

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 08-10601(CSS)
) (Jointly Administered)
) Chapter 11
)
DIAMOND GLASS, INC.,) Courtroom No. 6
) 824 Market Street
Debtors.) Wilmington, Delaware 19801
)
) April 24 2008
) 3:08 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Please be seated.

2 MR. NESTOR: May it please the Court, Your Honor.
3 Michael Nestor of Young Conaway Stargatt and Taylor appearing
4 on behalf of Diamond Glass, Inc. and its affiliated debtors,
5 Your Honor.

6 Your Honor got the message that we resolved the
7 objections for the matters that were scheduled for today?

8 THE COURT: Yes.

9 MR. NESTOR: Thank you, Your Honor. We thank the
10 Court for entering orders on Item Numbers 1 through 10.

11 That takes us to Item Number 11. And for purposes of
12 the hearing, Your Honor, we're just going to go forward in
13 accordance with the agenda.

14 THE COURT: Okay.

15 MR. NESTOR: Item Number 11 is the motion for interim
16 final orders relative to the provision of adequate assurance to
17 utility providers. And we've resolved all the objections, Your
18 Honor. May I approach with a clean and black line form of
19 order?

20 THE COURT: Yes.

21 MR. NESTOR: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. NESTOR: Very simply, Your Honor, we wanted to
24 advise the Court that we've funded the deposit account last
25 Friday. As set forth in the order, there are additions towards

1 the end of the order. And all it really does is carve out the
2 objecting parties and provide that the debtor and those parties
3 have entered into separate agreements so that those parties
4 will no longer be subject to the provisions and mandates of
5 this Court's order.

6 We've reached a separate agreement regarding the
7 provision of adequate assurance.

8 And with that, Your Honor, I think all objections to
9 the motion are resolved.

10 THE COURT: Does anyone wish to be heard in
11 connection with this matter?

12 (NO AUDIBLE RESPONSE HEARD)

13 THE COURT: Hearing none, the Court will sign the
14 revised order without objection.

15 MR. NESTOR: Thank you, Your Honor.

16 (Pause)

17 MR. NESTOR: Thank you, Your Honor. Item Number 12
18 on the agenda is the debtors' motion for order authorizing the
19 payment of incentive pay to senior management. The Committee
20 filed a limited objection to that. And what we'd like to do is
21 adjourn that to another date so that we can continue to work
22 with the Committee and hopefully come forward with a consensual
23 deal.

24 We were wondering -- the parties will be in Delaware
25 on May 8th for the 341 meeting in IDI at the Office of the

1 United States Trustee and we were wondering if the Court had
2 time available that morning, possibly at ten o'clock, for a
3 hearing -- an adjourned hearing on this matter.

4 THE COURT: You're already on the calendar for that
5 time.

6 MR. NESTOR: Oh --

7 THE COURT: So, I'm trying to figure out if you
8 really are or if that was in anticipation of this.

9 MR. NESTOR: Your Honor -- excuse me, Your Honor.
10 Well, I guess that clears up that issue, Your Honor. We -- we
11 did not -- we were unsure as to whether we actually had time on
12 that date.

13 THE COURT: Yes, you do.

14 MR. NESTOR: So, we will -- we'd like to adjourn it
15 to that date, if it pleases the Court.

16 THE COURT: That's fine.

17 MR. NESTOR: Thank you, Your Honor.

18 THE COURT: Ten A.M.

19 MR. NESTOR: Thank you.

20 (Pause)

21 MR. NESTOR: Your Honor, Mr. Richman is going to
22 handle Item Numbers 13 and 14, and explain to the Court the
23 resolutions that we've negotiated with both the lenders and the
24 -- the Creditors' Committee. And then Mr. Salzberg will handle
25 the final item on the agenda.

1 THE COURT: All right. Very well.

2 MR. NESTOR: Thank you.

3 THE COURT: Thank you. Good afternoon.

4 MR. RICHMAN: Good afternoon, Your Honor. Michael
5 Richman, Foley and Lardner, for the debtors. And I want to add
6 my thanks to Mr. Nestor for the Your Honor's entering all the
7 orders yesterday on the uncontested matters.

8 I'm extremely pleased to be able to stand before the
9 Court this afternoon to report that after further and extensive
10 negotiations with our Creditors' Committee and our secured
11 lender and lead bidder, that we have an agreement with our
12 Committee on the sale process on the time table that we
13 propose.

14 We have now over 40 parties who are looking at least
15 at preliminary financial information about the company through
16 our investment banker, National City. And we have high hopes
17 that there will be lively and competitive bidding for the
18 company.

19 That makes this a landmark day for Diamond Glass and
20 the process which the company started on April 1 in an effort
21 to deal with its debt burdens and provide a means to obtain the
22 highest and best value for the business, to preserve some
23 sixteen hundred jobs, and to continue the successful existence
24 of this 85-year-old company in order to provide customers and
25 vendors with an enterprise that they can hopefully continue to

1 do profitable business with for a long period of time.

2 And I would add that we're especially pleased to be
3 able to go forward in the sale process, shoulder-to-shoulder
4 with our Committee.

5 With the settlement of the Committee's objections,
6 which involve some adjustments to the bid procedures, and the
7 terms of Guggenheim's expense reimbursement and credit bid
8 rights, we've also cleared the path toward final approval of
9 the company's DIP facility with Guggenheim to provide seven
10 million of additional post petition financing so that the
11 company has the liquidity necessary to carry on through an
12 expedited acquisition closing which would occur in mid-June if
13 we are able to get all of the dates that we'll discuss with
14 Your Honor later. I don't presume Your Honor's calendar to
15 necessarily accommodate what we want to do, but we'll review
16 those dates with you later.

17 What I thought might be helpful to Your Honor is to
18 highlight the major deal points that were negotiated last night
19 and today. We also have black line versions of both the -- the
20 DIP order and the sale bid procedures motion so that Your Honor
21 can see not only the major points, but any of the conforming
22 and other changes. All the parties have reviewed the orders, I
23 think there's one additional interlineation that Mr. Barry has
24 that was made just before we started this afternoon for
25 clarification, so everyone is in agreement on that. And I

1 thought after walking Your Honor through the major points, I
2 would proffer on the -- we have a record, I believe, that I
3 would ask Your Honor to accept as a record on the DIP motion,
4 the April 2nd transcript when we asked for and received interim
5 approval of the first portion of the DIP. But I don't believe
6 we have a record yet on the bid procedures, and I would proffer
7 the testimony of Mr. Victor and Mr. Cogswell and submit that
8 that would be a sufficient record for the bid procedures
9 motion.

10 I should -- I should add, Your Honor, we also made
11 some changes to the bid procedures to accommodate concerns
12 raised by one potential bidder, which is Belron, and they're
13 represented by counsel in the courtroom today.

14 Refer -- and -- and -- and starting with Belron, just
15 to summarize the changes, we agreed in the bid procedures to
16 eliminate -- and this was in the Committee's objection, as
17 well. We agreed to eliminate the option that we would have to
18 conduct any part of the auction under a sealed bid procedure.
19 So, that is now stricken.

20 In addition, we made clear that the parties who
21 initially are entitled to receive bids will not disclose them
22 to parties who are not initially entitled to receive bids,
23 amplifying the confidentiality of the process and the fairness
24 of it.

25 We also agreed to condition our exercise of

1 discretion with the word "reasonable." And we agreed to
2 provide reasonable access to management for all potential
3 bidders prior to the bid deadline.

4 We also had objections filed by ACH. I don't know if
5 they were on the -- if they were on the agenda for these items.
6 ACH was asserting setoff rights. We have addressed their
7 objections to their satisfaction by providing that any right of
8 setoff they have is reserved. And any parties' right to
9 contest their setoff rights are reserved, and nothing in these
10 orders is intended to impair whatever setoff rights they may
11 have. That relates to prepetition transactions between ACH and
12 the debtors.

13 Moving more -- and staying with the bid procedures
14 with respect to the Committee. We agreed to involve the
15 Committee in consultations at the auction stage. That's
16 covered in Paragraph 8, 12 and 13 of the bid procedures order,
17 and on Pages 5 and 7 of the bid procedures.

18 Responding to the Committee's objection on the
19 stalking horse expense reimbursement. Guggenheim agreed to cap
20 -- to an absolute cap of \$500,000 on its expense reimbursement,
21 and also to provide, 15 days prior to the auction, a good faith
22 estimate of what those expenses would be so that all parties
23 who are bidding understand that -- what component part of
24 expense reimbursement they need to bid against. The Committee
25 had also asked for reasonable -- to condition discretion, and I

1 mentioned we did that.

2 And Guggenheim also agreed that they would reduce
3 their aggregate credit bid. If Your Honor will recall, at the
4 prior hearing, we talked about Guggenheim's credit bid rights
5 as encompassing their entire prepetition loan, plus any amounts
6 drawn under the DIP and it could max out at approximately \$52
7 million.

8 They have agreed that they will not credit bid the
9 portion of their claim that is covered by the guarantee from
10 Kenneth Levine. So, there's approximately \$10 million that
11 they will not credit bid. So, that -- which then reduces their
12 maximum from roughly 52 to roughly \$42 million.

13 The Committee has consented to the roll-up in the
14 DIP. There's also a provision in the DIP to provide that sale
15 proceeds would be applied to the post petition claims of
16 Guggenheim before prepetition. Although I would note that with
17 the roll-up, that's probably not even necessary.

18 Guggenheim agreed to reduce their closing fee from
19 three and a half percent to two percent. That's covered in
20 Paragraph 3B in Page 14 of the DIP order. All parties' rights
21 with respect to any claims against Mr. Levine or claims with
22 respect to the guarantee are reserved.

23 Guggenheim also agreed to forebear from asserting any
24 deficiency claim that they might have as against the wind down
25 left in the estate. In other words, they won't assert that

1 there's any dilution of the wind down in the event they have a
2 deficiency.

3 I think that covers the major deal points. I would --
4 I would simply add, you know, again, I want to thank the
5 Committee and Guggenheim for working hard with us to try to get
6 us to a point where we could all be here today in agreement on
7 the process going forward. I think that is a tribute to the
8 fairness of the original proposals, the fact that few changes
9 needed to be made, and a recognition by everybody that the
10 process that is now to go forward if Your Honor approves is
11 truly in the best interest of all of the constituencies of the
12 debtor.

13 With that, unless Your Honor wants to walk through
14 the black line versions, and I could respond if there are other
15 questions about any of the changes made, I can proffer in
16 respect to the bid procedures motion the testimony of Mr.
17 Victor and Mr. Cogswell.

18 THE COURT: All right. Let's do the proffer first,
19 and then we can go through the orders if we have to.

20 Any objection to the use of a proffer?

21 (NO AUDIBLE RESPONSE HEARD)

22 THE COURT: All right. You may proceed.

23 MR. RICHMAN: Your Honor, if Mr. Victor were called
24 to the stand, we, would, of course, recall his qualifications
25 from the first day hearings so that he wouldn't have to go

1 through that again.

2 And Mr. Victor would testify that he has read and is
3 familiar with the bid procedures and sale motion. And he would
4 further testify that he was retained by the debtors as an
5 investment bankers in early March of 2008. That he's familiar
6 with the proposed bid procedures and believes, based on his
7 experience, that if these bid procedures are approved by the
8 Court, that interested parties will have adequate time to
9 conduct due diligence to bid and to participate in the auction.

10 And I would simply interlineate that with my own
11 comment from before. We already have more than 40 parties that
12 are actively looking at financial information on the company.

13 Mr. Victor would testify further that with the
14 assistance of Nat City, he has been conducting and facilitating
15 diligence by serious interested and qualified bidders. And
16 that he believes that the notice and time frame that are in the
17 bid procedures provide a fair opportunity for interested
18 bidders to participate in the auction.

19 He would also testify in support of the proposed
20 expense reimbursement procedures for Guggenheim, and that they
21 are generally consistent with similar provisions in other
22 transactions of similar size.

23 He would add that expense reimbursement provisions
24 like these are appropriate under the circumstances because
25 Guggenheim has conferred a tangible and substantial benefit on

1 the estate. We briefed that actually at some length in our
2 reply papers to the Committee's objection. Guggenheim's
3 cooperation and support here are truly all that stood between
4 the company's liquidation and its ability to survive as a going
5 concern in order to get to the auction and sale date.

6 Mr. Victor would also testify that he doesn't believe
7 the expense reimbursement would chill bidding based on his
8 experience and that of Nat City in cases of similar size and
9 nature, and that that expense reimbursement was, in part, a
10 material inducement for Guggenheim's entry into the asset
11 purchase agreement.

12 Mr. Victor would also testify more specifically than
13 I did in my opening statement that Nat City's contacted 178
14 potential buyers. They have received 46 requests for
15 confidentiality agreements. They have sent executive summaries
16 to 41 prospective purchasers. That is very strong testimony to
17 the process already in the marketplace. And one would hope
18 that after today, if everything is approved, that there will be
19 greater public attention, and perhaps greater interest than
20 that.

21 In summary, Mr. Victor would testify that the bid
22 procedures and protections before the Court were the result of
23 extensive negotiations and would provide material benefit to
24 the debtors and the estate.

25 THE COURT: All right. Does anyone wish to cross

1 examine Mr. Victor?

2 (NO AUDIBLE RESPONSE HEARD)

3 THE COURT: All right. Hearing one, the Court will
4 accept the testimony.

5 And to the extent necessary to the lay the -- Mr.
6 Victor's background, will incorporate the record from the
7 previous hearing.

8 MR. RICHMAN: Thank you, Your Honor. I would next
9 proffer the testimony of Mr. Cogswell, Diamond Glass's
10 President. And also at the outset would incorporate the record
11 from the April 2, 2008 hearing in which Mr. Cogswell described
12 his 18 years of experience in the replacement glass industry.

13 THE COURT: Any objection?

14 (NO AUDIBLE RESPONSE HEARD)

15 THE COURT: All right. Hearing none, the Court will
16 approve that without objection.

17 MR. RICHMAN: Thank you, Your Honor. Mr. Cogswell
18 would testify that he determined as President of the company,
19 in consultation with Nat City, that an orderly sale of the
20 debtors' assets was the best way to maximize value for the
21 estate and creditors.

22 He would testify that he engaged Nat City in March,
23 2008 to market the debtors' business for sale. And that he has
24 been integrally involved in every aspect of the sale process,
25 including reviewing the lists of prospective purchasers

1 prepared by Nat City, reviewing forms of confidentiality
2 agreement with interested parties, preparing, working with Mr.
3 Victor in preparing the descriptive memo to be supplied to
4 interested parties, and the -- and is involved in organizing
5 and conducting management presentations, and was also
6 intimately involved in the negotiations of the asset purchase
7 agreement with Guggenheim.

8 Mr. Cogswell would also testify that he determined in
9 consultation with Nat City and its professionals that the entry
10 into the stalking horse agreement with Guggenheim was the most
11 effective means of maximizing value for the estate. And that
12 the debtors and Guggenheim have, through the asset purchase
13 agreement, created a floor against which other bidders may bid,
14 sending important signals to the markets, both nationally and
15 internationally. That this is a viable company which it is
16 hoped will stimulate interest in the bid process.

17 Mr. Cogswell would conclude that the proposed bidding
18 procedures and incentive, inasmuch as they are now being
19 supported by all of the stake -- major stakeholders of the
20 debtor are fair, in the best interest of the estate, and should
21 be approved.

22 THE COURT: Does anyone wish to cross examine Mr.
23 Cogswell?

24 (NO AUDIBLE RESPONSE HEARD)

25 THE COURT: All right. Hearing none, the Court will

1 accept the testimony.

2 MR. RICHMAN: Thank you, Your Honor.

3 THE COURT: And to -- the Court will incorporate the
4 record from the previous hearing in support of the DIP motion.

5 Does anyone -- before we go through the order, does
6 anyone wish to be heard in connection with either the DIP
7 motion or the bid procedures?

8 (NO AUDIBLE RESPONSE HEARD)

9 THE COURT: You guys are all very quiet.

10 MR. RICHMAN: Which is a very good sign.

11 THE COURT: Spent all your energy negotiating a
12 resolution. That's good.

13 MR. RICHMAN: That --

14 THE COURT: Okay. Let's go through the order then.

15 MR. RICHMAN: Thank you, Your Honor. So, I think
16 what we might do is maybe I'll have Mr. Barry turn pages with
17 you on the -- because he was involved up until the last minute
18 making all the changes and is more familiar with the last-
19 minute stuff. But I've covered the high points. And any other
20 questions, I can be available to answer. We also have
21 Guggenheim's counsel here, as well as the Committee.

22 THE COURT: All right. And when do you want to go
23 through dates? After we turn the pages?

24 MR. RICHMAN: That's -- we can do that now, if you'd
25 like, Your Honor.

1 THE COURT: All right. What do you -- what do you --
2 let's do that. What dates do you want?

3 MR. RICHMAN: Your Honor, working backwards, because
4 I think the most important first date is the date we would have
5 the sale hearing itself. We were -- we were hoping that June
6 6th might be an available date for Your Honor. And I believe
7 that that is an omnibus date in the case, so hopefully that
8 will work.

9 THE COURT: Ten A.M., June 6th?

10 MR. RICHMAN: Yes.

11 THE COURT: All right. No problem.

12 MR. RICHMAN: So, working backwards from that or
13 starting with the first date going forward, I guess, we would
14 propose that the objections to the sale, as well as any
15 objections to cure amounts, be due on May 30th at four P.M.

16 We are proposing that bids be submitted no later than
17 12 noon on June the 3rd.

18 And we're proposing that the auction -- the auction
19 itself be conducted be conducted at nine o'clock on June 5th.

20 THE COURT: Okay. The only caveat on that is on
21 issues of adequate assurance of future performance. You've got
22 people objecting prior to knowing who the winning bidder is.
23 So, obviously those will be preserved for the hearing. You
24 can't -- you can't have people objecting before they have the
25 information.

1 MR. RICHMAN: That's right.

2 THE COURT: But all -- a cure is fine. When's the
3 note -- cure notice going to go out?

4 MR. RICHMAN: It's -- it's either three or five days
5 after this hearing, Your Honor.

6 THE COURT: All right. Okay. That's plenty of time.
7 All right. That's fine.

8 MR. RICHMAN: Thank you, Your Honor. I'll turn the
9 podium over to Mr. Barry on the particular black lines.

10 THE COURT: Okay.

11 MR. BARRY: Good afternoon, Your Honor. For the
12 record, Joseph Barry of Young Conaway Stargatt and Taylor.

13 Your Honor, may I approach with black lines of both
14 the sale procedures order, the bidding procedures and the DIP
15 order?

16 THE COURT: Yes.

17 (Pause)

18 THE COURT: Thank you.

19 MR. BARRY: Your Honor, first on the -- on the sale
20 procedures again, these changes have already been stepped
21 through with Mr. Richman.

22 THE COURT: With the bidding -- we're talking about
23 the bidding procedures?

24 MR. BARRY: Bidding procedures order --

25 THE COURT: Okay.

1 MR. BARRY: -- Your Honor.

2 THE COURT: Let me just -- I'll tell you what, why
3 don't I just tell you if I have any questions?

4 MR. BARRY: Perfect. Thank you, Your Honor.

5 (Pause)

6 THE COURT: I don't have any questions regarding
7 bidding procedures.

8 MR. BARRY: Thank you, Your Honor.

9 THE COURT: Next we'll turn to the bidding procedures
10 order.

11 (Pause)

12 THE COURT: Is Guggenheim a noticed party who
13 received a bid?

14 MR. BARRY: Yes, they are, Your Honor.

15 THE COURT: Okay. All right.

16 (Pause)

17 THE COURT: Okay, I've got a -- that's the --

18 (Pause)

19 THE COURT: You've got a -- Page 14 of the black line
20 has the adequate assurance language, that -- that needs to come
21 out. Or modified to say those objections can be made at the
22 hearing.

23 MR. BARRY: We'll make that interlineation --

24 THE COURT: All right.

25 MR. BARRY: -- so that the objections to adequate

1 assurance will be made at the sale hearing.

2 THE COURT: Okay.

3 (Pause)

4 THE COURT: All right. With that change, I don't
5 have any issues.

6 MR. BARRY: Thank you, Your Honor. We'll make that
7 change and hand up a clean version. If Your Honor would like
8 to step through the DIP order?

9 THE COURT: Let's move on.

10 MR. BARRY: Very well.

11 (Pause)

12 THE COURT: Let's just change a -- oops, hello, sir.
13 Yes?

14 (Laughter)

15 MR. COLEMAN: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. COLEMAN: Kenneth Coleman, Allen and Overy, on
18 behalf of Guggenheim.

19 Before Your Honor turns to the DIP order, I just --
20 just for the record wanted to make one point. Not -- not so
21 much going to the DIP finance order itself, but rather the DIP
22 loan agreement. As Your Honor heard from Mr. Richman, as part
23 of the negotiation with the Committee to resolve objections,
24 Guggenheim agreed that it would not be credit-bidding that
25 portion of its prepetition claim that is supported by the

1 guarantee in the cash collateral.

2 The way that the DIP financing proposal was made was
3 that that portion would not be rolled into the -- into the post
4 petition financing. That would not be the refinanced portion
5 of the prepetition lending.

6 There was a margin on top of that portion, something
7 on the order of a million dollars, I think it's actually less
8 than a million dollars, that was a cushion on top of that which
9 would have also, under the original proposal, been retained as
10 prepetition debt. As part of the resolution with the
11 Committee, that stub piece, if you will, is being rolled into
12 the post petition financing.

13 So, the only piece that's being left behind is the
14 guaranteed portion. So, again, nothing needs to be changed in
15 the DIP order. We think, instead -- and once we get precision
16 on the exact number, we think the DIP loan agreement itself
17 will need to be tweaked just to reflect that additional amount.

18 Thank you.

19 THE COURT: What this -- there's a change on Page 8,
20 Romanette 4, Prepetition Liens Striking Any Fee Owned Real
21 Property. What's --

22 MR. COLEMAN: There -- there is none.

23 THE COURT: There is none. All right.

24 MR. COLEMAN: It was in -- really in an effort to cut
25 down on words. We didn't succeed to any great extent, but

1 every little bit helps.

2 THE COURT: I've seen -- I've seen wordier DIP
3 orders.

4 MR. BARRY: We'll take that as a compliment, Your
5 Honor.

6 THE COURT: Okay. It looks like you're striking on
7 Page 14 the Financial Advisors' and Accountants' Fees, is that
8 correct?

9 MR. COLEMAN: Similarly motivated, Your Honor.

10 THE COURT: Okay.

11 (Pause)

12 THE COURT: What's this change on Page 18, Paragraph
13 H about avoidance actions?

14 MR. BARRY: That is a part of the settlement with the
15 Committee, Your Honor, where the lenders have agreed not to
16 assert their superpriority administrative expense claim against
17 the proceeds of Chapter 5, Causes of Action. They -- they're
18 waiving -- they won't assert that right in the event that a
19 sale of substantially all of the assets occurs in a single
20 transaction.

21 THE COURT: Okay.

22 MR. BARRY: And we've -- that -- that's where we've
23 actually interlineated one point. Just to clarify that a
24 single transaction can also include a sale of assets to
25 multiple buyers so long as the closing occur --

1 THE COURT: -- substantially --

2 MR. BARRY: -- substantially simultaneously.

3 THE COURT: -- contemporaneously.

4 MR. BARRY: Correct.

5 THE COURT: All right. So, that you can piecemeal
6 the sale.

7 MR. RICHMAN: And that -- that actually was on my
8 list of major points, and I inadvertently overlooked it --

9 THE COURT: All right.

10 MR. RICHMAN: -- in my description earlier.

11 THE COURT: Okay. Anything else you missed? Is that
12 it?

13 (Laughter)

14 THE COURT: The success fee for Foley and Lardner?

15 (Laughter)

16 MR. RICHMAN: Yeah, I missed that --

17 THE COURT: Yeah, all right. That's fine.

18 (Pause)

19 THE COURT: Challenge period is remaining 60 days, is
20 that right?

21 MR. BARRY: Correct, Your Honor.

22 (Pause)

23 THE COURT: Okay. I don't have any further
24 questions.

25 MR. BARRY: Great, Your Honor.

1 THE COURT: The Court will approve the DIP order and
2 the bidding procedures as modified.

3 MR. RICHMAN: Thank you very much, Your Honor.

4 MR. BARRY: Thank you, Your Honor. May I approach
5 with clean versions, Your Honor?

6 THE COURT: Yes, please do.

7 (Pause)

8 THE COURT: Where's the change to the --

9 MR. NESTOR: To the adequate protection objection,
10 Your Honor?

11 THE COURT: Adequate assurance, yes.

12 MR. NESTOR: Adequate assurance. It should be at the
13 end of that paragraph, unfortunately -- it's Page 18 of the
14 black line. It --

15 THE COURT: Oh, I've got it, I've got it. That looks
16 like your writing, Mr. Nestor.

17 MR. NESTOR: If you can read it, it's not my writing.
18 Thank you, Your Honor.

19 MR. RICHMAN: Thank you, Your Honor. I'd now like to
20 introduce my partner, Mark Salzberg, who will handle the last
21 item on the agenda, which is the lease rejection motion.

22 THE COURT: Very well.

23 MR. SALZBERG: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. SALZBERG: On the first day, we filed a motion

1 for authority to reject ten leases of non-residential real
2 property and for authority to abandon any property that
3 remained at the leased premises.

4 As described in the motion, prior to the petition
5 date, the debtors had determined not to continue operations at
6 ten leased premises. These premises were vacated between March
7 of '07 and March of '08. And the dates of abandonment were
8 identified in Exhibit A to the original motion, as well as
9 Exhibit A to the amendment to the motion, which is Docket
10 Number 89.

11 Prior to the vacating of the premises, the debtors
12 removed all items of value. And prior to the petition being
13 filed, keys for three out of ten of the premises were returned
14 to the respective landlords.

15 It was determined that keys to seven of the leased
16 premises had not been returned prior to the petition date. And
17 that oversight was remedied within the next ten days of the
18 petition date, and that's reflected in the amendment to the
19 lease rejection motion. The keys were returned to the
20 landlords by overnight mail, in one case by certified mail, in
21 one case by hand delivery.

22 These leases are not essential to the debtors'
23 operations. The debtors had determined not to continue
24 operating at these premises. And, in fact, the leases provide
25 no benefit to the estate.

1 For that reason, the debtors sought -- seek approval
2 to reject the leases and to reject the leases nunc pro tunc to
3 the date of the filing to the petition date.

4 Again, Your Honor, under the prevailing case law, we
5 believe the debtors would be entitled to nunc pro tunc relief.
6 The premises were all surrendered prior to the petition date.
7 Keys for the leased premises were either returned prior to the
8 petition date or immediately thereafter. The landlords were
9 all served with the motion. There was one objection filed by
10 one landlord, and that was for Store Number 256 in Alabama.
11 And essentially the sum total of that objection was that
12 unfortunately rejection of the lease would deprive that
13 landlord of six months of rent. But unfortunately, that is
14 what the Code would provide.

15 The Committee was served with the motion, and no
16 objection has been filed.

17 So, for that reason, Your Honor, we would ask that
18 the leases be rejected nunc pro tunc to the petition date.
19 That any property be deemed abandoned -- any property that
20 remains at the leased premises be deemed abandoned.

21 THE COURT: Do we have any idea what's left behind at
22 these properties that we're abandoning? And specifically -- I
23 don't know anything about the automotive glass business, but I
24 heard a lot about -- I heard a lot about polymers and things
25 that stick glass to plastic. Are they toxic? Are we leaving

1 behind drums of environmental issues? Paints? Solvents?

2 (Off-the-record colloquy)

3 MR. SALZBERG: I'm sorry, Your Honor. Your Honor, I
4 -- I had been advised before that what primarily had been left
5 behind would be wracks, and some -- just the empty wracks. Not
6 of glass -- of any glass product. And Mr. Cogswell --

7 MR. RICHMAN: Yeah, I was going to say if Your Honor
8 wishes to hear from Mr. Cogswell on that, I believe he --

9 THE COURT: Yes.

10 MR. RICHMAN: -- believes there isn't anything of
11 that nature that would be left behind.

12 THE COURT: All right. Well, maybe he can approach
13 the podium and just make a statement for the record. You don't
14 need to be under oath, sir.

15 MR. COGSWELL: Okay. We don't manufacture anything,
16 Your Honor, in any of our facilities. We're basically an
17 installation facility. So, we don't have polymers and the
18 various things that you may have heard about in the glass
19 industry.

20 Basically it's glass urethane, which is in tubes,
21 sealed tubes that's used to adhere the glass to the vehicles
22 themselves. And then miscellaneous parts: clips and moldings
23 and those kinds of things. Those kinds of items were removed
24 from all the facilities. So, there shouldn't be anything
25 remaining that would be toxic or anything along those lines.

1 THE COURT: Okay. Very well. Thank you, sir. All
2 right. The Court will approve the motion.

3 Do you have a form of order?

4 MR. SALZBERG: Yes, thank you, Your Honor.

5 THE COURT: And I'll --

6 MR. SALZBERG: If I may approach?

7 THE COURT: Yes. And I'll overrule the objection of
8 Woodland Development. That objection is -- is, as stated by
9 counsel, in effect, a complaint that the debtor shouldn't be
10 allowed to breach its lease. Section 365 of the Bankruptcy
11 Code addresses that. The debtor, in effect, is perfectly
12 entitled to breach its lease. Actually, any contract party is
13 perfectly entitled to breach a lease. And the issue is simply
14 one of converting the post petition breach into prepetition
15 rejection damages. The landlord has its claim, subject to the
16 limitations of the Bankruptcy Code. And there's nothing that
17 would indicate that authorizing the rejection is anything other
18 than a sound exercise of the debtors' business judgment.

19 So, the Court will approve the rejection and overrule
20 the objection.

21 MR. SALZBERG: Thank you, Your Honor.

22 (Pause)

23 THE COURT: Oh, I'm sorry. And in addition, the
24 statements in connection with the return of the premises
25 justifies nunc pro tunc rejection of the lease at the requested

1 date.

2 Anything further?

3 MR. RICHMAN: That's all, Your Honor. Thank you very
4 much.

5 THE COURT: Wonderful. Thank you very much. The
6 hearing is adjourned. Have a good afternoon.

7 (Proceedings Adjourn at 3:46 P.M.)

8

9

10 C E R T I F I C A T I O N

11

12 I, Karen Hartmann, certify that the foregoing is a
13 correct transcript to the best of my ability, from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.

16

17 /s/ Karen Hartmann

Date: May 5, 2008

18 TRANSCRIPTS PLUS

19

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