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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In Re:) Case No. 20-43597
) St. Louis, Missouri
BRIGGS & STRATTON CORPORATION,)
et al.,)
) July 21, 2020
Debtors.) 9:57 AM
)
_____)

TRANSCRIPT OF HEARING RE:
MOTION TO EXPEDITE (ON MOTION OF THE DEBTORS AND DEBTORS IN
POSSESSION FOR THE ENTRY OF AN ORDER SCHEDULING AN
EXPEDITED HEARING ON FIRST DAY MOTIONS
FILED BY THE DEBTORS (55);
MOTION OF DEBTORS FOR ENTRY OF AN ORDER DIRECTING JOINT
ADMINISTRATION OF
CHAPTER 11 CASES FILED BY THE DEBTORS (3);
APPLICATION FOR APPOINTMENT OF KURTZMAN CARSON CONSULTANTS,
LLC AS CLAIMS AND NOTICING AGENT AND ADMINISTRATIVE
ADVISOR AS OF THE PETITION DATE FILED BY THE DEBTORS (4);
MOTION OF DEBTORS FOR LEAVE TO EXCEED THE PAGE LIMITATION IN
THEIR FIRST DAY MOTIONS FILED BY THE DEBTORS (8);
MOTION OF DEBTORS FOR ORDER (I) EXTENDING THE TIME TO FILE
SCHEDULES AND STATEMENTS; (II) EXTENDING THE TIME TO SCHEDULE
THE MEETING OF CREDITORS; (III) WAIVING THE REQUIREMENTS TO
FILE EQUITY LISTS AND PROVIDE NOTICE TO
EQUITY SECURITY HOLDERS; (IV) AUTHORIZING THE DEBTORS TO FILE
A CONSOLIDATED LIST OF THE DEBTORS' THIRTY (30) LARGEST
UNSECURED CREDITORS; (V) AUTHORIZING THE DEBTORS TO FILE A
CONSOLIDATED AND REDACTED CREDITOR MATRIX; AND (VI)
APPROVING THE MANNER OF SERVICE OF NOTICE OF CASE COMMENCEMENT
FILED BY THE DEBTORS (18);
MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
PAYMENT OF CERTAIN PREPETITION TAXES AND FEES; AND (II)
GRANTING RELATED RELIEF FILED BY THE DEBTORS (29);
MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
ASSURANCE OF PAYMENT TO UTILITY PROVIDERS, (II) ESTABLISHING
PROCEDURES PROVIDING ADEQUATE ASSURANCE AND RESOLVING
OBJECTIONS BY UTILITY PROVIDERS, AND (III)
PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING UTILITY SERVICE; AND (IV) GRANTING RELATED
RELIEF FILED BY THE DEBTORS (6);

1 MOTION OF DEBTORS FOR ENTRY OF ORDERS (I) AUTHORIZING DEBTORS
2 TO (A) CONTINUE EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR
3 CERTAIN PREPETITION OBLIGATIONS RELATED TO THE USE THEREOF,
4 (C) CONTINUE INTERCOMPANY TRANSACTIONS
5 AND PROVIDE ADMINISTRATIVE EXPENSE PRIORITY FOR POSTPETITION
6 INTERCOMPANY CLAIMS, AND (D) CONTINUE SUPPLY CHAIN
7 FINANCING; (II) WAIVING REQUIREMENTS OF SECTION 345(B) OF THE
8 BANKRUPTCY CODE; AND (III) GRANTING RELATED RELIEF
9 FILED BY THE DEBTORS (17);
10 MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS GRANTING
11 AUTHORITY TO (I) HONOR CERTAIN PREPETITION OBLIGATIONS TO
12 CUSTOMERS AND (II) CONTINUE AND MAINTAIN RELATED CUSTOMER
13 PROGRAMS IN THE ORDINARY COURSE OF BUSINESS FILED
14 BY THE DEBTORS (7);
15 MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
16 DEBTORS TO (A) CONTINUE INSURANCE POLICIES AND PROGRAMS, (B)
17 CONTINUE SURETY BOND PROGRAM, (C) PAY ALL INSURANCE AND SURETY
18 OBLIGATIONS,
19 (II) LIFTING THE AUTOMATIC STAY FOR WORKERS' COMPENSATION
20 CLAIMS, AND
21 (III) GRANTING RELATED RELIEF FILED BY THE DEBTORS (9);
22 MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
23 DEBTORS TO PAY PREPETITION OBLIGATIONS IN THE ORDINARY COURSE
24 OF BUSINESS TO (A) CRITICAL VENDORS, (B) FOREIGN CREDITORS,
25 AND (C) 503(B)(9) CLAIMANTS; AND (II)
GRANTING RELATED RELIEF FILED BY THE DEBTORS (30);
MOTION OF DEBTORS FOR ORDER (I) AUTHORIZING PAYMENT OF
PREPETITION CLAIMS OF SHIPPERS, WAREHOUSEMEN, IMPORT/EXPORT
PROVIDERS, AND OTHER LIEN CLAIMANTS, (II) AUTHORIZING PAYMENT
OF SUCH OBLIGATION IN THE ORDINARY COURSE OF BUSINESS, AND
(III) GRANTING RELATED RELIEF FILED BY THE DEBTORS (5);
MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,
COMMISSIONS, EMPLOYEE BENEFITS, AND OTHER OBLIGATIONS, (B)
MAINTAIN EMPLOYEE BENEFIT PROGRAMS, AND
(C) PAY RELATED ADMINISTRATIVE OBLIGATIONS; AND
(II) GRANTING RELATED RELIEF FILED BY THE DEBTORS (11);
MOTION OF DEBTORS FOR ENTRY OF ORDERS ESTABLISHING
NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN
TRANSFERS OF INTERESTS IN AND CLAIMS AGAINST THE DEBTORS FILED
BY THE DEBTORS (32);
DEBTORS' MOTION FOR AN ORDER ESTABLISHING CERTAIN NOTICE,
CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
FILED BY THE DEBTORS (16);
APPLICATION TO EMPLOY AND RETAIN AND EMPLOY WEIL, GOTSHAL &
MANGES LLP AS ATTORNEYS FOR THE DEBTORS EFFECTIVE AS OF THE
PETITION DATE FILED BY THE DEBTORS (27);

1 APPLICATION TO EMPLOY AND RETAIN CARMODY MACDONALD P.C. AS
2 LOCAL RESTRUCTURING COUNSEL FOR THE DEBTORS FILED BY THE
3 DEBTORS (31);
4 APPLICATION TO EMPLOY AND RETAIN EMPLOY ERNST & YOUNG LLP AS
5 FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE
6 PETITION DATE FILED BY THE DEBTORS (42);
7 APPLICATION TO EMPLOY AND RETAIN HOULIHAN LOKEY CAPITAL, INC.
8 AS INVESTMENT BANKER FOR THE DEBTORS NUNC PRO TUNC TO THE
9 PETITION DATE FILED BY THE DEBTORS (45);
10 APPLICATION TO EMPLOY AND RETAIN DELOITTE & TOUCHE LLP AS
11 INDEPENDENT AUDITORS NUNC PRO TUNC TO PETITION DATE FILED BY
12 THE DEBTORS (34);
13 APPLICATION TO EMPLOY AND RETAIN FOLEY & LARDNER LLP AS
14 SPECIAL COUNSEL FOR THE DEBTORS NUNC PRO TUNC TO THE PETITION
15 DATE FILED BY THE DEBTORS (33);
16 MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
17 DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING
18 DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND
19 SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE
20 PROTECTION TO PREPETITION SECURED PARTIES, (V) MODIFYING
21 AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING AND (VII)
22 GRANTING RELATED RELIEF FILED BY THE DEBTORS (35);
23 MOTION TO FILE UNDER SEAL FEE LETTER RELATED TO MOTION OF
24 DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS
25 TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING DEBTORS TO
USE CASH COLLATERAL, (III) GRANTING LIENS AND
SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES, (V) MODIFYING AUTOMATIC STAY,
(VI) SCHEDULING FINAL HEARING AND (VII) GRANTING RELATED
RELIEF FILED BY THE DEBTORS (37);

BEFORE THE HONORABLE BARRY S. SCHERMER
UNITED STATES BANKRUPTCY COURT

ECRO

Jed Bain

Transcription Services:

eScribers, LLC
7227 N. 16th Avenue
Suite #207
Phoenix, AZ 85020
(973) 406-2250

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APPEARANCES:

For the Debtors:

CHRISTOPHER J. LAWHORN,
ESQ.
ROBERT E. EGGMANN, ESQ.
DANIELLE A. SUBERI, ESQ.
THOMAS H. RISKE, ESQ.
DORMIE KO, ESQ.
CARMODY MACDONALD P.C.
120 S. Central Avenue
Suite 1800
St. Louis, MO 63105

RONIT J. BERKOVICH, ESQ.
(TELEPHONIC)
DEBORA A. HOEHNE, ESQ.
(TELEPHONIC)
MARTHA E. MARTIR, ESQ.
(TELEPHONIC)
JANIEL JODI-ANN MYERS,
ESQ.
(TELEPHONIC)
ANDREW CITRON, ESQ.
(TELEPHONIC)
ANDREW J. YOON, ESQ.
(TELEPHONIC)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153

EDWARD SOTO, ESQ.
(TELEPHONIC)
LAUREN Z. ALEXANDER, ESQ.
(TELEPHONIC)
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue
Miami, FL 33131

For Office of the United States
Trustee:

SIRENA T. WILSON, ESQ.
DEPARTMENT OF JUSTICE
Office of the U.S. Trustee
111 South 10th Street
Suite 6.353
St. Louis, MO 63102

1 APPEARANCES (CONT'D):
2 For JPMorgan Chase Bank, N.A.: DAVID M. UNSETH, ESQ.
3 (TELEPHONIC)
4 BRIAN C. WALSH, ESQ.
5 (TELEPHONIC)
6 BRYAN CAVE LEIGHTON
7 PAISNER
8 One Metropolitan Square
9 211 North Broadway
10 Suite 3600
11 St. Louis, MO 63102
12
13 PETER P. KNIGHT, ESQ.
14 (TELEPHONIC)
15 JONATHAN GORDON, ESQ.
16 (TELEPHONIC)
17 LATHAM & WATKINS LLP
18 330 North Wabash Avenue
19 Suite 2800
20 Chicago, IL 60611
21
22 For ad hoc noteholder group: OKSANA P. LASHKO, ESQ.
23 (TELEPHONIC)
24 ROBERT J. STARK, ESQ.
25 (TELEPHONIC)
HARRISON F. FREEMAN, ESQ.
(TELEPHONIC)
BROWN RUDNICK LLP
7 Times Square
New York, NY 10036

JEFFREY L. JONAS, ESQ.
(TELEPHONIC)
BROWN RUDNICK LLP
One Financial Center
Boston, MA 02111

For bondholder group: GREGORY D. WILLARD, ESQ.
(TELEPHONIC)
ALEC MOEN, ESQ.
(TELEPHONIC)
DOSTER, ULLOM & BOYLE, LLC
16150 Main Circle Drive
Suite 250
Chesterfield, MO 63017

1 APPEARANCES (CONT'D):
2 For KPS Capital Partners LP: RICHARD W. ENGEL, JR.,
3 ESQ.
4 (TELEPHONIC)
5 ARMSTRONG TEASDALE LLP
6 7700 Forsyth Blvd.
7 Suite 1800
8 St. Louis, MO 63105
9
10 GREGORY F. PESCE, ESQ.
11 (TELEPHONIC)
12 CHAD J. HUSNICK, P.C.
13 (TELEPHONIC)
14 KIRKLAND & ELLIS
15 300 North LaSalle
16 Chicago, IL 60654
17
18 For Wells Fargo Commercial
19 Distribution Finance, LLC: ANN E. PILLE, ESQ.
20 (TELEPHONIC)
21 REED SMITH LLP
22 10 South Wacker Drive
23 40th Floor
24 Chicago, IL 60606
25
26 MARK BOSSI, ESQ.
27 (TELEPHONIC)
28 THOMPSON COBURN LLP
29 One US Bank Plaza
30 St. Louis, MO 63101
31
32 Also Present Telephonically: Mark Schwertfeger, Senior
33 Vice President and Chief
34 Financial Officer of
35 Briggs & Stratton
36 Corporation
37
38 Kathryn M. Buono
39 Vice President, Corporate
40 Counsel & Secretary of
41 Briggs & Stratton
42 Corporation
43
44 Jeffrey Lewis,
45 Houlihan Lokey
46
47 Jeffrey Ficks,
48 EY Americas Advanced
49 Manufacturing

1 THE CLERK: The United States Bankruptcy Court for
2 the Eastern District of Missouri, Southeastern Division is now
3 in session, the Honorable Barry S. Schermer presiding.

4 THE COURT: Please be seated. Good morning.

5 IN UNISON: Good morning, Your Honor.

6 THE COURT: On our calendar for July 21st, I have the
7 matter of Briggs & Stratton, et al.

8 Mr. Eggmann, good morning.

9 MR. EGGMANN: Good morning, Your Honor.

10 THE COURT: Would you introduce me to your
11 colleagues?

12 MR. EGGMANN: I'd be happy to do so, Your Honor.

13 First we have in the courtroom Chris Lawhorn, who I
14 believe you've met before.

15 THE COURT: Good morning.

16 MR. LAWHORN: Good morning, Your Honor.

17 MR. EGGMANN: Danielle Suberi.

18 THE COURT: Good morning.

19 Ms. Suberi: Good morning, Your Honor.

20 MR. EGGMANN: Tom Riske.

21 Mr. Riske: Good morning, Your Honor.

22 THE COURT: Of course.

23 MR. EGGMANN: And the newest lawyer member of our
24 team, Dormie Ko. Dormie is a Washington University Law School
25 grad, so point one, right law school.

1 THE COURT: Doesn't get any better than that.

2 MR. EGGMANN: Oh, yes, it does. And she took your
3 class, so having taken your class, I don't know that we really
4 need anybody else on the debtors' end of the line; Dormie
5 could do it herself.

6 THE COURT: You have planned well.

7 MR. EGGMANN: And finally, we have Amanda Zumwalt,
8 who is a paralegal at our law firm.

9 THE COURT: Good morning.

10 MR. EGGMANN: And we have on the telephone today our
11 cocounsel from Weil, Gotshal. And there are three primary
12 presenters today from the Weil, Gotshal law firm, and they are
13 Ronit Berkovich, Debora Hoehne, and Martha Martir. They are
14 all partners with the Weil, Gotshal law firm. We also have
15 Janiel Myers, Ed Soto, and Lauren Alexander. I don't believe
16 there's going to be any presenters other than Ms. Berkovich,
17 Ms. Hoehne, and Ms. Martir.

18 And these are folks that we didn't know well forty-
19 five days ago and we've gotten to know very well over the last
20 forty-five days, and they've been a delight to work with, very
21 skilled, terrific team, and I think you'll enjoy hearing from
22 them and working with them throughout the course of this case,
23 Your Honor.

24 THE COURT: Thank you, Mr. Eggmann.

25 MR. EGGMANN: And that is the debtors' team.

1 THE COURT: Thank you.

2 Other appearances, please?

3 Good morning.

4 MS. WILSON: Good morning. Sirena Wilson on behalf
5 of the office of the U.S. Trustee.

6 THE COURT: Always a pleasure.

7 Any other appearances?

8 Mr. Eggmann?

9 MR. EGGMANN: Thank you, Your Honor. We do have
10 several first-day motions, and what I'd like to do with
11 respect to the first-day motions, I'd like to turn it over to
12 my cocounsel, Ronit Berkovich, and let her walk through those
13 and let her introduce the party that is handling that
14 particular motion, if that's acceptable to the Court.

15 We are going to do our doggonest to stay close to
16 that proposed agenda. The Court granted several of these
17 motions, which obviously we will not call today, since they've
18 been granted on an interim basis, although the U.S. Trustee
19 may have a comment or two on some of those that have been
20 granted on an interim basis, but I will leave that up to Ms.
21 Wilson if we do that.

22 THE COURT: Let me explain what I was trying to
23 accomplish yesterday by entering those provisional orders with
24 respect to professionals. It asked for nunc pro tunc relief,
25 which we know the Feliciano case said we shouldn't do. So my

1 work around Rule 6003 and the nunc pro tunc, which are at odds
2 with each other, was to provisionally grant the application to
3 employ, subject to a final hearing. And that's what I was
4 trying to accomplish so that you're employed as of the
5 commencement of the case without having to use the term "nunc
6 pro tunc".

7 MR. EGGMANN: And we appreciate that. That --

8 THE COURT: Okay.

9 MR. EGGMANN: -- brings up all sorts of problems,
10 especially as of late, I've noticed, Your Honor, so thank you
11 for the Court's indulgence --

12 THE COURT: Sure.

13 MR. EGGMANN: -- in doing that, since we dumped a lot
14 on the Court yesterday, we're well aware.

15 So with that, assuming Ms. Berkovich is ready, I will
16 turn it over to Ronit.

17 THE COURT: Thank you.

18 Ms. Berkovich, can you hear me all right?

19 MS. BERKOVICH: I can hear you, Your Honor. Can you
20 hear me?

21 THE COURT: I can.

22 MS. BERKOVICH: Okay. Wonderful. Good afternoon.
23 For the record, Ronit Berkovich, Weil, Gotshal & Manges,
24 counsel to Briggs & Stratton Corporation and the affiliated
25 debtors.

1 I would like to start by thanking the Court and its
2 staff for accommodating today's hearing and scheduling us on
3 shortened notice, and also to thank the Court for handling us
4 remotely during these unprecedented times, and to extend my
5 hope that everyone at the Court is staying healthy and safe.
6 I truly wish we could be in St. Louis today presenting our
7 case in person, and hopefully that day will come soon.

8 I would also like to thank the Clerk of the Court,
9 Ms. McCoy. She and her staff have been very generous with
10 their time in reviewing the motions with us before this
11 hearing to work out any issues, and since the filing, her
12 assistance has been invaluable to us.

13 I also would like to thank the U.S. Trustee's office,
14 Ms. Sirena Wilson, for reviewing our motions before the
15 hearing and providing us invaluable guidance with respect to
16 those motions.

17 I know that members of the company's management team
18 are with us telephonically today, including the chief
19 financial officer, Mark Schwertfeger, and the vice president,
20 corporate counsel, Kathryn Buono. Our chief executive
21 officer, Todd Teske, has also been intimately involved in our
22 Chapter 11 preparations and may be on the line as well.
23 They're all monitoring the proceedings while attending to the
24 important business of the company.

25 I'm also joined today by a number of my colleagues

1 from Weil, Gotshal who will join me in presenting first-day
2 motions. Those are Debora Hoehne, Martha Martir, Andrew
3 Citron, and Janiel Myers, as well as our colleagues from the
4 Carmody MacDonald firm.

5 I do have two additional colleagues, who I hope I
6 won't need, but those are Ed Soto and Lauren Alexander.
7 They're on the line and would handle any witness testimony,
8 should that be necessary. And there are others on the line
9 that would be available to answer questions that may arise and
10 support us in our request for a smooth transition into Chapter
11 11.

12 The debtors' proposed investment banker in these
13 cases is Houlihan Lokey. Mr. Jeffrey Lewis of Houlihan
14 submitted a declaration in support of the motion for DIP
15 financing, and he is available by phone. He is joined in this
16 engagement by, among others, Mr. Reid Snellenbarger and Mr.
17 William Peluchowski of Houlihan. Mr. Snellenbarger submitted
18 a declaration in support of the debtors' sale motion, which we
19 filed yesterday but will be heard in August.

20 The debtors' proposed financial advisor is Ernst &
21 Young. Mr. Jeffrey Ficks submitted a declaration in support
22 of the first-day relief, and he is also available by phone.

23 I just want to pause to make sure people can still
24 hear me.

25 THE COURT: Yes, you're doing well. Thank you.

1 MS. BERKOVICH: Okay. I wouldn't want to speak for
2 twenty minutes only to find that you lost me one minute in.

3 So on Monday morning, Briggs & Stratton Corporation
4 and four of its U.S. affiliates filed voluntary petitions for
5 Chapter 11 protection. We are pleased to appear before you,
6 Your Honor, with a stalking-horse purchaser, which is an
7 affiliate of private equity firm KPS, that has agreed to
8 purchase substantially all of the company's assets for roughly
9 550 million dollars. That would of course be a floor for our
10 asset sales process, and we are hopeful to increase that
11 number during our competitive in-court marketing process.

12 We will discuss the terms of that proposal in further
13 detail later in the hearing. For now, I will only say that
14 the debtors' goal here is to maximize value, and we are
15 proceeding down this path because we believe that a going-
16 concern sale is the best path forward for this company.

17 I know Your Honor reviewed our papers closely, and we
18 did file many papers, so we appreciate that, but I will keep
19 my introductory remarks short. I will spend just a few
20 minutes highlighting what I think is the most important, which
21 are the answers to the following questions. First, who is
22 Briggs & Stratton? Second, why are we here? And third, what
23 do we hope to accomplish during these cases?

24 First, who we are. Briggs & Stratton is an old and
25 proud American brand with a 112-year history that has

1 pioneered the field of gasoline engines and outdoor power
2 equipment. It is a publicly-held company headquartered in
3 Wauwatosa, Wisconsin, with operations in six states, including
4 two facilities in Missouri, in Poplar Bluff and in Lee's
5 Summit, and over twenty countries across North and South
6 America, Europe, Asia, Africa, and Australia. The company has
7 over 4,500 employees worldwide.

8 Briggs & Stratton is the world's largest producer of
9 gasoline engines for outdoor power equipment and is a leading,
10 designer, manufacturer, and marketer of power generation,
11 pressure washer, lawn and garden, turf care, and job site
12 products, through its various brands which include Briggs &
13 Stratton, Simplicity, Snapper, Ferris, Vanguard, Allmand,
14 Billy Goat, Hurricane, Murray, Branco, and Victa.

15 The company's business is divided into two reportable
16 segments, the products segment and the engines segment. The
17 product segment designs, manufactures, and markets a wide
18 range of outdoor power equipment, job site products, and
19 related accessories through various channels of retail
20 distribution.

21 The engines segment sells engines worldwide,
22 primarily to original equipment manufacturers of lawn and
23 garden equipment and other gasoline-engine-powered equipment.
24 Globally, the company's engines can be found on diverse
25 applications, such as milking machines in New Mexico, sugar

1 can crushers in Puerto Rico, fishing boats in Vietnam, rice
2 harvesters in the Philippines, and cocoa pod grinders in
3 Indonesia, just to name a few.

4 Next I will turn to the second question: Why are we
5 here?

6 Can you still hear me, Your Honor?

7 THE COURT: Yes, of course.

8 MS. BERKOVICH: Okay. I'm just making sure. A
9 number of factors contributed to the company's current
10 situation. These factors include headwinds related to
11 cautious ordering patterns from channel partners; weather
12 conditions in certain regions that lowered the demands for our
13 products; the bankruptcy of Sears, which was one of the
14 company's largest direct customers and a major indirect
15 customer of engines who are customers; next, a shift in
16 consumer preferences, leading to reductions in residential
17 consumer engine demand, though offset by growth in commercial
18 and larger engines and products; and unfair trade practices
19 from Chinese competitors.

20 As a result of these factors, the debtors made
21 significant efforts, pre-petition, to reduce costs and improve
22 efficiency, including an engine manufacturing consolidation
23 project. In early 2020, Briggs & Stratton developed a
24 remediation plan to reposition strategically and delever the
25 company to improve financial flexibility.

1 Then came COVID. The current COVID-19 global
2 pandemic resulted in unexpected near-term business
3 consequences. This Court, the company's customers and its
4 employees, are all too familiar with the terrible impact of
5 the COVID pandemic globally. For Briggs, COVID has impacted
6 sales and revenues precisely during the season when the
7 company would typically generate the most sales, springtime.

8 The COVID-19 impact included substantially lower than
9 forecasted revenues, four to five weak plants entered select
10 shut-downs at six of the company's U.S. facilities, and
11 negative impacts on Briggs & Stratton's customers and sales
12 channels, that is, those customers similarly closed
13 operations, reduced production, et cetera, leading to lower
14 demands for our products.

15 In response to the start of COVID-19, the company
16 took various measures to reduce costs further, but these
17 proved insufficient, and the company began to run short on
18 liquidity.

19 Beginning in March 2020, the debtors determined they
20 would require additional financing to fund their operations in
21 the near term as well as a solution to their upcoming 2020
22 maturity.

23 I'll take a step back and describe the company's
24 funded debt. It has two major funded debt facilities. First,
25 it has secured asset-based lending, or ABL facilities with

1 approximately 326 million in unpaid principal, plus accrued
2 and unpaid interest, fees, and other expenses. In addition,
3 the debtors owe an additional approximately twenty-six million
4 in bank product obligations which are essentially hedges that
5 are secured under the pre-petition ABL agreement.

6 The second facility is the company's unsecured notes.
7 Approximately 195.5 million in principal is outstanding under
8 those notes, plus a 6.7 million-dollar interest payment that
9 was due in June. The notes had a maturity of December 2020,
10 and the ABL facility has a springing maturity of September 15,
11 2020 if any of the unsecured notes remained outstanding as of
12 that time. So the company faced the prospect of over 500
13 million in debt coming due this year.

14 In March and April of 2020, the company hired an
15 experienced team of advisors, including Houlihan Lokey as
16 investment banker, to assist the company in debts and capital
17 matters, including raising additional capital to address the
18 company's near-term liquidity and 2020 notes maturity.

19 The company's preferred path was, of course, an out-
20 of-court solution. Houlihan ran a robust capital raise
21 process, contacting numerous potential sources of capital,
22 both lenders and potential purchasers of assets. During the
23 course of that process, investors generally indicated that
24 they were unwilling to provide the company with sufficient
25 capital without the company solving its 2020 maturities. And

1 the investors expressed a willingness to proceed with the
2 transaction only in connection with a Chapter 11 filing.
3 The first-day declaration describes the capital raise and M&A
4 process that led to our DIP financing and stalking-horse
5 proposal.

6 The company also, for several months, worked with an
7 ad hoc group of holders of unsecured notes on potential
8 solutions, but after diligence and numerous discussions, that
9 group did not present a viable proposal for either an in-court
10 or out-of-court process. With no viable out-of-court solution
11 and no party willing to fund a Chapter 11 reorganization, the
12 board determined that an efficient sale of the company's
13 assets, through a Section 363 sale, provided the best
14 opportunity to maximize the value of the company.

15 The pre-petition negotiations, led by Houlihan,
16 resulted in our entering Chapter 11 with a three-prong
17 package: first, a 677.5 million DIP Financing package to fund
18 post-petition operations in these Chapter 11 cases, and we
19 will, of course, discuss the DIP motion in further detail
20 towards the end of this hearing.

21 Second, and perhaps most importantly, the 550-
22 million-dollar stalking-horse proposal from an affiliate of
23 KPS, which will form the basis for a competitive sale process.

24 Third, we were able to secure, through a floor plan
25 lender, a continuation of that program in Chapter 11 which is

1 important for the company's customer relations.

2 Next I get to the final part of my presentation.
3 What would we like to accomplish in Chapter 11? We filed a
4 motion seeking approval of bidding procedures in the early
5 days of these Chapter 11 cases to secure a value-maximizing
6 sale transaction that will benefit all stakeholders. That's
7 not on today's agenda, but we hope we will set a hearing on
8 August 11th for that.

9 The debtors hope, based on pre-filing indication of
10 interest, that their post-petition sale process will result in
11 a robust auction and overbids. To consummate the sale of our
12 business as a going concern and operate the business during
13 the Chapter 11 cases, we have obtained a 677.5-million DIP
14 facility consisting of a 412.5-million-dollar DIP ABL facility
15 funded by the debtors' pre-petition ABL lenders, and a 265-
16 million-dollar DIP term loan facility funded by the stalking-
17 horse purchaser, KPS.

18 Importantly, our pre-petition ABL lenders have agreed
19 to forbear from exercising any remedies against the debtors'
20 foreign affiliates that are a borrower and a guarantor under
21 the pre-petition ABL facility. This will allow the company to
22 continue operating at foreign jurisdictions with the least
23 amount of destruction possible and to go forward with the
24 business.

25 Our goal, I will say it again, is to maximize value.

1 We plan to work constructively with the creditors' committee,
2 when one is formed, for vetting. Based on current
3 assumptions, the existing stalking-horse bid is enough to
4 cover our secured debt, our administrative and priority
5 claims, and the costs of a wind-down.

6 But to be candid with the Court, it does not
7 currently provide much, if any, recovery for unsecured
8 creditors. We hope to increase that recovery through the
9 competitive auction process as well as through being efficient
10 in these Chapter 11 cases.

11 We hope that we and the creditors' committee can find
12 common ground to work together to minimize administrative
13 expenses so that asset sale proceeds can go towards making
14 distributions to unsecured creditors rather than funding
15 lawyers to fight over those proceeds.

16 Your Honor, as we move to the first-day motions --
17 that concludes the end of my introductory remarks, but I think
18 it might efficient to first move into evidence, the
19 declaration of Jeffrey Ficks in support of the first-day
20 relief. It's located at docket number 51. Mr. Ficks is on
21 the telephone and available for cross-examination.

22 THE COURT: I was going to treat his affidavit as an
23 offer of proof. Does anyone oppose the introduction into
24 evidence of Mr. Ficks' affidavit?

25 There's no opposition. It is received into evidence.

1 (Declaration of Jeffrey Ficks was hereby received into
2 evidence as of this date.)

3 MS. BERKOVICH: Thank you, Your Honor. So I will
4 turn the podium over -- the virtual podium over in a minute to
5 my colleague, Debora Hoehne, to present the first few first-
6 day motions, and then I will be back again to present the
7 final two motions, including the DIP financing motion.

8 Does Your Honor have any questions for me?

9 THE COURT: No, ma'am. Thank you.

10 MS. BERKOVICH: Thank you very much, Your Honor. Now
11 Ms. Hoehne will present.

12 MS. HOEHNE: Good morning, Your Honor. This is
13 Debora Hoehne from Weil, Gotshal & Manges, on behalf of the
14 debtors. I think that if -- with the Court's permission, I
15 would like to address a few moments -- a few motions that
16 perhaps are a bit out of turn with respect to the agenda. And
17 if it's okay with Your Honor, I'd like to start with cash
18 management, which is item -- I believe item number 8 on the
19 agenda, filed as docket number 17.

20 THE COURT: Give me just a minute to find the tab
21 number 7. Continuation of cash management. Ms. Williams
22 (sic) is anxiously awaiting your presentation.

23 MS. HOEHNE: Thank you, Your Honor. Briefly, in that
24 motion the debtors seek the authority to continue and maintain
25 their existing cash management system, including the

1 maintenance of the debtors' existing bank accounts, checks,
2 and business forms, to pay bank fees, and to waive the
3 requirements of Section 345(b).

4 The debtors also seek authorization to continue
5 ordinary-course intercompany transactions with debtor and
6 nondebtor affiliates, including payment of pre-petition and
7 post-petition obligations related thereto, and to accord
8 intercompany transactions between debtors' administrative
9 claim status.

10 The debtors also seek to continue their corporate
11 card program and the supply-chain-financing program that was
12 described in the motion.

13 We've reviewed the form of interim order with the
14 U.S. Trustee and we've agreed that we will continue to have
15 discussions with their office with respect to the JPMorgan and
16 Bank of Montreal accounts that are not listed as authorized
17 depositories for the U.S. Trustee's Office in this region, in
18 connection with the 345(b) waiver, at the final hearing.

19 I will pause a moment to see if Your Honor has any
20 questions about the relief sought in the motion and also to
21 allow Ms. Williams (sic) to speak on this issues if she'd like
22 to.

23 THE COURT: Thank you, Ms. Hoehne. I have no
24 questions.

25 Ms. Williams (sic), what is the U.S. Trustee's

1 position?

2 MS. WILSON: Your Honor, just for note purposes, this
3 is one motion that we had previously received and reviewed
4 prior to the filing, so we can agree to limited relief.
5 However, we believe the waiver of 345 is premature, at this
6 time. We'd like an opportunity to discuss it with counsel and
7 work towards compliance on that matter.

8 Also, we'd like to see the draft order before it is
9 submitted.

10 THE COURT: Let's work in reverse order. As you
11 know, but those appearing by telephone may not know, my rule
12 is always that your submission of a proposed order is your
13 representation that the order has been circulated to those who
14 are affected by it. Those affected by it have twenty-four
15 hours to review it and get their comments back to debtors'
16 counsel. And the submission of the order is your
17 representation that it has been reviewed, there's no
18 opposition to its content, and it will be entered.

19 And your second point, Ms. Wilson, is can you have a
20 few more days to work with Ms. Hoehne to alleviate your
21 concerns of the cash management and the waiver of 345. The
22 answer is: of course.

23 Why don't we give you a week to do that, and we'll
24 advance our calendar one week on that motion. And if we need
25 a subsequent telephonic hearing, we'll have one.

1 MS. WILSON: Yes. The only other note that I have
2 for that is at this time we believe that the waiver of any --
3 the waiver of 345 should be pushed off to the final hearing,
4 in case it extends beyond the one week discussion, if that
5 works for the Court.

6 THE COURT: Let's see where you are in a week. And
7 we'll have Mr. Lawhorn or Mr. Eggmann contact Ms. Cohen to see
8 where we are at that one-week mark.

9 MS. WILSON: Thank you.

10 THE COURT: Fair enough? Thank you, ma'am.

11 Ms. Hoehne, what is our next motion?

12 MS. HOEHNE: Thank you, Your Honor. The next motion
13 that I would turn to is item -- I believe agenda item number
14 9, filed at the docket at number 7, a motion to pay certain
15 pre-petition customer obligations, pursuant to pre-petition
16 customer programs and practices that are in the debtors'
17 ordinary course, also known as the customer-programs motion.

18 THE COURT: I'm ready if you are.

19 MS. HOEHNE: Thank you, Your Honor. These programs
20 are ordinary-course programs that are standard in the industry
21 in which the debtors operate and are important to maintain the
22 debtors' competitiveness in the marketplace.

23 The debtors estimate that approximately fifty-three
24 million has accrued on account of the customer programs
25 through the end of the year, approximately ten million of

1 which will come due during the interim period.

2 Given the critical importance of the debtors'
3 customers to its ongoing business, the debtors would request
4 that the motion be granted. I'm happy to discuss any
5 particular program or aspect of the relief sought in greater
6 detail, if Your Honor has any questions.

7 THE COURT: Thank you. Does anyone wish to be heard
8 with respect to the debtors' motion granting authority to
9 honor certain pre-petition obligations to customers and to
10 continue and maintain customer programs?

11 Ms. Wilson?

12 MS. WILSON: We agree to the limited relief, but only
13 for those obligations which become due or are expected to
14 become due within the first thirty days of the case.

15 THE COURT: I'm sorry, your limited objection, then,
16 is to the next thirty days?

17 MS. WILSON: To the next thirty days, that becomes
18 due within the next thirty days of the case.

19 THE COURT: And what's your thinking on that?

20 MS. WILSON: So that we can have an opportunity to
21 review it in the event something occurs before the final
22 order.

23 THE COURT: All right. We'll put you on the one-week
24 schedule on this one also.

25 MS. WILSON: Thank you.

1 THE COURT: Thank you. This seems to be ordinary-
2 course, though, doesn't it?

3 MS. WILSON: Yes, sir.

4 THE COURT: Okay. We'll put that on the list, then.

5 Ms. Hoehne, what is our third motion?

6 MS. HOEHNE: Thank you, Your Honor. The next item I
7 would go to is agenda item number 13, the debtors' wage motion
8 filed at docket number 11.

9 As you've read, Your Honor, the debtors employ almost
10 4,000 people and 2,400 supplemental workers with an average
11 base compensation of approximately twelve-and-a-half million
12 dollars per month. These, Your Honor, are the people
13 responsible for producing the debtors' goods and also the
14 people responsible for the debtors' sales, marketing,
15 accounting, administration, and management. In short, Your
16 Honor, these are the lifeblood of the company.

17 In the ordinary course of business, the debtors have
18 maintained all of the customary employee programs that you
19 would expect, including health and welfare benefits, retiree
20 benefits, and employee savings plans.

21 The debtors are seeking authority today to continue
22 the substantial majority of these programs as outlined more
23 specifically in the motion. There are a few aspects of the
24 motion, Your Honor, that I wanted to highlight for the Court.

25 The first is that the motion requests authority to

1 pay pre-petition amounts related to wages, salaries,
2 commissions, vacations, and severance, up to the 13,650-per-
3 employee cap. With respect to the incentive bonuses, we've
4 had discussions earlier this morning with the U.S. Trustee's
5 Office, and we have agreed to defer the payments under the
6 ordinary-course incentive bonus programs to the final hearing.
7 And we will work with the U.S. Trustee on a proposed form of
8 order to submit, that makes that clear.

9 To be clear to Your Honor, these are ordinary-course
10 bonuses paid annually to rank-and-file employees, and not in
11 the nature of a KEIP or KERP.

12 In addition, Your Honor, we are not seeking, at this
13 time, to pay any severance or vacation benefits, until a final
14 order is entered. And none of the employees, Your Honor, that
15 would receive severance, are insiders of the debtors that is
16 defined in Section 101 of the Bankruptcy Code.

17 THE COURT: So are you looking for an order, Ms.
18 Hoehne, that grants the motion with a carve-out of the
19 subjects you just described?

20 MS. HOEHNE: That's correct, Your Honor.

21 THE COURT: Ms. Wilson, what is your office's
22 position?

23 MS. WILSON: Similar to the discussions that she's
24 just discussed, no employees should receive the pre-petition
25 salary bonuses or incentives in excess of the statutory cap.

1 There was reference in this motion of key employees, executive
2 incentives, and bonuses. We believe those references should
3 be redacted -- which she mentioned we worked with in the
4 order -- and dealt with separately.

5 It's not for the key employees to start or to
6 continue to receive bonuses. And that should be noticed out.
7 But I believe we can work together on that.

8 THE COURT: All right. Look at the order that will
9 be submitted today or tomorrow, see that it carves out for a
10 week from today those areas that you and Ms. Hoehne just
11 described. Thank you.

12 MS. WILSON: Thank you.

13 THE COURT: Ms. Hoehne, was there any compensation in
14 the form of bonuses entered before the filing of this
15 bankruptcy case?

16 MS. HOEHNE: Your Honor, the motion describes that
17 there was a KERP program implemented in June with respect to
18 senior executive management. And that program was also
19 disclosed in an 8-K filed at the time that that program was
20 adopted by the board of directors' compensation committee.

21 THE COURT: Thank you. What is our next motion?

22 MS. HOEHNE: Your Honor, with that, I will turn the
23 virtual podium over to my colleague, Martha Martir, who will
24 take up the next motions.

25 THE COURT: Who is going to present the following

1 motions?

2 MS. HOEHNE: I believe my colleague, Martha Martir,
3 is going to present the next motions.

4 THE COURT: If you would, please?

5 MS. MARTIR: Good morning, Your Honor. This is
6 Martha Martir from Weil, Gotshal, on behalf of the debtors. I
7 will be presenting two motions.

8 The first motion is the NOL motion, agenda item 14,
9 at docket number 32.

10 THE COURT: Hold on just a minute.

11 Mr. Lawhorn, in the future, we're going to follow the
12 agenda. Thank you.

13 Yes, please, if you would proceed.

14 MS. MARTIR: Your Honor, this motion seeks to
15 establish procedures to protect the potential value of the
16 debtors' consolidated tax attributes, including disallowed
17 business interest expenses, carryovers of unused business
18 credit, consolidated federal net operating losses, carryover
19 of unused foreign credit -- foreign tax credits, and certain
20 other tax benefits.

21 The proposed procedures would impose narrowly
22 tailored restrictions and notification requirement with
23 respect to the stock of Briggs & Stratton Corporation.

24 THE COURT: And who wishes to be heard in opposition
25 to this motion?

1 There is no opposition. The motion will be granted.

2 MS. MARTIR: Thank you, Your Honor. Okay.

3 The next item on the agenda, Your Honor, is the -- is
4 item number 11 at docket number 30, the critical-vendor
5 motion.

6 THE COURT: Thank you. If you would, please?

7 MS. MARTIR: By this motion, the debtors are seeking
8 the authority to pay pre-petition claims of certain vendor
9 claimants in the ordinary course of business. These vendor
10 claimants include critical vendors which are -- vendors and
11 suppliers who are essential to maintain the going-concern
12 value of the debtors' business; foreign creditors -- these are
13 vendors, services suppliers, and other entities outside of the
14 United States that are not or may not be subject to
15 jurisdiction in the United States, and may consequently take
16 action against the debtors in a foreign country; and also
17 503(b)(9) claimants -- these are vendors holding claims that
18 are entitled to statutory priority under 503(b)(9) of the
19 Bankruptcy Code.

20 Pursuant to the motion, the debtors seek authority --
21 I'm sorry?

22 THE COURT: What is the benefit to those who are not
23 critical?

24 MS. MARTIR: Well, Your Honor, these are suppliers
25 and vendors that the company needs to continue its ongoing

1 enterprise --

2 THE COURT: I understand --

3 MS. MARTIR: -- in an effort to --

4 THE COURT: -- what a --

5 MS. MARTIR: -- maximize -- I'm sorry.

6 THE COURT: I understand what a critical vendor is.

7 The question I asked was what's the benefit to those who are
8 not deemed critical?

9 MS. MARTIR: What's the -- well, I mean, this enables
10 the company to continue its ongoing operations, right? It has
11 supplies. It needs to get it. And some of these suppliers
12 are saying, listen, we're not going to ship to you because you
13 have a pre-petition balance, and we're just not going to do
14 it.

15 So the company is requesting this relief to be able
16 to pay those claimants in order to continue receiving the
17 parts and products that it needs to continue its operations.

18 THE COURT: Again, you're --

19 MS. MARTIR: And --

20 THE COURT: -- you're going back to who is critical.
21 I'll answer my own question. It's the going-concern value of
22 the business. That's what the Seventh Circuit said when it
23 denied critical vendors in Kmart.

24 Okay.

25 MS. MARTIR: Right, Your Honor. So I mean -- I mean,

1 not allowing this would really disrupt the debtor's
2 manufacturing process and consequently its ability to generate
3 revenue. The debtors' business is highly seasonal and most of
4 its products are sold in the spring and summer months. And
5 any delay to the manufacture or shipment of its finished
6 products to market before the spring, could prevent the
7 debtors from maximizing sales revenue.

8 And ultimately any disruption would, again, affect
9 the company's stakeholders and creditors.

10 THE COURT: Who wishes to be heard in opposition to
11 the motion to pay critical vendors and foreign creditors and
12 503(b)(9) creditors? Ms. Wilson.

13 MS. WILSON: Your Honor, our office has discussed
14 this with debtors' counsel. We have some transparency
15 concerns on this motion. There may be too much leverage for
16 the debtors to force creditors to accept the terms. We'd like
17 to allow the official committee to be appointed and review the
18 procedures more closely in this matter.

19 THE COURT: Well, you're the person to ask. What is
20 the status of the creation of a committee?

21 MS. WILSON: We're working to get the letters out
22 currently.

23 THE COURT: So what you just said was the letters
24 have not gone out yet.

25 MS. WILSON: Correct.

1 THE COURT: Then I'm not going to wait for a
2 committee, if the committee will slow this down and the
3 debtor's telling me that we have critical vendors.

4 What's your second position or plan B?

5 MS. WILSON: Plan B is to have it granted on an
6 interim basis only, but still expressing our concerns for the
7 transparency.

8 THE COURT: Well, that's a decent plan B, I suppose,
9 but the debtors' going to pay these as promptly as possible.
10 You know that, don't you?

11 MS. WILSON: Yes, sir.

12 THE COURT: Thank you.

13 MS. WILSON: Thank you.

14 THE COURT: Any other opposition to the motion to pay
15 critical vendors?

16 The motion is granted.

17 Now, who is going to present the motion for joint
18 administration?

19 Oh, yes, we're going back to the agenda. You know
20 what? The motion is going to be granted, because this isn't
21 controversial and this case needs to have joint
22 administration. Just be --

23 MR. EGGMANN: In that case, Your Honor, I'm happy to
24 present it.

25 THE COURT: Take the hard ones, don't you?

1 MR. EGGMANN: Yeah.

2 THE COURT: I have an application to appoint Kurtzman
3 Carson Consultants as claims agent and noticing agent. Who is
4 going to present that motion?

5 I'll present it. I think this is more for noticing
6 than it is for a claims agent, given the number of claims
7 anticipated in this case. I'll be the first to admit that I'm
8 not that conversant with the statutory obligations of the
9 Clerk of Court, therefore I will need a few days to work on
10 this proposed order --

11 MR. EGGMANN: And Your Honor --

12 THE COURT: -- which I think --

13 MR. EGGMANN: -- certainly that's acceptable --

14 THE COURT: -- the conversations of which have
15 already started.

16 MR. EGGMANN: Yes. We have exchanged drafts of this
17 with the Clerk of the Court and the U.S. Trustee's Office. I
18 know the U.S. Trustee has a couple of tweaks to our order,
19 especially when it relates to potential parties involved in
20 KCC having an ownership interest or investment in the debtor.
21 And those, I think, have been resolved and will be resolved
22 before it is submitted to the Court.

23 Ms. McWay has weighed in quite a bit on the KCC
24 motion. I don't want to say that she's -- did she approve the
25 order yet, Chris?

1 Okay, so she's not approved the order yet, but we are
2 in communication.

3 THE COURT: I think the ball's in our court. You'll
4 hear from Ms. Cohen. Ms. Cohen will speak for the Clerk. And
5 we'll get this resolved as promptly as possible.

6 MR. EGGMANN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 I overlooked the motion for expedited hearing. But
9 whoever wants a soft ball can have this one.

10 MR. LAWHORN: Good morning, Your Honor. Chris
11 Lawhorn from Carmody MacDonald on behalf of the debtors. Yes,
12 Your Honor, I will take the soft ball. This is a motion to
13 expedite. We would appreciate Your Honor's consideration and
14 entry of the order, please.

15 THE COURT: It is granted.

16 MR. LAWHORN: Thank you, Your Honor.

17 THE COURT: Go home a winner, kid.

18 MR. LAWHORN: Thank you.

19 THE COURT: Our next motion is to exceed the page
20 limitation with respect to certain pleadings. Ms. Suberi's
21 going to hit a home run on this one.

22 MS. SUBERI: Good morning, Your Honor. There's some
23 complex information we would like to get in front of you as
24 succinctly as possible, however we do believe we need to
25 exceed the page limit on some of these.

1 THE COURT: Sure. The page limitation is fifteen. I
2 see the need for it. The motion is granted.

3 MS. SUBERI: Thank you, Your Honor.

4 THE COURT: Thank you. Our next motion is for
5 interim and final orders with respect to certain pre-petition
6 taxes, fees, and granting related relief. Who is going to
7 present this motion?

8 Okay --

9 MS. HOEHNE: Andrew Citron is prepared to present
10 that motion. Mr. Citron.

11 THE COURT: If you would -- if you would, please?

12 MR. CITRON: Hi, Your Honor. Thank you very much.
13 Good morning. Andrew Citron on behalf of the debtors. And as
14 you noted, we are at agenda item number 6, the tax motion.

15 Through this motion, the debtors seek interim and
16 final orders authorizing payment of certain pre-petition taxes
17 and fees and granting related relief. This motion was filed
18 at docket number 29.

19 THE COURT: This is --

20 MR. CITRON: The debtors currently estimate they --
21 yes?

22 THE COURT: Go ahead, sir.

23 MR. CITRON: Thank you, Your Honor. The debtors
24 currently estimate that they owe approximately 4.21 million in
25 pre-petition tax obligations and regulatory assessments. This

1 includes sales and use taxes, property taxes, income taxes,
2 franchise taxes, and certain foreign taxes related to the
3 debtors' global operations.

4 Failure to pay these taxes and fees could lead to the
5 various taxing authorities taking action that may interfere
6 with the debtors' administration of these Chapter 11 cases.

7 THE COURT: Is that code for --

8 MR. CITRON: Which would include --

9 THE COURT: -- is that code for personal
10 responsibility or personal liability on some of these taxes?

11 The answer is: of course it is.

12 MR. CITRON: Thank you, Your Honor.

13 In addition, there could be the assertion of liens
14 against the debtors' property or assessments of penalties or
15 significant interest on past-due taxes.

16 THE COURT: You don't think the stay of 362 would
17 prohibit that?

18 MR. CITRON: Well, I think we would -- while we would
19 always take that position, with respect to some governmental
20 units, they might argue otherwise. And to have this relief
21 today would moot any such future conflict.

22 Further, many of the taxes and fees give rise to
23 priority claims under Section 507(a)(8) of the Bankruptcy Code
24 and will have to be paid in full under any Chapter 11 plan.

25 Based on those reasons, Your Honor, we'd ask that --

1 unless you have any further questions -- that the Court enter
2 the order approving the motion.

3 THE COURT: Thank you, sir.

4 Does anyone wish to be heard in opposition to the
5 motion to pay taxes?

6 The motion is granted. Our next motion --

7 MR. CITRON: Thank you, Your Honor.

8 THE COURT: Thank you. Our next motion is utilities
9 under Section 366.

10 MS. HOEHNE: Ms. Janiel Myers will be presenting that
11 motion, Your Honor.

12 THE COURT: Thank you.

13 MS. MYERS: Good morning, Your Honor. Janiel Myers
14 from Weil, Gotshal & Manges, on behalf of the debtors. The
15 next agenda item, as you're aware, is item number 7, the
16 debtors' utilities motion, at docket number 6.

17 The debtors are seeking to approve adequate assurance
18 of payments to utilities providers and otherwise establish
19 procedures for the utility providers to request additional
20 adequate assurance of payment and otherwise -- and authorize
21 the debtors to honor obligations to a payment processor, in
22 the ordinary course of business.

23 The motion proposes to have the debtors deposit cash
24 in the amount of two weeks' payment for the utility service
25 providers, in a segregated account, within twenty days of the

1 petition date.

2 Here the total amount of the adequate assurance
3 deposit is 907,505 dollars. This adequate assurance amount
4 reflects a sum equal to the cost of two weeks' worth of the
5 average utility costs for each provider, and it's based on the
6 historical averages of the use of utility services over the
7 last twelve months.

8 Further, the debtors are seeking to pay the service
9 fees to the payment processor, which include an average bill
10 payment administration fee and a monthly consulting service
11 fee, as well as a small fee for that process. As of the
12 petition date, the debtors estimate that approximately 2,500
13 in service fees remain outstanding and payable to the payment
14 processor. And we're seeking authority to pay these fees and
15 continue to honor obligations to the payment processor, as
16 they come due in the ordinary course of business, and are
17 consistent with past practices.

18 Your Honor, we aren't aware of any objections or
19 issues from other parties, and unless the Court has any
20 questions, we respectfully request that the Court grant the
21 motion.

22 THE COURT: Well, you're not aware of any opposition,
23 because the case was filed Sunday afternoon, and today is
24 Tuesday morning. The utilities aren't even aware that your
25 motion exists.

1 Number two, I haven't met a debtor-in-possession yet
2 who likes Section 366 and would rather rewrite it. That was
3 gratuitous. Let's move on.

4 So the essence of the motion is to pay Trane, which
5 will handle administratively the payment of utility bills.
6 You've offered a two-week adequate assurance, which is about
7 half of the monthly 1.8 million dollars you pay in utilities.

8 And then lastly, somebody set up our presenter of
9 this motion by citing Penn Central Transportation, a Third
10 Circuit 1972 case. 366 has been changed about seventeen times
11 since 1972.

12 Why don't we do this? Let's put this on for a final
13 hearing after the utilities have had a chance to look at this
14 and weigh in on it. So Shontelle, let's put this on the next
15 docket, tab number 6, the 366 motion. Thank you.

16 Our next motion, I believe it's our insurance -- to
17 pay insurance policies, programs, continued surety bond
18 program, et cetera. Who is going to present this?

19 MS. BERKOVICH: Yes, Your Honor, this is Ms.
20 Berkovich. I will present this one, as well.

21 THE COURT: Thank you.

22 MS. BERKOVICH: Your Honor, for the most part, this
23 is a standard insurance motion where we're seeking entry of an
24 order authorizing us to continue our insurance policies and
25 programs, continue our surety bond programs, and pay all our

1 insurance and surety obligations, whether they arise pre-
2 petition or post-petition.

3 One part of the relief I did want to highlight is the
4 Workers' Compensation program. Unlike most companies that we
5 see, the debtors' Workers' Compensation program is primarily
6 self-funded, which means that instead of having insurance pay
7 Workers' Comp claims, debtors pay their claims themselves as
8 they come due.

9 Under state law, in order to self-fund Workers'
10 Compensation, you need permission from each state in which you
11 operate, which Briggs has received. In all states except for
12 one, which is one where we no longer operate, the states have
13 asked for and Briggs has provided collateral to secure -- to
14 the state in the form of surety bonds. And in all of those
15 states, except for one, the state has more collateral than the
16 estimated amount that's open on those Workers' Compensation
17 claims. That last one is ninety-nine percent funded.

18 And to be clear, Briggs is in compliance with all
19 bonding and other requirements in all states, with respect to
20 Workers' Compensation.

21 The average monthly amount that the debtors pay on
22 account of Workers' Comp claims is approximately 300,000
23 dollars. And today we're seeking permission to pay Workers'
24 Compensation claims to avoid disruption in the near-term for
25 our employees.

1 But as the debtors will not be operating for more
2 than a few more months, our plan is reach out to the state
3 Workers' Compensation authorities to enter into agreements to
4 transfer responsibility for those claims to the states, in an
5 orderly manner.

6 Does Your Honor have any questions about the relief
7 that we're seeking here?

8 THE COURT: Not on the Workers' Comp. Would you go
9 ahead on premium financing?

10 MS. BERKOVICH: We are seeking authority, but not
11 direction, to continue to pay the premium financing
12 installments, as they come due, to ensure our insurance during
13 the period that we're operating.

14 THE COURT: And I see your monthly obligation is
15 141,000 dollars. Is there anything exceptional about this
16 premium financing, or is it pretty standard?

17 MS. BERKOVICH: No, Your Honor, this is the standard
18 insurance premium financing that we see with a lot of part
19 companies.

20 THE COURT: Thank you.

21 MS. BERKOVICH: For most of the actual insurance, we
22 do pay the premiums up front, and they're totally funded in
23 full. But for a couple of the programs, we do have the
24 insurance premium financing.

25 THE COURT: Does anyone wish to be heard in respect

1 of the motion to pay insurance premiums, et cetera?

2 That motion is granted.

3 MS. BERKOVICH: Thank you, Your Honor.

4 THE COURT: Thank you. I think we've covered
5 everything up to the motion for orders establishing
6 notification procedures, approving restriction on certain
7 transfers of interests.

8 MS. BERKOVICH: Yes, Your Honor. Ms. Martir will be
9 back to present that one.

10 THE COURT: Thank you. So we're ready to proceed
11 with the motion presentation, please?

12 MS. HOEHNE: Ms. Martir, are you on mute?

13 THE COURT: Okay, Mr. Eggmann, you're up at bat.
14 Somebody's got to present this motion. I've offered twice
15 now.

16 MR. SUBERI: Your Honor, I believe the motion for
17 order establishing notification procedures, that that was
18 taken up by this Court as the fourth motion and granted
19 previously.

20 THE COURT: Thank you.

21 MS. SUBERI: Thank you, Your Honor.

22 THE COURT: Thank you, Ms. Suberi.

23 All right, case management and administrative
24 procedures. Mr. Lawhorn, on this one, since you're basically
25 going through the rules of engagement on this one, I'd like a

1 few days to review this one, also.

2 MR. LAWHORN: Yes, Your Honor. And in particular, in
3 that regard, we'd point Your Honor to the page 12, paragraph
4 32 talks about telephonic appearances, and we think that might
5 need to be adjusted based on conversations that I've had with
6 various members of your team. And so we are happy to work
7 with the Court to do whatever we can to make these
8 procedures --

9 THE COURT: Well, we'll continue the ability to use
10 CourtCall and to appear and present by telephone.

11 MR. LAWHORN: That would be --

12 THE COURT: Let me look at this in detail, if you
13 would, please?

14 MR. LAWHORN: That would be fine, Your Honor. Thank
15 you.

16 THE COURT: Thank you. While we're doing this, may I
17 make a few notes about how we'd like to work with debtors'
18 counsel?

19 This sounds incredibly picky, but let's eliminate
20 double-sided copies.

21 With respect to evergreen retainers -- because we'll
22 ultimately get to professionals -- I don't see the need for an
23 evergreen retainer, since we're being paid monthly. Do you
24 agree?

25 MR. LAWHORN: Yes, Your Honor. We understand your

1 practice is those will -- those will be paid down.

2 THE COURT: With respect to professionals, I know
3 that everyone wants to be employed under 328 -- or pardon me,
4 compensated under 328. We're going to go over to 330. You'll
5 just have to trust me.

6 I don't know the last time I got involved in a fee,
7 but it's been many, many years. But I don't want to -- I
8 don't want to paint myself into a corner under 328.

9 MR. LAWHORN: Your Honor, may I be heard in that
10 regard?

11 THE COURT: Please.

12 MR. LAWHORN: Only because I don't know -- our lead
13 counsel may have an issue they want to discuss with that. I
14 know, in the past, what we've done, Your Honor, to accommodate
15 kind of the middle ground, if you will, is do 328 with a
16 reservation of the U.S. Trustee to come back at the end of the
17 case, but we're happy to discuss that --

18 THE COURT: Well --

19 MR. LAWHORN: -- after we get past the interim phase,
20 Your Honor.

21 THE COURT: -- when we get to those applications,
22 we'll go into detail.

23 MR. LAWHORN: Great. Thank you, Your Honor.

24 THE COURT: Sure.

25 I noticed there was not a motion to hold all hearings

1 in St. Louis.

2 MR. LAWHORN: No, Your Honor. Your Honor, our
3 experience from prior cases was that Your Honor was very
4 accommodating given travel schedules and whatnot and doing a
5 lot of the hearings here in St. Louis with the noted point
6 that Your Honor made in the past that if there's something
7 that's particularized to the jurisdiction where our company
8 has its operations, that we would consider then doing a
9 hearing in those locations.

10 THE COURT: And I think that's fair. That's what we
11 basically agreed to in Noranda.

12 MR. LAWHORN: Yes, Your Honor.

13 THE COURT: So we'll -- I understand what you're
14 doing, and we'll notice up the place of each hearing in each
15 notice.

16 MR. LAWHORN: Yes, Your Honor.

17 THE COURT: Okay, I think that's about it, then, for
18 the rules. Okay. Let's move onto --

19 MR. LAWHORN: Thank you, Your Honor.

20 THE COURT: Thank you, sir.

21 Next application is to employ Weil Gotshal.

22 Mr. Eggmann?

23 MR. EGGMANN: Thank you, Your Honor. We weren't sure
24 if these were going to be taken up. I think provisionally
25 probably is different than interim, so I'll go ahead and take

1 the lead on these applications.

2 Your Honor, the applications more or less speak for
3 themselves. This is, obviously, a very large, complex case
4 requiring the need of a large law firm with extensive
5 reorganization and restructuring experience, and I think we
6 have that with the team of Weil.

7 We do not, to my knowledge, have any opposition from
8 the United States Trustee's Office, at least to the interim
9 employment. I would ask that it be granted.

10 With regard to evergreen retainers, I think that the
11 parties to this case, who have been in discussion on these
12 issues, I think, understand the Court's position on these.
13 There might be one caveat that I might get to when we get to
14 Foley, but we'll wait for Foley.

15 THE COURT: Thank you. Let's take up this
16 application at our final hearing, because I think that's what
17 Rule 6003 requests us to do. So we'll put this on the
18 calendar for our next hearing and choose a date --

19 MR. EGGMANN: Okay. Thank you, Your Honor.

20 THE COURT: -- shortly. Thank you.

21 And then, Mr. Eggmann, we'll do the same with your
22 law firm, Carmody MacDonald: put this on for a final hearing.

23 MR. EGGMANN: Thanks, Your Honor.

24 THE COURT: Then we have Ernst & Young, who wish to
25 be employed also.

1 MR. EGGMANN: Ernst & Young is the debtors' financial
2 advisor, and as you heard in Ms. Berkovich's opening, they've
3 been critical, both pre-petition and will be critical going
4 forward post-petition. They have an incredible knowledge
5 about this case that probably no other professional in this
6 case assess, and we believe that that should be granted on an
7 interim basis as well for final hearing.

8 THE COURT: And it will be, and we'll put this on the
9 schedule for a final hearing.

10 Ms. Wilson, do you wish to weigh in on this?

11 MS. WILSON: Yes, Your Honor. I want to weigh in on
12 this one. There was another similar motion to this Ernst &
13 Young, and we can take this up on final matter also. But
14 different in this engagement is Ernst & Young was retained by
15 counsel to provide assistance, and both counsel and debtor are
16 assigned as -- the agreement is with Weil Gotshal and debtor
17 instead of simply being with debtor, and I wanted an
18 explanation as to why the agreement wasn't just with the
19 debtor.

20 THE COURT: Thank you.

21 Mr. Eggmann, do you wish to respond to that question?

22 MR. EGGMANN: Your Honor, I think a point of
23 clarification, we filed it, but I don't believe that we are
24 necessarily -- we are parties to the agreement, "we" being
25 Weil Gotshal and Carmody MacDonald. So they're being engaged

1 on behalf of the debtor and the debtors' estate.

2 THE COURT: Thank you. We'll take it up at final
3 hearing.

4 Houlihan Lokey wishes to be employed as your
5 investment banker. We don't need to go over their
6 qualification.

7 MR. EGGMANN: The only disappointment is that Mr.
8 Neimann is not involved in this engagement.

9 THE COURT: I'm not going to go for that one.
10 We'll take up Houlihan's application at the final
11 hearing. It will be granted on a provisional basis.

12 You wish to employ Deloitte Touche?

13 MR. EGGMANN: Right, and this is more for traditional
14 accounting services, Your Honor, and actually the debtor and
15 the estate needs a rather large sophisticated accounting firm
16 going forward with all the tax work and the like going
17 forward.

18 THE COURT: And did I read this --

19 MR. EGGMANN: So just the auditors. I apologize.
20 The auditors.

21 THE COURT: Okay.

22 MR. EGGMANN: Independent auditors.

23 THE COURT: And I think we'll take this one up also
24 at the final hearing.

25 MR. EGGMANN: That sounds great, Your Honor.

1 THE COURT: Thank you.

2 Foley & Lardner wishes to be employed as special
3 counsel.

4 MR. EGGMANN: This one's just a little bit different,
5 Your Honor.

6 First, certainly, Foley understands that nunc pro
7 tunc and a traditional evergreen retainer is not something
8 that this Court typically grants. But Foley is the law firm
9 that handles all of the -- essentially, the nondebtor entities
10 and the corporate work for the debtor. They've traditionally
11 been the Briggs & Stratton lawyers going back, I believe, over
12 ten years. It could be over twenty. I don't have my
13 application in front of me.

14 What Foley also does which is critical to the debtor
15 is they coordinate with the foreign law firms hired. As Ms.
16 Berkovich indicated the debtor does business in a number of
17 different countries and every continent other than Antarctica.
18 So it is necessary that we be employed a law firm that can not
19 only do our work in the U.S., but also coordinate our
20 international efforts, and Foley is that law firm.

21 The one thing that I wanted to -- and I guess we
22 could probably take this up at final, but Foley asked if we
23 could kind of meet in between on the evergreen because what
24 Foley does is when they hire a law firm, let's say, for
25 example, Switzerland, they pay that law firm. So what the

1 suggestion was -- and quite frankly, this is somewhat what my
2 suggestion -- was perhaps we could say no evergreen for fees,
3 but an evergreen for the expenses incurred in connection with
4 employing their counsel that they then pay as an expense item.

5 THE COURT: Understood, but we pay our expenses a
6 hundred percent every month. So if you just move the advance
7 to the expense column as opposed to legal services column,
8 they'll be paid in full every month.

9 MR. EGGMANN: We do. And you're correct, Your Honor.

10 THE COURT: So we'll take this one up at final
11 hearing if you don't mind.

12 MR. EGGMANN: That'd be fine. Thank you.

13 THE COURT: Thank you.

14 All right. The largest and most important, perhaps,
15 other than your employment is the interim financing for post-
16 petition 364 and use of cash collateral motion. Who is to
17 present that?

18 MS. BERKOVICH: Yes, Your Honor. This is Ms.
19 Berkovich again. I will present that.

20 I do apologize for the confusion, much of which
21 results from being virtual. I will do my best to be in St.
22 Louis next time, but we did -- and again, it's our fault
23 because we deviated from the agenda -- we did skip over the
24 shippers and warehousing motion. So Your Honor, would you
25 like to do that one before or after the DIP motion?

1 THE COURT: Let's do DIP financing first, please.

2 MS. BERKOVICH: Sure. Okay.

3 Your Honor, this is agenda -- I mean, docket number
4 35, the debtors' motion for approval of an interim DIP
5 financing. With this, we also filed a motion to seal the DIP
6 fee letter at docket 37. And in support of our DIP motion, we
7 filed the declaration of Jeffrey Lewis at docket number 36.

8 Your Honor, Mr. Lewis is on the phone and available
9 for cross-examination if needed, and the debtors hereby move
10 for the admission of the Lewis declaration into evidence.

11 THE COURT: Any opposition to the offer of proof of
12 Mr. Lewis?

13 His declaration is received into evidence.
14 (Declaration of Jeffrey Lewis was hereby received into
15 evidence as Debtors' Exhibit, as of this date.)

16 MS. BERKOVICH: Thank you, Your Honor.

17 I would like to start by giving Your Honor a brief
18 overview of the DIP facilities, followed by a brief summary of
19 our pre-petition DIP marketing process. I will follow that by
20 going into detail on some of the more salient terms of the DIP
21 facility, then discuss the need for access to the DIP facility
22 to avoid immediate and irreparable harm, and I will answer any
23 questions Your Honor may have regarding the DIP motion.

24 In a nutshell, Your Honor, the debtors seek authority
25 to obtain senior secured funding, debtor-in-possession

1 financing in an aggregate principal amount not to exceed 677.5
2 million dollars pursuant to the terms and conditions of the
3 DIP credit agreement, which is attached to the DIP motion and
4 the proposed interim DIP order.

5 The proposed DIP financing consists of two
6 facilities, both covered under that one agreement.

7 The first is the first asset-based revolving facility
8 in an aggregate principal amount not to exceed, initially,
9 412.5 million, and that is subject to a reduction to 350
10 million after entry of a final order. We call this the DIP
11 ABL facility.

12 Second, is a superpriority senior secured priming
13 last-out term loan facility in an aggregate principal amount
14 of 265 million dollars, which we refer to as the DIP term loan
15 facility, although you may sometimes hear people call it a
16 FILO facility.

17 There are some nuances in each of these facilities
18 that I will address shortly, but in terms of big picture at
19 this interim hearing today, they are only seeking authority to
20 borrow, first, up to 158 million under the DIP ABL facility,
21 and second, up to 20 million under the DIP term loan facility.
22 At the final hearing, we will be seeking authority to borrow
23 the rest of the DIP ABL, and the rest of the DIP term loan.

24 With that overview in mind, I'll take a step back and
25 provide Your Honor with a brief summary of the pre-petition

1 DIP marketing process conducted by the debtors and Houlihan
2 Lokey.

3 Your Honor, the Lewis declaration goes into nice
4 detail about this, so I will just focus on certain highlights.

5 The DIP marketing process really started in March and
6 April of 2020 when, as I discussed previously, the company
7 hired a team of advisors, including Houlihan, to assist in
8 debt and capital matters including raising additional capital
9 to address both its near-term liquidity needs as well as its
10 2020 maturity under the unsecured note.

11 During this period, the company, with Houlihan's
12 assistance and guidance, conducted a month-long robust process
13 for raising capital. As part of the capital-raise process,
14 Houlihan contacted over one hundred potential investors and
15 prepared extensive materials and numerous analyses to assist
16 investors and encourage them to submit proposals.

17 By the end of May 2020, the company distributed its
18 business plan and requested term sheets that provided for
19 solutions for both the incremental liquidity to fund the
20 company's long-term business plan and the upcoming maturity on
21 the unsecured notes.

22 By the end of May, the company had received eight
23 proposals, all of which called for an in-court solution to a
24 Chapter 11 filing. Of those proposals, seven provided for
25 some DIP financing element.

1 At that point, the company and its advisors requested
2 a DIP financing proposal from its pre-petition ABL agent,
3 JPMorgan Chase. In response, JPMorgan provided the company a
4 proposal for a 450-million DIP ABL facility, and a 250-million
5 DIP term loan last-out facility.

6 The company and Houlihan analyzed the DIP proposals,
7 including the economics and the upfront fees. They determined
8 that JPMorgan's DIP proposal offered superior economic terms
9 to any of the other DIP financing proposals as used by the
10 debtors.

11 In addition, given that JPMorgan and the other ABL
12 lenders are the debtors' incumbents lenders and have a lien on
13 most of the debtors' assets, other DIP proposals would have
14 had to prime JPMorgan's liens, which would have led to a
15 potential priming litigation with attendant cost and
16 uncertainties.

17 The debtors and their advisors actively negotiated to
18 secure the most favorable terms possible on the DIP financing
19 from JPMorgan and were ultimately able to obtain concessions
20 on a number of key provisions, including certain costs and
21 fees and an increase in the term loan amount to 265 million
22 dollars.

23 The debtors openly agreed to a reasonable proposal
24 from JPMorgan that they believed would meet their liquidity
25 needs at this critical juncture.

1 From the beginning, the term loan amount proposed by
2 JPMorgan was not going to be provided from the ABL lenders; it
3 was to be syndicated by JPMorgan and the market. And JPMorgan
4 commenced the best-effort syndication of the DIP term loan
5 facility in the weeks prior to the commencement of these
6 cases.

7 Several weeks into this syndication process, KPS, who
8 we were close at that point to reaching a deal from the
9 stalking horse asset sale purchase agreement, they offered a
10 firm commitment to participate in a DIP term loan facility and
11 openly offered to fund the full amount to that facility in the
12 same terms as had been agreed upon with JPMorgan. This was a
13 substantial improvement from the terms KPS initially proposed
14 their DIP when it made its first offer to purchase the assets,
15 and this solution eliminated the syndication risk we would
16 have faced going into the Chapter 11 cases had we stuck with
17 JPMorgan's term loan proposal. So we negotiated the DIP term
18 loan with KPS.

19 Your Honor, unless there are any questions in the
20 marketing process, I'd like to go back to the terms of the DIP
21 facility and zoom in on a few of the specific details and
22 mechanics of these loans.

23 THE COURT: Does anyone wish to go back into the
24 procedure that -- where we are today?

25 Okay. Let's go to the terms and the rollup.

1 MS. BERKOVICH: Great.

2 So as previously mentioned, the DIP facility is two
3 facilities.

4 First, the DIP ABL facility, a superpriority senior
5 secured priming first-out asset-based revolving credit
6 facility in an aggregate principal amount not to exceed
7 initially 412.5 million subject to reduction on the DIP term
8 loan closing date, which is after entry of the final order, to
9 360 million.

10 This DIP ABL facility consists of two facilities.
11 First, the North American revolving facility in the aggregate
12 amount of 383.7 million subject to reduction to 321.2 million,
13 and second, a Swiss revolving facility in the aggregate amount
14 of 28.8 million.

15 In addition, the DIP ABL facility is subject to a
16 letter of credit sublimit of up to six million dollars, other
17 than those of the pre-petition letters of credit issued under
18 the -- deemed issued under the DIP ABL facility.

19 Second, we have the DIP term loan facility, much
20 simpler; 20 million interim that ultimately aggregate amounts
21 of 265 million.

22 In terms of what Your Honor is being asked to approve
23 on an interim basis, we're seeking authority to borrow and
24 enter the interim order up to 158 million under the DIP ABL
25 facility and up to 20 million on the DIP term loan facility.

1 The fees under that facility -- there's an unused
2 line fee of 0.25 percent of the fronting fees, a 0.125 percent
3 per annum on the average daily amount of the North American LC
4 exposure. Other fees include a seventy-five basis point
5 upfront fee to all ABL lenders payable at the interim closing.
6 And there is an arranger fee for the DIP agent that is under
7 the fee letter filed under seal.

8 For the term loan, there's no fee at this time, but
9 upon entry of a final order, the fee will be two percent of
10 the aggregate principal amount of the DIP term loan funded by
11 the DIP term lender on the DIP term closing date.

12 We mentioned a rollup. Your Honor, the rollup is a
13 major component of the DIP facility, and we do imagine it
14 might be an issue at the final hearing, but to be clear, we're
15 not seeking approval of a full rollup today. Instead, the
16 proposed interim DIP order contemplates what we call a soft or
17 creeping rollup mechanism which provides for partially payment
18 of pre-petition ABL obligations, and all cash, collections,
19 and proceeds in the pre-petition collateral, including cash
20 collateral. In other words, we're using the lenders own cash
21 collateral to pay them down during this period, not new
22 borrowing.

23 The anticipated amounts of cash collections expected
24 to pay down its pre-petition obligations during the interim
25 period is approximately 74 million, and then this compared to

1 approximately 168 million we made available under the DIP ABL
2 during this period.

3 The pre-petition letter of credit exposure,
4 approximately fifty-three million, would also be converted
5 into DIP loans upon entry of the interim order. This is in
6 contrast to the proposed final DIP order, which will include a
7 full rollup and a full repayment of the pre-petition ABL
8 obligations from the proceeds of the DIP term loan. But
9 again, this is not before the Court today.

10 I'll pause here and see if Your Honor has any
11 questions about the rollup?

12 THE COURT: No, ma'am, I don't.

13 MS. BERKOVICH: Okay.

14 The DIP credit agreement includes certain standard
15 milestones for approval of the DIP sale and for confirmation
16 of the sale process. The lender, including the DIP ABL
17 lender, understand that you have a tight time frame -- a
18 relatively short time frame for the sale process in these
19 cases to maximize value. Even though debtors always prefer
20 more relaxed time frames, the debtors believe these milestones
21 are reasonable and doable.

22 So those are within five days following the petition
23 date entry of this Court of the interim order. No later than
24 forty days following the interim order, there's a milestone
25 for entry of the final order. And in the sale process, the

1 milestone is no later than August 25th, entry by the
2 bankruptcy court of the bidding procedures order. We are
3 seeking, as a reminder, a hearing on the bidding procedures
4 for August 11th, so this would give us a two-week cushion. No
5 later than September 15th, commencement of an auction. No
6 later than September 25th, entry by the Court of the sale
7 order. And the closing date milestone is November 19th,
8 subject to extension, if we need more time for regulatory
9 approval, to December 31st.

10 Next, I'd like to make a few points about the KPS DIP
11 term loan. As noted, initially, we preferred not to have a
12 DIP provided by one of our bidders. But KPS was the only
13 party to offer us committed financing for the DIP term loan.

14 We also got comfortable because they're not tying the
15 DIP term loans; they're being the purchaser. They're really
16 just the lender in that capacity. In other words, even if KPS
17 is not the winning bidder at the auction, its DIP term loan
18 remains outstanding. We have to continue to fund through the
19 closing date of the sale to the winning bidder subject to the
20 milestone.

21 In addition, the terms KPS gave us are basically the
22 same terms that JPM negotiated with us and was going to go to
23 the market with. These are market-based DIP term loan terms.

24 In addition, although they are funding twenty million
25 of the DIP term loan upon entry of an interim order, they're

1 not asking for any fees to be paid until entry of the final
2 order. We are quite pleased that KPS stepped in to give us
3 the committed financing rather than having us take market
4 risks in the syndication process. This is good for the estate
5 and the process.

6 Those are the key terms of the DIP. Other terms,
7 such as adequate protection and the pro rata are fairly
8 standard, and as Mr. Lewis testified in his declaration, the
9 terms of both DIP facilities are reasonable market terms that
10 were negotiated at arm's length.

11 I will touch finally on our need for the DIP
12 facilities. The need for the financing to avoid immediate and
13 irreparable harm is set forth on the Ficks declaration, and
14 separately, we filed on the docket the DIP budget.

15 During the interim period, all proceeds of the DIP
16 loans will be used to fund operations and pay Chapter 11
17 costs. As Mr. Ficks testified, there is no doubt that the
18 debtors desperately require an immediate institution of
19 liquidity for their ordinary court business expenditures that
20 are necessary for the continued survival of their business.

21 In short, we believe approval of the DIP is important
22 both to fund the business during the Chapter 11 cases and to
23 send a reassuring message to our vendors, customers, and
24 employees that we have sufficient funding to continue post-
25 petition operations in the ordinary course.

1 We believe a DIP financing package is supported by
2 the debtors' business judgment and will enable the company to
3 maximize value for all creditors.

4 That marks the end of my presentation. I'm happy to
5 answer any questions Your Honor has about the DIP loan.

6 THE COURT: Thank you, Ms. Berkovich. I have no
7 questions. I want to know if Mr. Walsh or Mr. Unseth wish to
8 be heard with respect to this motion.

9 MR. WALSH: Good morning, Your Honor. It's Brian
10 Walsh on behalf of JPMorgan Chase.

11 Your Honor, if you have any questions, we're happy to
12 answer them. And I want to introduce Peter Knight and
13 Jonathan Gordon from Latham & Watkins in Chicago who are also
14 counsel for JPMorgan.

15 We did not intend to make an affirmative
16 presentation, however, Your Honor, unless you have questions.

17 THE COURT: Thank you. I'll hear from you shortly on
18 the next motion, I'm sure.

19 Does anyone else wish to be heard with respect to
20 this important motion of post-petition financing? Ms. Wilson?

21 MR. STARK: Your Honor?

22 THE COURT: Go ahead, Ms. Wilson, please.

23 MS. WILSON: Thank you. Your Honor, I just want to
24 note that we had not had an opportunity to review the budget
25 that was filed yesterday afternoon. But now that it is filed,

1 we'd like an opportunity to review it and request that nothing
2 beyond interim would need to be granted in this matter.

3 THE COURT: It hurts me to say this, but I'm going to
4 enter an order on this soon and not delay it because it is an
5 interim order, and I'm going to talk to Ms. Berkovich in a
6 minute about a final hearing date. So we need to survive to
7 the last hearing date -- to the next hearing date. Thank you,
8 ma'am.

9 Mr. Pesce or Mr. Unseth, do you -- I'm sorry; Pesce
10 or Stark, do you wish to be heard in respect to this motion?

11 MR. STARK: Your Honor, it's Robert Stark. I'm happy
12 to defer to Mr. Pesce, if I can.

13 MR. PESCE: Thank you, Your Honor. It's Gregory
14 Pesce, Kirkland & Ellis, on behalf of KPS Capital Partners. I
15 understand Mr. Engel is having some technical difficulties,
16 and he's also on the phone from Armstrong & Teasdale, as is my
17 partner, Chad Husnick.

18 Kirkland represents KPS Capital Partners, the
19 proposed stalking horse bidder, and the FILO DIP lender in
20 this case, and we wanted just to make a few quick statements
21 regarding the DIP if the Court would indulge us.

22 THE COURT: Of course.

23 MR. PESCE: First, KPS greatly appreciates Your
24 Honor's ability to conduct this hearing today and making it
25 possible for myself, my partner, Mr. Husnick, to join

1 telephonically from Chicago. We also greatly appreciate the
2 incredible efforts of the debtors' management team and
3 professionals during the last few weeks.

4 By way of introduction, KPS is a private equity
5 sponsor that works exclusively to acquire and improve
6 businesses that manufacture a diverse array of products across
7 a broad number of industries.

8 Briggs & Stratton is a natural fit for KPS, and we're
9 pleased to be serving as the stalking horse bidder here, and
10 to be providing the 265 million dollar last-out -- I'm
11 sorry -- FILO DIP commitment that Ms. Berkovich described
12 earlier in the hearing.

13 In terms of the key priorities at Briggs & Stratton
14 here, in addition to providing liquidity through the DIP and
15 serving as the stalking horse here, a key element of KPS's
16 investment strategy is working hand-in-glove with organized
17 labor and, in particular, the Steelworkers, which is one of
18 the most critical creditor constituencies in this case.
19 Although they haven't spoken yet, I'm sure their involvement
20 and interest in this case will be something that the Court
21 hears much about in the coming weeks.

22 Prior to today, we've reached an agreement in
23 principal on the terms through which KPS's acquisition entity
24 will enter into a new CBA with the Steelworkers, obviating, if
25 we are the winning bidder, any kind of distracting litigation

1 regarding labor and benefit obligations. We are very
2 appreciative of the Steelworkers' efforts with working with
3 us, along with management's indulgence to let us work out that
4 arrangement.

5 If there's any questions about KPS's involvement,
6 specifically with respect to the DIP, we're happy to address
7 them. And again, we really appreciate Your Honor's time as
8 well as that of the management team and the Steelworkers in
9 getting us this far starting Briggs & Stratton's Chapter 11
10 process on a good start. Thank you.

11 THE COURT: Thank you, sir.

12 Does anyone else wish to be heard in respect of this
13 motion?

14 MR. STARK: Your Honor, it's Robert Stark. Is this a
15 good time for me?

16 THE COURT: Of course it is.

17 MR. STARK: Thank you, Your Honor. Can you hear me
18 okay?

19 THE COURT: Yes, I can.

20 MR. STARK: I do appreciate the opportunity to
21 present by telephone.

22 Again, it's Robert Stark. My partners Jeff Jonas,
23 Oksana Lashko are from Brown Rudnick. We're co-counsel with
24 Greg Willard and Alec Moen from the Doster, Ullom firm, and
25 we're appearing on behalf of an ad hoc committee comprised of

1 about thirty percent of the company's unsecured noteholders or
2 institutions holding that amount of unsecured notes.

3 We did not file a pro hac vice or 2019. It's our
4 error. Our apologies for that. I hope Your Honor will allow
5 us to remediate a little later today with those, and hopefully
6 will hear me in advance.

7 THE COURT: Of course I will, and the pro hac is not
8 something I take seriously.

9 MR. STARK: Okay. Thank you.

10 In terms of the first-day declaration, just to give
11 a -- if it's okay with the Court, I'll just give a little bit
12 of retracted lens and then we'll focus in. And I won't be
13 long. I won't belabor the record. But I'd like to retract
14 some things and give the Court just a little perspective.

15 You've heard an awful lot from the debtors'
16 presentation, and it was extremely helpful, and I want to give
17 you the committee's perspective.

18 I am very recent to the scene here. There was a
19 prior law firm -- that other law firm was disclosed in the
20 first-day declaration -- who was working with an ad hoc
21 noteholders committee. We've only been on the scene for a
22 couple of days, but we're moving awfully quickly, and those
23 noteholders did ask me to provide Your Honor, to the extent it
24 would be helpful for today, a little bit of context and
25 framework for the case.

1 From the noteholders' perspective, Your Honor, this
2 bankruptcy and this 363 process that's been proposed is not
3 surprising to us. Of course, as Ms. Berkovich quite
4 eloquently said, this company was facing a fairly significant
5 wall of near-term maturities and cross-defaults and had a
6 liquidity issue. It had to do something. And as disclosed in
7 that first-day declaration, the unsecured noteholders were
8 part of, what I gather, was a community of discussions that
9 involved other stakeholders -- we'll call them workout
10 discussions -- to try to figure out what to do next. And as
11 the declaration states, the noteholders were, in fact, talking
12 about ideas for what to do next, but those ideas did not
13 mature as a filing in place instead. And from our
14 perspective, a lot of that might have been circumstantial.
15 These are very -- this is a very pressured negotiating dynamic
16 pre-petition. The maturities are right around the corner.

17 Now, in the added -- the period of the company's
18 business cycle, as best I understand it, where added liquidity
19 is necessary -- I'll call it the inventory bill season -- so
20 that made things a little more pressured. And then, of
21 course, we've got the COVID problem.

22 But not only is that a matter of logistics, supply,
23 employees, customers like Sears, it's also a matter of
24 markets: capital markets and the main markets. They're not
25 functioning efficiently, and that makes it quite difficult to

1 think in terms of what to do next in terms of applying
2 liquidity and moving forward in our instruction. So we just
3 sort of ran out of time.

4 What we hope to achieve in this bankruptcy case --
5 and this is sort of a larger framing point -- is that Briggs &
6 Stratton presents itself now as a quick-sale case, and we're
7 not of the view that that's necessarily the accurate way to
8 think about the case.

9 We now have an automatic stay. The debt wall that
10 was coming has now been put off. Of course, we still have
11 liquidity constraints. We have DIP financing needs, but we
12 have less pressure and we can think about what we used to call
13 business rehabilitation, a plan. And if the question is long-
14 term liquidity needs, as it always is, we're obviously
15 thinking about projections in more normalized environment
16 knowing right now we're in dislocation land, we have to
17 analyze it, we have to think about it, we have to talk about
18 it.

19 Perhaps a rights offering is the way to go. Perhaps
20 we sell parts of the business but not the entirety. There's
21 different things that can be done with a more flexible
22 approach, and we're worried about just marshaling quickly down
23 a quick path to one solution where the company goes for a low
24 dollar amount to Mr. Pesce's client.

25 So what we're looking for is sort of the true,

1 inherent value and what's the appropriate thing to do, and we
2 suspect we're not alone. The unsecured noteholders, of
3 course, are one category, one breed of unsecured creditor.
4 I'm not sure how much trade is left after there's been
5 approval of a fairly sizeable basket for critical trade and
6 similar-type payoff, and it sounds as though, as Mr. Pesce
7 reported from a conversation with the Steelworkers' Union,
8 that that may be a constituent that may now be on board with
9 the sale, but there are others.

10 There are pension issues. There are OPED (ph.)
11 issues. I'm sure that PBGC is not likely to look at a sale
12 transaction where their particular claim issues, as are
13 described in the first-day declarations, is a fairly sizeable
14 dollar amount, presumptively, the purchase will not include
15 that ongoing obligation. They may have a very different view
16 about a way to go in and may be more aligned with the Bonnel
17 (ph.) dispute. We need to study the case and be sure that
18 we're not rushing to a sale when a different, more value-
19 creative solution is possible.

20 Getting now to the point at hand -- forgive me Your
21 Honor for framing it -- with the DIP, we do not lodge an
22 objection to the DIP. The company, obviously, needs immediate
23 liquidity. We're not in a position to quibble with the
24 amounts they claim that they need, and they have put forward
25 evidence; in fact, there was no other choice as Your Honor

1 said before. So they need an interim allowance that's going
2 to happen. But we do have major criticisms about the DIP.

3 Ms. Berkovich talked about the roll-up and the
4 milestones. The key of a roll-up is that you're converting
5 pre-petition debt into -- granted it's a lien debt, but now
6 you have an admin claim that rides with it. And so you take a
7 secured pre-petition claim and you adjoin it with an admin
8 claim. Now, in order to do a plan, dollar for dollar every
9 ABL pre-petition debt that becomes a rolled-up debt, you now
10 must find exit financing in this marketplace to refinance that
11 exit. That's tough. That pressure is the plan environment.
12 We need to be very, very certain before we go ahead and agree
13 to such an exceptionally large roll-up, albeit in a creeping
14 way, but it is a massive roll-up, that that is, in fact, the
15 right answer for this company. I mean, because it otherwise
16 pushes you clearly into the sale half.

17 So I think the milestones give us -- as presently
18 crafted -- give a very narrow window for diligence analysis,
19 thoughtful discussion amongst parties. Again, it drives to a
20 sale conclusion, doesn't really make allowances for plan
21 alternatives. And of course, having your stalking horse
22 bidder be your DIP lender doesn't give a whole lot of
23 confidence. That credit agreement, that would be the junior
24 debt, only 20 million can be drawn in the interim. We can
25 digest that. But having your stalking horse bidder being your

1 DIP lender, that does not send an open and embracing message
2 to the community of stakeholders that anything other than a
3 sale to KPS is going to happen.

4 So again, these objection points can hold to a DIP
5 hearing, and we can look at them collectively with the bid
6 procedures that are being proposed, but I'll just conclude
7 this way. The noteholders are looking at this case far more
8 flexibly than, I think, the presentation has made right now.

9 And we take Ms. Berkovich at full face value, and
10 knowing her as we do, we have every confidence in her that
11 this is going to be a value maximizing but also appropriate
12 case outcome and appropriate for those who will be left behind
13 by a sale transaction. We may find ourselves, at upcoming
14 hearing, advocating, or the committee will be advocating for a
15 very different exit strategy, or at least opening the doors
16 for an alternative exit strategy, and we may need changes to
17 this DIP from a structural perspective.

18 And I just thought Your Honor ought to have that as
19 you're being asked to sign the interim order.

20 Thank you for the opportunity, Your Honor. Do you
21 have any questions for me?

22 THE COURT: Mr. Stark, let me see if I can summarize
23 what you've told me.

24 MR. STARK: Yes.

25 THE COURT: One, no opposition to the DIP financing

1 order today. Number two, and most importantly, you want a
2 pre-emptive strike to remind me that you're not in favor of a
3 sale, and a plan process, in your opinion, will realize the
4 true value of the enterprise. Fair enough?

5 MR. STARK: The second point I'd phrase a little bit
6 differently, Your Honor.

7 THE COURT: Please.

8 MR. STARK: The bankruptcy comes at a pretty awful
9 time for this company. Maybe the sale -- maybe the sale
10 process will, in fact, yield true inherent value for the
11 business and will maximize value, as Ms. Berkovich said. Or
12 maybe it doesn't. Maybe, in fact, this company is worth far
13 more, but is a momentary casualty of logistic problems,
14 employee problems, customer dislocation, trends and markets
15 that are a little bit collapsed.

16 What we're supposed to do, I think, and I've studied
17 bankruptcy for a while, is we're supposed to pause and look at
18 are we actually doing the right thing in the particular exit
19 strategy that's determined? Are we forcing a sale too early?
20 That's from the Lionel Trains case in the Second Circuit.
21 Have we thought about whether or not a sale is the right way
22 to do it, as opposed to a plan, the historically preferred way
23 of doing it?

24 And all I'm saying today, Your Honor, is it's
25 presented to Your Honor and all stakeholders and everybody

1 watching this case on no notice that we're trending to the
2 ultimate exit determined bankruptcy plan. Excuse me. DIP.
3 That, sort of, tells you what you're going to get and how it's
4 going to happen.

5 I'm not lodging that objection today, but I think
6 that there's a lot of thinking -- a lot of thought that ought
7 to be put into that as we get towards the final hearing, and
8 it may need to change.

9 THE COURT: Thank you.

10 MR. STARK: I don't know if that was elucidating or
11 more opaque, but I thought I was trying to help.

12 THE COURT: You did a fine job. In any event, it's a
13 fight for another day.

14 MR. STARK: Accurate.

15 THE COURT: Mr. Knight?

16 MR. STARK: Thank you, Your Honor.

17 THE COURT: Mr. Knight, did you wish to be heard?

18 MR. KNIGHT: Your Honor, thank you. It's, for the
19 record, Peter Knight from Latham & Watkins on behalf of
20 JPMorgan Chase Bank as the pre-petition agent and the proposed
21 DIP agent.

22 In light of the comments made by other counsel, I
23 really just want to take the opportunity, Your Honor, to
24 introduce myself and to say thank you very much on behalf of
25 myself, my firm, my client, and of course, our bank group, for

1 taking the time to hear us this morning considering the DIP
2 motion and to allow us to participate telephonically.

3 The only response that I would make briefly, Your
4 Honor, to Mr. Stark's comments, in view that there's no
5 pending objection to the DIP today, is that this is not a case
6 where the lenders are -- the pre-petition lenders are jumping
7 into court compelling the debtors to use the bankruptcy court
8 to maximize the value of their recovery as quickly as possible
9 on a going-concern basis through very tight milestones the
10 (audio interference) drive. Indeed, just the opposite, in my
11 view.

12 This is a case where -- and it's a tough case. The
13 numbers are what they are. The runway is what it is. And
14 this case plan and the runway was simply driven by the amount
15 of money needed to give the best runway the debtor could
16 provide and obtain -- to maximize value, without effectively
17 guaranteeing upfront that the case be administratively
18 insolvent.

19 So many of the items that Mr. Stark raised certainly,
20 I think, come from the perspective of what everybody on this
21 phone, including Your Honor, would prefer in an ideal world.
22 Unfortunately, neither the pre-petition lenders, nor this
23 Court, nor the debtors or anybody else are living in a perfect
24 world when it comes to this particular debtor and these
25 particular facts in these particular times.

1 So with that, Your Honor, we look forward to working
2 again with the stalking horse bidder, with the debtors, and
3 with the creditors' committee and the U.S. Trustee's office,
4 as necessary, moving forward here. And with that I'll
5 conclude my remarks. Thank you very much, Your Honor.

6 THE COURT: Thank you. Does anyone else wish to be
7 heard on today's matter, interim financing? Thank you. I'll
8 entertain an order granting the motion.

9 MS. BERKOVICH: Thank you, Your Honor. And I would
10 like to say in response to Mr. Stark's comments, I think that
11 we actually share the same goal. Our goal and the team's goal
12 is to maximize recovery to unsecured creditors here. We
13 believe under the facts and circumstances an efficient sale
14 through the process that we've identified with the stalking
15 horse bidder to set the floor, and hopefully a robust and
16 competitive process that yields high bids is the best way to
17 do that.

18 We'll continue discussions with Mr. Stark and with
19 his group to see if they have any alternatives. I think he
20 identified, as I've identified, the biggest obstacle to
21 anything else, which is being able to get the funding
22 necessary to support a Chapter 11 plan, or to support, really,
23 any alternative other than the one that we've proposed.

24 But we have a friendly relationship with him, and we
25 are looking forward to continuing this discussion.

1 THE COURT: Thank you very much.

2 MS. BERKOVICH: One --

3 THE COURT: I said thank you very much.

4 MS. BERKOVICH: I would like to make one --

5 THE COURT: Go ahead.

6 MS. BERKOVICH: But Your Honor, I apologize. There
7 is one, before we even get to the next item on the agenda,
8 while I have the virtual podium. There's some confusion on
9 our side on what Your Honor ordered with respect to the cash
10 management motion. I believe the ruling was that we are
11 provisionally authorized to use our cash management system and
12 use our bank accounts, tomorrow, for example, to make payroll
13 and to fund all of our expenses, but we would be back in front
14 of Your Honor next week if we can't reach an agreement with
15 the Trustee on some of the issues that were raised. Is that a
16 correct understanding of the ruling?

17 THE COURT: Ms. Berkovich, you will continue to use
18 the cash management system I've given the parties, that is
19 U.S. Trustee's office and your office five days to work out
20 any differences. Otherwise, I'll entertain a conference call
21 and make a ruling. Fair enough? Use it until you can't use
22 it.

23 MS. BERKOVICH: Thank --

24 THE COURT: All right.

25 MS. BERKOVICH: That is what we thought, but given

1 the importance of the matter, we did want the clarification.

2 Thank you very much, Your Honor.

3 THE COURT: Sorry for the ambiguity.

4 MS. BERKOVICH: No. No, no. I think you were clear,
5 but because some people were asking questions we did not want
6 it to -- we do not want it to go unclarified, so I appreciate
7 it.

8 THE COURT: The penultimate motion is to file under
9 seal a letter relating to the debtors' motion for interim and
10 final order. This is dealing with JPMorgan, I believe.

11 MR. EGGMANN: You are correct, Your Honor. Rob
12 Eggmann on behalf of the debtor and debtor-in-possession. So
13 Your Honor, we filed this with respect to just one matter, and
14 that is what we call the fee letter between JPMorgan Chase, as
15 the agent for the DIP lending group.

16 THE COURT: Without oversimplifying this, you're
17 relying upon 107, I believe. And let me just turn to it for a
18 moment.

19 So you assert that the information you want filed
20 under seal is commercial information. Once you categorize
21 information as commercial, the statute says the court shall,
22 and that's your presentation in a nutshell.

23 MR. EGGMANN: It is, Your Honor. And we had a --

24 THE COURT: But let me give you the order side. If
25 you look at the statute, and I know that Justice Frankfurter

1 said that use of commas is like -- pernicious
2 oversimplification is what he said. But we got to look at the
3 statute. It says, "protect any entity with respect to a trade
4 secret or confidential research, development or commercial
5 information". Wouldn't you say that your hourly rate as an
6 attorney is commercial information?

7 MR. EGGMANN: In the broadest sense it is. It is
8 indeed. But I guess this one's a little bit different because
9 of the competitive market out there. Lawyers these days,
10 accountants these days, we all have very similar hourly rates,
11 given our area of expertise, our length of time in the
12 practice, and the jurisdictions in which we practice.

13 When you're dealing with a national market like a
14 lending group, especially dealing with potentially insolvent
15 entities, the lending structure and fee structure could be all
16 over the books. It could be completely in -- and in a
17 situation like this, we rely upon the debtors' pre-petition
18 professionals, who have negotiated the best fee structure they
19 can negotiate under the circumstances.

20 So unlike in a situation where I'm filing a fee
21 application, and the whole world is going to want to know if
22 my hourly rate is commensurate with my experience, it's a
23 little different when you're dealing with fee structures,
24 because you're giving the world a preview of what this
25 particular bank or entity or lending group structures things,

1 and you're not necessarily reliant upon the professionals
2 having done the best they can understand the circumstances.

3 And that is where it implicates the bankruptcy
4 estate, especially in light of Mr. Stark's comments, where
5 they are looking at well, maybe a sale's not the best thing in
6 the world. We could be renegotiating a DIP here in sixty
7 days, or sooner if it looks like the creditor community is
8 pushing us towards a different direction.

9 THE COURT: Let me give you two thoughts. One is
10 policy, and the other is statutory construction. With respect
11 to policy, I think you would agree that lending to a debtor-
12 in-possession in the magnitude of this case, we need
13 transparency. Why shouldn't we know what this loan costs or
14 what JPMorgan is charging the debtor?

15 Number two, with respect to statutory construction,
16 do you think that development or commercial information
17 modifies confidential research and trade secret?

18 MR. EGGMANN: I believe it's standalone.

19 THE COURT: Of course you do.

20 MR. EGGMANN: Yes. And I had the interesting aspect
21 of arguing this same very issue before Judge Fenimore about
22 ten days ago. I don't want to quote --

23 THE COURT: Now you're going to tell me that he
24 disagrees with me also?

25 MR. EGGMANN: He agrees with you in Apex, where you

1 allowed Mr. Palans to file his receiver's report under seal,
2 and I think in those situations, I think that's more
3 commercial, less trade secretish.

4 THE COURT: Well, that involved the First Amendment.

5 MR. EGGMANN: It did. But it was still a 107(b)
6 issue. And in that case, you had members of the public
7 arguing that they want to see this. And granted, today's the
8 truly first day -- first full day of the case. We don't have
9 members of the public. The salient terms of this deal have
10 been put in the DIP motion and the DIP order.

11 We have allowed the provisions under 107(b) to have
12 the U.S. Trustee look at the terms. Any statutory committee
13 appointed by the U.S. Trustee's office, they're professionals,
14 and I think that that's --

15 THE COURT: So it's really not --

16 MR. EGGMANN: Of course the Court. The Court.

17 THE COURT: It's not a secret, because we want
18 certain constituents to learn about it, but not others.

19 MR. EGGMANN: It's not the other constituents,
20 because I think right here I probably covered all of the
21 constituents, being the Court, the U.S. Trustee, and a
22 statutory committee.

23 THE COURT: Then, of course, why seal it?

24 MR. EGGMANN: Because we're sealing it from the
25 general public, who could look at this and try to have an

1 unfair advantage and could potentially impact debtors-in-
2 possession and this debtor-in-possession from obtaining DIP
3 financing on a going-forward basis. So that's the difference.

4 THE COURT: Who else wishes to be heard with respect
5 to the motion to file under seal?

6 MR. KNIGHT: Your Honor, it's Peter Knight on behalf
7 of JPM. May I address the Court?

8 THE COURT: Please.

9 MR. KNIGHT: All right. Thank you very much. I
10 certainly will not take Your Honor's time belaboring the
11 point. Protecting what we feel is very important, sensitive,
12 commercial information under 107 is very important to JPMorgan
13 Chase. Obviously you have evidence in the form of the
14 declaration that says it is certainly within the boundaries of
15 market. I just want to make a point about policy, since you
16 raised it, because often in these matters, where this issue is
17 being addressed, there is almost an expectation that the fees
18 are, kind of, pushing the higher boundaries of market, and
19 that's why the lender wants to keep them filed under seal.
20 And perhaps that is the case in certain cases.

21 But from policy perspective, I think it's very
22 important that the debtors have the flexibility to negotiate
23 that fee with the lender without the lender having a second
24 thought about whether that might impact their competitive
25 dynamic or their market. And in many case, it may very well

1 be, and I won't -- I have my own view. My client has its own
2 view on whether this fee is below market, at market, or above
3 market value. But I will simply say there is an equal concern
4 from the debtors' perspective and from a policy perspective
5 that if the debtor is able to negotiate a fee that may be
6 below market, if you require these fees and fee letters to be
7 filed publicly, there is going to be less interest on the part
8 of the lenders to actually agree to such a fee that may be
9 below market in a particular circumstance because of a fear of
10 resetting the market downward.

11 So you mentioned policy, Your Honor. I want to make
12 that point. Obviously my client and I have an interest in
13 your ruling on this, and I don't ignore that fact, but I think
14 it is an important point to take into account. Thank you,
15 Your Honor.

16 THE COURT: Thank you, but I think you give me far
17 too much credit. I don't think a Midwestern judge from
18 flyover country is going to reset the marketplace.

19 I'm going to deny the motion for the reasons that I
20 discussed with Mr. Eggmann, who wants another bite at the
21 apple.

22 MR. EGGMANN: Another bite of the apple, as the Court
23 might say. Your Honor, I would ask if perhaps maybe we could
24 brief the issue and maybe enter it on an interim basis,
25 because once the horse is out of the barn here, the terms are

1 out there.

2 THE COURT: I took the motion seriously.

3 MR. EGGMANN: I'm sure you did, Your Honor.

4 THE COURT: Thank you.

5 THE COURT: Ms. Berkovich, what date do you want for
6 a final hearing on 364 borrowing and cash collateral?

7 MS. BERKOVICH: Yes, Your Honor. We were looking for
8 a final hearing for all of our motions on the week of August
9 17th. That will allow us to give parties-in-interest notice.

10 THE COURT: What day do you prefer?

11 MS. BERKOVICH: Whatever's best for Your Honor. We
12 are flexible.

13 THE COURT: How about the 18th, a Tuesday, so you
14 don't have to use the weekend to travel?

15 MS. BERKOVICH: I appreciate that, Your Honor. The
16 18th works.

17 THE COURT: Shall we say 10 o'clock Central?

18 MS. BERKOVICH: Yes, Your Honor. Before we go, we
19 do --

20 THE COURT: Who's going?

21 MS. BERKOVICH: -- want to remind you that we do need
22 the --

23 THE COURT: Wait a minute. Who's going? You're
24 still on the phone.

25 MS. BERKOVICH: Go off the line.

1 THE COURT: I'm here.

2 MS. BERKOVICH: Right. Right. We did want to bring
3 the shipper's motion back up, because that was important what
4 we shared, that we are seeking, and we would --

5 THE COURT: Have some confidence that I know what I'm
6 doing. We'll get to the shipper's motion.

7 MS. BERKOVICH: Okay. No problem. I'm not even able
8 to jump up and down. I'm not able to jump up and down in the
9 courtroom, since I'm not there, so I'm jumping up and down on
10 the phone.

11 MR. KNIGHT: Ms. Berkovich. Your Honor, may I --
12 it's Peter Knight again. May I just take a moment before we
13 move on, just to -- I want to make sure I understand, for the
14 benefit of advising my client, the ruling you just made on the
15 motion to file under seal. Is the intent, then, that the
16 letter would be publicly filed on the docket after this
17 hearing? I just want to make sure I understand the
18 consequence of your ruling, Your Honor. I apologize for --

19 THE COURT: The request was to file under seal
20 certain information. That request is denied.

21 Let's review for a moment the matters that will be
22 heard on the 18th at 10 o'clock, in addition to the 364 and
23 363 motions. Those matters which I said we'll hold final
24 hearings -- for example, professional fee employ --
25 professional employment, et cetera, will be heard on that day.

1 Should you have any questions of what will be heard
2 on that day, call Ms. McCoy or Ms. Cohen, and they will be
3 very clear.

4 MR. EGGMANN: Your Honor, with respect to the
5 professional employment, we have a Local Rule in terms of
6 compensating professionals, as the Court referenced early in
7 some of the arguments, the eighty percent of fees, a hundred
8 percent of expenses.

9 I traditionally don't file a motion. Because we have
10 a Local Rule, you don't really need to.

11 THE COURT: Right.

12 MR. EGGMANN: Would the Court prefer a motion and
13 have it heard at that same time?

14 THE COURT: A motion for what, sir?

15 MR. EGGMANN: A motion to essentially alert the world
16 that we plan to proceed under that Rule, which I think is
17 2016.

18 THE COURT: No. Our Local Rules are made public.
19 They're on our website.

20 MR. EGGMANN: And that is my position as well.

21 THE COURT: All you need to do is follow them. And I
22 don't need extra pleadings.

23 MR. EGGMANN: That is our intention. Thank you, Your
24 Honor.

25 THE COURT: Thank you. All right. If there's

1 nothing else, then let's take up the motion, the last motion,
2 authorizing payment of pre-petition claims to shippers,
3 warehousemen, et cetera.

4 MS. BERKOVICH: Thank you, Your Honor. Ms. Myers
5 will present that motion.

6 THE COURT: I can't hear you.

7 MS. MYERS: Your Honor, Jan Myers again on behalf of
8 the debtors. I'm presenting the motion to pay in the ordinary
9 course of business the pre-petition claims of shippers,
10 warehousemen, import/export providers, and other lien
11 claimants, together referred as the lien claimants.

12 Your Honor, to maintain access to the goods that are
13 essential to the debtor's continued operation and to preserve
14 the value of such goods the debtors seek authority to pay pre-
15 petition charges on account of one, shipping, warehousing, and
16 import/export charges totaling 3.5 million, of which 2.9
17 million will come due within the first thirty days of these
18 Chapter 11 cases, and two other lien claims totaling 3.7
19 million, of which 2.5 million will come due within the first
20 thirty days of these cases.

21 As part of the debtors' operations, they utilize the
22 services of various steamship lines, freight forwarders,
23 shippers, and distributors, to ship, transport and otherwise
24 facilitate the movement of the debtors' goods between their
25 business segments domestically and internationally and also to

1 their customers globally.

2 To facilitate their distribution and storage needs,
3 the debtors utilize domestic and international third-party
4 logistics providers and warehousemen, and in the ordinary
5 course of their business the debtors import component parts
6 and a portion of their finished engines from their production
7 facility in China as well as finished goods from certain of
8 their foreign contract manufacturers.

9 The debtors also export parts to their facility in
10 China to support manufacturing, as well as various goods to
11 their foreign subsidiaries, which are then sold directly to
12 customers.

13 The debtors also regularly contract with a number of
14 third parties that regularly make improvements and repairs to
15 their property and equipment, including their custom tooling,
16 die casting, and other manufacturing equipment.

17 Paying the lien claimants will benefit the debtors'
18 estates and their creditors by allowing the debtors' business
19 operations to continue without interruption. And unless the
20 debtors pay the lien claimants, it is unlikely that the
21 debtors will continue to have access to the goods in
22 possession of the lien claimants, which, in turn, could have a
23 material adverse effect on the debtors' business operations,
24 to the detriment of all creditors.

25 Unless Your Honor has any further questions, the

1 debtors request that Your Honor enter the proposed order
2 granting the motion.

3 THE COURT: Who wishes to be heard in opposition to
4 this motion? No one does. The motion is granted.

5 I have --

6 MS. MYERS: Thank you, Your Honor.

7 THE COURT: Thank you. Ms. Berkovich, I thought we
8 were finished, but it's called to my attention that I failed
9 to call the motion to extend the time to file schedules, 341
10 meeting, et cetera.

11 MS. SUBERI: Good morning again, Your Honor.
12 Danielle Suberi for the debtors.

13 THE COURT: Thank you.

14 MS. SUBERI: We have received no opposition from the
15 motion. We're request --

16 THE COURT: No, no. Don't go there.

17 MS. SUBERI: Okay.

18 THE COURT: You've given forty-eight hours' notice.

19 MS. SUBERI: Very correct, Your Honor.

20 THE COURT: By what date do you want to have your 341
21 meeting?

22 MS. SUBERI: We'd like to have it after the schedules
23 are filed, which we're requesting until August 18th.

24 THE COURT: Ms. Wilson, what do you say to August
25 18th?

1 MS. WILSON: That's fine. We can work with that.

2 THE COURT: All right. One week thereafter, you
3 said? Or just after you said.

4 MS. SUBERI: I said after.

5 THE COURT: That's fine.

6 MS. SUBERI: As long as the U.S. Trustee believes
7 that they have adequate time to review the schedules, I think
8 that then one week is sufficient, Your Honor.

9 THE COURT: What about the list of equity holders?

10 MS. SUBERI: We would like to be able to -- well,
11 we're providing notice, so by publishing notice of it the
12 equity holders will get that --

13 THE COURT: Yes, we did this in Peabody without
14 opposition. Does anybody oppose this request? Okay.

15 Is there anything else here? Let's take a look.

16 MS. SUBERI: Yes, Your Honor. We're asking to file a
17 consolidated list of creditors for the five entities, which
18 would be --

19 THE COURT: Sure.

20 MS. SUBERI: Instead of the top twenty, we would file
21 a consolidated list of thirty.

22 THE COURT: Right.

23 MS. SUBERI: This is similar to relief that's been
24 granted in other cases, including Peabody.

25 THE COURT: And then you want to redact personal

1 information on the matrix?

2 MS. SUBERI: That's correct, Your Honor.

3 THE COURT: That makes sense.

4 MS. SUBERI: And we would provide an unredacted copy
5 to the U.S. Trustee, and if we revised it down the line, we
6 would also do the same.

7 THE COURT: Motion granted.

8 MS. SUBERI: Thank you, Your Honor. There's one more
9 part of relief. We just want to confirm that KCC has
10 authorization to work with the clerk of the court to get out
11 the notice of commencement of the cases, serve that as well.

12 THE COURT: Yes.

13 MS. SUBERI: Thank you, Your Honor.

14 THE COURT: Thank you. Ms. Berkovich or Mr. Eggmann,
15 anything further?

16 MS. BERKOVICH: Yes, Your Honor. We would like to
17 have August 11th for the bidding procedures hearing. All the
18 reasons I stated, it's important that we have an efficient
19 sale process, and we'd like to do that a week before the
20 second day hearing.

21 THE COURT: All right. The 11th at 10 o'clock
22 Central Time.

23 MS. BERKOVICH: Thank you, Your Honor.

24 THE COURT: Including the motions that were filed but
25 not heard today.

1 MR. EGGMANN: Your Honor, there is one motion that
2 was filed and not heard today that is a little more time
3 sensitive, and that is a motion to settle the debtors'
4 interest in a particular class action lawsuit paying the most
5 multidistrict litigation.

6 That matter is set for approval of the actual
7 settlement on August 6th, in, I believe, a court in Wisconsin.
8 So we were wondering if we could perhaps -- and we'll file
9 this up on a motion to shorten notice, with shortened notice
10 and have a perspective hearing date of August the 5th on that
11 one.

12 THE COURT: All right. Let's do that on August the
13 5th. 10 o'clock?

14 MR. EGGMANN: That is fine.

15 THE COURT: Please notice that up for St. Louis, as
16 well as the 11th and the 18th for St. Louis.

17 MR. EGGMANN: Your Honor, one more hearing date
18 that's, kind of, lagging out there. With respect to the
19 utilities, while I don't anticipate this will happen, I think
20 technically within a week the utilities could begin cutting us
21 off. And I think that motion was -- I don't want to say it
22 was taken under submission, but I don't know if we need to
23 hear that again, or if the Court's just going to look at the
24 order and tweak it as it deemed appropriate.

25 THE COURT: No, I want the utilities to have some due

1 process to review your proposed procedure.

2 MR. EGGMANN: Certainly, Your Honor.

3 THE COURT: So I thought we'd hear that on the 18th.

4 If you want to hear it earlier, we can.

5 MR. EGGMANN: Well, again, I don't necessarily think
6 they're going to start cutting us off, but technically they
7 could.

8 THE COURT: What do they have? Twenty days?

9 MR. EGGMANN: Is it --

10 THE COURT: They have twenty days. So let's take a
11 look. I think if we hear it the 11th, that'll be close enough
12 to the twenty days.

13 MR. EGGMANN: That should be fine.

14 THE COURT: So we'll put the 366 motion on the 11th.

15 THE CLERK: Got it.

16 MR. EGGMANN: That should be fine, Your Honor. I
17 think that cleans up all the hearing dates in the short term,
18 Your Honor.

19 THE COURT: So in the Jeffrey Ficks affidavit, there
20 is revealed for the first time the true name of the potential
21 buyer, Bucephalus Buyer. I asked a friend of mine last night,
22 who I think is pretty smart and pretty well read, I said what
23 do you think Bucephalus means? My friend said, I don't have a
24 clue. And then I had to ask Ms. McCoy, who reminded me that
25 was Alexander the Great's horse. Stalking horse. Get it?

1 MR. EGGMANN: I do get it. No, Your Honor, I was not
2 aware of that. I didn't know what it mean. And I was hoping
3 you weren't going to say it was obvious.

4 THE COURT: No, it wasn't obvious to me.

5 Is there anything further we can do today for the
6 debtor?

7 MR. EGGMANN: Your Honor, I just wanted to -- just a
8 couple of different things. Speaking of Ms. McCoy, that's one
9 person who I forgot to thank. She's been very patient and
10 helpful, responding to emails at 6 in the morning on her
11 vacation, talking to me, and I greatly appreciate it, because
12 while we certainly had a couple of hiccups today, we couldn't
13 have gotten this far without, again, her patience and her
14 help.

15 And I did forget to introduce Mr. Citron this
16 morning. I didn't realize he was going to be be on the call,
17 so Andrew, I apologize for that.

18 That's what I have for the debtor, Your Honor.

19 THE COURT: Thank you. Anything for the U.S.
20 Trustee?

21 MS. WILSON: No, Your Honor. Thank you.

22 THE COURT: Does anyone else wish to be heard?

23 Thank you. We are adjourned.

24 (Whereupon these proceedings were concluded at 11:53
25 am)

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I N D E X

EXHIBITS:

No.	Description	Marked	Admitted
DEBTORS:			
	Declaration of Jeffrey Ficks		21
	Declaration of Jeffrey Lewis		53

RULINGS:

	PAGE	LINE
Debtors' pre-petition wage motion is granted, in part, on an interim basis, as modified on the record.	28	22
Debtors' motion for establishing notification procedures and approving restrictions on transfers of interests is granted.	30	15
Debtors' interim motion to pay critical vendors, foreign creditors and 503(b)(9) claimants, is granted.	33	5
Motion for joint administration is granted.	33	9
Motion to expedite hearing on first-day motions is granted.	35	4
Debtors' motion to exceed page limitation is granted.	36	16
Debtors' motion authorizing payment of pre-petition taxes and fees is granted.	38	20
Debtors' motion to continue paying insurance and surety bond programs is granted.	43	17
Application to employ Ernst & Young LLP granted on an interim basis until final hearing	49	9
Retention of Houlihan Lokey granted on a provisional basis until final hearing	50	11
Interim financing motion is granted	75	8
Motion to file fee letter under seal is denied	82	19
Shipping motion is granted	88	4
Motion to extend filing time is granted	90	7

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

I, Sharona Shapiro, the court-approved transcriber,
do hereby certify the foregoing is a true and correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.

Sharona Shapiro

July 23, 2020

SHARONA SHAPIRO (CET-492)

DATE

AAERT Certified Electronic Transcriber

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