecor World, Inc., a Canadian corporation. It is the  
22 controlling shareholder of Quebecor World, Inc. The printing  
23 businesses that are before this Court and before the court  
24 under the CCAA are one of the businesses of Quebecor, Inc.

25 I thought it was a good time to introduce Quebecor,

1 Inc. into this proceeding. They are an important stakeholder  
2 here, albeit not on the chart, tend to be an active  
3 participant, as I said, as a controlling shareholder of  
4 Quebecor World, Inc.

5 Just as a matter of background, Quebecor, Inc. was one  
6 of the sponsors of the rescue -- the financing proposal that  
7 was an attempt to keep this out of court but didn't work. And  
8 also, Your Honor, and obviously a reorganization of this  
9 company is something they're very interested in.

10 Another thing to take note of, and this relates to the  
11 cash management order, prior to the two filings, Quebecor, Inc.  
12 served a notice on all the debtors, both the Canadian and the  
13 U.S. debtors, terminating the right to use the name "Quebecor"  
14 under a licensing agreement of which they are a party.

15 And the reason I raise this now and we are not going  
16 to object to anything today, nor stand in the way of anything  
17 going forward here today --

18 THE COURT: If I use it, I have judicial immunity.

19 (Laughter.)

20 MS. GOLDSTEIN: And I don't think I've ever spoken  
21 about a first day order, other than as debtor's counsel,  
22 authorizing the use, for example, of business forms, but these  
23 all take for granted the use of the name. And our acquiescence  
24 in the orders today in no way indicates Quebecor, Inc.'s  
25 acquiescence in the use of its name and we understand that that

1 may come before this Court or the Canadian court at a future  
2 time.

3 THE COURT: Okay.

4 MS. GOLDSTEIN: Thank you.

5 MR. DONOHO: Good afternoon, Your Honor. Christopher  
6 Donoho of Lovells, LLP, on behalf of Wilmington Trust as  
7 indentured trustee for the several series of unsecured bonds.

8 I think I was retained slightly before Paul Weiss was  
9 this afternoon, so we haven't had much of a chance to review  
10 the orders, but I've raised some of the same concerns that Mr.  
11 Rosenberg would raise; and I would ask that the Court consider  
12 the relief that be granted as part of the interim DIP facility  
13 take every effort to be clear that the relief that is being  
14 entered is interim relief so that the kind of motion that Mr.  
15 Coleman refers to actually would be meaningful when there has  
16 been a chance for a committee to be formed and for the parties  
17 in interest to have an adequate chance to review what's  
18 happening here today. Thank you.

19 THE COURT: All right. Thank you.

20 MR. BELTZER: Good afternoon, Your Honor. Howard  
21 Beltzer of Morgan Lewis for BNP Paribas.

22 Just briefly, Your Honor, BNP Paribas has a number of  
23 different exposures to the debtors and their affiliates, both  
24 in North America and in Europe. The most relevant for today is  
25 that we are the factoring bank in Europe, including in France,

1 where there's about 47 million euros of exposure.

2           And I believe -- I was retained maybe twenty minutes  
3 before the other counsel that preceded me, Your Honor, so we're  
4 still going through the documents, but it appears to me, and  
5 also from my brief discussion with Mr. Bartner, the DIP  
6 lender's counsel, that the contemplation is, by the DIP lenders  
7 as well as by the banks represented by Mr. Levy -- and I've not  
8 had a chance to speak to Mr. Canning about the debtors'  
9 perspective, but I will assume that he shares it -- is that the  
10 factoring arrangements in Europe, both the current arrangements  
11 and the contemplated increase to those arrangements, are meant  
12 to be accommodated by the DIP pleadings.

13           We don't think they quite do so from our -- in various  
14 respects, Your Honor, from our initial review, including in  
15 respect to the amount of the factoring arrangements. Right  
16 now, as I said, there are about 47 million euros in France. My  
17 client is under -- is in discussions with the affiliates of the  
18 company in Europe to increase those amounts, I believe another  
19 \$40 million in Spain and 15 million -- excuse me, euros, 40  
20 million euros in Spain --

21           THE COURT: That's more money.

22           MR. BELTZER: Yes, Your Honor. And 15 million euros  
23 in Belgium, so that would bring it to a total of 102 million  
24 euros.

25           There is a carve-out in some of the DIP agreements,

1 including the negative covenant on asset sales, for example, up  
2 to \$80 million, so we're going to have to reconcile some of the  
3 language to take account of what I believe is the common  
4 understanding that the factoring is in the best interests of  
5 these estates, as well as the European subsidiaries.

6           So again, we reserve our rights to the extent that we  
7 unexpectedly fall out of bed, but hopefully this is something  
8 where there will be a meeting of the minds.

9           One other small point, or not so small point, is that  
10 there are guarantees by the European subsidiaries of the DIP  
11 that are contemplated. As Your Honor may be aware, there are  
12 various concepts akin to ultra vires and constructive fraud and  
13 the like. But, you know, with a special pungency in Europe in  
14 various European jurisdictions as to the civil and criminal  
15 even problems, to the extent that upstream guarantees are not  
16 supported by adequate consideration, so we would want some  
17 language in the final DIP order which would limit the European  
18 subsidiaries' guarantees to some element of consideration that  
19 flowed through from the arrangements to them.

20           Again, I don't foresee any problem, but I just wanted  
21 Your Honor to be aware of it.

22           THE COURT: All right. Thank you.

23           MR. ZUJKOWSKI: Good afternoon, Your Honor. Ed  
24 Zujkowski of Emmet, Marvin & Martin for the Bank of New York.  
25 The Bank of New York is indentured trustee for the six-and-a-

1 half-percent notes that are guaranteed by QWI.

2 I'd just like to join in the comments made by counsel  
3 for Wilmington Bank and also say because of the brief time  
4 we've been involved, we have not received any communications or  
5 directions from our holders but, you know, we have worked with  
6 Mr. Rosenberg extensively in the past and obviously we will  
7 follow whatever directions are received. Thank you.

8 THE COURT: Okay.

9 MR. BARTNER: Afternoon, Your Honor. Douglas Bartner  
10 from Shearman & Sterling, counsel to the proposed DIP lenders;  
11 last, I hope.

12 I wanted to rise now, Your Honor, as I'd be remiss in  
13 not doing so at ten of three and not do so at ten of five.  
14 There is a deadline in the commitment letter, and that was  
15 negotiated last Friday night I believe; the days begin to  
16 blend. We've been available with the debtor working closely  
17 24/7 to get this done. Mr. Levy has raised issues, to be sure,  
18 and we've addressed them as best we could.

19 These have been two perhaps the worst days in the  
20 credit markets that we've seen in awhile, I am informed.  
21 Obviously we can all take note of the equity market decline  
22 worldwide. That's why there's a commitment deadline. It's  
23 serious and I do not have, as we stand here now, any  
24 authorization to extend that on the same terms that exist in  
25 the commitment.

1           So, again, I think we ought to get to it and, you  
2 know, we're prepared to do what we've committed to do, but on  
3 the terms we've committed to do it.

4           THE COURT: Fine. That's good.

5           MR. BARTNER: Thank you, Judge.

6           THE COURT: I take it that everyone who felt the need  
7 to speak at this time has spoken.

8           (No response.)

9           THE COURT: Hearing nothing more, I think, Mr.  
10 Canning, the floor is yours, but I do have a question for you  
11 about how best to use the approximately two hours and eight  
12 minutes, by my watch, that remains before the stated deadline.

13           Does it make sense for you to use any of that time for  
14 conversation with Mr. Levy and Mr. Bartner and others  
15 concerning the disputed language in the DIP order so that at  
16 least you can be assured that you have a need for a contested  
17 matter or not? If you do, then there will be sufficient time  
18 presumably to put on the case that's necessary for me to  
19 adjudicate that dispute before the deadline.

20           Or we can just get into it and when Mr. Bartner used  
21 the term "it" in quotation marks, I wasn't quite sure what he  
22 meant by "it." I don't know if "it" means that you get on with  
23 working this out if you can or get on with seeing with what I'm  
24 going to do.

25           MR. CANNING: I think that's a fair comment, Your

1 Honor, and perhaps I can ask for a minute or two to consult  
2 with Mr. Bartner and Mr. Levy and see where we are.

3 THE COURT: Why don't we -- without exaggerating this,  
4 why don't we take a break until exactly three o'clock. It's  
5 not going to be 3:02, it's going to be three o'clock when I'm  
6 going to come out, by my watch, which could actually be 3:01.  
7 I'll see you in five minutes.

8 MR. CANNING: All right. Thank you, Your Honor.

9 (Recess taken at 2:54 p.m.)

10 (Proceedings resume at 4:01 p.m.)

11 THE COURT: Please be seated.

12 Now it's four o'clock.

13 MR. CANNING: Your Honor, thank you very much for  
14 accommodating the counsel here to spend some time to try to  
15 work out the interim DIP order. I think it was very productive  
16 and, in fact, we have reached an agreement, Your Honor. And  
17 what I would like to do, if the Court is so inclined, is we  
18 have taken a -- the interim DIP order as it was submitted to  
19 the Court yesterday and we had made some changes earlier in the  
20 day which have been black-lined.

21 What we just did is we reached some further  
22 accommodations, which we've inter-lineated in the black-line,  
23 and then we have two areas that we would like to read into the  
24 Court and have you so order that. We just don't have time to  
25 reduce all of it to writing.

1           We can certainly do that after the fact, but that's  
2 the way we think it's best to approach it now.

3           THE COURT: And I take it that the proposed DIP  
4 lender's counsel is satisfied that so ordering the inter-  
5 lineations will be sufficient to give him and his clients  
6 comfort that they will advance funds on the strength of the  
7 order.

8           MR. CANNING: I believe that's right.

9           MR. BARTNER: Yes, Your Honor, we are. Since the  
10 inter-lineations are really accommodations to other parties, I  
11 don't think we're much at risk, but that would be fine, so if  
12 we have the inter-lineations in the order, if Your Honor were  
13 to sign the order today with the inter-lineations, and then we  
14 can, in due course, make it pretty.

15           I think what Mr. Canning was referring to, there are  
16 two areas that would be very complicated to draft and I'd say  
17 impossible to draft in the hour that we have. He was going to,  
18 between him and Mr. Levy, they were going to read that into the  
19 record and ask Your Honor to so order the record.

20           THE COURT: As long as the parties are satisfied with  
21 it, I'm satisfied with it, but to state the obvious, the way  
22 orders are entered in this court, electronic versions of the  
23 order end up on the docket. That's the official signed order.

24           You're going to end up with two electronic zones that  
25 don't necessarily intercept. That is the ECRO record of this

1 oral hearing and the order in the form that it's entered on the  
2 electronic docket.

3 I think it would be sensible for the form of order, as  
4 actually entered, to include a reference to the fact that there  
5 are sections to be later substituted in an amended and updated  
6 and restated version of the order that reflects the substance  
7 of record comments made today, though anybody looking at the  
8 ECRO -- excuse me, anybody looking at the ECF record will know  
9 that there is an ECRO record that needs to be referenced in  
10 order to fully understand the nature of the financing.

11 Additionally, because the interim order contemplates a  
12 final hearing to be held within forty-five days, and notice of  
13 that hearing must include the form of order as entered, there  
14 must be a fully integrated order that goes out to all notice  
15 parties.

16 MR. BARTNER: In my view, Your Honor, the matters  
17 which will be read into the record do not necessarily need to  
18 go into the order. They're matters that relate to the conduct  
19 of the business of the debtors that don't have anything  
20 directly to do with the DIP lenders and the DIP orders.

21 THE COURT: That's fine. You all know a lot more  
22 about what it is that you've worked out than I do. I'm making  
23 comments that are more related to the procedure. And if you're  
24 satisfied and you're prepared to recommend that your clients  
25 advance funds, that's all I care about.

1 MR. BARTNER: Thank you, Your Honor.

2 MR. CANNING: Your Honor, what I would like to do, if  
3 it pleases the Court, is I could hand Your Honor up a copy of  
4 the black line that was done late this morning with the changes  
5 that have previously been agreed upon into which -- onto which  
6 we've also marked our inter-lineations. There were not very  
7 many.

8 I could then actually turn pages with Your Honor and  
9 address both the black-line changes, as well as the hand inter-  
10 lineated changes.

11 THE COURT: That sounds fine. You may approach.

12 Thank you.

13 MR. CANNING: Your Honor, okay. I guess -- probably  
14 the easiest thing to do is just to turn the pages. There's not  
15 a lot of changes, but I don't know any easier way to do it.

16 On the first page you'll note, Your Honor, we added  
17 there was inadvertently -- two of the debtors were left off the  
18 list of debtors, so we added those two debtors at the end of  
19 the first page.

20 On the second page I don't believe we had any changes.

21 On Page 3 in B, Your Honor, we added in the first line  
22 the reference there to the term loan. And then in the second  
23 line in C at the bottom of the page we changed "administrative  
24 agent" to "collateral agent."

25 THE COURT: You left out in the second-to-the-last

1 line of B.

2 MR. CANNING: Oh, you're correct, Your Honor.

3 THE COURT: "And any other party in interest."

4 MR. CANNING: Correct. We did add "and any other  
5 party in interest." That's correct.

6 I'm working off of two orders here, so on Page 4, Your  
7 Honor, in the second line we changed "upon entry of" to "to the  
8 extent provided in," referencing the final order.

9 In D in the next paragraph, once again on the second  
10 line we changed "administrative agent" to "collateral agent."

11 In the fifth line down after "including" we inserted,  
12 "comma, without limitation."

13 The next line we added after "for the benefit of," we  
14 added "the agents and," as well as the lenders, and we defined  
15 them collectively now as the pre-petition secured lenders.

16 Several lines down, which previously had said the  
17 "pre-petition secured facility" -- "the pre-petition lenders"  
18 now says the "pre-petition RBC facility lenders," and that now  
19 becomes a defined term of "pre-petition agent." I think that's  
20 all on Page 4.

21 On Page 5, at the end of the carryover paragraph we've  
22 added a "(i)" in the last line, thought it had been the last  
23 line, and now have a "(ii)" which was added to say "and any  
24 other obligations and liabilities secured in accordance with  
25 the provisions of the applicable pre-petition security

1 agreements." And that now is in the aggregate defined as the  
2 pre-petition secured indebtedness.

3 THE COURT: Let me just stop you.

4 MR. CANNING: Sure.

5 THE COURT: In this paragraph on Page 5 of the  
6 document you handed me there is some handwritten material. Do  
7 you intend --

8 MR. CANNING: I'm sorry. Correct, Your Honor.

9 THE COURT: Do you intend to address that later?

10 MR. CANNING: No, I'm glad you pointed that out. I'm  
11 referencing two documents here and I'll have to turn the pages  
12 simultaneously.

13 One of the changes that we have now inter-lineated by  
14 hand as a result of our conference next door is in (iii) there,  
15 Your Honor. And we have added after it said "those certain  
16 security agreements," we've now added "pledge agreements,  
17 hypothec, mortgages, deeds of trust, and other collateral  
18 documents."

19 And I think with that, that now is all of the changes  
20 on Page 5.

21 THE COURT: Do I -- I just want to be sure I  
22 understand what this says. "Those certain security agreements,  
23 pledge agreements" -- is that "hypothec"?

24 MR. CANNING: I believe that's how you pronounce it,  
25 Your Honor.

1 THE COURT: I simply have never seen that term in a  
2 DIP order.

3 MR. CANNING: I believe that's a Canadian --

4 (Laughter.)

5 MR. LEVY: Your Honor, it's a Canadian security  
6 instrument.

7 THE COURT: Okay. And that's the -- that's used  
8 correctly?

9 MR. LEVY: Yes.

10 THE COURT: And it's a noun?

11 (Laughter.)

12 MR. LEVY: A noun, yes.

13 MR. CANNING: I'm glad you asked, Your Honor. I was -

14 -

15 (Laughter.)

16 THE COURT: Okay.

17 MR. CANNING: So I believe those are the changes on

18 Page 5.

19 On Page 6 there is no handwritten comments but we did,  
20 in the middle of Paragraph H, clarification with respect to the  
21 interest that was transferred from Quebecor World Finance  
22 downstream in connection with the securitization. We added the  
23 phrase "a variable undivided percentage interest in the  
24 receivables portfolio" to accurately reflect that.

25 Page 7, Your Honor, the first change that's there is

1 about seven or eight lines down, the end of the line that  
2 starts with "the DIP loan documents." You'll see after  
3 "Creditors' Committee" we added the phrase "and any other party  
4 in interest," and struck the bold language which would  
5 constitute an extraordinary provision under the court's  
6 guidelines.

7 Now, I think there is no change on the next page, so  
8 we go over to Page 9 and we had just some conforming changes  
9 now, Your Honor, pretty much definitional from the changes  
10 we've just noted.

11 So on Page 9 in Paragraph C you'll see there we  
12 changed "administrative agent" to "agent," which again is just  
13 a conforming change.

14 And that same change is made again on the next page,  
15 Page 10, in the middle of Paragraph H.

16 THE COURT: Let me just stop you.

17 MR. CANNING: Sure.

18 THE COURT: And I don't mean to cause a problem in  
19 raising this point with you at this juncture, but I am being  
20 asked at the bottom of Page 9 to make certain findings  
21 regarding the financing. And at the bottom of the page, G  
22 reads, "The terms and conditions of the DIP credit facility, as  
23 described in the motion and as set forth at the hearing on the  
24 motion" -- of course, we haven't had a hearing on the motion  
25 really -- "including those which provide for the payment to the

1 agents and the lenders of interest and fees related to the DIP  
2 credit facility at the times and in the manner provided under  
3 the DIP credit facility are fair, reasonable, and the best  
4 available under the circumstances, reflect the debtors'  
5 exercise of prudent business judgment consistent with their  
6 fiduciary duties and constitute reasonably equivalent value and  
7 fair consideration."

8           That may be true, but I don't know how I can make that  
9 finding today.

10           MR. CANNING: I certainly understand, Your Honor. I  
11 can, for the record, certainly discuss, broadly at least, the  
12 efforts that the debtors have gone through in order to try to  
13 secure financing in connection with the reorganization. It has  
14 been a considerable effort over the last several weeks and,  
15 indeed, before that.

16           THE COURT: And I'm absolutely certain that's true and  
17 I have no reason to doubt anything that I've read in the  
18 declaration that supports the first day motions. And it's  
19 obvious that a tremendous amount of very significant effort has  
20 gone into preparing these cases to file both in Canada and  
21 here, in developing extremely well done pleadings and, no  
22 doubt, extraordinarily complicated loan agreements and related  
23 documents for transactions that are to be entered into.

24           But I wanted to be clear. I have not had an  
25 opportunity to review the DIP credit agreement, which is an

1 attachment to the DIP motion. I don't believe anyone in my  
2 position could be expected to have had a chance to review it  
3 and the record has to reflect that I am not, in approving this  
4 DIP facility, foreclosing the ability of any party in interest  
5 or foreclosing my own ability, for that matter, to review and  
6 reflect on those undoubtedly carefully worded paragraphs and to  
7 make a finding that's different from what's in this interim  
8 order as it relates to that facility.

9 MR. CANNING: I understand, Your Honor.

10 THE COURT: I'm not approving the facility. I can't.

11 MR. CANNING: I certainly understand, Your Honor. I  
12 mean, it's a very lengthy document and you've only had it for a  
13 matter of hours, so I certainly understand that to the extent  
14 that there will be more time to reflect on the documents and  
15 read the documents and consider them in connection with making  
16 findings regarding its fairness and reasonableness and the best  
17 available, that that may be something you'll read --

18 THE COURT: As to that, I am certainly able to make  
19 findings the sooner you're able to connect the dots on a  
20 declaration and make an appropriate offer of proof before we  
21 conclude the hearing.

22 MR. CANNING: I'd be happy to do that, Your Honor. We  
23 can do that now or we can finish going through this.

24 THE COURT: I think we should go through the rather  
25 turgid prose of the order, go through the edits so that they're

1 done at one time and people don't have to look in multiple  
2 places in the transcript to see what you've said and what I've  
3 said. And then I think you should have as clean a record as  
4 you can put on as to why I should enter this order.

5 MR. CANNING: Okay. Fine. Thank you, Your Honor.

6 Then I guess we'll continue with the somewhat  
7 laborious task of making sure we've captured all of the  
8 comments we've changed, and I think we left off on Page 10 in  
9 the middle of H, where we once again changed "administrative  
10 agent" to "agent," in order to address that definitional  
11 change.

12 Page 11 I think, Your Honor, there are no changes.  
13 I'm sorry, there is a change down in the middle of (iii) in  
14 4(a)(iii). There is now a clarification in the parenthetical  
15 that adds a reference to "and side letters, each dated January  
16 8th, 2008," and adding the word "each" before the phrase "among  
17 Credit Suisse securities."

18 On Page 12 I don't believe there are any changes, Your  
19 Honor. I think that's fine as it is.

20 THE COURT: Well, on Page 12 there is an inter-  
21 lineation in D.

22 MR. CANNING: I'm sorry, Your Honor. I don't have an  
23 inter-lineation -- here it is. Okay. In D, yes. At the  
24 beginning of the second line, the following phrase was  
25 included: "That upon advance notice to the counsel to the pre-

1 petition agent, Soc Gen, the ad hoc bondholders committee, and  
2 the committee" -- I'm sorry -- "and the Creditors' Committee."  
3 That was added in D, Your Honor.

4 And I'll have to -- excuse me for a moment.

5 (Counsel confer.)

6 MR. CANNING: Okay. Your Honor, then we go to 13, at  
7 the end of what had been in the order we've now -- we've  
8 changed "fee letter" to "fee letters" about four lines before  
9 the end. And in (iv) we've now stricken all of (iv) and the  
10 word "or," so "or" (iv) and then we've taken out the balance of  
11 that paragraph.

12 On Page 13, Your Honor --

13 THE COURT: I think we're on Page 14.

14 MR. CANNING: I'm not sure I've got the same version.

15 (Counsel reviews document.)

16 (Counsel confer.)

17 MR. CANNING: I apologize, Your Honor. It's just a  
18 little cumbersome here.

19 At the top of Page 14 we've added in a second line  
20 there. Again, this is a cleanup reference, so we've inserted  
21 the phrase "a variable undivided percentage interest in the  
22 receivables portfolio" and then in the next line we have  
23 stricken the phrase "the existing receivables facility agent."  
24 And the next line we've also stricken "subject to QWF's right  
25 to retain any." We've inserted instead the phrase "with QWF

1 retaining certain rights to."

2           Moving down that paragraph another three lines, after  
3 the phrase "receivables portfolio" we've added in "certain  
4 related rights to QW (USA)" and we've changed this so it now  
5 says "for approximately \$418 million."

6           The line below that we've inserted in the  
7 parenthetical the phrase "together with the assignment  
8 agreement relating to the assignment by QWF of the remainder  
9 trust." And we've finished that off with the defined term of  
10 the purchase agreement.

11           In B at the bottom of the page we have again a  
12 conforming change around five lines down. We've added the  
13 phrase "and certain related rights." And in the next line  
14 we've corrected the reference to the number by changing it from  
15 416,800,000 to the four-hundred-and-eighteen-million-dollar  
16 number.

17           On the carryover paragraph on the top of Page 15 we've  
18 added the phrase at the end of that paragraph "and/or as a  
19 dividend to QW (USA) as its sole equity holder."

20           THE COURT: You've left out at the bottom of 14 the  
21 subordinated note becomes "notes" and there is a phrase added  
22 after --

23           MR. CANNING: Oh, you're right, Your Honor.

24           THE COURT: -- QW (USA) "and certain other debtors"  
25 before the word "incident."

1 MR. CANNING: You're correct. Thank you, Your Honor.

2 Okay. In D at the bottom of that page, in the third  
3 line where it says "in satisfaction of the deferred purchase  
4 price," we changed "note" to "notes" and we've added the phrase  
5 "and/or as a dividend."

6 I'm on Page 16, Your Honor, and the first full  
7 paragraph regarding DIP liens, we've added a parenthetical that  
8 starts "and with respect to the receivables portfolio, upon  
9 full payment of the purchase price (as defined in the purchase  
10 agreement) and the effectiveness of the purchase agreement."

11 Four lines down we have changed "administrative agent"  
12 to "collateral agent," again a conforming change; and we have  
13 done that again five later down, we also changed  
14 "administrative agent" to "collateral agent."

15 Turning over to Page 17, the first change that I note  
16 is in the middle -- towards the end of that carryover  
17 paragraph, actually, after the defined term "avoidance actions"  
18 it now says "but" and we took out "upon entry of" and we've  
19 added "in lieu thereof to the extent provided in." I think  
20 that's all the changes on Page 17.

21 Carryover on Page 18, once again we've changed  
22 "administrative agent" to "collateral agent" and we've updated  
23 the definition of -- had been "pre-petition collateral agent"  
24 to "pre-petition secured lenders."

25 The only other change on that page I note, Your Honor,

1 is again towards the bottom where we had "administrative agent"  
2 and it's been changed to "collateral agent."

3           Moving on to Page 19, the only first change I see  
4 there is at the end of Paragraph 7 on super priority claim, in  
5 the parenthetical at the end we once again have changed "upon  
6 entry." We've taken out "upon entry of" and we've inserted  
7 instead the phrase "to the extent provided in."

8           The next page, Your Honor, which is Page 20, I don't  
9 believe I see that any changes were made on that page.

10           On Page 21, at the end of the carryover paragraph,  
11 we've inserted in the next-to-last line in the parenthetical  
12 the language "except as provided in Paragraph 6B and C."

13           The next Paragraph 14A, again, we've changed  
14 "administrative agent" to "agents."

15           And then at the bottom of that page we've inserted a  
16 sentence that starts, "Notwithstanding anything in this order,  
17 the DIP credit agreement, or any" -- onto the next page -- "any  
18 other DIP loan document to the contrary, no proceeds of any  
19 sale, lease, transfer, or other disposition" -- I'm sorry --  
20 "disposition of any collateral on which the pre-petition  
21 secured lenders hold a valid, perfected, and unavoidable first  
22 priority security interest, pursuant to this order or any pre-  
23 petition security agreement, shall be remitted to any secured  
24 DIP creditor for application to the DIP obligations or  
25 otherwise, unless and until the pre-petition secured

1 indebtedness has either been paid in full or cash  
2 collateralized in full with cash from such proceeds."

3           Okay. And I think that's the only change on Page 22,  
4 Your Honor, so on Page 23 --

5           THE COURT: I hate to do this to you again, but --

6           MR. CANNING: Whoops. No, we've got two more here, I  
7 see.

8           THE COURT: And I apologize to everybody who has to  
9 listen to this. This is why drafting by committee is never  
10 desirable. We're now drafting with an entire courtroom  
11 watching.

12           MR. CANNING: Yes, we have the change in A, Your  
13 Honor, and that was on the --

14           THE COURT: There are inter-lineations in A that I  
15 have.

16           MR. CANNING: Yes, there are, Your Honor. Just --  
17 with the pagination different on my copy, it's on the next  
18 page, but that's correct. In little (i) in the middle of A it  
19 had said "not take any action to foreclose upon or recover."  
20 We've now substituted for the word "recover" the word  
21 "enforce."

22           And then two lines down, after the phrase "or  
23 otherwise exercise" we've inserted the word "default" before  
24 the word "remedies" so it now reads "or otherwise exercise  
25 default remedies."

1           Okay. In the paragraph, the next paragraph, that's  
2 Paragraph B, Your Honor, we have both some black line and again  
3 some inter-lineations. It starts out in B with the third line.  
4 We've changed "administrative agent" to "agents."

5           And then down in about the eighth or ninth line, after  
6 the words "Creditors' Committee" we've added the phrase "comma,  
7 counsel for the pre-petition agent."

8           We've also added by inter-lineation the phrase --  
9 after it says "counsel for the pre-petition agent" we've added  
10 "counsel to the ad hoc noteholders' group." And I think that's  
11 --

12           THE COURT: And it also says "counsel for Soc Gen."

13           MR. CANNING: I'm looking for that. Okay. Yes. I'm  
14 sorry, it does. Correct, Your Honor.

15           All right. Then at the end of that paragraph, once  
16 again in two locations right at the very end of that paragraph,  
17 we've changed "administrative agent" to "agents."

18           Going over to Page 24 in Paragraph 16, we have, in  
19 response to the U.S. Trustee's request, changed the amount from  
20 \$50,000 to \$250,000 with respect to the fees and expenses of a  
21 Chapter 7 trustee upon conversion. And then later on in that  
22 paragraph we've also changed "administrative agent" to  
23 "agents."

24           And I think that takes us to Page 25. In Paragraph  
25 19A, again, six lines down, we've changed in two places

1 "administrative agent" to "agents;" and again, two lines  
2 thereafter, we've changed "administrative agent" to "agents."

3           On Page 26, Your Honor, we have changed  
4 "administrative agent" to "collateral agent" in each of the  
5 first two lines, and we also did the same thing in the first  
6 line of Subparagraph B.

7           Paragraph 20 has been deleted in its entirety, which  
8 takes us through the rest of 26 and all of 27 and through the  
9 first third of Page 28. And in lieu of that we have added some  
10 additional language, which has both black lines and inter-  
11 lineations, so I will read that, hopefully putting the two  
12 together, so that it now says:

13           "Adequate protection for pre-petition secured lenders:  
14           To the extent of pre-petition secured indebtedness is  
15           secured by valid, perfected, non-avoidable, and  
16           enforceable liens in existence as of the petition  
17           date, the pre-petition secured lenders are hereby  
18           granted an administrative claim pursuant to Section  
19           507(b) of the bankruptcy code (the pre-petition  
20           secured lender's administrative claim against the  
21           debtors" -- I think it should say, Your Honor -- it  
22           should say "against the estate of any debtor which  
23           owns pre-petition collateral in an amount equal to any  
24           diminution in value" -- "in the value of such pre-  
25           petition collateral, following the petition date,

1           whether as a result of the imposition of the automatic  
2           stay, use of the pre-petition collateral, or  
3           otherwise.

4           "The pre-petition secured lender's administrative  
5           claim shall have priority over all administrative  
6           expense claims, unsecured claims, and all other claims  
7           against the debtors now existing or hereafter arising,  
8           of any kind or nature whatsoever; including without  
9           limitation administrative expenses or other claims of  
10          the kind specified in or ordered pursuant to Sections  
11          105, 326, 328, 330, 331, 503(a), 503(b), 506(c),  
12          507(a), 507(b), 546(c), 726, 1113 and 1114 of the  
13          bankruptcy code, provided that the pre-petition  
14          secured lender's administrative claim shall be junior  
15          and subordinate to the super priority claim and the  
16          carve-out."

17          Next, Your Honor, Page 29, Paragraph 21, change in the  
18          third line there from "administrative agent" to "agents." And  
19          then again the next-to-last line on that page we've also  
20          changed "administrative agent" to "agents."

21          The carryover of that paragraph onto Page 30, the  
22          black line we've added there is a new (ii) the following. It  
23          says, "The pre-petition secured lender's administrative claim  
24          shall continue in full force and effect and shall maintain its  
25          priority as provided in this order until satisfied; and that

1 such pre-petition secured lender's administrative claim shall,  
2 notwithstanding such dismissal, remain binding on all parties  
3 in interest; and (iii)" and those are the changes there.

4 In C, following and midway down, we've changed  
5 "administrative agent" to "agents." We've done the same thing  
6 three lines thereafter. We've also done the same at the end,  
7 last line of that page, carrying over to the top of the next  
8 page.

9 And I guess I should say in the next-to-last line or  
10 three lines from the end of that carryover paragraph we've also  
11 changed "administrative agent" to "agents."

12 Moving on to Page 32, in the middle of the page we  
13 have added, in Subsection X, after the phrase "all payments  
14 made" we've inserted "in connection with or under the existing  
15 receivables facility." I believe that's the only changes on  
16 that page, Your Honor.

17 Moving on to Page 33, again, these are the same  
18 conforming changes in Paragraph 23, about ten lines down, we've  
19 changed "administrative agent" to "agents." Three lines after  
20 that we've changed "administrative agents'" to "collateral  
21 agents' assertion." And two lines thereafter, once again, it  
22 has been changed from "administrative agent" to "agents."

23 Page 24 (sic), Your Honor, I don't think any changes  
24 were made there. I think the next changes are on Page 35 in  
25 Paragraph 26. Again, conforming changes in the third line,

1 "administrative agent" is "agents." The next line "pre-  
2 petition secured creditors" has been changed to "pre-petition  
3 secured lenders."

4 Five lines after that we've changed "agent" singular  
5 to "agents" plural. Two lines after that, we've inserted after  
6 the phrase "existing receivables facility" the phrase "the pre-  
7 petition secured lenders." And then the line after that we've  
8 changed "administrative agent" to "agents," and that's all the  
9 changes on that page.

10 Page 28 (sic), we're now fast approaching the long-  
11 awaited notice provision.

12 THE COURT: You're on Page 36, Paragraph 31.

13 MR. CANNING: 36, correct, Your Honor. And I don't  
14 think there were any changes there.

15 (Counsel confer.)

16 MR. CANNING: I think, Your Honor, with that, I think  
17 I've highlighted for you all of the changes that were made,  
18 both this morning among the parties and also inter-lineated  
19 among the parties --

20 THE COURT: During the break.

21 MR. CANNING: Pardon me? During the break. Yes,  
22 during the break, Your Honor.

23 Now, there are also two other issues that, again, we  
24 indicated we've discussed and had a lot of discussion about and  
25 we've now reached an agreement among counsel for the DIP

1 lenders and counsel for the bank syndicate and the debtors,  
2 which I would ask Mr. Levy I think wants to read those for the  
3 Court.

4 MR. LEVY: Rick Levy again on behalf of Royal Bank of  
5 Canada, the agent for the pre-petition lender syndicate.

6 The first change that we agreed to relates to the  
7 issue of inter-company transfers, and we've agreed upon  
8 restrictions with respect to the use of DIP alone proceeds that  
9 are transferred from debtor entities to non-debtor entities.

10 And the restrictions we agreed to are as follows:

11 With respect to pre-petition trade payables that are  
12 owed by non-debtor entities, including Quebecor World, S.A., as  
13 to which there is previous discussion about, that's the entity  
14 that has -- purchases ink and other inventory on behalf of  
15 Quebecor entities throughout the world.

16 With respect to any of the pre-petition trade payables  
17 that it or other non-debtor entities owe that relate to the  
18 European operations, the debtor is authorized in the next  
19 thirty days to use up to 25 million euro of DIP proceeds in the  
20 aggregate to pay those particular pre-petition trade payables.

21 In other words, it's in the nature of a -- it's kind  
22 of a critical vendor type issue but in a non-debtor context and  
23 obviously we and other creditors were concerned about the use  
24 of DIP proceeds to pay down unsecured pre-petition trade  
25 payables that were structurally junior, at least to my client's

1 claims. But we've agreed on that limitation, the twenty-five-  
2 million-euro limitation, with respect to the use of DIP loan  
3 proceeds to pay pre-petition trade payables that relate to the  
4 European operations.

5 In addition, we've agreed to a separate cap of 10  
6 million U.S. dollars of the -- up to that amount of the DIP can  
7 be used to fund pre-petition trade payables owed by non-debtor  
8 parties with respect to the Latin American operations.

9 There's a separate inter-company issue which we're not  
10 going to address today, but I just want to highlight it for the  
11 judge and that --

12 THE COURT: Is that also a thirty-day period?

13 MR. LEVY: Yeah, that's correct. Thank you, Your  
14 Honor.

15 Those are both thirty-day limitations.

16 It's possible, by the way, that we may, you know, have  
17 an earlier hearing in the Canadian court than this issue which  
18 the Canadian court, as Your Honor probably is aware from  
19 reading the transcript of that hearing, the judge did indicate  
20 that inter-company issues were serious issues and there may be  
21 a further hearing on that between now and thirty days from now,  
22 but for purposes of this proceeding and this order, we've all  
23 agreed on a thirty-day time period and these particular caps.

24 THE COURT: All right. Now, I understand what you  
25 said and that's part of the record. Is that what you would

1 like me to so order, along with the other changes that were  
2 read into the record?

3 MR. LEVY: Yeah, I have one other --

4 THE COURT: Okay. I didn't mean to cut you off, but  
5 how is this understanding to be ultimately documented?

6 MR. LEVY: I think we should, you know, put it in the  
7 form of a supplemental order that we would present to Your  
8 Honor.

9 THE COURT: Or is it a transactional document that the  
10 parties enter into relating to use of proceeds? Because these  
11 are -- this is a use of DIP proceeds to pay non-Chapter 11  
12 creditors and the payments are being made by non-debtors in all  
13 instances. In one -- in the first --

14 MR. LEVY: With proceeds of the DIP loan.

15 THE COURT: I understand. I understand that it's a  
16 limitation on the use of DIP proceeds to funnel through the  
17 system and end up being paid by non-debtors to creditors that  
18 are not necessarily subject to the jurisdiction of this Court,  
19 correct?

20 MR. LEVY: That's correct.

21 THE COURT: I'm simply trying to gather how most  
22 appropriately -- I'm sure you thought about this -- that should  
23 be ultimately documented in a way that's satisfactory to your  
24 client.

25 MR. LEVY: Well, I would have, you know, if we had

1 more time, simply inserted that language in the DIP order.  
2 Frankly, that piece of this isn't that hard to draft, but we  
3 are where we are and I'm comfortable, you know, having it so  
4 ordered based on, you know, my presentation and we can submit  
5 an order that memorializes that.

6 (Counsel confer.)

7 MR. LEVY: Yeah, we can prepare a stipulation which  
8 you so order that's going to reflect what I've discussed and --

9 THE COURT: That will be fine.

10 MR. LEVY: -- I'm not concerned. I trust the debtors.  
11 They're going to abide by those restrictions and -- but we can  
12 memorialize that in a stipulation that we'll present to Your  
13 Honor.

14 THE COURT: Okay. That sounds fine.

15 MR. LEVY: Okay. Well, let me just finish up the  
16 inter-company discussion just to state this on the record, but  
17 this isn't -- we're not asking the judge -- Your Honor to so  
18 order this, but the separate inter-company issue is simply the  
19 -- our desire, and I think the desire of other creditors, to  
20 include what I would call the Delphi-type inter-company  
21 protections that would -- that are intended to address the  
22 situation of one debtor paying more of the DIP loans ultimately  
23 than the amount of the proceeds it received. It would have a  
24 contribution claim in that circumstance against other debtors  
25 who didn't pay -- who paid less than the portion of the DIP

1 they received.

2           There could be other instances where there were inter-  
3 company transfers among the debtors where some debtor makes an  
4 inter-company transfer to another debtor and with respect to  
5 all those inter-company obligations, we will be coming back at  
6 the final order stage and asking for this final order to  
7 include the same type of protections that have been included in  
8 other recent Southern District cases, including those that were  
9 included in the Delphi final order, which consists of granting  
10 a second, silent lien on the debtor obligor's assets that's  
11 junior to the DIP lien and junior to the DIP super priority  
12 claim, but it would support both the junior lien, the silent  
13 junior lien, and a junior super priority admin claim with  
14 secure support these inter-company obligations that run back  
15 and forth.

16           Issue for another day and we have an understanding  
17 with the debtor and the other parties that during the interim  
18 period before the entry of the final order, the debtor will do,  
19 as they've already indicated, and that is to keep very close  
20 track of where the loan proceeds go, where the DIP loan  
21 proceeds go, which way the inter-company transfers go, and when  
22 we come back, you know, with hopefully a resolution of this  
23 issue in the final order, whatever the agreed-upon arrangement  
24 is will be retroactive from day one, you know, when the DIP  
25 loan was first advanced.

1           That's the separate issue, nothing to so order today,  
2 but I just wanted to highlight that issue.

3           THE COURT: Okay.

4           MR. LEVY: The next area which will be -- which we  
5 would ask you to so order concerns an adequate protection  
6 arrangement with respect to one part of the RBC syndicate's  
7 collateral. We have a pre-petition security interest in the  
8 inventory of QW Memphis, which is one of the operating U.S.  
9 subsidiaries, and perhaps certain of its own subsidiaries.

10           We are going to retain that pre-petition lien to the  
11 extent that it's valid and perfected, on that inventory; and in  
12 addition, that lien will attach to the proceeds of that  
13 inventory. You know, in due course that inventory will be  
14 converted to receivables and ultimately collected.

15           The debtor has agreed to deposit all proceeds and  
16 collections of that pre-petition inventory into a cash  
17 collateral account to which we would retain a first priority  
18 lien to the extent we had a first priority lien on the pre-  
19 petition inventory, and it would be released from the cash  
20 collateral account subject to further court order.

21           THE COURT: I know I read about that, or something  
22 that's resonating with me that seems very much like that in  
23 some of the documents that I saw in the binder before today's  
24 hearing.

25           MR. LEVY: It was in an earlier version of the DIP

1 order, I think, and we ended up -- we had a different  
2 arrangement with respect to that adequate protection piece. At  
3 the request of the DIP lenders we struck the other arrangement,  
4 which is similar to this in certain respects.

5 THE COURT: That's why the paragraph was stricken from  
6 the order?

7 MR. LEVY: Yes. Yes. But we didn't have time -- we  
8 kept in the junior admin priority claim as part of our adequate  
9 protection, but we didn't include what I'm describing now, in  
10 the interest of time.

11 THE COURT: All right. I understand generally what  
12 you're talking about. I'm prepared to so order it, since I  
13 would have so ordered it before, but I see Mr. Rosenberg  
14 standing, so he might not be happy.

15 MR. ROSENBERG: Actually, he is generally happy and  
16 we've worked out this language together --

17 THE COURT: You're saying "he" is generally happy?

18 MR. ROSENBERG: "He" being Mr. Rosenberg meaning his  
19 client.

20 (Laughter.)

21 THE COURT: Okay.

22 MR. ROSENBERG: The phrase would be referring to the -  
23 - would be valid, perfected, and unavoidable. And with that,  
24 the so-ordered language would be acceptable to the noteholders.

25 THE COURT: I think that's an acceptable change to

1 all.

2 MR. LEVY: That's fine with us.

3 The one last thing that I'll mention, and this I would  
4 ask to be so ordered as well, and that is we have an  
5 understanding with the debtor and its professionals, including  
6 with the monitor, that they will work with us, my client RBC,  
7 and its professionals, its financial advisor, to share  
8 information concerning the company comparable to what's being  
9 provided to the DIP bank group so that we can be, you know,  
10 well informed about the status of the debtor and its operations  
11 and assets.

12 So they're going to work and cooperate with us. We  
13 may include a more-detailed provision along those lines in the  
14 final order, but we're comfortable at this point relying on  
15 that understanding.

16 THE COURT: All right.

17 MR. HOFFMANN: Thank you. Your Honor, very briefly,  
18 Trevor Hoffmann, Luskin, Stern & Eisler, on behalf of Society  
19 Generale.

20 SG is a participant in the RBC facility, but as  
21 mentioned earlier, we also have a stand-alone facility that  
22 shares in the same collateral as the RBC facility does. And so  
23 I just wanted to make sure that any order that is so ordered  
24 today will apply as well with respect to the SG collateral that  
25 we do share.

1           And we, too --

2           THE COURT:  You're speaking now in respect of SG's  
3 interest as an equipment lender or SG's interests as a co-  
4 lender or syndicate participant with RBC?

5           MR. HOFFMANN:  I am speaking as the equipment  
6 financier.

7           THE COURT:  Okay.

8           MR. HOFFMANN:  This is with respect to the separate  
9 facility, but it shares the same collateral as --

10          THE COURT:  Pari passu.

11          MR. HOFFMANN:  Exactly.  And so I just wanted to make  
12 sure that the inter-company protections and the adequate  
13 protection statements with regard to the QW Memphis collateral  
14 and the sharing of information provisions all apply to the  
15 stand-alone facility as well.

16          THE COURT:  I can't give you those assurances, but  
17 maybe others in the room can.

18          MR. CANNING:  I believe that's correct.  The language  
19 that was in there that you referred to, Your Honor, was our  
20 attempt to address the issue of adequate protection to the  
21 extent that there was a usage of the inventory from QW Memphis.  
22 As we tried to negotiate further changes, the parties couldn't  
23 reach agreement with respect to some of the features of the  
24 cash collateral process, and so it was decided we would delete  
25 it altogether and we would read into the record what Mr. Levy

1 read.

2 But certainly to the extent that Societe Generale and  
3 the banks that share that collateral, then the procedure would  
4 be applicable to both and they would share -- their liens would  
5 share on the cash collateral account, as they did on the  
6 collateral previously.

7 THE COURT: Fine.

8 MR. CANNING: Now, my only other comment, I didn't  
9 have any exceptions to take with what Mr. Levy said, other than  
10 just to clarify that the description that he gave of his  
11 concerns and his client's request regarding the inter-company  
12 transfers, we appreciate them. We haven't reached any  
13 agreement. We're going to try to work and see what we can do  
14 over the next forty-five days, but just to make sure there's no  
15 agreement reached.

16 THE COURT: Let me be clear I understand what you just  
17 said about no agreement.

18 You've reached no agreement about the kind of language  
19 that Mr. Levy referenced he would hope to see in a final order,  
20 but you have agreed to the restrictions on use of DIP proceeds  
21 that have been put in the record, including the twenty-five-  
22 million-euro restriction in Europe and the ten-million-dollar  
23 U.S. denominated restriction in Latin America?

24 MR. CANNING: That's correct, Your Honor. We have  
25 agreed on that. It's what he referred to as the Delphi inter-

1 company process. The complexity of that between Canada and the  
2 U.S. is such that we've discussed it but we don't have any  
3 agreement on that but we will be addressing that over the next  
4 week.

5 THE COURT: Okay.

6 MR. D'AVERSA: Your Honor, Ran D'Aversa from Mayer  
7 Brown. I'm representing ABN Amro, the agent in the  
8 securitization facility. I am conscious of the time so I'll be  
9 brief.

10 I just wanted to make sure the record was clear with  
11 respect to the first item that Mr. Levy wanted so ordered that  
12 the cap on DIP proceeds that could be paid on account of non-  
13 debtor affiliates doesn't apply to the securitization payment.  
14 I just wanted to make sure that was clear.

15 MR. LEVY: That's certainly my understanding.

16 THE COURT: Sounds like it's the understanding that  
17 was intended.

18 MR. D'AVERSA: Yeah, I agree. Just want the record to  
19 be clear.

20 Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. CANNING: Your Honor, with that, I think we've  
23 addressed the substance of the proposed DIP order.

24 Now, with respect to proving up the process and the  
25 fairness and the reasonableness of that process, and certainly

1 being cognizant of the time, I would proffer the declaration of  
2 Jeremy Roberts. He's here in the courtroom today and he is one  
3 of the -- if not the senior financial guy in Quebecor and he's  
4 available to answer any questions for anybody, but I would hope  
5 that that proffer would be sufficient for purposes of  
6 establishing the reasonableness of that.

7 THE COURT: It's sufficient from my perspective, but  
8 I'd like to ask if anyone wishes to examine Mr. Roberts with  
9 respect to that portion of his declaration in support of first  
10 day motions that deals with the debtors' current liquidity  
11 constraints and need for DIP financing, as well as the efforts  
12 undertaken by the debtor pre-filing to obtain financing from  
13 the existing lenders and from other alternative sources.

14 (No response.)

15 THE COURT: There's no response. I accept the  
16 proffer.

17 MR. CANNING: Thank you, Your Honor. So I want to  
18 make sure that the language that you referred to before about  
19 the reasonableness and the fairness of the terms is all  
20 acceptable to Your Honor.

21 THE COURT: It is. I'm satisfied on the basis of the  
22 offer of proof that reasonable efforts were undertaken by the  
23 debtor to obtain the best financing that it could find; and  
24 that, based upon the representations made in the declaration of  
25 Mr. Roberts, the debtor has demonstrated an extreme liquidity

1 crisis that can only be met at this juncture by the proposed  
2 debtor-in-possession facility that is -- has been presented on  
3 an interim basis to me today.

4 MR. CANNING: Thank you, Your Honor.

5 I guess with that I would ask the Court if we could  
6 have the DIP financing on an interim basis approved in  
7 accordance with the interim order, as we have reflected it with  
8 Your Honor and read it into the record.

9 THE COURT: I'm prepared to enter that order today. I  
10 just want to be absolutely clear that anybody who wishes to  
11 object has an opportunity to do that now. Are there any  
12 objections to the entry of the order in the form that it has  
13 been modified on the record this afternoon?

14 (No response.)

15 THE COURT: I hear no objections. I'm prepared to  
16 enter the order as presented.

17 MR. CANNING: Thank you very much, Your Honor.

18 Now, as to the mechanics, I know we talked about that  
19 earlier. We'll try to clean that up, I guess, is a better way  
20 to phrase it and get something down to Your Honor as quickly as  
21 we could.

22 THE COURT: Well, here's my suggestion. My suggestion  
23 is that, assuming we have a disk to go with this -- do we?

24 MR. CANNING: We are -- we have somebody I believe who  
25 has been working on incorporating the changes. I'm not sure

1 that anybody has printed out what has been typed and read it,  
2 but one thing we certainly could do --

3 THE COURT: Do we have a disk in court today that  
4 reflects at least the black-lined version of the order that I  
5 have?

6 MR. CANNING: I'm advised that we do not.

7 (Counsel confer.)

8 MR. CANNING: We do not, Your Honor.

9 THE COURT: Well, it's now just before five o'clock.  
10 I'm going to assume that, with Mr. Bartner sitting here staring  
11 at the bench, and having heard directly my statement that I'm  
12 entering this order, that we've met the five o'clock deadline.  
13 Is that correct?

14 MR. BARTNER: Yes, Your Honor. That's correct. Thank  
15 you.

16 THE COURT: Thank you.

17 That means that the actual entry of the order is a  
18 mechanical detail which we'll attend to, and we'll try to  
19 attend to it this evening. But in order to accomplish that, we  
20 need either a disk or we need an e-mail from your office, which  
21 I think can be arranged, I assume --

22 MR. CANNING: Correct.

23 THE COURT: -- even while you're here by having one of  
24 your colleagues go to the phone and have somebody in your  
25 office arrange for the e-mail to my chambers' address and we

1 can then arrange for entry of the order promptly after the  
2 conclusion of this hearing.

3 MR. CANNING: We can certainly do that, Your Honor.

4 THE COURT: Fine.

5 MR. CANNING: Thank you.

6 With that, Your Honor, we can proceed directly, or we  
7 could take a five-minute break for those who were here  
8 primarily for this particular portion and then reconvene at  
9 Your Honor's pleasure.

10 THE COURT: Why don't we, just because I think a  
11 stretch is in order, take a five-minute break? Call it ten-  
12 minute break.

13 MR. CANNING: Thank you very much, Your Honor.

14 THE COURT: Resume at 5:05.

15 (Recess taken at 4:55 p.m.)

16 (Proceedings resume at 5:18 p.m.)

17 THE COURT: I know that we dealt with the order, but  
18 there is a missing part of the order that I want to address  
19 that involves the date for the final hearing, and that's a  
20 blank that needs to be filled in.

21 In connection with the case administration order,  
22 there was a request for omnibus hearing dates and while these  
23 have been selected just so we know what they are for our  
24 purposes, there's nothing yet fixed in stone and they can  
25 change.

1           But one of the omnibus hearing dates that we  
2 identified next month is February 21st and my question is  
3 whether February 21st would or would not be an acceptable day  
4 from the debtors' perspective and from the perspective of other  
5 interested parties for a final hearing on the DIP.

6           That's significantly less than forty-five days. I  
7 also recognize that in some cases parties are anxious to get to  
8 final hearing as soon as possible and others not so much, so  
9 what's your preference?

10           MR. CANNING: If I could have a moment, Your Honor?

11           (Counsel confer.)

12           MR. CANNING: Your Honor, under the circumstances of  
13 the DIP where -- once we go to final order, we go onto a  
14 borrowing base and so there are -- there's a number of things  
15 that have to be done in order to get to that point, so if the  
16 Court could accommodate us, I think that that would be helpful  
17 to the debtors if we could have the full forty-five days.

18           THE COURT: That's fine.

19           MR. CANNING: Okay.

20           THE COURT: Then what day do you want?

21           MR. CANNING: Well, let's see if we have a calendar  
22 here.

23           (Counsel confer.)

24           MR. CANNING: Your Honor, I think maybe either  
25 Thursday, March 6th or Friday, March 7th.

1 THE COURT: You can have March 6th with the  
2 understanding that it won't be in this courtroom, and we'll let  
3 you know where it's going to be.

4 MR. CANNING: Okay. Fine. Thank you, Your Honor.

5 THE COURT: I'll be in the courtroom, wherever it is,  
6 but --

7 (Laughter.)

8 THE COURT: -- this room is reserved for Chapter 13  
9 hearings and Judge Glenn will be sitting here on that day and  
10 I'll have to find another courtroom, but once I do, I'll let  
11 you know.

12 MR. CANNING: Okay. Thank you.

13 (Counsel confer.)

14 THE COURT: We'll make conforming changes to Paragraph  
15 31 to include other dates, unless you have specific  
16 preferences.

17 MR. CANNING: No, Your Honor.

18 THE COURT: Okay. And that will be at 10 a.m., by the  
19 way.

20 MR. CANNING: Your Honor, I think we'll proceed with  
21 the rest of the first day motions that are scheduled for  
22 hearing today.

23 The first one I would like to take up, consistent with  
24 what I said earlier, I think would be the employee wages, Your  
25 Honor, which is on the agenda listed as C-2.

1 THE COURT: Okay.

2 MR. CANNING: Your Honor, as I mentioned earlier, the  
3 company has got over 20,000 employees at the various sites  
4 around the country that work for the company. There are, for  
5 example, about 15,000 to 16,000 hourly employees and about  
6 3,000 salaried employees.

7 What we're here today primarily to address is  
8 compensation for those individuals. We also have some parties  
9 that get sales commission. We have some senior managers that  
10 have some bonus programs. Although we've mentioned those in  
11 the motion, we are not seeking the Court to address those  
12 today. It is primarily just our salaried employees and our  
13 hourly employees.

14 And we're seeking authority to pay them for their pre-  
15 petition work up to the limit under 507(a)(4) of the \$10,950.  
16 This is, for the record, Your Honor, critical to them. They  
17 are hard working. They're certainly the life blood of the  
18 company and we are concerned about how they responded to this.  
19 They've been terrific and they're continuing to work.

20 We did have a payroll that went out on Friday of last  
21 week that covered all of these almost 19,000 employees. With  
22 the holiday, we have issues with respect to whether those were  
23 cashed -- checks are being cashed. Although we have a  
24 significant number, probably fifty percent or more, that are  
25 direct deposit, you know, almost half of these employees get

1 their paycheck and they go down to their local bank and they  
2 cash the check.

3           So it's critically important that we keep them  
4 comfortable and confident and to the -- as to the long-term  
5 viability of the company and we think getting them paid right  
6 away is necessary. So what we would like to ask is for the  
7 Court to enter an order that would allow us to pay those hourly  
8 and salaried employees, as they have been paid historically, so  
9 they can cash their checks.

10           THE COURT: Is there any objection to this requested  
11 relief?

12           MR. VELEZ-RIVERA: None, Your Honor.

13           THE COURT: I'm prepared to find, on the basis of the  
14 representations made by counsel and that portion of the  
15 declaration of Mr. Roberts that addressed the needs of the  
16 employees, and this motion in particular, that approval of this  
17 motion is needed in order to avoid immediate and irreparable  
18 harm to the debtor. And as a result, notwithstanding the  
19 language of new Rule 6003, which limits first day motions under  
20 certain circumstances, this is a first day motion that provides  
21 for critical relief and under the circumstances I'm prepared to  
22 grant it.

23           MR. CANNING: Thank you, Your Honor.

24           As I noted earlier, we do have some individuals who  
25 work on sales commission. They are -- I don't want them to

1 think that they're not critical, but we recognize, consistent  
2 with the new rules, that's for the people that really need to  
3 be taken care of today and they understand that their payment  
4 dates on their commissions are coming out in the future. We  
5 will be coming back with another motion to the Court, but we  
6 appreciate the Court allowing us to take care of our salaried  
7 and hourly employees today.

8 THE COURT: And your motion made clear that you were  
9 paying attention to those who are the subject of the motion  
10 today, but also recognizing the importance of the others to the  
11 continuity of your operations.

12 MR. CANNING: Correct, and thank you, Your Honor.

13 Your Honor, if I could, the next motion I would like  
14 to address would be the cash management.

15 Your Honor, as we set forth in our motion, we have a  
16 centralized cash management system, which is very, very  
17 important to the debtors. With fifty-three debtors scattered  
18 throughout the country, we have a limited number of accounts so  
19 that we can centralize all of our receivables and our payables.  
20 And I think -- I hope it was evident in the motion that that is  
21 a very efficient -- a very effective system for us.

22 It's run primarily through Bank of America out of  
23 their Chicago office. We have had preliminary discussions with  
24 the U.S. Trustee's office about the importance and the need to  
25 be in compliance with Section 345 and we have agreed and

1 provided for in the order that we will work to be in compliance  
2 within the next thirty days or so to make sure that we  
3 effectuate that.

4           And we've spoken with Bank of America in this regard.  
5 We've spoken to their counsel and their business folks and they  
6 are certainly willing to work with us to see if we can  
7 accommodate doing that as quickly as possible. Hopefully we  
8 won't have to remove all of the accounts and bring them to New  
9 York, we'll be able to, by some sort of bonding or something,  
10 satisfy the requirements so that we can leave our system  
11 basically intact as it is today.

12           I think that there was some language in the order,  
13 Your Honor, that Bank of America wanted to have clarified,  
14 particularly so that they didn't expose themselves to any  
15 uncertainty with respect to what they were supposed to do when  
16 the order was effective, as to what accounts they were supposed  
17 to release money, and to whom they were supposed to release  
18 that money, recognizing that with respect to certain of our  
19 payables that the automatic stay precludes any payments on  
20 account of those obligations and they should stop checks and so  
21 on and so forth; and with respect to the employees, for  
22 example, as to their payments that you have just approved, that  
23 we can quickly and efficiently get that back up and running so  
24 that we can process those checks and get the employees paid.

25           So we have asked them to provide us with some language

1 that would make them comfortable. They did so and we have  
2 incorporated that language, but what I'd like to do at the  
3 Court's pleasure is to hand up a black-line of the order as we  
4 proposed it, showing it highlighted --

5 THE COURT: You're not going to read it, though, are  
6 you?

7 MR. CANNING: -- and I'm hoping, Your Honor --

8 (Laughter.)

9 MR. CANNING: -- that unless somebody out there is  
10 really, really mean, that I won't have to go through that  
11 laborious process again.

12 THE COURT: You can certainly hand it up. Thank you.

13 MR. CANNING: And, Your Honor, I can give you a moment  
14 or two to see the changes are not that extensive and if you  
15 have any questions I'd be happy to answer them.

16 THE COURT: Do you have a disk in court that reflects  
17 the order as amended?

18 MR. CANNING: We do, Your Honor, yes.

19 THE COURT: And do you also have a disk that reflects  
20 the employee wage and benefits motion?

21 MR. CANNING: We do, yes, Your Honor.

22 THE COURT: Okay. Fine. I assume --

23 MR. CANNING: You want me to hand those all up?

24 THE COURT: -- that at the end you'll hand them up all  
25 at once. I just wanted to make sure that that detail was taken

1 care of.

2 Are these changes acceptable to the office of the  
3 United States Trustee?

4 MR. VELEZ-RIVERA: Those are the changes we agreed to,  
5 Your Honor, and suggested.

6 THE COURT: Fine.

7 MR. VELEZ-RIVERA: And, Your Honor, the genesis of the  
8 problem with the Bank of America, just for clarification, is  
9 that even though the Bank of America is an approved depository  
10 in both this -- Region 2 of the United States Trustee system,  
11 as well as Region 11, Chicago, the Chicago branch does not  
12 report directly on bankruptcy estate funds to my region, but we  
13 think we can work it out. Hopefully we will.

14 THE COURT: Seems like something that great minds can  
15 solve.

16 (Laughter.)

17 MR. CANNING: I didn't mean to suggest that Bank of  
18 America was not a reputable and acceptable institution; it  
19 certainly is.

20 THE COURT: Okay. This is fine.

21 MR. CANNING: Thank you, Your Honor.

22 (Counsel confer)

23 MR. WILAMOWSKY: Again for the record, Steven  
24 Wilamowsky, Bingham McCutchen, LLP on behalf of Bank of  
25 America.

1           Your Honor, we did work out most of the changes.  
2 There was an additional issue, which I think that -- it's  
3 important to our client. I don't think that counsel for the  
4 debtors meant to push us aside with it, but I think it just  
5 kind of came up close to the hearing and, like I said, we were  
6 only retained a few hours ago, so I apologize.

7           But we have, separately from the depository accounts  
8 and separately from that relationship, or related to but  
9 separate, is a purchasing card agreement where debtor employees  
10 use purchase cards -- charge cards essentially where they --  
11 and they -- to charge expenses that get paid directly by the  
12 debtors.

13           We are not sure -- I just literally got hold of this  
14 agreement about half an hour before the hearing, but we believe  
15 that we may have rights of setoff related to that agreement.  
16 And the reason I say it as "we believe we may" is because as  
17 Your Honor is aware, in order to have a valid right of setoff  
18 under Section 553, we need mutuality. We need to make sure  
19 that the particular party that's obligated under the purchasing  
20 card agreement is the same party that has -- at least one or  
21 more parties that has a property interest in depository  
22 accounts.

23           The entity that is on the card agreement resembles --  
24 we think that maybe -- I'm not sure, there maybe an error, but  
25 it resembles some of the entities on the chart, but we don't

1 have the exact name so we're not sure which entity it's  
2 precisely meant to refer to.

3           And we are also not sure that we -- there are  
4 ancillary documents that are referred to. Bottom line is we  
5 don't know for sure whether we have a right of setoff against  
6 some of the funds in these accounts. We would like to be able  
7 to consent and we want the debtors to be able to move forward  
8 on an ordinary-course basis to allow checks to clear and to  
9 allow everything to operate as normally and as seamlessly as  
10 possible.

11           The issue that we obviously have though is if money  
12 goes out the door and then it turns out that we, in fact, had a  
13 right of setoff in respect of our claims under the purchasing  
14 agreement, the new money that comes in -- the fact that there's  
15 new money coming in under the -- that's post-petition money.  
16 Under 553 that's not necessarily going to be available to us to  
17 offset.

18           So what we're really looking to do is a way to not  
19 enhance our rights or impair them, but to preserve the status  
20 quo that we would have today and just come up with something  
21 where -- we'd be happy to have this cash collateral motion  
22 order go through if there was a -- I'm sorry. I keep saying  
23 cash collateral, but I mean cash management. If there is a way  
24 to insure that whatever rights of setoff that may exist today,  
25 that those rights are not going to be impaired as a result of

1 this cash management order.

2           And that's the -- that's what we raised with the  
3 debtors and, frankly, we didn't have a great deal of time to  
4 discuss it, or any time to discuss it prior to the hearing  
5 because of the rush to this whole -- in this whole process in  
6 terms of getting documents and figuring out what's going on.

7           THE COURT: Mr. Canning, if I understand what has just  
8 been articulated, you're being asked to stipulate on the record  
9 that whatever rights Bank of America may have to setoff in  
10 respect of various purchase accounts that appear to be credit  
11 cards in the hands of employees, if I'm understanding it  
12 correctly, are not impaired as a result of this cash management  
13 system approval.

14           Are you prepared to do that?

15           MR. CANNING: Your Honor, I think that's acceptable to  
16 the debtors. I mean, we also were made aware of this credit  
17 card agreement just within the last twenty-four hours and we  
18 did assure Bank of America we would deal with that after we got  
19 through with our first day --

20           THE COURT: It seems to be the kind of thing that can  
21 be investigated and that supplemental agreements can be reached  
22 after today.

23           MR. CANNING: Precisely, so I'm fine with that.

24           THE COURT: Okay. It's simply a preservation of  
25 rights. Sounds like you have an agreement.

1           MR. WILAMOWSKY: Thank you. That's -- I appreciate  
2 that.

3           Just because -- that last phrase that Your Honor said,  
4 I'd like to just, if I can. It's a little bit more than a  
5 preservation of rights because under the code -- in other  
6 words, it's not just, okay, nobody is going to actively impair  
7 me today, it's a little bit more than that because if we just  
8 stood back and did nothing and nobody did anything and the  
9 money flowed out and new money flowed in, I might actually lose  
10 my right of setoff.

11           I think what the debtors are saying I think is  
12 affirmatively is that -- and what everyone is agreeing to is  
13 that the claim is not going to be -- I guess I'm trying to --  
14 it's a little bit more than a --

15           THE COURT: You're probably better off just accepting  
16 what I said and sitting down.

17           (Laughter.)

18           MR. WILAMOWSKY: Very well, Your Honor.

19           MR. EGUCHI: Hi. Weston Eguchi, Mayer Brown, on  
20 behalf of ABN Amro, agent under the securitization facility.

21           On Page -- I'm sorry, Paragraph 28B of the cash  
22 collateral motion there's a description of an accounts  
23 receivable account being held by -- in the name of QWF, which  
24 is a non-debtor, so we are simply clarifying that the relief  
25 granted under the cash management motion exempts this

1 particular company.

2 MR. CANNING: Your Honor, the account relative to QWF,  
3 with reference in the motion only as an accurate description of  
4 the way money flowed historically, and to the extent the  
5 securitization is going to be collapsed, if you will, and that  
6 account is no longer going to be active, it was never our  
7 intention generically in describing that we would keep this  
8 system in place, that we were specifically talking about an  
9 account that may not be active after today.

10 THE COURT: I understand. It would be senseless to  
11 de-construct the securitization only to maintain the account.

12 MR. CANNING: Correct.

13 THE COURT: Understood.

14 (Counsel confer.)

15 THE COURT: With those comments, I'm prepared to  
16 approve the cash management system motion in the form of the  
17 order that has been agreed upon between the debtor and the  
18 office of the United States Trustee.

19 MR. CANNING: Thank you, Your Honor.

20 Your Honor, I guess the next motion I would like to --  
21 thank you.

22 Those are the three primary motions I wanted to  
23 address to the Court in addition to our other motions today,  
24 but specifically the DIP and the employee wages and cash  
25 management.

1           I'll now just take -- I can return to the order that  
2 was provided in the first day proposed agenda, Your Honor. And  
3 the first one there under 2A is the motion regarding  
4 administrative and procedural matters, first of which is the  
5 joint administration which, as you know, we filed a motion on  
6 behalf of all of the debtors pursuant to Rule 1015(b) asking  
7 the Court to approve a joint administration of all of these  
8 cases.

9           And if I haven't said it earlier, Your Honor, with  
10 respect to all of these motions -- and I'll try to remember --  
11 I proffer the declaration of Mr. Roberts in support of all  
12 these motions.

13           THE COURT: That's fine and there's no need to repeat  
14 it. I have reviewed Mr. Roberts's declaration and treat his  
15 declaration as an offer of proof that I can accept in  
16 connection with each of the first day motions that I'm actually  
17 hearing today, but would note that any party in interest that  
18 wishes to cross-examine Mr. Roberts with respect to the  
19 declaration has the right to do so and should simply get up and  
20 request that right at the appropriate time.

21           As far as joint administration is concerned, obviously  
22 it's necessary and desirable, given the number of cases that  
23 have been filed; and at some level it's already happening  
24 because I see that many of the filings are happening under the  
25 proposed lead case.

1           Is there any objection to joint administration?

2           (No verbal response.)

3           THE COURT: Hearing none, I grant your motion for  
4 joint administration.

5           MR. CANNING: Thank you, Your Honor.

6           The next motion is the motion of the debtors for an  
7 order approving the cross-border insolvency protocol, Your  
8 Honor, and I know you mentioned that earlier in the -- in the  
9 evening now.

10          THE COURT: Well, it was actually in the afternoon.

11          MR. CANNING: I guess it was in the afternoon.

12          (Laughter.)

13          MR. CANNING: Let it not be lost.

14          THE COURT: As far as the cross-border insolvency  
15 protocol is concerned, I'm prepared to approve it, and I've  
16 reviewed it preliminarily, but I haven't had a chance yet to  
17 really examine it in detail, and my concern, as expressed  
18 earlier, is that it's not clear to me that all parties-in-  
19 interest, many of whom have been reacting to the filing as an  
20 emergency, have had a full and complete opportunity to examine  
21 and consider the cross-border protocol as it has been proposed.

22           It's obviously desirable, and it's certainly  
23 consistent with what has been done in other cases of like type,  
24 in which significant assets and creditor bodies are located  
25 both in Canada and in the United States, and these are both

1 plenary cases. So I think it's desirable, and I saw nothing in  
2 the proposed protocol that troubled me.

3 I do have a question, though, which is: Is this the  
4 kind of relief that needs to be entered today in order to  
5 facilitate case administration? If the answer is yes, I'll do  
6 it. If the answer is, not really, it can wait awhile, perhaps  
7 until after a creditors' committee has been formed and I can  
8 get the benefit of the committee's thoughts regarding the  
9 protocol, I'd be just as happy to wait on this.

10 MR. CANNING: Fair enough, Your Honor.

11 Let me first say that I think it is the understanding  
12 and the expectation of both the debtors here in the U.S. and  
13 the debtors subject to the CCAA proceeding that this document  
14 will be an organic document, if you will; this will be a  
15 document that will evolve and be modified and added to and  
16 adjusted periodically, as both Your Honor and the justice in  
17 Canada better understand the cases and the respective  
18 constituent parties more fully appreciate the need for a  
19 protocol, and in what areas we really need the protocol.

20 Having said that, I mean, I think we do think it's  
21 important for -- even if it's just the basics, that there be  
22 clearly an understanding that a protocol will be in effect.  
23 I'm sensitive to Your Honor's concerns. I think the reality is  
24 the two cases will work together and cooperatively as much as  
25 possible, whether or not we have a protocol entered today. But

1 we do expect that, certainly when a creditors' committee and  
2 other constituents get involved, that it will change.

3           In that context, Your Honor, I think we'd like to have  
4 a protocol, but we'd like to have a protocol that we all  
5 understand could change as soon as next week or the week after  
6 if it turns out that something occurs in Canada or something  
7 occurs here that needs a modification. Frankly, we would look  
8 forward to discussions between the courts, and then get the  
9 benefit of each of the justices' views as to how this should be  
10 addressed.

11           So I guess -- and I'm going to look for my colleagues  
12 in Canada, but I'm not sure they're here. I wasn't in the  
13 Canadian hearing earlier this week, as to what was expected by  
14 the judge in Canada. So that was also one hesitancy I had.

15           THE COURT: Mr. Coleman, do you have any thoughts on  
16 this?

17           MR. COLEMAN: Your Honor, I think that it's sort of  
18 nice to have today, but it's not critical.

19           THE COURT: Fine. Then we're not going to have it  
20 today.

21           MR. CANNING: Thank you, Your Honor.

22           THE COURT: But let me at least express one question  
23 and concern that I have when I look at it, and this may be a  
24 non-issue.

25           I know that there was an attempt to divide that which

1 is Canadian from that which is U.S. with the understanding that  
2 assets sold in Canada would be subject to Canadian  
3 jurisprudence, and assets sold in the United States would be  
4 subject to U.S. jurisprudence. That's fine, as a broad  
5 statement of goals. But it's unclear to me, given my current  
6 state of knowledge of the debtors, which has advanced as a  
7 result of, you know, preparing for the hearings today and what  
8 has occurred, but has not gotten to the point of sophisticated  
9 understanding, such as the understanding that the lawyers  
10 already have, who have been deeply steeped in this for a while.  
11 I don't know whether or not U.S. entities have assets in Canada  
12 that would require U.S. Bankruptcy Court approval to sell, nor  
13 do I know whether or not Canadian entities have assets in the  
14 United States.

15           So I think that there is some concern that I have,  
16 just as a conceptual matter, as to whether or not the protocol,  
17 as it is presently drafted, is correct, in terms of the reality  
18 of the business. And I'm looking for a little more comfort on  
19 that subject before rubber-stamping that which people in good  
20 faith have put together, hoping that it's right. Fair enough?

21           MR. CANNING: Well, I think that's absolutely fair and  
22 correct, Your Honor. And again, if Mr. Coleman is indicating  
23 that there is no need for it in Canada, to sort of complete the  
24 other piece of it, then I'm absolutely in favor of waiting so  
25 we can flesh this out.

1 THE COURT: Okay.

2 MR. COLEMAN: Your Honor, I would add, though, that we  
3 certainly don't see any restriction on Your Honor's  
4 communication with the Canadian Court, even in the absence of a  
5 protocol.

6 THE COURT: Nor do I.

7 MR. COLEMAN: And -- thank you.

8 MR. VELEZ-RIVERA: Your Honor, if I may address the  
9 Court on a couple of issues.

10 The first-day order issued in Canada actually makes  
11 the finality of protocol in Canada dependent on Your Honor's  
12 approval. So they don't -- the Court there doesn't envision  
13 that it's looking at a final order, either, even though it  
14 appears to have entered it on an interim basis.

15 THE COURT: Okay. Well, let me just put on the record  
16 then that one of the things I intend to do between now and when  
17 next we get together is to have a conversation with -- assuming  
18 he's willing to have it -- with the justice in Montreal who's  
19 responsible for the case in Canada, to introduce myself, to  
20 talk a little bit about issues of case administration that  
21 might be of common concern, and to address the protocol to see  
22 how best it could work from a judicial perspective.

23 And I think that what else would be desirable, that  
24 the parties themselves, who have commenced cases both in Canada  
25 and the United States in a hurry, to have a thoughtful breather

1 to think about how the protocol might be best applied. It may  
2 be that it's pretty close to perfect now; I don't know that it  
3 is, but some more thought might be put into it and there might  
4 be some additional provisions and flexibility built into it.  
5 And I'm sure it follows protocols that have been adopted in  
6 other transnational cases, and so we're not inventing the wheel  
7 here. But I'd say I'd be more comfortable approving this after  
8 speaking to my counterpart in Canada and after the creditors'  
9 committee has been appointed and has engaged counsel.

10 MR. COLEMAN: That's fine, Your Honor.

11 MR. CANNING: Thank you, Your Honor.

12 THE COURT: And I might even enter it without a  
13 further hearing.

14 MR. CANNING: Okay. Next up, Your Honor, timely, and  
15 speaking of next hearings, is our case management motion, where  
16 we filed a motion for an interim order entering, under Sections  
17 1021 and 105, establishing some omnibus hearing dates, which  
18 Your Honor referred to earlier, and issues regarding notice and  
19 case management and administrative proceedings.

20 THE COURT: Well, I have dates for you.

21 MR. CANNING: Excellent, Your Honor.

22 THE COURT: And I assume that there's a typographical  
23 error, and that April appears twice, and the second "April" is  
24 intended to be July. I assume that's correct.

25 MR. CANNING: I assume that's correct, too, Your

1 Honor.

2 THE COURT: I'm treating it as a July date.

3 Here are the dates that we've identified. If there  
4 are material problems that the parties have with these proposed  
5 dates, they can always be adjusted. It's just that these are  
6 dates that are being set aside in advance for purposes of this  
7 case in particular, without knowing exactly what motions will  
8 be presented. And if you know far enough in advance to reserve  
9 the dates, I'm hoping this will work for you. The dates that  
10 we've identified are: February 21, March 20, April 17, May 22,  
11 June 19, and July 17.

12 MR. CANNING: Okay. Thank you, Your Honor.

13 Unless Your Honor has any other specific questions, I  
14 guess we'd ask the Court to approve the motion and enter the  
15 order adopting the case management.

16 THE COURT: Is there any objection to the proposed  
17 case management order?

18 (No verbal response.)

19 THE COURT: I'm prepared to enter it.

20 MR. CANNING: Thank you, Your Honor.

21 MR. VELEZ-RIVERA: Excuse me, Your Honor.

22 (Counsel confer.)

23 MR. CANNING: Your Honor, the next up is five, and the  
24 extension -- I'm sorry, four, the consolidated lists, or the  
25 debtors' motion for entry of an order authorizing the debtors

1 to prepare a consolidated list of creditors in lieu of a  
2 mailing matrix; the consolidated list of the sixty largest  
3 unsecured creditors, and addressing the mailing of the initial  
4 notices. I think it's fairly straightforward, Your Honor. We  
5 haven't had any objections, and we'd ask the Court to enter the  
6 order approving the motion.

7 THE COURT: Is there any objection to the entry of  
8 this order?

9 MR. VELEZ-RIVERA: Your Honor, the proposed order  
10 embodies some of the comments of the United States Trustee,  
11 we're fine with it.

12 THE COURT: Fine. I'll enter it.

13 MR. CANNING: Thank you, Your Honor.

14 The last item in the first section regarding motions  
15 regarding administrative and procedural matters relates to the  
16 schedules; the motion seeking an extension of the time to file  
17 our schedules. We actually had initially discussed a longer  
18 period, but after discussing it with the U.S. Trustee, we've  
19 only asked for a thirty-day extension over and above the  
20 fifteen days that were granted under the code.

21 Frankly, Your Honor, as you probably -- from listening  
22 to some of the discussions today, that's a real effort to do  
23 that, but we think it's important to give a good-faith attempt  
24 to try to do that, so we've accommodated the trustee, reserving  
25 our rights with their understanding that, if we get closer and

1 we're a little pushed, we may be back asking for more time.

2 THE COURT: I take it, since the U.S. Trustee's  
3 Office's thoughts on duration have been included in the  
4 proposed order, that there's no objection to the request.

5 MR. VELEZ-RIVERA: Right, Your Honor.

6 THE COURT: Fine. I'll approve it.

7 MR. CANNING: Thank you, Your Honor.

8 Your Honor, I think that takes us to C(iii), which is  
9 utilities. And the next -- really, the next five motions, Your  
10 Honor, I think are all related to the operation of the debtors'  
11 businesses and our efforts to try to be careful in coming to  
12 the Court with what we really believe is critical for the  
13 smooth operations of the company and in order to preserve our  
14 relationships with our critical customers.

15 So we didn't come in, for example, with a critical  
16 vendor, broad, overreaching motion. We've tried to target the  
17 areas where we think we really need some immediate relief, and  
18 it's critical to the operations of the company that we get that  
19 relief. And that relates to the utilities and our customer  
20 programs, reclamation, shipping and warehousing, and what we've  
21 characterized as "liens."

22 The first up on that is utilities, where we've sought  
23 the Court's granting of our interim order determining adequate  
24 assurance of payment for future utility services. This is a  
25 company that consumes enormous energy costs, primarily because

1 of its extensive printing facilities. And the aggregate fees  
2 that are paid on an annual basis in connection with utilities  
3 is -- when I first read about it, can be quite staggering.

4 In order to preclude, you know, the rush from all of  
5 the utilities coming in and asking for two or three months of  
6 historical payments, as adequate assurance, we've developed a  
7 process that generally provides for a two-week period of time  
8 that we would use as our adequate assurance of future  
9 performance.

10 I think it's reasonable. I think, with only two  
11 objections, not really having to do with the procedures at all,  
12 but really just having to do with whether or not they're  
13 properly included in the motion, we haven't received any  
14 objections from any of the utilities. And anticipating the  
15 objections, the issue there was, in a rush of time, trying to  
16 identify all of the utility providers at all of the  
17 installations across the country, we made some attempts, and I  
18 think we made one or two mistakes in trying to glean what was  
19 really a utility. So there are two that we are going to --

20 (Counsel confer.)

21 MR. CANNING: Okay. I'm advised that, after  
22 discussions, we're not necessarily conceding they're mistakes,  
23 Your Honor. We're willing to concede that it's not been  
24 determined yet today whether -- with respect to four entities,  
25 whether the interim order would be appropriate.

1           So with respect to National Fuel Resources and three  
2 of the BP-related entities; BP Energy Marketing Corp., BP  
3 Energy Company, and IGI Resources, Inc., we would propose to  
4 modify the order as it was initially provided to the Court to  
5 provide language that I could read to the Court now to see if  
6 it was acceptable, and I'd certainly ask the parties to comment  
7 on it if they took exception to it.

8           THE COURT: Fine. If you have language that you think  
9 is going to work, why don't you read it.

10          MR. CANNING: Okay. We would add, Your Honor, as a  
11 new paragraph to the order language that would read as follows:

12           "For purposes of this interim order, National Fuel  
13 Resources, Inc., BP Energy Marketing Corp., BP Energy  
14 Company, and IGI Resources, Inc., shall be excluded  
15 from the definition of 'utility provider,' and none of  
16 such parties shall be included on the utilities  
17 service list, and those parties and the debtors  
18 reserve their respective rights."

19          THE COURT: All right. Is that acceptable to the  
20 purported utilities.

21          MR. WOLFE: Your Honor, Craig Wolfe, Kelley, Drye &  
22 Warren, on behalf of the BP entities, BP Canada Energy  
23 Marketing, BP Energy Company, and IGI Resources.

24           Generally, we're okay with that language. But I want  
25 to make it clear because we didn't have a lot of opportunity to

1 talk about what we're agreeing to. But generally, what we're  
2 agreeing to do is to have us removed from the utility order.  
3 The debtors, in my view, are reserving their right to come back  
4 and say that we are, in fact, a utility.

5 We're going to work over the next week to try to reach  
6 a resolution for a going-forward relationship.

7 I want point out that our objection really raises two  
8 issues:

9 Number, we're not a utility.

10 THE COURT: Forward contract, as well.

11 MR. WOLFE: Pardon? Forward contract, as well.

12 THE COURT: Forward contract and definition of  
13 "utility." I read it.

14 MR. WOLFE: That's right. That's right.

15 And on the second issue, that implicates other things.  
16 And I think what is critical about that is that, to the extent  
17 that we're not on the utility motion and we're not a utility  
18 and we are a forward-contract merchant, we have the right to  
19 terminate the contract and settle, irrespective of the  
20 automatic stay.

21 And so those are some of the issues we understand,  
22 over the next week or so, we've agreed not to do that, not to  
23 terminate. But at the end of one week, you know, all  
24 agreements are off if we don't have a resolution. And we'll  
25 take our risks at that point in time, and decide whether or not

1 to terminate. And so my recommendation to debtors' counsel was  
2 to reserve a date next week, in the event that we don't reach a  
3 settlement.

4 THE COURT: Well, here's my suggestion in terms of  
5 reserving dates. I suspect that, even though we've tried to  
6 predict in the future omnibus hearing dates that will work for  
7 the debtor and many of the parties-in-interest in the case,  
8 that there may be a need, especially during the early weeks of  
9 this bankruptcy filing, for some emergency relief, or even for  
10 conferences with the Court on occasion, and that's fine.

11 I see no reason now to schedule the hearing. My  
12 courtroom deputy is available to any of you for scheduling  
13 purposes. And if you have an agreement ultimately disagree a  
14 week from now, you can file your motion and you can get a  
15 hearing date.

16 As far as your argument concerning the  
17 characterization of the contractual relations as being forward-  
18 contract-type agreements and your assertions concerning safe  
19 harbors in the Bankruptcy Code that might apply to your  
20 contracts, you're either right or wrong on that. And if you're  
21 wrong, there will be adverse consequences, and if you're right,  
22 you don't need me.

23 MR. WOLFE: That's right. In fact, one point of  
24 clarification. It's my view that the motion that would be  
25 filed next week would be the debtors' motion, as opposed to

1 ours.

2 THE COURT: Whatever motion is filed is -- that's  
3 fine.

4 MR. WOLFE: Yeah. Yeah.

5 THE COURT: I don't care who files it.

6 MR. WOLFE: Great. Thank you very much.

7 MR. DEL VIRGINIA: Good evening. If Your Honor  
8 please, Gabriel Del Virginia on behalf of Hess Corporation,  
9 who, in fact, can be substituted as to the legal issues just  
10 articulated by counsel. And not to go any further, but I would  
11 ask that the relief that is entered be without prejudice to,  
12 again, Hess's right to argue that it is covered by the safe  
13 harbor of 556, Your Honor.

14 THE COURT: Well, okay. That's fine. Let me make  
15 something clear.

16 Except for what I've read in the objection that I  
17 received this afternoon from Kelley Drye on behalf of its  
18 clients, which raised the definition of "utility" argument and  
19 the forward contract characterization argument, I don't read  
20 any of the papers that have been filed by the debtor as seeking  
21 any relief with respect to documents that may or may not be  
22 characterized as forward contracts. For that reason, nothing  
23 that's happening today impacts the rights of any parties under  
24 any contracts that may be characterized as fitting within  
25 forward contract definitions, repurchase agreement definitions,

1 securities contract definitions, or any other definitions of  
2 sections of the Bankruptcy Code that are designed to facilitate  
3 liquidity in the market.

4 So Hess's rights are preserved, everybody else's  
5 rights are preserved, too. And the debtors' rights aren't  
6 adversely affected, either. Anybody can argue whatever they  
7 want to argue at the proper time.

8 MR. DEL VIRGINIA: Very fine. Thank you, Your Honor.

9 MR. WOLFE: Your Honor, one other point of  
10 clarification. We didn't file a formal objection, evidentiary  
11 objection, to the Roberts declaration, but we would like to  
12 reserve if that becomes relevant because we -- it's our view  
13 that the portion of the declaration that pertains to the  
14 utility motion does make some legal conclusions and so forth  
15 with respect to the status of the individual companies on the  
16 utility exhibit being utilities, and so we'd just like to  
17 preserve that right, to raise an evidentiary objection.

18 THE COURT: Well, it's not preserved for today, so I  
19 mean, if Mr. Roberts is not in court when somebody files a  
20 motion that relates to this, I don't know what rights have been  
21 reserved. The --

22 MR. WOLFE: I just don't want to waive the objection.

23 THE COURT: If you wish to argue that you're not a  
24 utility and that Mr. Roberts's list is erroneous, in your view,  
25 for the reasons that you're planning to articulate at some

1 future date, that's fine. And your objection makes clear that  
2 the clients that you represent takes the position that they are  
3 not utilities, and the reservation of rights and the language  
4 read by Mr. Canning makes clear that the debtor reserves the  
5 right to say you're wrong.

6 MR. WOLFE: Very good. Thank you.

7 MR. CANNING: Your Honor, I guess the one other thing  
8 on this particular motion, we did request a final hearing date.  
9 Now I was just conferring with my colleague; I think we would  
10 like that to be within thirty days, and there's a February 21  
11 omnibus date, which I think works for that. So I think we're  
12 all set if we could just, for the final hearing date for that,  
13 we'll use the omnibus date.

14 THE COURT: That's fine. That will be convenient, as  
15 long as it works under 366, as amended.

16 MR. CANNING: Correct.

17 THE COURT: And I haven't looked at my calendar to  
18 check that.

19 (Pause in proceedings.)

20 MR. CANNING: Your Honor, the next motion relates to  
21 the company's customer programs, and we're asking for the Court  
22 to grant an order allowing us to continue those programs.

23 Generally, Your Honor, these are programs where the  
24 company gives rebates, for example, or has certain incentive  
25 programs with its key customers. Some of them are volume-

1 related; if they order enough product by the end of the year,  
2 then they get a rebate at the end of the year. We have  
3 adjustments and accommodations we make with customers; that, to  
4 the extent that we deliver them product and they say a certain  
5 amount of it is defective, we'll make adjustments to new  
6 orders, for example. And to the extent that some of these, you  
7 know, may relate to some pre-petition areas, when we do an  
8 adjustment, we just want to make sure we're not in violation of  
9 any orders the Court may enter or any rules under the code.

10           So what we're trying to do, in order to maintain our  
11 relationships with our customers, so that they don't think that  
12 this bankruptcy filing is going to in any way negatively impact  
13 the way they do business with us, we're just asking for an  
14 order to continue our ordinary course practices, with respect  
15 to how we interface with our customers.

16           THE COURT: Is there any objection to this requested  
17 relief?

18           MR. WOLFE: Your Honor, Craig Wolfe, Kelley, Drye &  
19 Warren, representing Simon & Schuster and Readers' Digest,  
20 also.

21           Question. It wasn't quite clear to us whether the  
22 relief that was being sought actually would authorize the  
23 company to pay something that is clearly pre-petition. I  
24 assume from what was just stated on the record that it would.

25           MR. CANNING: Your Honor, what I wanted to be careful

1 about is, to the extent that the company -- and we're involved  
2 in multiple -- you know, many, many jurisdictions, and there  
3 are a lot of transactions going on every day. To the extent  
4 that we do what we do in our normal course, which is we make  
5 adjustments, as I said, for product that may be deficient, if  
6 that product was delivered pre-petition and we're now making an  
7 adjustment on the purchase price, to the extent that happened  
8 at a pre-petition moment in time, then, yes, we are dealing  
9 with a pre-petition claim, potentially. But it's critical to  
10 the company that it be allowed to continue business in this way  
11 because we may lose customers to competitors and the like.

12

13 THE COURT: Based upon that statement, you can now get  
14 up with your other hat. Is that an objection, are you  
15 satisfied, or are you upset?

16 MR. WOLFE: I guess I'm still struggling with what the  
17 answer is. I mean, will the order today --

18 THE COURT: Let me tell you what I think I heard.  
19 What I think I heard is that, in order for the debtors'  
20 businesses to be preserved on a going-forward basis, various  
21 customer incentive programs and adjustments that have been  
22 conducted pre-petition will continue to be conducted post-  
23 petition in the ordinary course of business. To the extent  
24 that there is a technical adjustment of a pre-petition claim,  
25 that's permitted here. I think that's what the debtor is

1 asking for, unless I misunderstand it.

2 (Counsel confer.)

3 MR. CANNING: Just my colleague points out, just to be  
4 a little bit more expansive on the rebate program. To the  
5 extent that we are -- in fact, we will be spending money to  
6 customers in connection with some pre-petition obligations. Is  
7 that a fair statement? This is not out of the ordinary. This  
8 is what our customers expect, given the relationship and the  
9 volume of business that we do with them.

10 THE COURT: You have an ongoing relationship and  
11 you're constantly making adjustments.

12 MR. CANNING: Absolutely.

13 THE COURT: When something isn't printed right or  
14 there's an overrun of Time Magazine on some week. I don't  
15 know. I assume that's what goes on in this business.

16 MR. CANNING: And those decisions are made very  
17 quickly and have to be made very quickly.

18 THE COURT: And they're made in the field.

19 MR. CANNING: And they're made in the field. That's  
20 correct, Your Honor.

21 THE COURT: I understand that.

22 Is there still -- is there an objection or no  
23 objection?

24 MR. WOLFE: Well, you know -- and it's difficult for  
25 me to say whether this is a formal objection. What I can say

1 is that I have two very critical -- I think -- what I believe  
2 are critical customers that don't know what to make of the  
3 proposed order. And I haven't had a chance to talk to debtors'  
4 counsel because we're here on an emergency basis. But what I  
5 can say is I'm not sure that the order, the way that it's  
6 presented, would satisfy our clients.

7           Our clients operate under these programs. I think it  
8 would be arguable that they would have, in some cases, sizable  
9 pre-petition amounts, or amounts that might have come due that  
10 could be argued to be pre-petition, that they would expect  
11 under this program to be passed through, basically, and to be  
12 permitted to be honored.

13           If that's the case, which I would hope it would be  
14 under this, we're absolutely fine with that. And I think that  
15 that would really improve the relationship between the debtors  
16 and these two clients. If it's something less than that, we're  
17 going to be talking tomorrow, and we're going to have still  
18 this cloud of uncertainty over us, and we're not going to know  
19 what to do with the going-forward relationship.

20           So this is the time to, I think, fix it. And that's  
21 my only recommendation. I don't think I would call it an  
22 "objection," but perhaps a recommendation.

23           MR. CANNING: And I don't think we take exception with  
24 the way Mr. Wolfe has characterized how it works with respect  
25 to clients like his clients. I think that's fairly accurate.

1 Is that correct? Yeah.

2 THE COURT: I take that as confused agreement.

3 (Laughter.)

4 MR. WOLFE: And we're absolutely fine with that, and  
5 that's what we're hoping that --

6 (Laughter.)

7 MR. WOLFE: We're hoping that the order will reflect  
8 that, in fact, so I can take it back to my clients. Thank you.

9 THE COURT: All right. We will assume that the form  
10 of order is acceptable in the absence of objection, with the  
11 understanding that it's difficult in a first-day bankruptcy  
12 order to accommodate every transaction in a complicated  
13 business that operates in so many jurisdictions. However, the  
14 purpose of the order, as I understand it, is to normalize  
15 relations between the debtors and their important customers by  
16 allowing the debtors to continue to honor pre-petition  
17 obligations to those customers and to continue to conduct their  
18 business appropriately in the ordinary course, so that the  
19 bankruptcy does not disrupt ongoing relations. That's my  
20 understanding.

21 MR. CANNING: That is absolutely correct, Your Honor.

22 THE COURT: On the basis of that understanding, I  
23 believe that the debtor has made a showing that approval of  
24 this motion is consistent with its reorganization objectives  
25 and fits the rubric of immediate and irreparable harm of Rule

1 6003.

2 MR. CANNING: Thank you, Your Honor.

3 We move now, Your Honor, to Item No. 5 in that  
4 category, which is a reclamation procedure.

5 THE COURT: Here's where you may have some trouble  
6 with that.

7 MR. CANNING: Okay, Your Honor. To be honest with  
8 you, when we were putting together our first-day motions and we  
9 were trying to better and quickly understand the nature of the  
10 debtors' business and to give some thought to whether  
11 reclamation would be a real concern for us, we really weren't  
12 sure whether it was going to be a real issue. But not knowing  
13 enough about what might happen, we wanted to be protective of  
14 the debtors, and so we filed a motion. In fact, I think we  
15 already have received at least one, and maybe more reclamation  
16 claims, so I don't think it's a real issue.

17 And so we decided that we should file a motion that  
18 has fairly standard reclamation procedures. All we're trying  
19 to prevent is sort of the run on the warehouses, if you will,  
20 to make sure that we have a way to kind of filter them through.  
21 And again, is it critical? It's important. It's important if  
22 it escalates, now that the word is out that the company is in  
23 bankruptcy, and if we have more and more of the --

24 THE COURT: Oh, the word is out.

25 (Laughter.)

1 MR. CANNING: Boy, the word is out, Your Honor.

2 So, in any event, it's against that backdrop that we  
3 filed the motion and set forth what we thought were fairly  
4 reasonable procedures to try to deal with it.

5 THE COURT: I'm not critiquing the procedures, nor am  
6 I suggesting that it wasn't good practice on your part to  
7 include a reclamation procedures motion in the package that  
8 you're now advancing. Even without regard to the new  
9 bankruptcy rule that we're struggling to apply today, I had  
10 some concerns as to whether or not the reclamation procedures  
11 motion should be viewed as a first-day order.

12 I reviewed the Dana case docket and saw that a  
13 reclamation procedures motion was, in fact, entered by Judge  
14 Lifland in that case, although it wasn't on the first day; it  
15 was a few days later. I don't know what showing was made in  
16 that case; and frankly, I'm not concerned about that showing  
17 because I have to deal with the case that's before me and what  
18 the law is, as it exists today.

19 But it's not clear to me that one or two reclamation  
20 claims constitutes cause for a reclamation procedures motion  
21 that would have the effect of freezing parties in place for 120  
22 days. So without prejudice to your ability to file this as an  
23 emergency motion for cause shown, as you begin to see how the  
24 market is responding to the news of your bankruptcy, I'm not  
25 going to grant his as a first-day motion today.

1 MR. CANNING: I think we're fine with that, Your  
2 Honor. I offer up the statement about, we did get a  
3 reclamation claim, as evidence that we will get some. But I  
4 recognize I've also evidenced the fact that we haven't got that  
5 many, and we're already two days into the case. So I think  
6 that's fine, Your Honor, and we'll be pleased to put that on  
7 for a later time.

8 THE COURT: And we will be -- and I commit this to you  
9 -- very responsive to your needs for emergency relief, should  
10 you have any, and we'll be responsive to the scheduling of  
11 hearings on shortened notice, provided notice is given to the  
12 parties that should get notice.

13 MR. CANNING: Right. Thank you very much, Your Honor.

14 The next motion, Your Honor, regarding shipping and  
15 warehousing, actually almost made it to the top of the list as  
16 one of the two or three more critical ones for us.

17 We have, I think, as we set forth in our motion,  
18 anywhere from, you know, 1,000 to 2,000 freighters and truckers  
19 on the roads at any given time hauling our goods and product  
20 all over the country. And that is a problem that we are  
21 addressing hourly right now, and it started when the news came  
22 out over the weekend that it looked like we were going to file  
23 bankruptcy; it escalated considerably when the Canadian  
24 proceeding was started two days ago, and it is now an avalanche  
25 of phone calls and sort of frantic efforts to try to keep the

1 product rolling. If we don't get our goods and services to the  
2 places they have to be and we miss deadlines for producing  
3 magazines or books or Sunday weekly inserts or things like  
4 that, it will not be very long before we're just really in a  
5 different proceeding than we are today.

6           And that -- as we've said in our papers, it takes a  
7 number of forms. You know, we have truckers, we have  
8 warehouses, we have delivery folks who claim liens on goods  
9 that they're delivering. They assert that, if we don't pay  
10 them on time, they have the right to go back to the customers  
11 that it was delivered to and pick them back up and put them on  
12 the truck. And it's critical for us that we be in a position  
13 where we can stop that practice, where we can pay some people  
14 when they show up with the goods and say, this is COD, and we  
15 know we signed a contract last week, but we're her with the  
16 truck, and don't tell me it's post-petition; we'd really like  
17 to see if we can avoid that.

18           Because that's also something that, if it spreads, it  
19 will shut us down, you know, pretty quickly. So that is a high  
20 priority for the company, and we would ask that you grant this  
21 motion.

22           THE COURT: Is there any objection to granting that  
23 relief?

24           (No verbal response.)

25           THE COURT: Hearing no objection and in light of the

1 representations of counsel concerning the critical need to  
2 normalize shipping and warehousing relations post-petition, I'm  
3 prepared to grant the relief as requested.

4 MR. CANNING: Thank you, Your Honor.

5 Consistent with that, Your Honor, the next motion was  
6 with regard to satisfying certain liens that arose pre-  
7 petition. And these are generally liens, such as mechanics'  
8 liens for work that's been done on a particular facility pre-  
9 petition. It also relates to real estate taxes, that the liens  
10 arose pre-petition.

11 We now have a different agreement in place that has  
12 certain obligations and responsibilities and certain covenants  
13 that we have to maintain, that includes keeping the collateral  
14 for the DIP lenders free and clear of all liens. And what we  
15 wanted to do is make sure we weren't being violative of the  
16 Bankruptcy Code if we have any of these sort of statutory liens  
17 that arise, so that we can go out and take care of those right  
18 away, even if they arose pre-petition. So it's kind of a  
19 focused motion, but it's an important one.

20 THE COURT: Is there any objection to that relief?

21 (No verbal response.)

22 THE COURT: There's no objection. I'll grant the  
23 relief as requested.

24 MR. CANNING: Thank you, Your Honor.

25 And last, but not least, Your Honor, is the

1 applications regarding retention of debtors' professionals.

2 And we filed two applications today:

3           One was with respect to Arnold & Porter, which is the  
4 primary debtors' counsel, and another one for -- well, three of  
5 them actually: Donlin, Recano & Company, which is a claims  
6 agent, and we also filed for Richards, Kibbe & Orbe to be  
7 conflicts counsel.

8           With respect to Richards, Kibbe & Orbe, we have, in  
9 recognition of the new rules, deferred a hearing on that for  
10 twenty days, Your Honor, and that's fine.

11           With respect to Arnold & Porter and for Donlin Recano,  
12 however, being cognizant of the new rule, we nevertheless think  
13 that these are critical, very critical times for the debtors;  
14 and we actually, recognizing that the rule hasn't been out very  
15 long, and there's not a lot of precedent as to how you apply  
16 the rule in connection with retention of counsel, gave a lot of  
17 thought to how the new rule is supposed to be read, in light of  
18 327 and some other provisions of the code.

19           And it's our opinion, Your Honor, that the real way to  
20 make these two requirements and rules and the code work is to  
21 say that, with respect to cases in general, perhaps, counsel  
22 should and could wait twenty days to be retained. But to the  
23 extent that the rules contemplate that if it's critical for the  
24 debtors that the relief that otherwise need to be deferred for  
25 twenty days, the Court is authorized to allow those -- for

1 orders to be entered to allow for those retentions.

2           And I guess we believe -- and it may have been --  
3 hopefully it's been a little evident today -- that this case  
4 involves a lot of complex issues, and it is maybe one of the  
5 fastest moving cases I have ever been involved in, for some of  
6 the reasons that I've alluded to with respect to the network  
7 and the operations and the number of employees and the cross-  
8 border issues and the international issues. And we have spent  
9 -- "we" being Arnold & Porter -- a significant amount of time,  
10 under great pressure, in the last two or three weeks to get our  
11 arms around the company and its operations, to understand its  
12 challenges, to deal with the cross-border issues, to negotiate  
13 a two-hundred-page credit agreement, and to prepare, frankly,  
14 all of the motions and all of the orders that we needed to  
15 present to the Court today. And we don't think that that's the  
16 end of it. I mean, we think the word is out. And what we're  
17 going to have to do here over the next twenty days with respect  
18 to, you know, all of these areas is critical.

19           And so we think that it's appropriate, in light of the  
20 needs of the debtor, and the critical nature of the  
21 circumstances that it finds itself in, that it is reasonable  
22 for the Court to approve Arnold & Porter's retention, even in  
23 light of the new rules under 6003.

24           THE COURT: What does the U.S. Trustee think of that  
25 argument?

1           MR. VELEZ-RIVERA: Your Honor, if I may address the  
2 Court, we take a different view of Rule 6003. Mr. Canning has  
3 mentioned that his firm's retention is critical to these  
4 proceedings, but that's just not the governing standard under  
5 the new rule. The standard is whether a showing of immediate  
6 and irreparable harm has been made. Neither Mr. Roberts's  
7 declaration or Mr. Canning's first-day declarations have  
8 anything on this point whatsoever.

9           The rule appears to -- it's a tough one, Your Honor.  
10 Not only are we working with a clean slate, but the rule has  
11 been written in mandatory terms, which impose constraints upon  
12 the Court. It uses the word "shall." But it also doesn't  
13 differentiate between interim and final relief.

14           It is my office's position that, because the wording  
15 of the rule is clear, it says, in paraphrase, the Court shall  
16 not grant relief, without differentiating between interim and  
17 final; that the Court simply cannot enter any type of a  
18 retention order within the first 120 -- excuse me -- within the  
19 first twenty days of the case.

20           Basic rules of statutory construction apply here, Your  
21 Honor. The rule is very clear on its face. And even if it is  
22 ambiguous, which we don't concede, we can look at the title of  
23 the rule, which uses the words "Interim" and "Final." That  
24 title shouldn't be rendered superfluous with the Court's  
25 interpretation.

1           The rule is meant to prevent, according to both the  
2 Advisory Committee note -- which, in the absence of any other  
3 legislative history, we can look at -- it says that you and I  
4 should not be having this discussion. It is meant to prevent  
5 exactly a fight over retention issues on the first day of the  
6 case, when Your Honor has received a binder this big a few  
7 hours before the hearing, when there are many more critical  
8 issues to be dealt with.

9           With that in mind, Your Honor, even Collier says that  
10 the Court just doesn't have the ability to grant relief of any  
11 type on the first day of the case or within the first twenty  
12 days of the case on any of the three categories under the new  
13 rule.

14           THE COURT: Except to the extent that relief is  
15 necessary to avoid immediate and irreparable harm.

16           MR. VELEZ-RIVERA: That's not my showing, Your Honor.

17           THE COURT: I'm simply saying it's not -- it's  
18 mandatory with an exception that I need to interpret.

19           MR. CANNING: Your Honor, just one follow-on. Just to  
20 make clear, I mean, 327 is also a significant provision in the  
21 Bankruptcy Code that says that a debtor can only retain  
22 professionals with the Court's approval. And frankly, getting  
23 a billion dollars worth of financing in a matter of ten days,  
24 and getting it negotiated and in place, it is critical. There  
25 is no way anyone can say that it's not critical; and to get

1 that order final is not critical, and to deal with all of the  
2 issues that this debtor has been facing and will face from day  
3 to day, absolutely is critical.

4           And I'm respectful of 6003, and I'm respectful of the  
5 U.S. Trustee's office. But I also know the reality of the  
6 facts and circumstances here. And I think the only way to  
7 really read 327 consistent with 6003 under these facts and  
8 circumstances -- and I can't speak to all facts and  
9 circumstances -- but for these facts and circumstances, I think  
10 it does meet the test that you just articulate, which is, in a  
11 critical situation, it is permissible.

12           And we're not asking for a final order; we're only  
13 asking for an interim order, Your Honor. We are more than  
14 comfortable with the creditors' committee and the U.S.  
15 Trustee's Office and anyone else who wants to review our  
16 application and address any concerns to the Court. But we do  
17 think it's important, and it's fair for us to at least know  
18 that we have been retained; and, as we continue to put this  
19 effort into this case, that we're not sort of hanging out  
20 there, not knowing whether or not we are going to be protected.

21           THE COURT: Anything more?

22           MR. VELEZ-RIVERA: Your Honor, there is no prejudice  
23 to the firm in this regard whatsoever. The firm can rest  
24 assured that at least my office won't object to either its  
25 retention or its fees between now and the first twenty days of

1 the case just because an employment order, even an interim one,  
2 hasn't been entered.

3 THE COURT: But let me just ask you a question,  
4 because I don't think bankruptcy rules are designed to be one  
5 size fits all. I think that even with mandatory language, the  
6 wiggle room is there to allow for thoughtful interpretation.

7 Are you, today, aware of any reasons why Arnold &  
8 Porter would not qualify to be debtors' counsel? Have you  
9 reviewed the application, the affidavits, the relationships  
10 disclosed, and have you satisfied yourself that, but for the  
11 rule, there would be no problem with the retention?

12 MR. VELEZ-RIVERA: We've taken a preliminary view of  
13 the application; we did screen it before the bankruptcy cases  
14 were filed. And at least the quick run-through gives us some  
15 assurances that at least the firm is not disinterested and may  
16 be employed in the case. But we haven't given it the time or  
17 the attention for the same reasons --

18 THE COURT: I think you mean to say "is  
19 disinterested."

20 (Laughter.)

21 MR. VELEZ-RIVERA: The double-negative, Your Honor.  
22 You're right.

23 (Laughter.)

24 MR. VELEZ-RIVERA: And it trips me up a lot.

25 But we haven't had the time to review it and vet\* it

1 through as we would in the ordinary circumstances.

2 THE COURT: All right. Here's how I see this. And  
3 this is a troublesome rule, which is now being applied, at  
4 least for the first time in this court, and it's being applied  
5 in a mega case.

6 I think that the purpose of Rule 6003 is to build in a  
7 twenty-day waiting period in each of the enumerated subject  
8 areas, including quite expressly professional retention under  
9 Rule 2014. The problem with the exception, as one reads the  
10 rule, is that it is hard to imagine a case in which a twenty-  
11 day delay in the approval of a retention application will be a  
12 source of immediate and irreparable harm to the debtor or to  
13 the debtors' estate or to the interest of creditors.

14 There's little question that the delay is a source of  
15 anxiety to the partners of the law firm Arnold & Porter.

16 (Laughter.)

17 THE COURT: But it's probably acceptable anxiety in a  
18 case where there is a professional reason to believe that it's  
19 just a matter of time, and the retention application will be  
20 approved, because I have to assume that the firm, for an  
21 engagement of this magnitude, considered carefully whether or  
22 not a retention was allowable under 327, and must have  
23 concluded that it was. So that I view this as really more a  
24 temporal question than a substantive question.

25 I'm sorry to impose the added stress in an already

1 stressed situation, but I believe that there has not been a  
2 showing that the delay for twenty days will be a source of  
3 immediate and irreparable harm. It will, however, be a source  
4 of, let's call it "consternation."

5 I also assume that -- and none of this is in the  
6 record -- that, as a law firm of renown and substance, in  
7 multiple sophisticated areas of legal practice, that the firm  
8 protected itself, at least to the extent of all of the good  
9 work that was done prior to the petition date; and, if it  
10 didn't, that's another problem that I need to know more about.

11 So assuming that this case that went a breakneck speed  
12 through the filing in Canada and here this week was well and  
13 appropriately managed by debtors' proposed counsel, all of the  
14 significant work that led to the filing should have already  
15 been compensated for, and what we're really talking about is  
16 theoretical risk for three weeks, I think it's just theoretical  
17 risk.

18 If there were a real issue with respect to  
19 disinterestedness, an interim order would not provide the  
20 invisible shield of protection with respect to compensation --  
21 I'm not getting into Leslie Fay-type issues, but you're either  
22 disinterested and you're entitled to be compensated, or you're  
23 not. And so I think this -- and we're spending a lot of time  
24 on -- I think that there's more of a theoretical than a real  
25 concern. And I'm certainly prepared to alleviate the concern

1 by having a hearing to approve the engagement of Arnold &  
2 Porter and of the firm identified, Richards Kibbe, as special  
3 conflicts county, on the twentieth day. And you can do the  
4 math, and assuming I'm here, you'll have a hearing. And so I  
5 will literally apply the rule, but not give you any heartburn  
6 unnecessarily beyond the twentieth day.

7           Now as it relates to Donlin Recano, we haven't talked  
8 about them very much. I actually think they're in a different  
9 category. I think that claims agents, if not retained in a  
10 mega case, at the very beginning of the case, could be a source  
11 of immediate and irreparable harm, and I say that because I  
12 don't know what claimants are going to do.

13           But I think, for a case this large, there's a need for  
14 a website, there's a need for clarity in the market right away  
15 as to what claimants should do with their claims. I think this  
16 wouldn't be true if we were dealing with a case that had fewer  
17 creditors, fewer issues, less complexity; again, not one size  
18 fits all. If this were an ordinary Chapter 11 case, there  
19 wouldn't be a need for a claims agent, there wouldn't be any  
20 critical problem if a claims agent weren't in place. And  
21 unless somebody tells me I'm wrong in this, I think that for a  
22 mega case, a claims agent's retention represents an appropriate  
23 form of case administration, not terribly different from the  
24 case management order and joint administration, because I'd  
25 like this case, from day one, to be predictably and

1 professionally managed from a claims perspective. The  
2 alternative is claims that will end up in the Clerk's Office.

3 So those are my evening conclusions. And nobody  
4 argued the Donlin Recano issue. But if the U.S. Trustee would  
5 like to change my mind, you're free to try to do that, if you  
6 wish.

7 MR. VELEZ-RIVERA: Your Honor, I didn't raise the  
8 Donlin Recano issue specifically, and I guess I should have  
9 been clear. We have no objection to their retention.  
10 Arguably, they don't come under the rubric of Rule 2014, which  
11 is incorporated in Rule 6003 to begin with.

12 THE COURT: All right.

13 MR. CANNING: Thank you, Your Honor.

14 That is the end of my agenda for today, Your Honor.  
15 We did, of course, file a few other motions, but as I mentioned  
16 earlier, in recognition of Rule 6003, we did not set those and  
17 did not ask that they be heard on an emergency basis. I guess  
18 we would like to see if we could schedule a date now for those  
19 to be heard. I think we may take you up on your twenty-day  
20 offer with respect to the retention of Arnold & Porter and  
21 Richards Kibbe, and would ask the Court's guidance as to  
22 whether it might be appropriate to have all of those, the  
23 remaining three or four motions that we filed, that we did not  
24 hear today, put those together and have another hearing date.

25 THE COURT: I think that makes good sense. Are you

1 looking at a calendar?

2 (Counsel confer.)

3 THE COURT: How about February 13th.

4 MR. CANNING: That's not a Friday, is it, Your Honor?

5 (Laughter.)

6 THE COURT: It's a Wednesday. Okay.

7 (Laughter.)

8 MR. CANNING: That would be fine, Your Honor.

9 THE COURT: You have it. Ten o'clock.

10 MR. CANNING: Thank you very much.

11 Again, Your Honor, thank you for seeing us on such  
12 short notice and devoting so much time and well into the  
13 evening. It was critically important to the company and all of  
14 us here, so we appreciate very much your assistance.

15 THE COURT: Fine. We're adjourned until February  
16 13th, unless there's an earlier hearing for cause shown.

17 MR. CANNING: Okay.

18 THE COURT: Good evening.

19 MR. CANNING: Good night. Thank you, Your Honor.

20 COUNSEL: Thank you, Your Honor. Good evening, Your  
21 Honor.

22 (Proceedings concluded at 6:42 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



January 25, 2008

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Lisa Luciano, AAERT Cert. No. 327  
Certified Court Transcriptionist  
Rand Reporting & Transcription



January 25, 2008

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