Docket #0170 Date Filed: 12/10/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
American Signature, Inc., *et al.*,[1]	Case No. 25-12105 (JKS)
Debtors.	(Jointly Administered)
	Re: Docket Nos. 18, 104
	Hearing Date: Dec. 15, 2025 at 10:30 a.m. (ET)
	Obj. Deadline: Dec. 10, 2025 at 4:00 p.m. (ET)

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS TO (A) ASSUME THE CONSULTING AGREEMENT, (B) CONDUCT STORE CLOSING SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, AND (C) GRANTING RELATED RELIEF

Andrew R. Vara, the United States Trustee for Regions Three and Nine (the "U.S. Trustee"), through his undersigned counsel, hereby objects (this "Objection") to the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Assume the Consulting Agreement, (B) Conduct Store Closing Sales, with Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances, and (C) Granting Related Relief* [D.I. 18] (the "Motion"), and in support of this Objection respectfully states:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: American Signature, Inc. (6162); American Signature Home Inc. (8573); American Signature USA Inc. (6162); ASI Pure Promise Insurance LLC (6162); ASI Elston LLC (7520); ASI – Laporte LLC (6162); ASI Polaris LLC (6162); ASI Thomasville LLC (6162); and American Signature Woodbridge LLC (6162). The Debtors' business address is 4300 E. 5th Avenue, Columbus, OH 43235.

PRELIMINARY STATEMENT[2]

1. The Court should deny final approval of the Motion because SB360 Capital Partners, LLC ("SB360," or, the "Consultant") is an estate professional subject to the disinterestedness requirements of section 327(a) of the Bankruptcy Code, which it does not and cannot satisfy.

2. Courts in this district have applied a six-factor test articulated in *In re First Merchants Acceptance Corp.*, 1997 Bankr. LEXIS 2245, 1997 WL 873551 at *3 (D. Del. Dec. 15, 1997) to determine whether an entity is an "other professional person" within the meaning of section 327(a). The Consultant satisfies the *First Merchant* factors—whether the Consultant's proposed services are considered in isolation or in the broader context of the Consultant's myriad connections to the Debtors, their affiliates and their controlling stockholders.

3. The Debtors concede (as they must) that the Consultant is their affiliate, and therefore an insider as that term is defined in the Bankruptcy Code. That connection—along with the many other overlapping interests described in more detail herein—disqualifies the Consultant from retention under section 327(a). Accordingly, the Motion must be denied.

4. If the Court determines that the Consultant is not a professional subject to section 327(a), the Court should nonetheless deny the Motion. That is because the Motion is central to an integrated series of insider transactions and does not pass the heightened scrutiny the Court should apply pursuant to sections 363 and 365 of the Bankruptcy Code.[3]

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them herein. Capitalized terms used but not otherwise defined in this Objection shall have the meanings ascribed to them in the Motion.

[3] As discussed further below, the U.S. Trustee contends the Court should evaluate the Motion using the Entire Fairness standard. *See In re Tesla Motors, Inc. S'holder Litig.*, 298 A.3d 667, 700 (Del. 2023) (citing *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983)).

5. These chapter 11 cases are structured to benefit one group of insiders—the Schottenstein family—who stand on all sides of the case-defining transaction proposed in the Motion. Specifically, it is undisputed that the Schottenstein family:

(a) wholly owns the Debtors indirectly "through various trusts";

(b) wholly owns the Stalking Horse Bidder, directly or indirectly;

(c) wholly owns the Stalking Horse Bidder's guarantor—SEI, Inc.— directly or indirectly; and

(d) holds a 60% interest in Holdings indirectly "through various trusts."

Holdings, in turn, wholly owns both the proposed Consultant and Second Avenue Capital Partners LLC ("SACP") (the Debtors' prepetition ABL Agent/Lender and now DIP Agent/Lender).

6. Stated differently, the Schottenstein family is (a) loaning its own entities money to fund chapter 11 cases in which (b) the Schottenstein family will purchase principally all assets of those same entities from themselves while simultaneously (c) paying fees to the Consultant (in which they hold a 60% interest) to liquidate those same entities. Where, as here, a controlling stockholder stands on all sides of a transaction, the Court should not defer to the Debtors' business judgment. Instead, the Court should apply the more exacting Entire Fairness standard and find that the Debtors have not met their burden thereunder. However, the U.S. Trustee submits that, under the facts and circumstances of these cases, the Debtors cannot meet their burden even under the more deferential business judgment standard.

7. Accordingly, and for the reasons stated in more detail herein, the U.S. Trustee respectfully requests that the Court deny final approval of the Motion.

JURISDICTION AND STANDING

8. This Court has jurisdiction to hear and determine the Motion and this Objection pursuant to: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the

District of Delaware issued pursuant to 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

9. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. The duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

10. The U.S. Trustee has standing to be heard on this Objection pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND

A. The Chapter 11 Cases

11. On November 22, 2025 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code," or "Code"), in the United States Bankruptcy Court for the District of Delaware (this "Court"), thereby commencing their respective above-captioned chapter 11 cases (the "Chapter 11 Cases").

12. The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

13. The U.S. Trustee appointed a committee of unsecured creditors on December 4, 2025. [D.I. 119]. No trustee or examiner has been appointed in the Chapter 11 Cases.

14. On November 23, 2025, the Debtors filed the *Declaration of Rudolph Morando in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [D.I. 5] (the "First Day Declaration," or "First Day Decl.").

B. The Motion and Consulting Agreement

15. On November 24, 2025, the Debtors filed the Motion, which requests, among other things: (a) authority under section 365 of the Code to assume the Consulting Agreement and amendments thereto; and (b) to receive property outside the ordinary course of business from the Debtors under section 363 of the Code, whereby SB360 will liquidate certain of the Debtors' assets pursuant to certain sale guidelines.

16. On December 3, 2025, in support of the Motion, SB360 submitted the *Declaration of SB360 Capital Partners, LLC In Support Of Debtors' Motion For Entry Of Interim And Final Orders Authorizing The Debtors To (A) Assume The Consulting Agreement, (B) Conduct Store Closing Sales, With Such Sales To Be Free And Clear Of All Liens, Claims, And Encumbrances, And (C) Granting Related Relief* [D.I. 116] (the "Raskin Declaration," or "Raskin Decl.").

17. The Debtors have agreed to pay SB360 fees for its services under the Consulting Agreement including: "a fee to Consultant, equal to two percent (2.0%) of Gross Proceeds from the sale of Merchandise, plus the Pre-Sale Orders Handling Fee. In addition, Consultant shall retain (or be paid) ten percent (10%) of the Companies fee from the sales of Rugs." Mot. at p. 8 (summary chart "Compensation for Consultant"). The Consultant also is permitted to sell Additional Merchandise through the Debtors' points of Sale, in exchange for a payment to the Debtors of 7.0% of the gross proceeds (excluding Sale Taxes). *Id.* This provision revised a term from the Original Agreement providing for 50/50 sharing of the net proceeds from such sales. *Id.* at n.8.

18. The Consulting Agreement was attached, along with its Amendment, to the Motion. [D.I. 18-1]. Section 2 of the Consulting Agreement, titled "Consulting Services," sets forth the activities of SB360:

> 2.1 Company hereby retains Consultant and Consultant hereby agrees to serve as the exclusive consultant to the Company in connection with the conduct of the Sale as set forth herein. With respect to the Sale and during the Sale Term, Consultant shall serve as the sole and exclusive consultant to the Company relative to the conduct of the Sale at the Stores or future stores which may be included within this Agreement in the Company's sole discretion.
>
> 2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Company with the following Services with respect to the conduct of the Sale:
>
> > (i) provision of qualified Supervisors to supervise and assist Company in its conduct of the Sale as further described in Section 2.3 below, including such lead, regional, financial, and field Supervisors as needed (after consultation with Company) *to assist* Company in conducting the Sale a*nd oversee the Sale process*;
> >
> > (ii) provide the Company with such *oversight, supervision and guidance* with respect to the conduct of the Sale and the liquidation and disposal of the Merchandise and Owned FF&E from the Stores as may be required *to maximize Gross Proceeds and proceeds from Owned FF&E*;
> >
> > (iii) *recommend and implement* appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with the theme of the Sale and the Sale Guidelines, it being understood that the *Sale will be advertised as specified by the Company on a per store basis as a "Total Inventory Blowout", "Store Closing", "Everything on Sale" or similar handles throughout the term of the Sale*;
> >
> > (iv) *advise the Company* as to appropriate discounting of Merchandise, appropriate staffing levels for the Stores, and appropriate deferred compensation and incentive programs for Store Employees;
> >
> > (v) *recommend an acceptable sign package* to be used throughout the Sale Term subject to the Company's final approval
> >
> > (vi) *oversee the display of Merchandise* in the Stores;
> >
> > (vii) *assist Company in the formulation and implementation* of a loss prevention program designed to protect the Merchandise from theft or other shortages;

> (viii) *assist Company with accounting functions for the Stores*, including evaluation of sales of Merchandise by category, sales reporting and monitoring of expenses, in each case using Company's infrastructure and IT systems;
>
> (ix) to the extent requested by the Company, *recommend and implement the transfer and balancing of Merchandise between and among the Stores to maximize results during the Sale*;
>
> (x) *participate in weekly calls with representatives of the Company*;
>
> (xii) coordinate with Company regarding an advertising and signage program to direct customers to Company's on-going stores;
>
> (xiii) with the permission of the Company, provide Additional Merchandise to be procured by the Consultant:
>
> (xiv) leave the Stores in white box condition after the Sale Termination Date; and
>
> (xiv) *provide such other related services deemed necessary or prudent by the Company and the Consultant, or as reasonably requested by the Company* under the circumstances giving rise to the Sale.

[D.I. 18-1 at ECF p. 30-31] (emphasis added).

19. Section 10.8 of the Consulting Agreement, describing certain Affirmative Duties of the Company, covers implementation of the Agreement in the event of a "petition for reorganization." That section makes it the Debtors' responsibility to seek Court approval of the Agreement in a form reasonably acceptable to the Consultant, including various provisions that Consultant Payments govern over any "dip or cash collateral order." *Id.* at ECF p. 39.

20. Section 12 of the Consulting Agreement includes "Miscellaneous" notice parties. These include, on behalf of the Debtors, Eric Jackson and Tod Friedman. [D.I. 18-1 at ECF p. 40]. Mr. Friedman uses an "@spgroup.com" email address. In 2023, public news reporting identified him as "the executive vice president and chief legal officer of Schottenstein Stores Corporation."[4]

[4] Columbus Jewish News, *Tod H. Friedman/Executive Vice President and Chief Legal Officer, Schottenstein Property Group and Value City Furniture/American Signature Furniture* (Mar. 23, 2023) (https://www.columbusjewishnews.com/features/special_sections/local_lawyers_super_attorneys/profiles/

Schottenstein Stores Corporation is ASI's parent entity. *See* [D.I. 5-1] (attaching an organizational chart). Mr. Friedman is also listed as a member of ASI's Board of Directors. *See* Raskin Decl. at ¶ 6.

21. The Amendment to the Consulting Agreement implemented four categories of substantive changes: (1) deleting the definitions of Additional Merchandise Expenses, Additional Merchandise Proceeds, and Additional Merchandise Net Proceeds; (2) inserting a new Section 3.2 requiring funding of (a) a $125,000 "Prepayment" to the Consultant, and (b) an $800,000 payment for signage for additional stores; (3) removing the provision authorizing the Debtors to retain 50% of Additional Merchandise Net Proceeds and replacing it with a provision granting the Debtors 7.0% of gross proceeds (excluding Sales Taxes); and (4) allocating responsibilities regarding Pre-Sale Orders and certain orders placed during the first 18 days of the Sale Term. [D.I. 18-1 at ECF p. 47-50].

22. Aaron Miller signed the as-filed Amendment on behalf of SB360. *Id.* at ECF p. 50. The Debtors did not countersign the filed Amendment. *Id.*

C. Affiliate Status, Common Control, and Other Governance Matters

i. Affiliate Status and Common Control

23. "The Consultant is affiliated with the Debtors." Mot. at ¶ 8.

24. The Schottenstein family indirectly owns the Debtors through various trusts. First Day Decl. at ¶ 35; Raskin Decl. at ¶ 19(a). The Schottenstein family also wholly owns ASI Purchaser, LLC, the proposed Stalking Horse Bidder. First Day Decl. at ¶ 35. The family appears to have formed the Stalking Horse Bidder as a new entity for the purpose of making the Stalking

tod-h-friedman-executive-vice-president-and-chief-legal-officer-schottenstein-property-group-and-value/article_7201dfac-c8c0-11ed-a903-0fdffc1ded18.html) (last accessed Dec. 4, 2025).

Horse Bid. The family also wholly owns SEI, Inc., which is the Stalking Horse Bidder's guarantor. *Id.*

25. The Schottenstein family also hold a 60% interest in SB360 Holdings ("Holdings"). *Id.* The remaining 40% of Holdings is owned by entities controlled by the Miller family. *See* Raskin Decl. at ¶ 5 (referring to ownership of "SB360" but not distinguishing between Holdings and SB360 Capital Partners, LLC). Holdings, in turn, wholly owns both SB360 and SACP. *See* First Day Decl. at ¶ 20 n.2. SACP is the administrative agent and a lender in connection with the Debtors' first-lien Prepetition ABL Facility and now serves as the Debtors' DIP Agent and DIP Lender. *See* [D.I. 83] (the "Interim DIP Order").

26. In summary, the Schottenstein family: (a) wholly owns the Debtors, the Stalking Horse Bidder and the Guarantor; and (b) through their 60% interest in Holdings, holds a majority interest in SB360, the Prepetition ABL Agent/Lender and the DIP Agent/Lender.

27. The Debtors have also disclosed yet another affiliated entity—SACP SPV, LLC ("SACP SPV")—whose members include officers and employees of the Debtors, the Consultant and SACP. SACP SPV participates in loans made by SACP. Eric Jackson (CFO of the Debtors) and Jeff Swanson (a member of the Board of Directors of the Debtors) are members of SACP SPV. Mot. at ¶ 8 n.3. Mr. Jackson signed the Consulting Agreement on behalf of the Debtors. *See* [D.I. 18-1 at ECF p. 43]. Brian Strayton, who is listed as a current director and officer of the Debtors, "is a member of the Advisory Board for SB360's and SACP's investment committees and is a member of SACP SPV." Raskin Decl. at ¶ 19.g. In other words, directors and officers of both the Debtors and SB360 participate in and benefit from SACP's lending activities.

28. Members of the Schottenstein family are or were active in the management of the Debtors and their affiliates. For example, "Jay Schottenstein is Chairman and CEO of SB360 and

was the Chairmen [sic] of the Board of Directors of the Debtors prior to the filing of the bankruptcy petition." Raskin Decl. at ¶ 19.b.

29. Joseph Schottenstein "is the Chief Strategy Officer at SB360" and "holds many roles within the broader Schottenstein organization, including Chief Operating Officer and Executive Vice President of Acquisitions and Leasing at Schottenstein Property Group (SPG) and Schottenstein Realty LLC, as well as Executive Vice President of Schottenstein Stores Corporation and a member of its board of directors." *Id.* at ¶ 19.h. At some unspecified time "prior to the filing of the bankruptcy petition," Joseph Schottenstein resigned from "his position."[5] *Id*.

30. Moreover, the Schottenstein family, through their entity Schottenstein Realty LLC and its subsidiaries and affiliates, "are the landlords for thirty-two' [sic] of the Debtors' retail store locations." *Id.* at ¶ 19.c.

31. The various Schottenstein affiliates directly benefit from the connections described above. For example, SB360 disclosed that, "[t]hrough its affiliations with the Schottenstein family businesses, SB360 and its affiliates, received certain volume cost savings in connection with various business and employee insurance covering a larger group of the affiliated entities." *Id.* at ¶ 19.o.

ii. Timing Regarding the Execution of the Consulting Agreement

32. The Prepetition ABL Documents, which the Debtors entered into in December 2024, required that "if the Debtors, as borrowers, sought to close more than 5 stores at a time," they "agreed to retain SB360 as consultant in connection therewith." *Id.* at ¶ 8 n.3 (disclosing this

[5] It is not clear which "position" Joseph Schottenstein resigned from given his numerous roles "within the broader Schottenstein organization" and whether he remains in any of those roles. As of December 10, 2025, Joseph Schottenstein is still listed as SB360's Chief Strategy Officer on the company's public website. *See* https://sb360.com/joseph-schottenstein/ (last visited on Dec. 10, 2025).

loan-to-liquidate provision for the first time eight days after the hearing on interim approval of the Motion).

33. In September 2025, approximately nine months after entering into the Prepetition ABL Documents, the Debtors commenced store-closing sales at five of their locations. *Id.* at ¶ 8. At that time, the Debtors had not appointed the independent director or formed the Conflicts Committee (defined herein), had not retained BRG or appointed a Chief Restructuring Officer and had not retained SSG (or any other professional) to market the store closing opportunity to any unaffiliated liquidators.

34. Instead, on or about September 19, 2025—apparently in compliance with the Prepetition ABL Documents—the Debtors executed the Consulting Agreement with SB360. [D.I. 18-1 at ECF p. 27]. The Amendment was "made as of November 5, 2025." *Id.* at ECF p. 47. The record in these cases reflects that no representative of Debtor American Signature Inc. ("ASI") executed the Amendment. *Id.* at ECF p. 50.

35. After executing the Consulting Agreement, the Debtors engaged BRG to provide professional services in October 2025, but the parties did not execute an engagement agreement until November 7. *See Declaration of Rudolph Morando in Support of Debtors' Motion for Entry of an Order Authorizing the Retention and Employment of Berkeley Research Group, LLC to Provide Co-Chief Restructuring Officers and Additional Personnel for the Debtors, Effective as of the Petition Date* [D.I. 118-4] (the "Morando BRG Declaration") at ¶ 7.

36. On November 11, 2025, Adam Zalev was appointed to the Board of Directors of ASI to serve as an independent director. First Day Decl. at ¶ 32. Eight days later, on November 19, the ASI Board of Directors constituted a conflicts committee ("Conflicts Committee") with Mr. Zalev as its sole member. *Id.* at ¶ 33. In that capacity, Mr. Zalev holds authority "to negotiate,

review, approve, and ratify all related party transactions." *Id*. The Conflicts Committee has not submitted any declaration in support of the Motion or otherwise provided evidence as to the work it has done on these issues.

37. During the first day hearing on November 25, 2025, Mr. Morando testified on cross-examination that, to the best of his knowledge, Mr. Zalev did not have "any input into the terms of SB360's engagement as the proposed consultant." *See* Ex. A, 11/25/25 Hrg. Tr. at 83:12 – 84:8.[6] Mr. Morando further testified that he had prepared a comparable analysis as part of his evaluation of the terms of the Consulting Agreement on the Debtors' behalf. *See id.* at 78:15 – 80:17 & 86:4 – 90:13.

38. However, the Debtors have not submitted any declaration of Mr. Morando detailing the comparable analysis. And during the November 25 hearing, Mr. Morando could not identify any instance—whether in the comparable analysis or his experience with restructuring matters that he considered—where the debtor sought to use an affiliate or insider as its liquidation consultant. *See* Ex. A, Tr. at 86:4 – 90:13. Mr. Morando testified that an unspecified "we" "did negotiate the fees" with respect to the Consulting Agreement. *Id.* at 78:15-22. The documentary evidence, the Consulting Agreement and the Amendment only memorialize changes to the Additional Merchandise provision, which modified the amount the Debtors would receive, required the Debtors to prefund certain expenses, and allocated certain responsibilities regarding Pre-Sale Orders and orders placed within the first 18 days of the sale term. [D.I. 18-1 at ECF p. 47-50].

39. Neither Mr. Morando nor BRG were engaged when the Consulting Agreement was executed and when the Debtors became obligated to utilize SB360 as Consultant. *Compare*

[6] A true and correct copy of the November 25, 2025 hearing transcript is attached hereto as **Exhibit A** and incorporated herein by reference.

Morando BRG Decl. at ¶ 7 *with* [D.I. 18-1 at ECF p. 27 & 47]. Mr. Morando's testimony upon redirect examination only confirmed that he "had a number [of] conversations together about this" with the Conflicts Committee. Ex. A, Tr. at 91:3-19 (bracketed text added). Mr. Morando did not testify that the Conflicts Committee had expressly ratified the Consulting Agreement and Amendment. *See id.* Both the Consulting Agreement and Amendment predate Mr. Zalev's appointment as an independent director and designation as the sole member of the Conflicts Committee. It is unclear whether the Debtors or BRG asked Mr. Zalev to review or ratify the Prepetition ABL Documents, which obligate the Debtors to use SB360 as a consultant when simultaneously conducting more than five store-closing sales.[7]

iii. Interplay with the Bid Procedures and DIP Financing Relief

40. On November 26, 2025, the Debtors filed the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bid Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter Into (I) Stalking Horse Asset Purchase Agreement and (II) Stalking Horse Agency Agreement and to Provide Bid Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [D.I. 108] (the "Bid Procedures Motion").

[7] The Debtors assert that "[t]he accelerated Maturity Date of the Prepetition ABL Obligations occurred prior to the Petition Date." First Day Decl. at ¶ 20. It is unclear when or why SACP accelerated the maturity date, including whether SACP did so before the Debtors engaged BRG or appointed the independent director. It is also unclear when the Debtors defaulted or what the nature of any such default was.

41. The Bid Procedures Motion provides that the Stalking Horse Bidder shall receive Bid Protections in the form of an Expense Reimbursement capped at $1.5 million and an "Augment Purchase," with such Bid Protections payable from the proceeds of a Subsequent Transaction. [D.I. 108 at p. 36]. The Augment Purchase "requires the Debtors to compensate the Stalking Horse Bidder for the Additional Agent Goods purchased by the Stalking Horse Agent in anticipation of the sales contemplated under the Stalking Horse Agency Agreement." Bid Procedures Mot. at ¶ 43. "Additional Agent Goods" means "goods procured by [the Stalking Horse Agent] which are of like kind, and no lesser quality to the Merchandise in the Sale." Stalking Horse Agency Agreement, § 8.9(A).[8] There is no apparent limit on the Augment Purchase. *See* Stalking Horse APA, § 8.2(a)(ii).

42. The Bid Procedures attached to the proposed Bid Procedures Order as Exhibit 1 provide that "[o]n or prior to December 25, 2025, the Stalking Horse Bidder will notify the Debtors of the amount of the Augment Purchase as of such date." Bid Procedures at § II.d n.5. The Stalking Horse Bidder "will also notify the Debtors of any additional Augment Purchases incurred after December 25, 2025, through January 2, 2026." *Id.* The Debtors will then, at some point (no deadline is provided in the Bid Procedures), "notify bidders and the DIP Agent of the amounts of the Augment Purchases that has [sic] been provided them by the Stalking Horse Bidder." *Id.*

43. The Bid Procedures also provide for "Consultation Parties," including "the DIP Agent and the Prepetition ABL Agent" (i.e., SACP) and the Committee. Bid Procedures, p. 14. The Bid Procedures do not impose any limitations on information sharing between SACP and the Stalking Horse Bidder (or any other Schottenstein entity).

[8] "Merchandise" is defined in section 5.2(a) of the Stalking Horse Agency Agreement.

44. Notwithstanding the formation of the Stalking Horse Bidder as proposed purchaser and liquidating agent, the Debtors anticipate that the Stalking Horse Bidder will "delegate" responsibility for liquidating the Debtors' stores to SB360. Bid Procedures Mot., ¶ 8, n.3 ("[T]he Debtors anticipate that they will shortly enter into agreements" with the Stalking Horse Bidder to, among other things, "grant the Stalking Horse Bidder the right to act as the Debtors' agent for purposes of liquidating their inventory, furniture, fixtures and equipment at certain locations, *with respect to which [SB360] is expected to be delegated responsibility*.") (emphasis added).

45. Further, the Debtor-in-Possession Credit Agreement between ASI and SACP [D.I. 14-1, Ex. 2] (the "DIP Credit Agreement") provides that SB360 will act as liquidation consultant on certain "Specified Store Closing Sales." DIP Credit Agreement, ECF p. 116. This includes, without limitation, sales at stores "designated" by ASI within three weeks after the Petition Date (subject to SACP's approval). *Id.* The DIP Credit Agreement further provides that any stores not acquired under a "Purchase Agreement"—whether with the Stalking Horse Bidder or otherwise—will automatically be deemed to be subject to Specified Store Closing Sales and liquidated by SB360 pursuant to the Consulting Agreement. *Id.*

OBJECTION

I. The Court Should Deny the Motion Because SB360 is an Estate Professional and Cannot Satisfy the Disinterestedness Requirements of Section 327(a) of the Code

46. Section 327(a) of the Bankruptcy Code provides that the trustee or debtor-in-possession, "with the court's approval, may employ one or more attorneys, accountants, appraisers, *auctioneers, or other professional persons*, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a) (emphasis added).

47. Additionally, Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that: "[a]n order approving the employment of attorneys, accountants, appraisers, *auctioneers*, *agents*, or other professionals pursuant to § 327 … of the Code shall be made only on application of the trustee or committee." Fed. R. Bankr. P. 2014(a) (emphasis added).

48. An "agent" is defined as "someone who is authorized to act for or in place of another; a representative[.]" BLACK'S LAW DICTIONARY (12th ed. 2024). An "auctioneer" is defined as "[a] person legally authorized to sell goods or lands of other persons at public auction for a commission or fee." *Id.*[9]

49. The term "disinterested person" is defined in Code section 101(14) as a person that:

> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14).

50. Section 101(31)(B) of the Bankruptcy Code defines an "insider" for a corporation to include:

> (i) director of the debtor;
>
> (ii) officer of the debtor;
>
> (iii) person in control of the debtor;

[9] An auction is simply "[a] public sale of property to the highest bidder." BLACK'S LAW DICTIONARY (10th ed. 2014).

> (iv) partnership in which the debtor is a general partner;
>
> (v) general partner of the debtor; or
>
> (vi) relative of a general partner, director, officer, or person in control of the debtor.

11 U.S.C. § 101(31)(B); *see also In re QDN, LLC*, 363 F. App'x 873, 876 n.4 (3d Cir. 2010) ("Limited liability companies are eligible to file bankruptcy petitions because they are sufficiently similar to a corporation and limit responsibility for the debts to the capital subscribed.") (citations omitted). The term "insider" also includes an "affiliate, or insider of an affiliate as if such affiliate were the debtor[.]" 11 U.S.C. § 101(31)(E).

51. The purpose of section 327 is to ensure both that the person's employment is held to the strictest of fiduciary standards and that the professional possesses no conflict of interest with the estate. *See In re Cornerstone Prods., Inc*., 416 B.R. 591, 608 (Bankr. E.D. Tex. 2008) ("The purpose of § 327(a) is to ensure that any auctioneer or other professional appointed to represent the estate will tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities."); *In re Buchanan*, No. 98-10576-SSM, 1998 WL 1041291, at *2 (Bankr. E.D. Va. Aug. 11, 1998). Bankruptcy Rule 2014 dictates the manner in which a professional must be retained under section 327 and requires that the application state, among other things, the specific facts showing the necessity for the employment, the reasons for the selection, and any connections with parties in interest. *See* Fed. R. Bankr. P. 2014.

52. Here, SB360 is a professional person that holds or represents an interest adverse to the Debtors' estates and is not a "disinterested person." Accordingly, SB360 cannot be employed under section 327(a) of the Bankruptcy Code.

53. SB360 is the Debtors' affiliate. Mot. at ¶ 8. SB360 and the Debtors are both indirectly owned and controlled by the Schottenstein family. *See* First Day Decl. at ¶ 35; Raskin

Decl. at ¶ 5. The Debtors anticipate that if the Stalking Horse Bidder (also a Schottenstein entity) is the successful bidder for the Debtors' assets, it will "delegate" to SB360 the rights to liquidate the Debtors' stores under the Stalking Horse Agency Agreement. Mot. at ¶ 8, n.3. Numerous individuals—including without limitation Jay Schottenstein, Joseph Schottenstein, Brian Strayton, Tod H. Friedman and Eric Jackson—hold roles at affiliates of these Debtors (including SB360), and either held or continue to hold roles with the Debtors. The facts relevant to the retention of SB360 developed at a time when multiple such individuals (Joseph Schottenstein and Brian Strayton at a minimum) held director and officer positions at both SB360's parent and ASI. *See* Raskin Decl. at ¶¶ 6 & 19. Put simply, the Court would be well supported in finding that SB360 lacks disinterestedness on any number of bases.

54. Courts in this district have also applied the factors set forth in *In re First Merchants Acceptance Corp*., 97-1500 JJF, 1997 WL 873551, at *1 (D. Del. Dec. 15, 1997) to determine whether a particular entity was a "professional" under 327(a). Those factors are as follows:

> (i) whether the employee controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization;
>
> (ii) whether the employee is involved in negotiating the terms of a Plan of Reorganization;
>
> (iii) whether the employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
>
> (iv) whether the employee is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate, i.e. the qualitative approach;
>
> (v) the extent of the employee's involvement in the administration of the debtor's estate, i.e. the quantitative approach; and

> (vi) whether the employee's services involve some degree of special knowledge or skill, such that the employee can be considered a "professional" within the ordinary meaning of the term.

Id. at **3-5 (applying factors, concluding that proposed "consultant" was a professional within the meaning of section 327(a) and lacked disinterestedness, and denying motion to approve consultation agreement).

55. Applied here, in evaluating the *First Merchants* factors, this Court can conclude that SB360 is a professional when SB360's proposed services are considered standing alone. If the Court broadens its analysis to account for the common control by the Schottenstein family over the Debtors and SB360, this fact renders SB360 an interested professional performing services central to the Debtors' Chapter 11 Cases and, by extension, prohibited from employment under 11 U.S.C. § 327(a).

56. Evaluating the factors only as to SB360's proposed services: (a) SB360 is currently liquidating 33 stores; (b) the Debtors will delegate to SB360 responsibility for additional liquidations pursuant to the Stalking Horse Agency Agreement if the Stalking Horse Bid succeeds; and (c) the DIP Credit Agreement provides that SB360 will conduct all Specified Store Closing Sales, including at *all* stores that are not acquired pursuant to a Purchase Agreement. Moreover, the closing of stores and liquidation of inventory is definitionally outside the routine maintenance of the Debtors' business operations, and much argument was made during the first day hearing about the value of services that SB360 or its competitors might bring to this and similar situations. Thus, the first, third, fourth and fifth *First Merchants* factors are all satisfied. As to the sixth *First Merchants* factor—and although the *Brookstone* decision found that factor unhelpful—SB360 has specialized knowledge and skills warranting a finding that it is a professional.

57. Considering the totality of the connections among the Debtors, SB360, SACP, the Stalking Horse and the Schottenstein family, all six factors from *First Merchants* weigh in favor of finding that SB360 is a professional that must be retained under section 327(a) of the Code.

58. The first and second factors are satisfied because all of the foregoing parties are affiliates ultimately under common control with equity ownership resting in the Schottenstein family. The Schottenstein entities are making decisions about the permitted path forward for the Debtors, they hold the purse strings through the DIP financing, and they have set aggressive milestones requiring certain actions occur lest the Debtors default on their secured obligations. If a plan is proposed, input will be required from multiple entities in the Schottenstein group. *E.g.*, DIP Credit Agreement, § 8.01(u)(ii)-(iv) (providing, among other things, that an Event of Default shall occur thereunder upon "the entry of an order in any of the Chapter 11 Cases confirming a plan that … is not acceptable to [SACP] in its Permitted Discretion[.]").

59. The third factor is satisfied because, as noted above, liquidation of stores and store closures are not the ordinary course of business, and the Consultant has an active role in determining strategy with property covered by the closings. In the broader context, SB360 is also earmarked to be delegated additional work if the Stalking Horse is the winning bidder, but at an additional level of removal from the relief at bar with the Motion.

60. The fourth factor is satisfied because the Schottenstein group has discretion per the DIP financing to fund these cases. Should the Debtors oppose requests from SACP, then the Debtors risk a default.

61. The fifth factor is satisfied because SB360 is the proposed professional, its affiliated Stalking Horse Bidder is poised to purchase additional assets and delegate additional work to

SB360, SACP is the DIP Agent and Lender, and the ultimate parent of all the foregoing entities also wholly owns the Debtors.

62. The sixth factor, like the third factor, remains satisfied because of SB360's expertise, but with the added context of the additional services to be delegated to SB360 pursuant to the Bid Procedures and DIP Credit Agreement, which further illustrates the pervasive influence of Schottenstein family interests over these Chapter 11 Cases.

63. Accordingly, and for all the reasons stated above, the U.S. Trustee submits that SB360 is a "professional" under section 327(a) of the Code, and its retention should be evaluated through that section's statutory framework. Because SB360 is an affiliate of the Debtors, with common directors and officers present, it is not disinterested. Moreover, SB360 holds or represents a material adverse interest by virtue of its generating additional fees from further store closings/liquidations. This dictates that SB360 cannot be retained under section 327(a) of the Bankruptcy Code, and consequently the Court should deny the Motion on a final basis.

II. Alternatively, the Court Should Deny the Motion Because the Insider Transactions Contemplated Therein Are Subject to the Entire Fairness Standard, and the Debtors Have Failed to Meet Their Burden Thereunder

64. If the Court determines that SB360 is not a professional subject to the retention requirements of section 327(a) (which the Court should not do), the Court should nonetheless reject deference to the Debtors' business judgment and deny the Motion. That is because the Motion and Consulting Agreement are part of an integrated series of insider transactions that are subject to Entire Fairness review, and the Debtors have not met (and cannot meet) their burden thereunder. However, even if the Court applies business judgment review, the Motion cannot pass muster for the reasons described in more detail herein.

A. The Court Should Not Defer to the Debtors' Business Judgment

65. A debtor in possession "is bound by a duty of loyalty that includes an obligation to refrain from self dealing, [and] to avoid conflicts of interests and the appearance of impropriety," including in the exercise of the debtor's business judgment. *See In re Coram Healthcare Corp.*, 271 B.R. 228, 235 (Bankr. D. Del. 2001). And so long as the debtor remains in possession, "it is clear that the corporation bears essentially the same fiduciary obligation to the creditors as does the trustee for the Debtor out of possession." *Id.* Section 1107(a) of the Bankruptcy Code "contains an implied duty of the debtor-in-possession" to act as a fiduciary to "protect and preserve the estate" on behalf of the debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (*quoting In re CoServ, LLC*, 273 (B.R. 487, 497 (Bankr. N.D. Tex. 2002).

66. The Third Circuit applies the business judgment standard in assessing the decision of a trustee or debtor in possession to assume or reject an executory contract. *See Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp. (In re Sharon Steel)*, 872 F.2d 36, 39 (3d Cir. 1989); *City of Rockford v. Mallinckrodt PLC (In re Mallinckrodt PLC)*, No. 21-167-LPS, 2022 WL 906458, 2022 U.S. Dist. LEXIS 54785, at *15 & *19 (D. Del. Mar. 28, 2022) (citing *In re Culp*, 545 B.R. 827, 844 (D. Del. 2016) (§ 363(b)), *aff'd*, 681 F. App'x 140 (3d Cir. 2017); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (D. Del. 2006) (§ 365(a); *In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del. 2003)).[10] "Business judgment" is defined as "the presumption that in making

[10] In the *Mallinckrodt* case, the district court affirmed another novel use of sections 363 and 365 and held that section 503 of the Code did not apply or override those sections. *See* 2022 WL 906458 at *9 (affirming bankruptcy court's order pursuant to sections 363 and 365 approving payment of certain fees in connection with an RSA). The facts of the *Mallinckrodt* case and the transactions at issue are completely different from those presented in these Chapter 11 Cases, and in any event the court's analysis there is not binding on this Court. *See Threadgill v. Armstrong World Indus., Inc*., 928 F.2d 1366, 1371 (3d Cir. 1991) ("There is no such thing as 'the law of the District.'"); *see also Seneca Res. Corp. v. Twp. of Highland*, 863 F.3d 245, 257 (3d Cir. 2017) ("[A] decision of a federal district court judge is not binding precedent in either a

business decisions *not involving direct self-interest or self-dealing*, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest." *In re Network Access Sols., Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (cleaned up) (emphasis added) (quotations and citations omitted).

67. But that relatively deferential standard does not apply where a party makes "an adequate showing" that the directors breached their duty of loyalty, good faith or care in reaching a decision. *Rafool v. Goldfarb Corp. (In re Fleming Packaging Corp.)*, 351 B.R. 626, 634 (Bankr. C.D. Ill. 2006). For example, board decisions are not entitled to deference under the business judgment rule where the directors: (i) committed fraud or corporate waste; (ii) engaged in self-dealing; (iii) made decisions affected by a conflict of interest; (iv) acted in bad faith or with a corrupt motive; or (v) reached their decision by a grossly negligent process that includes the failure to consider all material facts reasonably available. *See id.* (holding that in the foregoing scenarios, "[t]he protection against judicial review of the substantive merits of a board decision afforded by the business judgment rule does not apply[.]").[11]

68. Here, the uncontested facts detailed above provide an adequate showing of a self-dealing transaction with a grossly negligent process. Accordingly, the Court should reject deference to the Debtors' business judgment in connection with the Motion and Consulting Agreements.

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different judicial district, the same judicial district, or even upon the same judge in a different case.") (quoting *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011)); *In re U.S. Wireless Corp.*, 384 B.R. 713, 723 n.62 (Bankr. D. Del. 2008) ("In the Third Circuit . . . the decision of a district court is not binding on a bankruptcy court.") (citing *Threadgill*).

[11] Matters "related to the assumption or rejection of executory contracts" may proceed by motion practice, which "provid[es] a better fit" than commencing an adversary proceeding. *Manus Corp. v. NRG Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 188 F.3d 116, 124 (3d Cir. 1999).

69. Moreover, the Court should not apply business judgment review where a debtor's discretion is cabined by other statutory requirements under the Bankruptcy Code:

> Termination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503, which, in relevant part, permits the payment of post-petition administrative expenses only to the extent that they constitute "the actual, necessary costs and expenses of preserving the estate," [citations]. In light of this statutory requirement, we rejected application of a business judgment rule, under which a requested termination fee would be approved if the debtor had a good faith belief that the fee would benefit the estate. [Citation]. "The allowability of break-up fees," we said, instead "depends upon the requesting party's ability to show that the fees are actually necessary to preserve the value of the estate."

See In re Energy Future Holdings Corp., 904 F.3d 298, 313 (3d Cir. 2018) (cleaned up) (citations omitted).

70. Applying the Third Circuit's reasoning in *Energy Future Holdings Corp.* to these Chapter 11 Cases, the Court should likewise reject application of the business judgment rule to the self-dealing transaction the Debtors seek to ratify through section 365. *See id.* at 314 ("[I]t is ultimately within a bankruptcy court's discretion to approve or deny a termination fee based on the totality of the circumstances of the particular case").

71. Rather, under the facts and circumstances of these cases, the Court should apply a more exacting standard. Specifically, and as addressed in Section II.B *infra*, because the same controlling stockholders stand on both sides of the transaction proposed in the Motion, that transaction is subject to Entire Fairness review under corporate law principles. And the Debtors have not met (and cannot meet) their burden under that standard.

B. The Court Should Apply the Entire Fairness Standard Based on Corporate Law Principles and Deny Assumption or Performance of the Consulting Agreement Because the Debtors Have Not Met Their Burden

i. The Consulting Agreement is Reviewable Under the Entire Fairness Framework and is a Transaction Between the Debtors and an Entity Under Common Control

72. While the Entire Fairness standard is most often analyzed in the context of non-bankruptcy corporate transactions, the Bankruptcy Court may evaluate claims that would be brought by shareholders outside of insolvency to determine whether creditors are adversely impacted. *See Liquid. Tr. of Hechinger Inv. Co. of Del., Inc. v. Fleet Retail Fin. Gp. (In re Hechinger Inv. Co. of Del., Inc.)*, 327 B.R. 537, 547-48 (D. Del. 2005).

73. In discussing the zone of insolvency and the evaluation of claims, the district court in *Hechinger* observed that:

> If a company reaches the point of insolvency, the directors continue to have the task of attempting to maximize the economic value of the firm. That much of their job does not change. But the fact of insolvency does necessarily affect the constituency on whose behalf the directors are pursuing that end. By definition, the fact of insolvency places the creditors in the shoes normally occupied by the shareholders—that of residual risk-bearers. Where the assets of the company are insufficient to pay its debts, and the remaining equity is underwater, whatever remains of the company's assets will be used to pay creditors, usually either by seniority of debt or on a pro rata basis among debtors of equal priority.

Id. (citing *Prod. Res. Group, L.L.C. v. NCT Group, Inc.*, 863 A.2d 772, 2004 WL 2647593, at *13 (Del. Ch. 2004); *Credit Lyonnais Bank Nederland, N.V. v. Pathe Communs. Corp.*, 1991 Del. Ch. LEXIS 215, Civ. A. No. 12150, 1991 WL 277613, at *34 & n.55 (Del. Ch. Dec. 30, 1991) ("Where a corporation is operating in the vicinity of insolvency, a board of directors is not merely the agent of the residual risk bearers, but owes its duty to the corporate enterprise", including the corporation's creditors); *Official Comm. of Unsecured Creditors of Buckhead Am. Corp. v. Reliance Capital Group, Inc.*, 178 B.R. 956, 968-69 (D. Del. 1994)).

74. The Entire Fairness standard is described in many Delaware State corporate decisions. *See, e.g.*, *In re Tesla Motors, Inc. S'holder Litig.*, 298 A.3d 667, 700 (Del. 2023) (citing *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983)). "Delaware decisions have applied the entire fairness framework to compensation arrangements, consulting agreements, services agreements, and similar transactions between a controller or its affiliate and the controlled entity." *In re Vaxart, Inc. S'holder Litig.*, 2021 Del. Ch. LEXIS 279, at *52 (Del. Ch. Nov. 30, 2021) (quotation and citation omitted).

75. "Delaware cases consistently have looked to who wields control over the corporation and have imposed the risk of fiduciary liability on that individual." *See, e.g.*, *In re EZCORP Inc.*, No. 9962-VCL, 2016 Del. Ch. LEXIS 14, at *29 and n.2 (Del. Ch. Jan. 25, 2016) (collecting cases); *see also Shandler v. DLJ Merch. Banking, Inc.*, 2010 Del. Ch. LEXIS 154, 2010 WL 2929654, at *15 (Del. Ch. July 26, 2010) ("Fairly read, the complaint alleges that DLJ, Inc. presided over a family of entities that it dominated and controlled, including the entities that together owned 74% of Insilco's equity. Using their unified power in a concerted way, DLJ controlled Insilco and directed its business strategy, including causing it to employ the DLJ Advisors. … I believe that Shandler has pled sufficient facts from which it can be inferred that the DLJ Funds were instrumentalities operated for the benefit of DLJ, Inc. and DLJMB.").

76. Here, the Motion seeks approval of assumption or continued performance of the Consulting Agreement. That agreement (and its Amendment) is under the umbrella of reviewable transactions in the corporate context. *See, e.g.*, *Vaxart*, 2021 Del. Ch. LEXIS 279, at *52. And it is undisputed that the Debtors are undertaking obligations with an affiliate (SB360) under common control with the Debtors. *See* Raskin Decl. at ¶¶ 5-6.

ii. The Court Should Deny Final Approval of the Consulting Agreement Because It Fails Under Both Prongs of the Entire Fairness Analysis

77. Entire fairness has two elements: "fair dealing and fair price." *See Burtch v. Opus LLC (In re Opus E. LLC)*, 698 F. App'x 711, 718 (3d Cir. 2017) (unpublished opinion) (citing *William Penn P'ship v. Saliba*, 13 A.3d 749, 756 (Del. 2011)). "Evidence of fair dealing includes the use of an arm's length bargaining process." *Opus*, 698 F. App'x at 718 (citing *Kahn v. Lynch Comm'n Sys., Inc.*, 669 A.2d 79, 82 (Del. 1995)). Fair dealing also encompasses "reliance on accurate and complete information." *Id.* at 718-19 (citing *e.g., Valeant Pharms. Int'l v. Jerney*, 921 A.2d 732, 748 (Del. Ch. 2007)). Fair price "relates to the economic and financial considerations" of the proposed transaction. *See id.* at 719 (quoting *Weinberger.*, 457 A.2d at 711).

78. Entire Fairness is an "exacting" standard and "requires the director to show that the deal was objectively fair, not just that he believed it to be so." *Id.* (citing *In re Marvel Entm't Grp., Inc.*, 273 B.R. 58, 78 (D. Del. 2002)). The standard "remains applicable even when an independent committee is utilized." *Kahn v. Tremont Corp.*, 694 A.2d 422, 428 (Del. 1997) (citing *Weinberger*, 457 A.2d at 710). That is because "the underlying factors which raise the specter of impropriety can never be completely eradicated and still require careful judicial scrutiny." *Id.* ("This policy reflects the reality that … the controlling shareholder will continue to dominate the company regardless of the outcome of the transaction.") (citing *Citron v. E.I. Du Pont de Nemours & Co.*, Del. Ch., 584 A.2d 490, 502 (1990)).

79. The controlling or dominant shareholder initially bears the burden of proving entire fairness. *Id.*; *see also In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 451 (Del. 2024) (controlling stockholder "bears the burden of demonstrating the most scrupulous inherent fairness

of the bargain.") (cleaned up).[12] "Under this onerous standard, 'not even an honest belief that the transaction was entirely fair will be sufficient to establish entire fairness. Rather, the transaction itself must be objectively fair.'" *RPA Asset Mgmt. Servs., LLC v. Siffin (In re MTE Hldgs., LLC)*, Nos. 19-12269 (CTG), 21-51255 (CTG), 2024 Bankr. LEXIS 1574, at *57 (Bankr. D. Del. June 14, 2024) (quoting *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1145 (Del. Ch. 2006)).

80. Additionally, the Third Circuit has recognized that multi-step transactions—such as the DIP financing, Consulting Agreement and Bid Procedures relief sought in the Chapter 11 Cases—can be collapsed when they are "part of one integrated transaction." *In re Hechinger Inv. Co. of Del., Inc.*, 327 B.R. at 546 (citing *United States v. Tabor Realty Corp.*, 803 F.2d 1288, 1302 (3d Cir. 1986); *Voest-Alpine Trading USA Corp. v. Vantage Steel Corp.*, 919 F.2d 206, 212-13 (3d Cir. 1990); *HBE Leasing Corp. v. Frank*, 48 F.3d 623, 635 (2d Cir. 1995) (stating that collapsing a transaction is most frequently applied to "lenders who have financed leveraged buyouts of companies that subsequently become insolvent")). When considering whether to "collapse" transactions in this manner, the court's focus is "not on the structure of the transaction but the knowledge and intent of the parties involved in the transaction." *In re Hechinger Inv. Co. of Del., Inc.*, 327 B.R. at 546 (holding that transactions should be collapsed where the parties "all knew about the multiple steps," and "[e]ach step … would not have occurred on its own, as each relied on additional steps to fulfill the parties' intent[.].") (cleaned up) (quotations and citations omitted).

[12] Under certain circumstances not applicable here, the controlling shareholder can shift the initial burden to the party challenging the transaction. *See Kahn*, 694 A.2d at 429 (citations and quotations omitted). But "to obtain the benefit of burden shifting, the controlling shareholder must do more than establish a perfunctory committee of outside directors." *Id.* (cleaned up) (citations omitted).

81. Applied here, the Court should deny final approval of the Motion and the Consulting Agreement because the proposed transactions fail both prongs of Entire Fairness review.

82. Initially, the Consulting Agreement was not subject to a fair bargaining process. In December 2024, the Debtors agreed to hire SB360, an affiliate, as a condition of obtaining a secured lending facility from another affiliate, SACP. Raskin Decl. at ¶ 8 n.3. Neither BRG nor the Conflicts Committee were involved in that initial agreement. In September 2025, the Debtors commenced store-closing sales at five locations. First Day Decl. at ¶ 31. The Debtors did not market the store closing opportunity to non-affiliated liquidators. Ex. A, Tr. at 89:25 – 90:13. Instead, they engaged SB360 consistent with their obligations under the Prepetition ABL Documents and at a time when no apparent mechanism existed to mitigate the Schottenstein family's interests in both sides of the transaction. *Id.* at ¶¶ 31-33 (describing the necessity for and circumstances of the appointment of the independent director and constitution of the Conflicts Committee two months later).

83. Likewise, when the Debtors purportedly executed the Amendment in November of 2025, they still had not yet constituted the Conflicts Committee. *Id.* And no party has produced evidence that Mr. Zalev—whether in his capacity as independent director or sole Conflicts Committee member—did indeed review and approve the terms of the Consulting Agreement and Amendment, much less the underlying Prepetition ABL Documents. Ex. A, Tr. at 84:1-15, 91:5-19.

84. Consequently, the "process" that the Debtors ask this Court to approve occurred over the course of three to six days in November—between the constitution of the Conflicts Committee on November 19 and the filing of the Motion on November 24. First Day Decl. at

¶¶ 31-33.[13] With respect to the Consulting Agreement, the Conflicts Committee's role would have necessarily been limited to retroactive approval of a self-dealing transaction that was already a *fait accompli*. And as noted above, there is no testimony or other evidence that the Conflicts Committee completed that retroactive review and approval. Ex. A, Tr. at 84:1-15, 91:5-19. The inadequacy of this process is further compounded when the Motion is viewed (correctly) as part of an integrated transaction with the DIP financing and Bid Procedures Motion. The Motion, the DIP financing documents and the Bid Procedures Motion *run to a combined 664 pages*. Over the course of three to six days, the Conflicts Committee supposedly exercised "full authority" on the Debtors' behalf over the negotiation, review, approval and ratification of all of these transactions.

85. The Debtors and SB360 have argued that displacing SB360 would be value destructive. Even if true, that does not ameliorate the fact that multiple individuals who financially benefit from SB360's engagement served as officers and directors of the Debtors until around the Petition Date. This includes:

(a) Jay Schottenstein as Chairman and CEO of SB360 and the Debtors;

(b) Joseph Schottenstein as Chief Strategy Officer at SB360, COO at Schottenstein Property Group and Schottenstein Realty, and Executive Vice President at Schottenstein Stores Corporation and a member of its board, while an officer or director at the Debtors;

(c) Brian Strayton as an SB360 Advisory Board member and member of SACP's investment committees and member of SACP SPV, while a "Current D&O"; and

(d) additional entities that may benefit from these series of transactions.

[13] It is unclear when the Conflicts Committee retained counsel to assist in its review and whether that further shortened the process. First Day Decl. at ¶ 34.

See Raskin Decl. at ¶ 19. Further, BRG was not officially retained until November, and the Conflicts Committee was not in place until three days prior to the Petition Date despite the depth and breadth of the interrelated parties and transactions.

86. Put simply, the Debtors have failed to meet their burden of establishing that they ran a fair process. This is an independent basis upon which the Court can deny final approval of the Motion.

87. Even if the Court determines that the Debtors ran a fair process (which the Court should not do for all the reasons articulated above), the Court should nonetheless deny the Motion for the separate reason that the Consulting Agreement does not include a fair price. As to fair price, Mr. Morando's November 25 testimony confirms that BRG (i) did not consider SB360's status as a statutory affiliate of the Debtors when evaluating SB360's proposed compensation, and (ii) did not adjust the cases included in its comp analysis to reflect SB360's affiliate status. Ex. A, Tr. at 86:4 – 90:13. Nonetheless, the Debtors rely on that unfiled comp analysis in defense of their business judgment. But the uncontroverted documentary evidence suggests that, rather than improving the terms of the Consulting Agreement, the Debtors relinquished rights to a "50/50" split of net proceeds on the Additional Merchandise in favor of a 7% payment on gross proceeds for the same term of the Consulting Agreement. [D.I. 18-1 at ECF p. 47-50].

88. The U.S. Trustee identified on the record at the November 25 hearing (*see* Ex. A, Tr. at 117:12 – 120:8) the only instance the U.S. Trustee can recall in this District where a debtor's affiliate served as its liquidation consultant: *In re HDC Holdings II LLC*, Case No. 24-12307-TMH ("*HDC Holdings*"). In that case, Hilco Merchant Resources LLC served as a consultant for HDC Holdings II, LLC and its affiliated debtors-in-possession while itself being an affiliate of the Debtors' majority equity holder. *See* Case No. 24-12307-TMH [D.I. 12 at ¶ 9] (the "HDC Holdings

Motion"). The HDC Holdings debtors benefitted from Hilco foregoing a fee of 1.5-2.5% of gross proceeds from earlier sales services, and ultimately only paid expenses of the sales process. *See id.* at Exhibit 1 (Amendment to Letter Agreement).

89. In summary, the Court should deny final approval of the Motion because the Debtors have failed to establish that the Consulting Agreement reflects a fair process and fair price. Viewed in the correct light, the Motion and Consulting Agreement are part of an integrated transaction with the DIP financing and Bid Procedures. Through that integrated transaction, the Schottenstein family will sell the assets and agency rights of the Debtors (which they wholly own) to the Stalking Horse Bidder (which they wholly own), who will then "delegate" such agency rights to SB360 (in which the Schottenstein family holds a 60% interest), who will also have its Consulting Agreement assumed. The Schottenstein family will then retain all upside from the sale transaction and resulting liquidations. The Debtors' eleventh-hour formation of the Conflicts Committee does not cure the deficiencies with this integrated transaction. That is because the Conflicts Committee did not have an opportunity to bargain against the Schottenstein family's myriad interests in the related transactions, and neither Mr. Zalev nor the Debtors have produced any contrary evidence. *See* Ex. A, Tr. at 83:12 – 84:8; *see also Kahn v. Tremont Corp.*, 694 A.2d at 428. No evidence exists that shows "even an honest belief that the transaction was entirely fair," let alone that "the transaction itself [is] objectively fair." *See RPA Asset Mgmt. Servs., LLC v. Siffin (In re MTE Hldgs., LLC)*, Nos. 19-12269 (CTG), 21-51255 (CTG), 2024 Bankr. LEXIS 1574, at *57 (Bankr. D. Del. June 14, 2024).

90. Accordingly, applying the Entire Fairness framework to the Motion and Consulting Agreement, the Court should deny final approval of the Motion.

C. The Court Should Deny the Motion Even Under the Business Judgment Standard

91. As noted above, the Third Circuit ordinarily applies the business judgment standard in assessing the decision of a trustee or debtor in possession to assume or reject an executory contract. *See, e.g.*, *In re Sharon Steel*, 872 F.2d at 39. Under that standard, the Court must find that the Debtors are acting on an informed basis, in good faith and with the honest belief that assumption of the Consulting Agreements is in the best interests of the Debtors and their estates. *In re Network Access Sols., Corp.*, 330 B.R. at 75.

92. Here, for all the reasons articulated in Sections II. A-B *supra*, the Court should find that the Debtors have failed to meet their burden even under this more lenient standard.

RESERVATION OF RIGHTS

93. The U.S. Trustee leaves the Debtors to their burden of proof and reserves any and all rights to (i) amend or supplement this Objection, and (ii) conduct discovery.

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WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order: (i) denying the Motion on a final basis; and (ii) granting such other and further relief as the Court deems just and equitable.

Dated: December 10, 2025

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

By: */s/ Malcolm M. Bates*

Malcolm M. Bates
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CERTIFICATE OF SERVICE

I, Malcolm M. Bates, hereby certify that on December 10, 2025, I caused to be served a copy of the foregoing Objection by electronic service on the registered parties via the Court's CM/ECF system and courtesy copies were served via email on parties in interest.

Dated: December 10, 2025

/s/ Malcolm M. Bates
Malcolm M. Bates

EXHIBIT A

(Transcript of Nov. 25, 2025 Hearing)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 25-12105 (JKS)
AMERICAN SIGNATURE, INC., *et al.*,	(Joint Administration Requested)
	Courtroom No. 6
	824 Market Street
Debtors.	Wilmington, Delaware 19801
	Tuesday, November 25, 2025
	3:31 p.m.

TRANSCRIPT OF HYBRID ZOOM HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Laura Davis Jones, Esquire
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EXHIBITS

(Proceedings commenced at 3:31 p.m.)

THE COURT: Please be seated. Good afternoon, everyone. This is Judge Stickles.

We're on the record in American Signature, Inc., Case Number 25-12105.

Good afternoon, Ms. Davis Jones.

MS. DAVIS JONES: Got to get former number -- name -- former husband's name in there, Judge.

For the record, Your Honor, Laura Davis Jones of Pachulski Stang Ziehl & Jones, on behalf of American Signature and the related Debtors.

Your Honor, first of all, let me thank you for giving us time on a holiday week, at that, and I know a busy week, for us to present first day motions and proposed orders for the Debtors, which we filed petitions for on Saturday night and first day motions on Sunday.

Your Honor, I'm here with my colleagues Mary Caloway, Peter Keane, and Ed Corma, and we have -- Your Honor, I also want to thank you for giving us the time to make this later in the afternoon. That time has been used very efficiently and I think very productively. And I'm pleased to tell Your Honor that just minutes ago, we have executed the asset purchase agreement, which we will then be able to put on file with the Court. We're on our way to bracketing a few things that the Wachtell firm has caught

that we're going to push through on those, but, otherwise, the signatures are there and we're ready to go.

Your Honor, I also want to thank Mr. Fox, Mr. McMahon, and Mr. Bates for reviewing the documents and their responsiveness. And, Your Honor, this is a case where we've had a bunch of other parties involved --

THE COURT: Uh-huh.

MS. DAVIS JONES: -- everyone has their own counsel and they all have been sending comments and working through issues and so forth, so I want to thank everybody for their effectiveness, but also with what the U.S. Trustee's Office has been through the last month or so, I really want to thank them for jumping back into this and really being responsive to us.

THE COURT: I echo your thoughts. Thank you.

MS. DAVIS JONES: Thank you, Your Honor.

Your Honor, in terms of progress, as I said, I think we have reached resolution with the Trustee's Office and all the other parties on almost everything. I think there's an issue with that we, inadvertently, left out of the utilities motion, which I'll just mention on the record, and I think that'll resolve that.

And then with respect to the DIP financing and the consulting agreement, I think there's a few concerns from the Trustee's Office that they'd like us to make a record about.

THE COURT: Uh-huh.

MS. DAVIS JONES: So my partner, Max Litvak, is going to supplement the affidavit declarations we have on filed and we can deal with that when we get there and, hopefully, we'll be able to work through that, Your Honor.

THE COURT: Okay. And I should just let you know in case your colleagues are working offline, that there are a couple of evidentiary issues I have with respect to both, the DIP financing and the consulting agreement, certain findings that are made in there that I didn't see in declarations, if it helps expedite matters.

MS. DAVIS JONES: It does. And, Your Honor, that's kind of a heads-up to Mr. Litvak, who I know is listening, and maybe he can check that and we'll try to check those boxes for Your Honor as we go.

Your Honor, if I may, let me step back and give the Court just a generalized review of the Debtors, what has been happening, and our goals and expectations in the near term. Your Honor, we filed with the Court a declaration of Rudolph Morando of BRG.

And I'd ask Mr. Morando to turn on his camera for just a moment so Your Honor can meet him.

Your Honor, he is our chief restructuring officer. We did file a declaration. I'm going to talk a bit from that, Your Honor. I would ask that I be able to move that

declaration into evidence. If somebody wants me to wait on that, I can do it later, but I thought I'd put that up front.

THE COURT: Okay. Let me ask, does anyone object to the admission into evidence of the Morando declaration in support of debtors' Chapter 11 petitions and the first day relief at Docket 5?

(No verbal response)

THE COURT: I hear no one. I see no hands on Zoom.

Does anyone intend to cross-examine the declarant regarding the content of his declaration?

Mr. Fox, good afternoon.

MR. FOX: Good afternoon, Your Honor.

And may I please the Court? Tim Fox, on behalf of the United States Trustee.

As Ms. Jones previewed, we do have some open issues, with respect to the consulting agreement --

THE COURT: Uh-huh.

MR. FOX: -- in light of Mr. Litvak working on the supplemental direct that is going to occur, I just wanted to reserve the right to ask questions, in terms of cross-examination, at the appropriate time. I think that'll be better left until we've gotten to the balance of the hearing, where we're taking up that motion, as well as any outstanding issues on the DIP.

THE COURT: Certainly.

Your right and anyone else's right is reserved, with respect to cross-examine, when a proffer is made.

MR. FOX: And it may go beyond the scope of the proffer, so, again, just --

THE COURT: We put --

MR. FOX: -- it would streamline that at the appropriate time, as opposed to me taking a big cross-examination at this stage of the proceeding.

THE COURT: Certainly.

MR. FOX: Thank you, Your Honor.

THE COURT: Anyone else want to be heard?

(No verbal response)

(Morando Declaration received in evidence)

THE COURT: You may proceed.

MS. DAVIS JONES: Thank you, Your Honor.

Your Honor, as discussed in the declaration of Mr. Morando, first of all, he's a co-CRO of the Debtors. The company is a residential furniture company operating across its Value City furniture line and its American Signature Furniture brand.

Your Honor, the company sells its products through its retail locations, brick-and-mortar stores that Your Honor may have seen, and an eCommerce channel. They fulfill their orders, generally, through distribution facilities. The

company sources globally and from domestic vendors.

The company, Your Honor, operates approximately 120 stores across 17 states and has approximately 3,000 employees. About 28 percent of them, Your Honor, are full-time employees and the balance are hourly, mainly at the stores.

Your Honor, the Debtors, like so many Debtors that have come before you recently, have faced adverse macroeconomic factors, many becoming quite significant since the time of COVID. In the face of these challenges, the company executed various initiatives to increase the goal of maximizing value for all of its creditor constituencies.

As to debt, Your Honor, we have a prepetition ABL facility; it matured, prepetition. So Second Avenue Capital Partners is the administrative agent for itself and others of approximately $39 million outstanding as of the petition date. Also, Your Honor, we have a prepetition letter of credit facility with PNC, with about $24 million outstanding and then a prepetition term loan facility with PNC with approximately $54 million outstanding.

And the unsecured debt, Your Honor, in rough numbers --

THE COURT: Can I -- Ms. Davis Jones, may I interrupt you for a second?

MS. DAVIS JONES: Yes, of course.

THE COURT: The PNC letter of credit, it's PNC and then the borrower being ASI, as I understand it, and then the other party is the parent; is that correct?

MS. DAVIS JONES: Your Honor, I'm going to ask counsel to confirm for me, PNC's counsel, but that is my understanding.

THE COURT: I recall something in the DIP order, is what I'm alluding to. And my question is, who is it with and does it implicate, other than Debtors?

MR. TARR: Your Honor, Stanley Tarr from Blank Rome, on behalf of PNC.

My co-counsel from Goldberg Kohn is on and I'm going to defer that question to him; Mr. Klein will address that.

THE COURT: And we can address it at the DIP, too, but I'd just throw that out there because I was curious. If you want to email offline and we can address it.

MR. TARR: Yeah, I thought he -- it looked like he was getting on, Mr. Randy Klein.

MR. KLEIN: I'm on, but I'm not able to -- no, there we go.

Your Honor, perhaps we can address it when we get to the DIP order.

THE COURT: Okay. All right. Great.

MR. KLEIN: But it's my understanding that the

document went through a number of amendments from 2014 through last year. The parties have changed over time. There was a release of collateral from pending on inventory in favor of the ABL lender in the DIP documents and as part of their refinancing, the ABL lender provided the cash collateral for the letters of credit that benefit the Debtors and are still outstanding, benefiting the debtors' businesses.

There might be a non-debtor obligor on those documents.

THE COURT: Okay. Yeah, because my recollection was it was a Schottenstein Furniture or something, but we can talk about it when we get to the DIP.

MS. DAVIS JONES: That makes sense, Your Honor, and as Mr. Klein said, it has moved around a little bit, so I think, either, through our testimony or argument at the DIP or through Mr. Klein's investigation during, between now and then, I'll be able to get you an answer on that, Your Honor.

THE COURT: Okay. Thank you.

MS. DAVIS JONES: Your Honor, I think I was to the unsecured debt pool and, Your Honor, I think that's approximately $236 million. That's not including the lease liabilities. We're still getting our hands around that.

Your Honor, as set forth in our papers, and as Your Honor started to acknowledge, American Signature is

wholly-owned by the Schottenstein Stores Corporation, a holding company, which is wholly-owned by the Schottenstein family, including the various trusts. And each other debtor is a wholly-owned, direct subsidiary of ASI.

Your Honor, we did include an org chart. I don't know if Your Honor has had a chance to see it, but we attached that to the declaration.

THE COURT: And does that org chart represent all the entities?

MS. DAVIS JONES: Yes.

THE COURT: Okay. All right. Thank you.

MS. DAVIS JONES: Given these connections, Your Honor, and other relationships, as described in Mr. Morando's declaration, ASI thought it was good practice not only to disclose all those relationships and be quite transparent, but also, Your Honor, to appoint an independent director to the Board, who would have full power and authority to negotiate, review, and approve all transactions and issues that involve those affiliates.

And that independent director is Adam Zalev, and I would ask Mr. Zalev to turn on his camera for a moment, if he may, so Your Honor may meet him.

(Pause)

MR. ZALEV: I'm working on it, Your Honor.

Good afternoon.

THE COURT: Good afternoon, sir.

MS. DAVIS JONES: Mr. Zalev is represented by his own counsel. He's the founder and manager of Reflect Advisors, and he is the sole member of the conflicts committee of the Board, and as I mentioned, he has his own counsel, Goodwin Procter. And, indeed, Kizzy Jarashow -- I always screw up your name, I'm sorry -- is here and is present in the courtroom.

THE COURT: Welcome.

MS. DAVIS JONES: Thank you, Mr. Zalev.

MR. ZALEV: You're welcome.

Thank you, Your Honor.

MS. DAVIS JONES: And, indeed, Your Honor, each entity that has an affiliate with any of those Debtors and is involved in this case, also have their own counsel.

So, Your Honor, I can tell you, personally, it's been quite an experience dealing with a lot of lawyers. I'm just going to leave it right there.

Your Honor, our present plans and going forward, as I mentioned earlier, post-COVID, the Debtors faced a variety of operational challenges, including increased costs, resulting in increased losses. And the company's equity holders provided unsecured loans of over $51 million during the prepetition period and SACP, an affiliate, entered into the prepetition ABL facility in December of 2024, which

provided about, approximately, $50 million in added liquidity.

Unfortunately, Your Honor, that just was not enough. In September of 2025, the company retained SB360 to act as consultant, with conducting the store closing at five stores and in November of 2025, that was increased to 33 stores. Your Honor, those stores -- and you're going to hear about this more when we talk about the consulting agreement -- those store closings have started and those sales are ongoing since the prepetition period. And, Your Honor, SB360 also has its own advisors, its own counsel.

Your Honor, in October of 2025, BRG was retained to develop strategies, look at options. And in November of 2025, AMG Real Estate Partners was retained to evaluate rent reductions and concessions with the landlords, and AMG also has its own counsel.

SSG, also retained -- was retained in November to develop a sale and marketing plan for the company, and, Your Honor, I know, is familiar with Mr. Victor, Ms. Pool, and others from the SSG Group. And they were also asked to shop the DIP financing.

Again, Your Honor, we took the extra step there, simply because the DIP financing here is being provided by an affiliate, so I thought it only kind of good conduct to take it out to the market, as well as, obviously, having Mr. Zalev

review, and his counsel review, what was proposed and the alternatives that we had.

Your Honor, as I mentioned right before the hearing, we were able to enter into the APA and a bidding procedure agreement with the stalking horse bidder and we'll be on our way to moving forward.

Your Honor, to make the trip through bankruptcy as seamless as possible, we do have a series of first day motions we do seek to present to the Court. Your Honor, nothing, as I mentioned, is too lengthy; a little discussion will be on the DIP and on the consulting agreement, but, otherwise, Your Honor, I'm prepared to move forward with those if Your Honor's ready?

THE COURT: I am.

Could I ask one question --

MS. DAVIS JONES: Of course.

THE COURT: -- well, maybe two or three?

(Laughter)

THE COURT: But my question has to do with the conflicts committee and what the role is there. So, I understand it has full power and authority to negotiate, review, approve, and ratify all related-party transactions?

MS. DAVIS JONES: Yes.

THE COURT: I want to drill down on that; what does that mean, exactly? His role is not that of running

this reorg, correct?

MS. DAVIS JONES: No, he is not -- that is -- that's BRG's role, as co-CROs, and let me make clear on the record in case I have not: BRG has no affiliation, also, with the Schottenstein family, with ASI, Value City, or anything like that. And so, I think that's -- when the company brought BRG in, I think they realized that just given the affiliates, they needed to get somebody separate in for the operations.

Then, as they started to work forward on some strategies and options and alternatives they had, and they hired our firm. We, then, altogether, said, you know, we really need to get somebody independent on the Board, because our Board had four -- four members at that time, maybe six. It might have had six at that time. They -- everyone, somehow, had a relationship.

So, we just -- everyone, there was no disagreement on this; as Judge Shannon would say, it was kicking an open door -- everybody agreed that we needed to find a way to bring somebody independent into this, in addition to BRG. So, Your Honor, to answer your question the long way, BRG is doing the operating. Our independent director is on the Board.

If our independent director saw something he didn't like or could not make the recommendation for a

particular transaction and so forth, I could tell you, Your Honor, now I've dealt with Mr. Zalev a little while; he's not shy and he would definitely say so to the Board.

And, Your Honor, if you looked at the corporate documents in the board meeting that I ran with Mr. Zalev doing his report, Your Honor, they are -- they made their decisions based on his recommendation. So, were we not to have that recommendation, I don't think we'd be before the Court with any of the transactions that we propose to have in this proceeding or in front of the Court, because we would not have had his recommendation and the Board, there, would not have been comfortable with moving forward, Your Honor.

THE COURT: Okay. And before we jump into first days -- and maybe this is premature -- but could we talk about scheduling for a moment?

MS. DAVIS JONES: Of course we can.

THE COURT: So, I'm happy to give you -- I can't do December 30. I could do Monday, January 5 at 1 o'clock.

And I also think you need a December hearing, correct, so --

MS. DAVIS JONES: We do, Your Honor.

We had looked for December 8th, possibly, for the bid procedures, Your Honor.

THE COURT: I have -- could we do the 9th?

(No verbal response)

THE COURT: And let me ask -- this is going to require a little input from the U.S. Trustee's Office, as well, because if there's a committee, is there going to be adequate time for a committee appointment?

MR. BATES: Good morning, Your -- or good afternoon, Your Honor. Malcolm Bates, on behalf of the U.S. Trustee's Office.

We have commenced the solicitation process and to the extent we are going to appoint a committee here, we would like to reserve rights on the issue of whether shortening notice on bid procedures is appropriate, depending on how the timeline shakes out, with respect to appointment of a committee.

THE COURT: Understood.

Well, my position has always been if we schedule this and the committee comes in and objects to timing, then I'll take it under consideration.

But I guess my question is: Would a committee be up and running by the 9th or before the 9th to give the committee an opportunity to look at it?

MR. BATES: Yeah -- and, again, for the record, Malcolm Bates -- but the point is well taken, Your Honor. I'm not sure how fast we're going to be able to get this solicitation completed. Obviously, we have the Thanksgiving holiday intervening and then we need to be able to actually

conduct the charge meeting and they would need to retain counsel. So, I'm not sure that that would be enough time.

I think, you know, 14 days from today with two business days, essentially, blocked out; that might not be enough time here.

MS. DAVIS JONES: Your Honor, from our perspective, if I may? Your Honor, I think we've always seen the Trustee's Office, I think they're being a little humble here. Your Honor, we usually are able to have a committee in 10 days; I just haven't seen it exceed that.

But, Your Honor, your point is well taken that if a committee is appointed and they ask for more time; of course, we will work with them.

If the U.S. Trustee's Office is telling us now that they just absolutely are not going to have their committee done by that point, that's a different story, Your Honor. But I think it would make sense, being we all don't know, and the solicitation has already started -- I know I sent the emails out two days ago --

THE COURT: The committee solicitation?

MS. DAVIS JONES: Yes, Your Honor.

The U.S. Trustee had asked for a couple of email addresses to be corrected, which we provided to them.

So, Your Honor, as Mr. Bates said, that solicitation has started. So, I would like to take you up on

your offer of the 9th, but, obviously, I yield to the Court's desire on that.

MR. BATES: Your Honor?

THE COURT: Mr. Bates?

MR. BATES: Just one more point on this.

I will note that the solicitation did go out yesterday. The return date is set for December 1st. We may -- in fact, I anticipate we will have some stragglers, obviously, as a furniture dealer, we're dealing with a lot of vendors from Vietnam, I believe, Malaysia is another one of the well-represented countries here, and that always creates some issues, with respect to being able to conduct interviews.

So, we appreciate the full faith that we have received from debtors' counsel, but I do anticipate that there may be some delays here.

MS. DAVIS JONES: Your Honor, as we have the schedule presently planned out -- and I can tell things may change a little bit -- but, Your Honor, presently, we had our option scheduled, I think it was for around the 5th of January, and looking for a sale hearing shortly thereafter. I think it was the 8th, but I don't have that in front of me.

But, Your Honor, so the dates were kind of tagged off of that. We also, Your Honor, will have to seek an extension from our buyer, as well as our lenders, to move

these dates. But, obviously, we'll leave it to Your Honor's discretion --

THE COURT: Well --

MS. DAVIS JONES: -- if the 9th will work for you for the bidding procedures.

(Pause)

THE COURT: I'm going to leave it at the 9th, subject to, if there's a committee, subject to a Committee's right to come in here and argue for a date, a later date. I'm trying to be fair.

I also -- it is procedures, so I'm more concerned about -- not more concerned -- but I'm equally concerned about having a fulsome process, sale process. So, if the committee comes in and objects, we'll revisit it.

So, I understand the 5th is going to be problematic, is that right, January 5 for a second day?

MS. DAVIS JONES: Yeah, and I am going to -- I think I'm going to yield to counsel on the phone to make sure that I am correct, that, one, with the 9th being for bidding procedures, that that works within the time frame for both, the DIP financing and the sale and the milestones that we have. I guess, I would ask if there's any of the counsel in those groups that has a problem with an objection -- with that bid procedures hearing being on the 9th of December and seeking -- keeping our auction on the 5th of January, and

we'll have to ask the Court for a later hearing date in January.

(No verbal response)

THE COURT: Do you want to come back? We can start the first days and you can consult. But for you right now, just before I forget it, 12/09 at 11:00 a.m.

MS. DAVIS JONES: Thank you, Your Honor. We will take that.

Your Honor, do you want us to submit a proposed order, shortening the time to have that heard, or is this discussion and this ruling okay?

THE COURT: I think this discussion is sufficient.

MS. DAVIS JONES: Thank you, Your Honor.

THE COURT: I'm going to accept it as an oral motion.

I do want to make you aware that the week of January 8th -- I mean, January 5, I have two trials, so I can tell you right now, as of now, I have the 9th completely open and I can -- we can look at, maybe, a quick break, and look for some other time. But, perhaps, you all want to talk first?

MS. DAVIS JONES: I think that would be helpful, Your Honor, if we could take a five-minute break a little later in the proceeding.

Your Honor, I am -- I did receive a text that I do

need the proposed buyer's consent to go to the 9th for the bidding procedures. So, Your Honor, while I've taken that date -- kind of presumptuous of me --

THE COURT: Understood.

MS. DAVIS JONES: -- I might have to revisit that after the break.

THE COURT: Understood.

MS. DAVIS JONES: Thank you, Your Honor.

THE COURT: It's a first day. There are a lot of moving parts and a lot of professionals.

MS. DAVIS JONES: A lot of professionals and a lot of moving parts.

Your Honor, if it would make sense, then, I think I will move for the first day motions. Your Honor, we have a hard copy of all the blacklines --

THE COURT: I have them.

MS. DAVIS JONES: Your Honor has that? Thank you.

Your Honor, we already moved in Mr. Morando's declaration, which was listed as Number 2 on the agenda.

Number 3, Your Honor, is the motion for joint administration on a procedural basis. Your Honor, one comment that the Trustee's Office made, and you'll see it throughout most all the proposed order, is to take back out the reference to DIP orders and what they do allow and don't allow.

THE COURT: And I appreciate that, because that was one of the comments that I had on the orders that I received.

MS. DAVIS JONES: Thank you, Your Honor.

I think the other -- I think any of the other comments, Your Honor, throughout, with respect to the joint administration, I think with that one, Your Honor, we just filled in your initials, which we needed to do. But other than that, Your Honor, I don't think there's any other comments.

THE COURT: Yeah, does anyone want to be heard on the joint administration motion?

(No verbal response)

THE COURT: I hear no one.

I have reviewed the motion. The relief sought is ministerial in nature and appropriate, and I'm satisfied, based on the record before me that joint administration of the cases will aid the Court and the Clerk's Office with respect to these cases by providing a single form of caption, a single docket to record activity, so that motion is granted.

MS. DAVIS JONES: Thank you, Your Honor.

Your Honor, the next matter on the agenda was our motion to employ and retain Kurtzman Carson Consultants, doing business as Verita Global.

Your Honor, we had a couple comments that we added into this if you look, specifically, at paragraphs 17 and 18. And then I understood conceptually, Your Honor, that the U.S. Trustee's Office has asked for a supplemental declaration on this.

So I'm going to ask counsel if you want me to hold presenting the order or do you have an understanding to go forward?

MR. BATES: Your Honor, for the record, Malcolm Bates, on behalf of the U.S. Trustee.

While we were sitting here in the hearing, counsel for the debtor circulated a proposed form of supplemental declaration that was acceptable to our Office for purposes of this application. We'll simply reserve rights on -- with respect to any retention issues with respect to any forthcoming 327(a) application.

THE COURT: Okay. Great.

Thank you, Mr. Bates.

Does anyone want to be heard with regard to the claims and noticing application or the proposed form of order?

(No verbal response)

THE COURT: Okay. I hear no one.

I have reviewed the application and the Gerstein (phonetic) declaration. The relief is customary and required

under our Local Rules, since the Debtors have in excess of 200 creditors or parties in interest in these cases.

Further, the Debtors have represented that they've complied with the claims agent protocol, so I will enter the order granting this application.

MS. DAVIS JONES: Thank you, Your Honor.

THE COURT: Have these orders been uploaded?

MS. DAVIS JONES: No, they have not.

THE COURT: If this one hasn't been up uploaded yet, would you please put the related-to docket --

MS. DAVIS JONES: We will do that.

THE COURT: -- into the caption? Thank you.

MS. DAVIS JONES: And we'll -- we will check that on all the others, Your Honor.

Your Honor, the next matter is our motion about -- with respect to a consolidated list of creditors, and, Your Honor, this one had a number of comments from the Trustee's Office, but one that I wanted to spend just a moment with the Court on, if I may.

Your Honor, we have -- and this is just rough numbers -- something like 37,000 entities on the matrix and approximately 28,000 of those are customers. And one of the things that we had provided for was service by email and the U.S. Trustee came back and said, As long as you file -- follow Rule 9036.

So, Your Honor, looking back at the rule, the rule says you can do that if a party has consented.

THE COURT: Consented.

MS. DAVIS JONES: And I don't want to go down the road of Purdue and talk about consent, but, Your Honor, I think with -- in this case, where a customer has given their email to the retailer and receives whatever types of materials they may from the retailer over time at that email, I think it's fair, Your Honor, for us to notice them with respect to this bankruptcy by email and, surely, in a case that's already thin, I think it makes economic sense.

So, Your Honor, we would ask that Your Honor find that us providing e-service -- I don't know -- email service to the customers, which is predominantly that number, that that be satisfactory to the Court.

THE COURT: How does the debtor generally communicate with its customers?

MS. DAVIS JONES: Your Honor, if I may, I would have to ask Mr. Morando if he has an answer to that.

THE COURT: Okay.

MS. DAVIS JONES: My understanding is if there is an email address that is the form that is traditionally used, to the extent that there is communication, but if I may ask Mr. Morando to turn on his camera and I can ask him that question.

Sir, I think you heard the judge's question with respect to us being able to provide service by email. Is there a course of conduct or something that's in the ordinary course, if you will, with respect to communicating with customers?

MR. MORANDO: Good afternoon, Your Honor.

THE COURT: And you know what? Before he answers, I think you're actually asking for testimony, so maybe we should have him sworn in.

Could you swear in the witness, please.

And let me be mindful that we have to implement the courtroom protocol, the broadcast protocol.

(Pause)

THE COURT: Sir, thank you for your time. It'll be just a moment.

(Pause)

THE CLERK: Please raise your right hand.

RUDOLPH J. MORANDO, DEBTORS' WITNESS, AFFIRMED

THE WITNESS: Yes.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Rudolph J. Morando, Jr. Last name is M-o-r-a-n-d-o.

THE CLERK: Thank you.

//

DIRECT EXAMINATION

BY MS. DAVIS JONES:

Q Mr. Morando, thank you for appearing, first of all, and sorry for my misstep there of not having you sworn in.

With respect to our service that we propose by email, there were a couple of categories, and I might as well hit them all with you, but may have heard me say to the judge that on the matrix there's approximately 37,000 names.

Is that consistent with what you know?

A Yes.

Q And do you know how many of those are customer names?

A Approximately 28,000.

Q And in the ordinary course, if the company communicates with its customers, how does it usually do so?

A By email.

Q The other makeup of that matrix, would it be fair to tell you that it is employees and vendors --

A Yes.

Q -- would that be accurate?

A Yes, it is.

Q Okay. And how does the company generally communicate with vendors?

A Phone and email.

Q And what --

A Also, by writing, but all of those medias.

Q And what about employees?
A The same.
Q So, it could be by email or, but it could also be in writing or by phone?
A Correct.
Q Okay.
MS. DAVIS JONES: So, Your Honor, our -- I think the answer --
THE COURT: Wait. Let me just -- does anybody want -- are you finished?
MS. DAVIS JONES: I am.
THE COURT: Does anybody want to cross-examine the witness?
Mr. Fox looked eager, so...
(Laughter)
MR. FOX: Good afternoon, Your Honor.
May I please the Court? Tim Fox, on behalf of the United States Trustee. Just a couple of additional follow-up questions, based on that testimony.

CROSS-EXAMINATION

BY MR. FOX:
Q Specifically, I'll go to the three categories that Ms. Jones asked about. With respect to the customers, is there a policy regarding business interactions with the debtor companies here that authorizes the Debtors to

communicate by email with those parties?
A Mr. Fox, I can't speak to that. I have not seen or read that policy if it exists.
Q Okay. And with respect to vendors, as part of, in contractual terms, is there a term, generally, that the company may send notices, via email, as opposed to physical service, when required by applicable law?
A I have not studied that on a vendor-by-vendor basis, either.
Q And then, lastly, with respect to employees, as part of an employee accepting an offer of employment, is there any employee handbook or related document that, again, authorizes the company to communicate official notices via email?
A I do not know the answer to that either, Mr. Fox.
MR. FOX: That's all I have on the questions on cross-examination for this matter. Thank you.
THE COURT: Okay. Thank you.
Ms. Van Eck, did you want to cross-examine this witness?
MS. VAN ECK: Good afternoon, Your Honor.
Melissa Van Eck, on behalf of the Pennsylvania Office of Attorney General for the Commonwealth of Pennsylvania.
I think Mr. Fox asked most of my questions.
//

CROSS-EXAMINATION

BY MS. VAN ECK:

Q The one I do just want to follow-up on is, I know sometimes the debtor may have access to customers' emails.

Do those customers have the ability to opt out of email communication?

A I do not know the answer; you'd have to speak with IT on that.

Q Okay. And if they had the ability to opt out, does the company maintain that list?

A I would need to follow up and I could get you an answer, Ms. Van Eck.

Q Okay.

MS. VAN ECK: That's all I have, thank you.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MS. DAVIS JONES:

Q Mr. Morando, do you have any idea of the frequency with which the company does communicate with its customers?

A I don't know the exact cadence, but it is frequent. Promotions are communicated by email. There are a number of communications that would take place, but the exact frequency, I'm not aware.

Q And would the same be true, with respect to employees or would you not know that?

A I would not know that, but I would expect there to be frequent communication with employees by email.

MS. DAVIS JONES: Thank you, Your Honor.

I don't have any further questions.

(Witness excused)

THE COURT: Okay. Thank you.

Okay. Does anyone want to be heard, with respect to this motion?

MR. FOX: Good afternoon. Again, Your Honor, may I please the Court? Tim Fox, on behalf of the United States Trustee.

Your Honor, the U.S. Trustee's concerns regarding this requested relief is that the Federal Rules of Bankruptcy Procedure and our Local Rules require service by mail for certain parties in the absence of consent to electronic communications. As Mr. Morando has testified, there isn't any official policy in place for the three categories where the Debtors are seeking to utilize electronic service.

The U.S. Trustee wouldn't object to supplemental service being done by email for those parties, but the notice of commencement and additional items that would be required to be served under the Local Rules should be served by mail to those parties to, I guess, demonstrate the importance of interacting with the legal proceedings here, to the extent that those parties have rights that may be jeopardized.

Again, at this stage, we don't know, as to the 28,000 customers whether or not any of them would have claims for warranties or anything along those lines. But, as I'm sure Your Honor is aware, in the furniture business, that is often where a customer may have a claim to the extent a piece of furniture is not living up to the standards that were promised when they purchased the item.

Again, we understand that this is a bit of a burden in terms of effectuating service on those parties, but absent change to the Federal Rules of Bankruptcy Procedure or the Local Rules, absent consent to service electronically, there should be a paper mailing to at least put the parties on notice that their rights could be impaired in this proceeding.

So, I'm happy to take any questions Your Honor might have and then I can see that other counsel would like to also address the Court.

THE COURT: Mr. Fox, other than a notice of commencement, what other document would you, or it has to be by First-Class Mail?

MR. FOX: I think it would depend on the facts and circumstances, as the cases progress. To the extent there a later developments that would create a more concrete example of customers' rights being affected by relief sought in the bankruptcy case, that would be important.

I know in a matter before Judge Horan, I raised, at least, in terms of the sale relief and one or two other items that, off the top of my head, I cannot recall, as being items that should be served on those parties. That was in the, in connection with parties that were issued refund checks that hadn't yet deposited those. But, Your Honor, I think the same principles apply and it really is a matter of if the Rules need to be modernized to permit electronic communications more fully to, you know, have that as the default tool, as opposed to being something that has a higher burden for usage, other than that parties that, then, register for CM ECF notices and are subject to our Local Rules provision, in terms of electronic service.

THE COURT: Mr. Fox, talk to me a minute about precedent, in terms of other retailers in this jurisdiction.

MR. FOX: Your Honor, I don't know if I could cite to any specific cases on this front. I know that this item has been of increased sensitivity to my Office, but there may have been orders entered by the Court approving other relief similar to what's being requested here.

Again, we understand that there is a burden and real cost to effectuating that service, but, again, the debtor comes into Chapter 11 with the creditor body that it has and parties that might be entitled to notice and ensuring that they get what they're entitled to terms of due process

is an important issue.

So, Your Honor, any other questions or items that I can assist the Court with before I cede the podium to any others who would like to speak?

THE COURT: Not right now, thank you.

MR. FOX: Thank you, Your Honor.

THE COURT: Others who would like to be heard? Ms. Van Eck.

MS. VAN ECK: Yes, Your Honor. Melissa Van Eck from the Pennsylvania Office of Attorney General appearing on behalf of the Commonwealth of Pennsylvania.

Your Honor, I would just echo the concerns raised by the U.S.T.'s Office. I know our office is very concerned about notice to the customers, not just of the bankruptcy filing but with regards to how their rights may be impacted with respect to gift cards and other customer programs. So, we just want to make sure there is plenty of notice.

Often times those emails that we get from stores of various retailers we know they go into a spam folder, they get deleted, and often times many consumers don't really see those notices. So, we just want to make sure that there is proper notice that the customers really have the information they need with regards to the filing and the rights that may be impacted with regards to gift cards or other customer programs.

THE COURT: Thank you.

Anyone else?

(No verbal response)

THE COURT: Okay. I am going to grant the motion except for the service portion pending final hearing on the service. And I am going to allow the debtors the opportunity to provide different -- not different, excuse me. Additional information they might have, given the limited testimony of the witness, regarding the practice and the industry with respect to this debtor. Interim papers should go out by mail.

MS. DAVIS JONES: Thank you, Your Honor. We appreciate that opportunity. There is precedent in the district, Your Honor, such as in the Apex case, which was an amusement park case, and some others.

So, I think what we will do, Your Honor, is we will refine that testimony from Mr. Morando to find out -- let's see what we can find out in terms of our interaction with our customers and others and also, Your Honor, maybe we can provide you some cases as well.

THE COURT: Right. I am certain that I permitted it in Blink and I permitted it because there as evidence with respect to a policy and that was the way that customers communicated. So, I do think that the precedent has gone both ways but perhaps the debtors can provide some more

clarity with respect to the issue.

I am concerned here particularly given the pace of the case and the impact that we will ultimately see that it has on customer programs. I should say that at this juncture I am not opposed to mail and email because there are some quick deadlines here with respect to customer programs that I would rather customers know about then sitting in the mail service. That is no slight on the United States Mail Service, I just know it's a holiday week and as a consequence I see the value of electronic service.

Pending a final hearing, I think that the U.S. Trustees position is correct.

MS. DAVIS JONES: Thank you, Your Honor. We appreciate the opportunity to try to convince you at the final hearing that we won't incur that cost.

Thank you, Your Honor.

THE COURT: Can I just make one other comment with respect to PII. I have seen the first day order taken and used in adversary proceedings. And to me, you can't -- you have to judiciously redact in adversary proceedings. To leave out the names of parties in adversaries under the guise of the first day order I am not sure is appropriate. And I am not suggesting that you would do that. I am just putting you on notice that if it comes to that point, we will revisit the issue.

MS. DAVIS JONES: I appreciate that, Your Honor. I have not seen that but I hear you. Thank you, Your Honor.

Your Honor, that brings us to the wages motion. Your Honor, our blackline there -- our redline shows the changes that we made through comments to the U.S. Trustee's Office.

Your Honor, this is our wages, salaries and benefits, so forth, used in the ordinary course. As I mentioned, there are about 3,000 employees; 28 percent of which are salary rate and the others are hourly.

Your Honor, I don't think that there is anything you would find surprising in this redline. They did -- the U.S. Trustee's Office did ask us to bring the caps down a little bit, which we have. And then the other key thing was taking out the reference to the DIP order.

THE COURT: Might I ask: What is the plan with respect to -- the small plan with respect to employees.

MS. DAVIS JONES: It's going to depend how our sale turns out. The stalking horse bidder we have at the present time there would be a sale of the stores but it would be a winddown.

THE COURT: Okay.

MS. DAVIS JONES: We are hopeful -- maybe half too full on my part but we're hopeful that there may be someone that wants to buy a furniture store, and wants to keep all

the employees, and keep the 120 stores operating. The realistic side of me, Your Honor, knows what retail looks like these days and I will leave it at that, Your Honor. So, at this point it could be either way.

THE COURT: Okay. Does anybody want to be heard with respect to the employee wages motion?

Mr. Bates.

MR. BATES: Good afternoon, Your Honor.

We are still waiting on one remaining piece of information from the debtors regarding pre-funding and reimbursement obligations with respect to certain non-debtor healthcare plans. We're not opposing entry of the interim order today but we are still waiting on information. So, we are just reserving, you know, any implicative rights with respect to entry of the final order.

THE COURT: Okay. Does anyone else want to be heard?

(No verbal response)

THE COURT: Okay. I'm sure Ms. Davis Jones will ensure that her office gets you that information.

I have reviewed the motion and proposed order. The interim relief is appropriate, necessary and essential. The facts and circumstances of the case establish the importance of the workforce to debtors business and the success of these Chapter 11 cases.

Also, as noted, the relief requested implicates Bankruptcy Rule 6003 in that it contemplates payment of prepetition obligations in the first few weeks of the case. And for the reasons stated here on the record I am satisfied the debtors have carried their burden and that absent the requested relief, the reorganization efforts would suffer the risk of immediate and irreparable harm.

So, I will enter the order with one additional modification and that is striking "exclusive" from the jurisdiction paragraph.

MS. DAVIS JONES: Understood, Your Honor.

Your Honor, that brings us to Number 7 on the agenda which is our motion with respect to our cash management system. And, Your Honor, as you would assume, there is a cash management system that is used in the ordinary course of this business. What we are seeking is, on an interim basis, to be able to continue that program as it is set forth.

Your Honor, there are a number of comments that were made by the U.S. Trustee's Office with respect to it, if you look at Paragraph 3, and that is to make the point that once we've used our existing supply that we do replace it with checks that are marked "DIP" which is very judicial in this district, Your Honor.

Paragraph 8, Your Honor, is kind of a savings

clause by the U.S. Trustee at the end of Paragraph 8.

THE COURT: Understood. That was one of my questions but I see they addressed it.

MS. DAVIS JONES: Then the last change on -- not last change but there is a change on the last clause of Paragraph 10. They're tightening that up a little bit and making it at the direction of any of the debtors.

Your Honor, the most substantive change in this redline is in Paragraph 15 where the Trustees Office has asked us to put a cap on the inter-debtor transactions. Your Honor, we worked through that number and we're comfortable with where that is. Your Honor, I probably wouldn't be the debtors counsel if I didn't say to Your Honor in case our calculation is a little wrong we might have to come back and seek supplemental relief but, Your Honor, we're pretty comfortable that that is a number that gets us where we need to be on an interim basis.

THE COURT: Does anyone want to be heard with respect to the cash management?

Mr. Bates.

MR. BATES: Good afternoon, Your Honor.

We -- I agree that the substantive remaining change was in Paragraph 15. We did communicate with debtors counsel prior to the hearing and developed an understanding as to what is going to be included there is the cap and how

is this going to be broken down for the benefit of important parties in interest. And based on the information the debtors provided, we are satisfied and comfortable with the interim order being entered with that change in place.

THE COURT: Okay. Thank you very much.

Anyone else want to be heard?

(No verbal response)

THE COURT: I hear no one. I have reviewed the motion and I am satisfied, based on the record, that the relief is appropriate and warranted to minimize disruptions to the debtors business operations as they enter Chapter 11. So, I will enter the interim order subject to two modifications.

Please strike, in Paragraph 6, the very last line. There is a proviso about post-petition financing: "Subject to the terms and conditions of any post-petition financing."

In Paragraph 9 there is a similar proviso that is at the beginning of the paragraph. So, strike "Subject to the terms hereof and the applicable requirements." Just say the debtors are "authorized but not directed."

MS. DAVIS JONES: Thank you.

THE COURT: Thank you.

MS. DAVIS JONES: Your Honor, that brings us to Matter Number 8, which is our utilities motion. Your Honor, in the ordinary course the debtor does incur expenses related

to utilities. And, Your Honor, what we have provided for is the typical procedure of this district with respect to a deposit to give some adequate assurance comfort to our utilities.

Your Honor, the one change that was brought to my attention right before we started the hearing is that we had agreed that with respect to the situations where the landlord pays the utilities that that landlord isn't going to be deemed a utility for purposes of this motion. That caveat did not get into the order. We will make sure that it gets into it before we upload it. And this is from Ms. Heilman. I think the key there, Your Honor, is they don't want to be put in a position as if they're a utility and have to be bound by this because it actually effects honoring their lease.

THE COURT: Does anyone want to be heard on that? Does the U.S. Trustee have a position with respect to that?

MR. BATES: Your Honor, my understanding is that that issues is resolved prior to the hearing. I don't believe we are taking a position on that.

THE COURT: Okay. Ms. Heilman, did you want to be heard?

MS. HEILMAN: Good afternoon, Your Honor. Leslie Heilman, Ballard Sphar, for the record on behalf of landlords of 12 locations of the debtors, Your Honor, as I signed in earlier today.

Your Honor, with respect to the utility motion we do believe that Paragraph 12 of that order has been stricken which is the paragraph that was seeking to bind landlords by the provisions of the utility order because they provide utilities pursuant to the terms of the leases to the debtor.

Your Honor, they are not utility providers and they shouldn't be bound by a 366 order. All rights and obligations under the lease arise under Section 365 and another provision that we did ask for to be added to the order, because the motion did seek to deem landlords as utility providers, was that the order would say "Notwithstanding anything in the order or the motion to the contrary but Section 365 will control the rights and obligations of the debtors and the landlords under the leases."

And I believe with the record, we are going to add that provision before its uploaded to you today.

THE COURT: Okay. Does anyone else wish to be heard?

(No verbal response)

THE COURT: Okay. I've reviewed the motion and the proposed -- revised proposed order. I am satisfied, based on the record presented, the relief is appropriate. The proposed procedures are reasonable and consistent with procedures routinely granted in this district. And they

strike an appropriate balance between the debtors need for uninterrupted utility service and utility service providers entitled to adequate assurance under Section 366.

I am also satisfied the debtors have shown that immediate and irreparable harm would result if this relief were not granted on an interim basis. So, I will enter the order and I think all it needs is the scheduling and the modification that the parties discussed.

MS. DAVIS JONES: Thank you, Your Honor.

Your Honor, that brings us to the payment of taxes motion. Your Honor, in the ordinary course the debtor does collect taxes on behalf of other parties that it then pays over. Nothing unusual in this one.

Your Honor, we did put a cap in here. I think its $3.05 million pending entry of the final order. And, Your Honor, if you look at the blackline on Paragraph 4, the U.S. Trustee did strike the language that is typically in here including for the avoidance of doubt posting collateral or letter of credit in connection with any dispute on audits or paying taxes and fees as a result of an audit or enter into new agreements on renewal of other fees.

Your Honor, I will need to check with our co-CRO's and make sure that at a final basis we're okay with that being stricken. I understand this is just an interim order and I really think we are okay for the next period of time

but that is the first I had seen this type of language stricken. Usually -- we usually try to finish out audits and so forth but I will check with the CRO's and I just wanted to reserve my rights on the record that we may have a different opinion when we come at final.

THE COURT: Understood.

Does anybody else want to be heard?

MR. BATES: Your Honor, provided that the order is amended on an interim basis, we are happy to reserve rights on final.

THE COURT: All rights reserved on a final basis.

I have reviewed the motion. I am satisfied, based on this record that the relief is customary, appropriate, and warranted. And this relief also implicates Bankruptcy Rule 6003 in that it contemplates payment of prepetition obligations. I am satisfied the debtors efforts would suffer the risk of immediate and irreparable harm in the absence of this relief. So, I will enter this order and I think it just requires scheduling.

MS. DAVIS JONES: Yes, Your Honor. Thank you.

Your Honor, our shippers motion, you can imagine in the retail industry, this is an important relief for the debtor to have. We have put a cap of about $8.4 million in the interim order. In the ordinary course of business, we do use the shippers and various entities like that. And we want

to seek to do that in the ordinary course.

Your Honor, there were no substantive comments related to this order. More just to, again, remove the overlapping DIP provisions in Paragraph 4. They have been taken out. And I think the U.S. Trustee wanted to make clear, in Paragraph 6, that we have the authority to the extent of this interim order.

Your Honor, with that we don't have any issues with any of those comments and we would ask, Your Honor, that we be able to have the authority to pay shippers as needed going forward.

THE COURT: Does anyone else want to be heard with respect to this motion or proposed order?

(No verbal response)

THE COURT: Okay. I have reviewed the motion and the proposed order. I am satisfied, on this record, that the relief is appropriate and warranted. I will enter this order subject to striking "exclusive" in the final paragraph.

MS. DAVIS JONES: Understood, Your Honor. Thank you.

Your Honor, likewise, with the next motion, the debtors, in the ordinary course, maintain insurance, have sureties, have letters of credit and so forth. We are just seeking to continue to have the authority to do that in the ordinary course.

The comments that we received on this, Your Honor, were, one, to strike out the overlap with the DIP order. And, otherwise, to clarify, Your Honor, with respect to SIR's that we're authorized but not directed to pay any post-petition obligations on account of the deductibles or the SIR's to the extent such action is in the ordinary course of business. I think the U.S. Trustee's Office wanted to clarify that that is a post-petition -- if it's a post-petition obligation, Your Honor.

With that, Your Honor, I think we had no other comments to this order and we would ask that it be approved.

THE COURT: Does anyone want to be heard on the insurance motion or the proposed form of order?

(No verbal response)

THE COURT: Okay. I hear no one. I will grant this motion. Again, this is standard relief in the jurisdiction and I have observed many times that operating guidelines of the U.S. Trustee as well as business prudence require an operating entity to have insurance. So, this motion accomplishes those goals, and I have reviewed the motion, and I will grant it.

MS. DAVIS JONES: Thank you, Your Honor.

Matter 12, Your Honor, is our motion with respect to our customer programs. Your Honor may recall, in our customer programs, that we have in the ordinary course and

then we also had a couple other programs that were set out specifically in the motion. One was Synergy. That, Your Honor, we have not yet reached agreement on that with them. So, we are going to talk about that offline and see where we are. We gave Your Honor some idea of what that is about.

THE COURT: This is the credit card program?

MS. DAVIS JONES: Yes. So, we have to work through that.

Then, Your Honor, we also talked about Pure Promise, which I understand we do have an agreement with them. Again, Your Honor, I need to double-check. There were a lot of moving right before the hearing. But, again, we have explained that program and what is going on as part of this motion. So, if we reach agreement, we would go forward with that.

THE COURT: Okay.

MS. DAVIS JONES: You know, otherwise, Your Honor, I think our motion was pretty straightforward. To a concern that Your Honor had, and I think the trustee -- I believe it was the trustee, I might be giving the wrong person credit but in Paragraph 5 the language was put in to make language conspicuous in the going out of business sales and about the signage, and gift cards, and so forth. We appreciate that, Your Honor, and that has been added to our form of order.

THE COURT: So, could I ask you, I have a timing

question with respect to this. At the expense of sounding a little crazy, when is three business days this week? Does that mean next Monday or Friday is a banking day? I guess my concern is that given the timing here that as much notice be provided as possible or is this something that has already taken place and this is a little bit of cushion in here.

MS. DAVIS JONES: Your Honor, we had some research actually done before the hearing on what Friday is --

THE COURT: Okay, thank you. I feel a little more comforted by you saying that.

MS. DAVIS JONES: -- on whether it's a holiday. I think I lost that but in any event, Your Honor, in looking at the Delaware statute it's a state by state how they review the -- how the interpret the federal holiday. And in Delaware it is, indeed, a holiday but there are other states where it's not. From a federal banking perspective, Your Honor, it is not a holiday.

THE COURT: So, bluntly stated, when is this going to occur? This order provides three business days. So, does that mean counting tomorrow, next Monday and Tuesday or can it occur prior to that?

MS. DAVIS JONES: Your Honor, if I may have one moment, let me just ask the --

THE COURT: All right. I think Ms. Van Eck wants to also be heard.

MS. DAVIS JONES: That's fine, Your Honor. I can check on that while she's talking.

THE COURT: Thank you.

MS. VAN ECK: Good afternoon, Your Honor. Melissa Van Eck from the Pennsylvania Office of Attorney General appearing on behalf of the Commonwealth of Pennsylvania.

Your Honor, we have not had an opportunity, a fulsome opportunity, to review the order and to have discussions with debtors counsel. I am going to be honest, Your Honor, we learned of this filing earlier today. So, we have had very little opportunity.

When we initially read the motion, we did have concerns about the short notice with regards to the stores that are closing and as we read it, the gift cards could be used up until December 7th and no more. Given the holiday, that is short notice. So, we have concerns about the timing of that.

The other thing that we did have concerns on, and I raised like, I think, a few minutes before to put the debtors counsel on notice is are gift cards still being sold. Obviously, that is a concern for us. Not just are the debtors selling it but often times some debtors will have third parties selling those gift cards. For instance, at Costco or other venues. So, we want to make sure that those gift cards are still not -- they are not being sold

continually. We want to make sure that customers have the ability to use them if they are still being sold.

So that is, again, something we wanted to flag and highlight. Again, I didn't have an opportunity to speak with debtors counsel beforehand but it is something we wanted to put on the record for both the Court and for debtors counsel.

MS. DAVIS JONES: Your Honor, I hear Ms. Van Eck and she is more than welcome to call me on my cellphone any time.

Your Honor, we did -- I have looked at this gift card issue. We have done quite a few retailers and we have looked at the issue. Your Honor, what I would like to do is after a five-minute break come back and tell you what was agreed upon.

First of all, Your Honor, the whole universe of the gift cards, I think, is $100,000.

Secondly, Your Honor, I believe we're honoring the gift cards through the end of the year. There has been full agreement on this stuff, Your Honor. So, I think it might be helpful for me to take a break and come back and tell you and Ms. Van Eck where we are with respect to the gift cards.

THE COURT: That would be great.

MS. DAVIS JONES: Your Honor, would this be a good time to also take our break with respect to scheduling; maybe just a five, ten-minute break.

THE COURT: The other question I had though is does this case require a consumer privacy ombudsman?

MS. DAVIS JONES: You're reading my mind, Your Honor. We've had quite a few debates on that as well. We are of the present position that we think it does not, given what we have seen, but, Your Honor, there are a few questions that we're still wrestling with to make that final decision.

THE COURT: Okay. Well, we definitely scheduled -- no, we didn't schedule anything. I suspect that we could have like a second interim if we had to on some of these issues.

MS. DAVIS JONES: That is correct, Your Honor.

THE COURT: Okay.

MS. DAVIS JONES: Yeah, because we're looking at the bid procedures, Your Honor, then we're looking at the final hearing and we're looking at a sale hearing.

THE COURT: Okay. Why don't we take a 10-minute break and then we will reconvene.

Thank you, all.

(Recess taken at 4:39 p.m.)

(Proceedings resumed at 5:05 p.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

MS. DAVIS JONES: Your Honor, thank you for giving us the time and then a little extra time. We used it not

only to answer the question that Your Honor left us with but also to go back and pick up some of the other questions that Your Honor had.

With respect to gift cards and signage, Your Honor, they are planning on starting the signage Monday. If possible, they will be doing it by Friday but signage will go up Monday. The gift cards will go through December 22nd. And --

THE COURT: Instead of the 7th?

MS. DAVIS JONES: Yes.

THE COURT: Okay.

MS. DAVIS JONES: And we stopped the gift cards last weekend. We stopped selling any gift cards last weekend.

THE COURT: Okay. Is there any third-party vendor who sells them?

MS. DAVIS JONES: Not that I'm aware of.

THE COURT: Okay.

MS. DAVIS JONES: My understanding is everything was stopped last weekend and I think we're the only ones that sell it.

THE COURT: Okay. I'm assuming that signage isn't going to take long to post.

MS. DAVIS JONES: No. I had the president of the company explain to me signage. I learned. It happens pretty

quickly, Your Honor.

THE COURT: Okay, great.

MS. DAVIS JONES: Your Honor, I wanted to go back, with respect to the PNC loan, and you asked who was the other party, related party in that, there is a Schottenstein Stores letter of credit that's fully cash collateralized of about $900,000. So, 24.1 is the debtor, $900,000 is Schottenstein Stores. It is fully cash collateralized.

With respect to the bid procedures hearing, Your Honor, we are going to take you up on your offer of a hearing on the 9th. And we have received agreement from our stalking horse buyer to extend entry of an order on the bid procedures till the 10th so that we can take that hearing.

With respect to the final DIP hearing, Your Honor, you had said that you had time on the 5th of January. I was asked to find out if Your Honor has any time prior to that. I know we had asked for, I think, December 30th and I know that was not good for the Court.

THE COURT: Unfortunately, I am not here that week. Sorry.

MR. VENTOLA: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. VENTOLA: John Ventola of Choate Hall & Stewart on behalf of Second Avenue Capital Partners, the prepetition ABL agent and proposed DIP agent, Your Honor.

Being, of course, mindful of the Court's schedule and the holidays, what we are trying to avoid is having the DIP, the final hearing on the DIP, be kicked kind of coinciding with the auction and the sale. It sounds like the Court is very busy the week of January 5th.

So, I wanted to see if there was any possibility of having the final DIP hearing. You said you might have time for an interim second day the week of December 15th or so I believe under -- that is not available?

THE COURT: That is not available. Basically from the 15th to the 5th is unavailable.

MR. VENTOLA: Okay. So, you are available on January 5th, Your Honor. That would be the proposal.

THE COURT: Yes. I am available on the 5th. I can give you time on the 7th or the 9th. I just looked at my calendar.

MR. VENTOLA: Could we ask you to reserve time on January 5th, it would be for the final DIP hearing, Your Honor?

THE COURT: Yes, of course.

MR. VENTOLA: Thank you very much.

THE COURT: The 5th at one o'clock, does that work?

MS. DAVIS JONES: That works fine, Your Honor. Thank you.

Your Honor, with respect to the final sale hearing we're going to go back and work through our schedules again and come back to Your Honor on that --

THE COURT: Okay.

MS. DAVIS JONES: -- and figure out where we are going to put things.

(Coughing)

THE COURT: Ms. Jones, I think there are some cough drops over there if you need one.

MS. DAVIS JONES: Thank you, Your Honor.

So, Your Honor, I think we've answered all the questions on the customer programs and we would ask that that be approved.

THE COURT: Does anyone else want to be heard on customer programs?

(No verbal response)

THE COURT: Okay. I am satisfied, based on this record, and the statements of counsel, that the relief is appropriate and warranted. So, I will enter that order on an interim basis.

MS. DAVIS JONES: Thank you, Your Honor.

Your Honor, that then brings us to our DIP financing. Timing is good. I am going to yield to Mr. Litvak.

MR. LITVAK: Good afternoon, Your Honor. Can you

hear me?

THE COURT: Good afternoon. I can.

MR. LITVAK: Your Honor, I turned on my camera. I'm not sure, is it showing up?

THE COURT: You are visible in the courtroom and we can all hear you.

MR. LITVAK: Okay, wonderful. Your Honor, it's Max Litvak, Pachulski Stang Ziehl & Jones, on behalf of the debtors.

Your Honor, I wanted to first address the DIP motion, which is Agenda Number 13, Docket Number 14. We filed it early on November the 24th. I just want to thank the prepetition lenders, the ABL lenders, the PNC lender, as well as the landlords and the U.S. Trustee for working with us on an acceptable form of interim DIP order.

We submitted, Your Honor, prior to the hearing, a redline of the interim DIP order. We also submitted a budget that was very slightly revised. Basically, the budget now contemplates, per PNC's request, that we will also pay certain of their professional fees. It's in the range of $225,000 that is in there. And we took the opportunity also to update the budget with respect to receipts. It increased it $5 million or so. So, we did submit a revised budget, Your Honor. We wanted you to be aware of that.

I understand that the U.S. Trustee still has some

language changes, primarily, issues that they raised with us yesterday. We did address as many of their comments as we could. I think we addressed, I would say, 90 percent of them, if not more, with the lenders support but there are still, I think, a few U.S. Trustee language issues. Also, Your Honor, they asked us to supplement the evidentiary record with respect to the way that the DIP revolver works.

So, Your Honor, what we're asking today for approval of a $50 million DIP revolver with Second Avenue as the DIP agent and DIP lender that will refinance the existing Second Avenue prepetition ABL that is in place. There is currently $39 million, as Ms. Jones mentioned, that is outstanding under that facility, under the existing facility as of the petition date.

Essentially, Your Honor, the debtors are already in an over-advanced position with respect to the borrowing base as it existed on the petition date and yet the debtors need additional funds in order to meet their Chapter 11 administrative obligations including payroll, and vendors, and professional fees, and so forth. So, our budget actually contemplates that that revolver balance will go up to about $47 million. So, we are not going to be -- we are not projected to use the full 50 but we do show 47.

The only way we can do that, Your Honor, is by materially expanding the existing borrowing base under the

revolver. So, the advance rates with respect to inventory are increased, which is good for the debtors estates, and also real estate for the first time is added to the borrowing base net of the PNC debt. There is still some anticipated value above the PNC debt in the real estate that is utilized for purposes of the borrowing base.

So, that gives additional capacity, borrowing capacity, to the debtors, which is critical. We would not be able to survive without this lifeline in the case. So, effectively, there is no money being given. This is not simply a rollup of the existing facility; it's a rollup and an expansion of the borrowing base. So, there is additional borrowing that will be made available.

Does that make sense to Your Honor?

THE COURT: I actually -- so what is the ultimate new funding that is available to the debtors? Once you take out all the fees and expenses, and once you take out a half a million dollar in indemnity accounts, and you apply all of those, what is actually new money being provided to this debtor?

MR. LITVAK: So, Your Honor, as I mentioned, I think that the balance, just in terms of using math, will go from $39 to $47. So, that is $8 million of value that is provided to the debtors estates. But what I would also propose is that I go ahead and put Mr. Morando on to

supplement his first day declaration with some additional testimony on direct.

Would that be acceptable?

THE COURT: Okay. Does any -- it would be acceptable to me but does anybody oppose?

(No verbal response)

THE COURT: Okay, I hear no one. You may proceed.

MR. LITVAK: Your Honor, before I proceed with the questioning, I did want to ask you, you mentioned at the beginning of the hearing that there was some evidence that was lacking with respect to the DIP motion. Would you be so kind as to tell me what that is so that I can ask Mr. Morando the appropriate question?

THE COURT: Yes. I was really concerned more about Paragraphs (j) and (k), (m). Mr. Victor's declaration didn't address those types of issues. Nothing about good faith, arm's length, good cause, those types of issues. So, if the witness could address those as well.

Let me just say, Mr. Morando is still under oath and I would just ask the ECRO to re-implement the courtroom protocol, the broadcast protocol. Thank you.

MR. LITVAK: Your Honor, I apologize. You went through those very quickly. Did you say recitals (j), (k)?

THE COURT: Yes, and (m). (j), for example, talks about material inducement to the credit parties. (k) talks

about fair, reasonable, business judgment, reasonably equivalent value, good faith, etc. Those were not addressed in either of the declarations submitted into evidence; although, I don't believe that Mr. Victor's declaration was submitted into evidence.

MR. LITVAK: No. Actually, that gets me to that, Your Honor. I do believe Mr. Victor is on the line. There he is. Your Honor, we did submit a declaration from Mr. Victor of SSG in support of the DIP motion at Docket Number 16. At this time, I would ask request that the Court admit that declaration into evidence.

THE COURT: Okay. Does anyone object to the admission into evidence of the declaration of J. Scott Victor in support of the DIP financing motion at Docket Number 16?

(No verbal response)

THE COURT: Okay, I hear no one. The declaration is admitted.

(Victor declaration received into evidence)

THE COURT: Does anyone intend to cross-examine Mr. Victor regarding the content of his declaration?

(No verbal response)

THE COURT: Okay, I hear no one. Thank you, Mr. Victor.

MR. VICTOR: Thank you, Your Honor.

MR. LITVAK: Your Honor, we did submit a lengthy

first day declaration from Mr. Morando and I don't know if you've noticed it at the end but in Paragraphs 42 through 49 there is testimony there about the DIP facility, about the negotiation about the good faith and arm's length nature of it. I just wanted to point that out to Your Honor because I don't want to duplicate Mr. Morando's testimony.

Have you seen that, Your Honor?

THE COURT: I did read his declaration. I might have missed it. So, I'm looking for it.

MR. LITVAK: And I apologize because it was buried at the end after a long list of all the other first days that we were simply incorporating the facts in those motions but then at the beginning on Paragraph 42 it actually does contain the evidentiary recitation with respect to the DIP motion.

(Pause)

THE COURT: I see it in part. I'm sorry, I was just looking at the various points.

MR. LITVAK: No problem, Your Honor. Take your time, obviously.

THE COURT: I think the things that aren't in there are a reference to business judgement or reasonably equivalent value. I see good faith, arm's length, and I see inducement but with that, you may proceed. I don't want to hold up --

MR. LITVAK: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LITVAK:

Q Good afternoon, Mr. Morando. Can you hear me okay?

A I can. Good afternoon.

Q Mr. Morando, are you employed by BRG?

A I am.

Q What is your title there?

A I am a managing director in our corporate finance practice.

Q How long have you been a managing director?

A Almost 10 years at BRG.

Q Okay.

A Correction, I've been with BRG for 10 years. I've been a managing director for about five.

Q Can you give us, very briefly, your educational background?

A Sure. I have a finance degree from Northeastern University.

Q When did you get that degree?

A I graduated in 2001.

Q Thank you.

Can you describe for us your professional experience as well as, in particular, your restructuring experience?

A Sure. I have been in the turnaround industry for

approximately 20 years at a few different firms but started at the Recovery Group, then CRG Partners which was acquired by Deloitte in 2012. I was with Deloitte in a similar capacity through 2016 and then have been with BRG since then primarily as a company and lender side financial advisor.

Q Great. And do you have experience specifically with respect to debtor-in-possession financing?

A Yes. I'd say, in the last 12 months, I've worked on 11 retain bankruptcies and restructurings, all of which had a DIP component.

Q Great.

MR. LITVAK: And, Your Honor, if I may ask you a question? There are also issues with respect to the going-out-of-business-sale motion that are raised by the U.S. Trustee and, in the interest of time, I would propose to also ask Mr. Morando questions about that motion --

THE COURT: Certainly.

MR. LITVAK: -- is that okay?

THE COURT: Does anybody oppose that?

(No verbal response)

THE COURT: That's perfectly fine.

MR. LITVAK: Thank you, Your Honor.

BY MR. LITVAK:

Q Mr. Morando, do you also have experience with going-out-of-business sales?

A Yes.
Q How would you describe that experience?
A Very similar to my experience at BRG over the last ten years working significantly in the retail industry, providing financial advisory services to lenders, as well as to debtors directly, many of times which reflected or needed a liquidator to run a going-out-of-business-type liquidation.
Q And specifically with GOB, going-out-of-business liquidation, do you have experience in terms of the fees that liquidators charge?
A Yes, yes, we look at that on all of our deals, that's correct.
Q How much experience do you have in terms of dealing with liquidators, specifically with respect to their fees?
A Significant experience dealing with all the major liquidation firms.
Q When was BRG retained in this case for the debtors?
A We were retained in mid-October, and then retained as co-CROs on November 8th.
Q And your title with American Signature, is that a co-chief restructuring officer?
A That's correct.
Q And who's the other co-chief restructuring officer?
A My partner, Steve Coulombe.
Q Is he also at BRG?

A Yes, he is.
Q Okay. Are you familiar, Mr. Morando, with the proposed DIP financing in this case?
A Yes.
Q Did you play a role in negotiating it?
A I did.
Q Do you understand that the lender, Second Avenue, is affiliated with the debtors?
A I do.
Q Was there an arm's length negotiation with the lender over the DIP?
A Yes, there was. Over the last week and a half we worked considerably at negotiating this DIP and making sure that we could get the best pricing possible, in conjunction with Scott Victor and SSG's process to go market the DIP to see if we could secure even better financing.
Q Were they able to secure even better financing?
A No, not at this time, no.
Q Were they able to secure any alternative financing? Is any alternative financing available to the debtors?
A No.
Q Was there a lot of back and forth in the negotiations with Second Avenue and their representatives over the DIP?
A Yes.
Q Would you characterize it as a good faith negotiation?

A Yes.
Q Were both sides represented by separate counsel?
A Yes.
Q Do the debtors need this DIP?
A Yes, they do.
Q Why?
A Our baseline liquidity for cash showed a meaningful liquidity hole, north of $10 million, and through this negotiation we're able to create approximately $20 million of incremental value. That value comes, as you alluded to earlier, through providing incremental advance rates on inventory, increasing our advance rate from 90 percent to a hundred percent, and also including real estate as a new piece of collateral that it will be advanced against. Those two components are approximately $20 million of incremental value over this forecast period.
Q Mr. Morando, you may have heard that Your Honor -- Judge Stickles mentioned that she wanted to know how much new money is actually being made available to the estates under this proposed DIP, how would you respond to that question?
A Approximately $20 million in new availability is created by this DIP.
Q Mr. Morando, how soon do the debtors need this DIP?
A Immediately. There's a payroll run that needs to be funded tomorrow that we -- is obviously critical to the

operations of the business.

Q And how many people are on payroll who are relying on that money?

A Approximately 3,000.

Q How much is that payroll, approximately?

A Three and a half million dollars.

Q How much is currently outstanding under the revolver as of the petition date?

A Approximately $39 million.

Q And how much do the debtors project that they will need to borrow under the DIP during the term of the budget, how high will the balance go under the DIP?

A So, the projected loan balance peaks at approximately $47 million during the forecast period, which leaves us with approximately two to $3 million of availability. So, the full $50 million commitment is required. You can't operate a business of this size with no cushion.

Q So are you saying, Mr. Morando, notwithstanding the budget projection of a $47 million potential borrowing that you may need to go higher?

A Yes, it's possible.

Q And does this DIP facility provide that availability to the debtors?

A Yes, the commitment is 50 million.

Q Do you believe, Mr. Morando, in the exercise of your business judgment that the terms of the DIP facility are fair and reasonable, and in the best interests of the debtors' estates?

A I do.

Q Okay. Now, Mr. Morando, I'm going to ask you some questions about the GOB sale motion, going-out-of-business sale motion. Are you familiar with that motion?

A Yes, I am.

Q What are the debtors asking for -- well, let me ask it this way, sorry.

Are the debtors asking to -- through that motion, are the debtors asking to continue liquidation sales at 33 stores?

A That's correct. There are 33 stores currently being liquidated that will continue to be liquidated between now and the end of January, being closed out in different phases.

Q And who is the liquidator, or the consultant, as it's called under that motion?

A SB360.

Q Is SB360 affiliated with the debtors?

A Yes.

Q Why are the debtors liquidating these 33 stores?

A So, there are two different waves of stores being liquidated. The first five stores were identified in

September; those liquidations began in October, primarily in Tennessee, and were under-performing stores that did not have positive four-wall contribution. Similarly, there was a second wave that kicked off about two weeks ago of 28 stores that are now currently liquidating. Those 28 stores are spread throughout the country, but also have collective negative four-wall contribution, which means they lose money in and of themselves just by the stores, you know, approximately $20 million a year between all of -- all 33 stores. So, the short and long is, they lost money and were not stores that could be salvaged under any go-forward scenario.

Q And is it your business judgment that it is beneficial to the estates to continue that liquidation effort now?

A Yes.

Q What is it that SB360, the consultant, is doing for the debtors with respect to those 33 stores?

A So, they are leading the store liquidation process at all 33 stores, that includes posting signage, supervision, managing the store employees, running the discount cadence of product at those stores, and trying to move through the product as quickly as possible to manage overall expense.

Q And you may have mentioned it, but just to emphasize it a little bit, when did the GOB sale process commence for the 33 stores -- or five initially and then 28, when did that

start?
A Two different -- yeah, two different waves. The first five stores began liquidating in October of this year, and then the 28 stores began liquidating in November of this year, a couple of weeks ago.
Q And when do you expect these liquidation efforts, if the Court were to authorize the debtors to continue the liquidation effort, when do you expect it to be complete?
A So, the first wave of five stores will be completed by the end of January 2026, the second wave of 28 stores are estimated to be completed by the end of December 2025.
Q Are you familiar with the fee structure under the consulting agreement with SB360?
A Yes.
Q Did you renegotiate the fees under this agreement at some point?
A We did negotiate the fees. We also prepared a comp analysis of recent retail liquidations to get comfortable with what I would describe as kind of the key economics of their proposal, things like the base fee, the argument fee, their fee for selling furniture, fixtures, and equipment, et cetera.
Q Before we get into what those fees actually are, let me just ask you the question, were the fees under the proposed consulting agreement negotiated at arm's length and in good

faith --

A Yes.

Q -- between the debtors and SB360?

A Yes.

Q What is the proposed fee structure that's proposed -- sorry -- what is the proposed fee structure?

A So, the proposed fee structure is a base liquidation fee of two percent and, based on my analysis, that is very competitive in the current market. The argument fee, so this is for product that is brought into the stores by the liquidating consultant and then sold within, you know, our retail footprint, the debtors would receive a fee of seven percent for all of those sales. Again, based on my comp analysis, that's reasonable. You know, I've seen ranges of five to ten percent, so it's right in the middle of where I would have expected it to be, heavily weighted towards that five-to-seven-percent range.

The fee for monetizing furniture, fixtures, and equipment is 15 percent; again also, based on my comp analysis, very market, it was the median in our analysis.

Q Can you describe the comp analysis that you did? How many companies, what conclusions did you reach?

A Yeah, so we went and pulled a number of major retail filings over the last three to five years, it was well in excess of 20 comps that we thought were comparable, and

either cases that I worked on directly or that we had access to were used to help facilitate this analysis.

Q And, based on that analysis, what conclusion did you reach?

A That this is a market proposal and the economics are reasonable.

Q And, aside from the economics, would it make any sense at all to replace SB360 in the middle of this liquidation process that's ongoing?

A No, for two reasons: One is they're already plugged into the company, helping us liquidate 33 stores. They're familiar with our systems, our people, the stores themselves, how the product moves in the market. I think that is incredibly valuable. And then the second part is they have a competitive proposal, the economics are at or better than market. And, for all of those reasons, I'm very comfortable using them going forward.

Q Do you believe, Mr. Morando, in the exercise of your business judgment that the terms of the SB360 consulting agreement are fair and reasonable, and in the best interest of the debtors' estates?

A Yes.

Q Thank you, Mr. Morando.

MR. LITVAK: And, Your Honor, that concludes the direct testimony.

THE COURT: Okay. Thank you.

Any cross-examination?

MR. FOX: Good afternoon, Your Honor, may it please the Court, Tim Fox on behalf of the United States Trustee. I will be asking some questions on cross with respect to the GOB motion. I conferred with my colleague Mr. Bates and we don't have anything with respect to the DIP points, but do have issues that will be raised in argument, as Mr. Litvak previewed for the Court, with respect to that relief.

So, just bear with me. As Mr. Morando is testifying remotely, I would just ask if he has a copy of his declaration available to him, to the extent I refer to specific provisions of that document.

THE WITNESS: I do, Mr. Fox, I do.

CROSS-EXAMINATION

BY MR. FOX:

Q Okay, excellent. And let me start with respect to your declaration and direct your attention to paragraph 31.

A Yes, I'm there.

Q And, Mr. Morando -- and apologies if I am mispronouncing your last name, I've heard it said a few times and may be emphasizing the wrong --

A You've got it.

Q Okay.

A Thank you.
Q In paragraph 31 it identifies, September of 2025, the company retained SB360 to act as a consultant in connection with conducting store closing at and closing five stores. You testified to that, but do you have a specific date in September of 2025 upon which the debtors engaged SB360 as to those stores?
A I do not know the specific date, Mr. Fox.
Q And you did testify that BRG was only initially engaged in October of 2025, is that correct?
A That is correct.
Q And then within paragraph 31 of your declaration it identifies November of 2025 as the company entering into an amendment on that consulting agreement with SB360, are you aware of the date of that amendment?
A Not off the top of my head, no. It was approximately two weeks ago.
Q If I were to identify that the motion for the consulting relief identifies November the 13th, would that refresh your recollection?
A Yes, that sounds about right.
Q And with respect to your retention as co-CRO, could you state what date that was finalized?
A November 8th.
Q Okay, if you will skip ahead to paragraph 35 of your

declaration. In paragraph 35, you list several bullets relating to a number of parties in these cases that have interests either affiliated with the debtors or the Schottenstein family; is that information contained in paragraph 35 true and correct to the best of your information, knowledge, and belief?

A Yes.

Q And, Mr. Morando, you wouldn't have any reason to dispute that SB360 is an affiliate of these Chapter 11 debtors?

A No.

Q Let me turn your attention to the appointment of the independent director, and I believe your declaration discusses this as well. So, if you will go to paragraph 32 of your declaration. Mr. Zalev was appointed on November the 11th of 2025, is that correct?

A Yes.

Q And the conflicts committee, as constituted by the board of directors of ASI, in paragraph 33 of your declaration you testify that that occurred on November the 19th, 2025, correct?

A Yes.

Q And November the 19th, 2025 is six days after November the 13th, 2025?

A That is correct.

Q So, as part of the conflicts committee's ambit, which Ms. Davis Jones discussed earlier on the record, did Mr. Zalev have any input into the terms of SB360's engagement as the proposed consultant?

A No, not to my knowledge.

Q And --

A We have discussed it on several instances, obviously, since then.

Q And in your responsibilities as co-chief restructuring officer, are you taking direction from the entirety of the debtors' board of directors or is there a special ambit for Mr. Zalev and the conflicts committee as to directing your activities?

A I report to the conflicts committee, which is comprised of the independent director.

Q The 33 stores that you've identified in your testimony, the two phases, those stores have been the subject of certain processes to wind down or close those stores, is that correct?

A Can you just elaborate on specifically what you mean about that? What processes are you referring to?

Q So the debtors' intention is to close those stores by either January of 2026 as it relates to the initial five stores or to close the other 28 as of the end of December 2025?

A Yes.
Q In trying to advance those objectives, to the extent SB360 is providing services, it's doing so consistent with applicable state law?
A To the best of my knowledge --
MR. LITVAK: Your Honor, objection, it calls for a legal conclusion.
MR. FOX: I'll ask another question.
THE COURT: Okay.
BY MR. FOX:
Q Mr. Morando, you're not aware of any Court authority for SB360 to proceed other than in compliance with applicable law as it conducts business, correct?
MR. LITVAK: Objection, Your Honor. I don't understand the question. We're asking for Court authority now.
THE COURT: Can you rephrase the question, Mr. Fox?
BY MR. FOX:
Q Until the Court is able to act on the motion at bar, SB360 would not be acting under Court approval to vary the terms of applicable state law as it relates to the sales process, correct?
MR. LITVAK: Objection, Your Honor, it calls for legal conclusion, and indecipherable.

MR. FOX: I'll drop that line of inquiry; I'll save it for argument.

BY MR. FOX:

Q Mr. Morando, you testified as to the economic aspects of the consultant agreement and you mentioned that you had a comparable analysis, is that correct?

A Yes.

Q You mentioned that that involved cases that you had either worked on directly or had information regarding, is that correct?

A Correct.

Q Could you provide an illustrative example of a case that you worked on that was inside of that data set?

A I'm happy to do that. I'm just trying to think through the comps set and specifically what retailer I worked on that was on it, but Rite Aid would be one.

Q And, to your knowledge, was any of the liquidation consultants providing services affiliated with the Rite Aid debtors as part of that relief?

A Can you repeat the question?

Q Certainly. To your knowledge, in the Rite Aid bankruptcy cases, were any of the liquidation consultants or agents affiliated with the Rite Aid Chapter 11 debtors?

A Are you specifically asking if SB360 was involved in the Rite Aid liquidation?

Q That is not my question. I'm asking if you're aware of any of the agents that provided services pursuant to the agreement were affiliated with the Rite Aid Chapter 11 debtors.

A Not that I'm aware of.

Q As it relates to the rest of the comparable data set that you testified to, are you aware of any other situation in your data set where the agent, liquidation consultant, whatever term of art is used, was affiliated with the Chapter 11 debtors seeking to employ them?

A I am not.

Q Are you aware of any case outside of your data set where the liquidation consultant or agent was affiliated with a Chapter 11 debtor requesting services of their affiliate to provide store closings or going-out-of-business sale relief?

MR. LITVAK: Just if you could, I want to make sure I understand your question. You keep saying liquidating agent, what exactly are you asking?

BY MR. FOX:

Q Apologies for any confusion. SB360 and some of the other parties here go by various terms of art as part of similar relief sought in the Bankruptcy Court here. So, to the extent I use agent, liquidation consultant, store closings consultant, or any similar term, it is in relation to SB360 or its competitors in the market to provide services

relating to store closings and going out of business. Do you understand generally what I'm --

A I do, but I just want to take a step back and talk about Rite Aid for an example. There are a number of liquidation firms that provide these services, SB360 is just one of them; they were involved in Rite Aid. I want to understand specifically what your question is, are you asking about other liquidators being involved?

Q Yes. My question was, were any of the liquidators involved that you were comparing terms in your comparability analysis affiliates --

A Yes.

Q -- of the Rite Aid Chapter 11 debtors?

A Yes, that question I understand. The answer is yes. This was a broad sample set of all recent retail liquidations and the most common liquidators, Gordon Brothers, Hilco, SB360, et cetera, were included in that population. So, it was a broad base of comps.

Q I don't believe that is responsive to the question I was asking. My question was any of those competitor firms, in addition to SB360, were they affiliates of the Rite Aid Chapter 11 debtors?

A Yes.

Q Can you identify the specific affiliation between the agent and the Rite Aid Chapter 11 debtor -- or debtors?

A Well, there were two liquidation firms that participated, Hilco and SB360, in the Rite Aid liquidation.
Q And Hilco or Gordon Brothers was affiliated with Rite Aid?
A No, no, they were just hired as a liquidation firm.
Q Okay. So, again, apologies for any confusion, part of the reason, my office is trying to understand this is as it is a complicated set of facts. But for clarity of the record, if you're looking at Hilco, Gordon Brothers, SB360, Tiger, Great American Capital, or any other party that provides store closing or going-out-of-business sales, were any of those parties included in the comparability analysis affiliated with the Chapter 11 debtor for which they were being engaged?
A I don't know the answer to that question; to the best of my knowledge, no.
Q And then generally, in terms of your experience in restructuring matters involving retail companies, are you aware of another instance where a liquidation consultant constituting all of those firms I mentioned previously was affiliated with the Chapter 11 debtor that was seeking to employ them for purposes of engaging in going-out-of-business store closings or similar sales?
A None comes to mind, no, not that I'm aware of.
Q And in terms of the mechanics of negotiating with

respect to the November 13th amendment to the store closings agreement -- and apologies if I'm not using the specific term of art here, again, I understand that there are many labels for this type of activity, but when the agreement was amended in November, November 13th of 2025, did BRG or any other representative of the Chapter 11 debtors solicit competing proposals from any party beyond SB360?

A No. SB360 was already involved and, based on my business judgment and based on our comp analysis, it made sense to continue moving forward with them.

Q And, Mr. Morando, do you have personal knowledge of how the decision to engage SB360 in September of 2025 occurred?

A No.

MR. FOX: Thank you, Your Honor. I think that's all I have.

THE COURT: Okay.

MR. FOX: I would reserve for recross, if there's any redirect.

THE COURT: Okay. Any redirect?

MR. LITVAK: No, Your Honor.

THE COURT: Okay. Anyone else want to -- all right, I hear no one -- I'm sorry, Ms. Davis Jones?

MS. DAVIS JONES: Your Honor, can I ask one question of the witness?

//

REDIRECT EXAMINATION

BY MS. DAVIS JONES:

Q Sir, are you aware that there's a conflicts committee?

A Yes.

Q And did we -- in your declaration, did you discuss that conflicts committee?

A Yes.

Q Do you understand how it works?

A Yes.

Q Is it your understand that that -- those decisions that are reviewed by the conflicts committee, are they only forward-looking or can they look back at decisions that are existing?

A They have the ability to go backwards as well.

Q Do you know if the subject of SB360 doing the GOB sales, continuing on with them, whether that is something that the conflicts committee would have looked at?

A Yes, we've had a number of conversations together about this.

MS. DAVIS JONES: Thank you, Your Honor.

THE COURT: Any recross?

MR. FOX: I'm good, Your Honor. Thank you.

THE COURT: Okay. Thank you.

Okay, sir, you're excused. Thank you.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

THE COURT: In full candor to Counsel, I have no court staff after 6:45. So, I don't know if we're going to have to resume tomorrow morning, but I know that you need a DIP, or at least you want to put forward argument on a DIP. So, I'm not sure how you want to use your time.

MR. LITVAK: Your Honor, if I may, this is Max Litvak for the debtors. I would propose that we try to conclude the hearing with respect to the interim DIP at this point. I'm not going to go through and make a lot of arguments because I think that the evidentiary record speaks for itself and we've laid out the terms of the DIP facility and the proposed use of cash collateral, and the only thing that's left is for the U.S. Trustee to tell us -- and Your Honor of course to tell us if you have any issues with the order, and the U.S. Trustee's Office to tell us if they have any issues with the order because I don't think that they have a substantive objection to approval of the DIP facility.

THE COURT: Okay. Well, let me hear from the U.S. Trustee and others.

Mr. Bates.

MR. BATES: Your Honor, for the record, again, Malcolm Bates on behalf of the U.S. Trustee's Office. Mr. Litvak is correct that we are not opposing entry of an interim DIP, but we do have some specific objections as to

items that are included in the form of DIP order. I'm happy to walk through those now and, you know, address any responses from the debtors.

THE COURT: Okay, that would work for me.

MR. BATES: Your Honor, the first issue -- and I'll apologize in advance if I'm looking at the wrong version of this document, I certainly hope not, but the first issue appears on page 13 of my version of the order, which is paragraph F(ix), and this is the debtors' stipulation with respect to releases as to the DIP lender and prepetition ABL lender that the debtors are asking the Court to approve on -- providing through this interim order.

Your Honor, this is an insider DIP, it's obviously subject to heightened scrutiny. The substance of the DIP, notwithstanding the testimony of the witness here today, is essentially a complete rollup of the prepetition ABL facility. And given the structure of this transaction, the related store closing transaction, how the cases came in, the speed at which we're moving, and what I believe would be the substantial interest that a potential committee would have in the releases that are granted pursuant to this order, we'd ask that these be made subject to final, and that this be amended both in the debtors' stipulation in this paragraph and in paragraph 34 of the interim order, which appears on page 59 of the version I'm consulting.

And I'm happy to just walk through everything all at once, if Your Honor would prefer that.

THE COURT: That's fine.

MR. BATES: Okay, great. The next issue we raised, Your Honor, appears at Footnote 4, which is on page 19 of the version I'm consulting, just under paragraph H. Your Honor, this footnote --

THE COURT: Okay, bear with me a second, I'm not there.

MR. BATES: I apologize, Your Honor. I'll take my time here.

THE COURT: I know there's some meaty footnotes in here. Okay, Footnote 4?

MR. BATES: Yes, Your Honor. Your Honor, this is the definition of paid in full as used in the order. Initially, the definition provides that, you know, it's the indefeasible repayment in full in cash, the sort of language you would expect to see in a definition like this. About halfway through the paragraph, it includes a separate precondition to full repayment that the prepetition and DIP lenders receive the releases or, in the event of the appointment of a committee, that any challenge having been asserted has been dismissed with prejudice, there's a final, non-appealable order.

Your Honor, the bottom line is this: We object to

anything in the definition of paid in full that goes beyond the indivisible -- indefeasible repayment in full in cash and incorporates this release concept. For the same reasons we oppose approval of the releases in the interim order, we don't think this definition should incorporate the release concept. It's not clear to me that if a successful challenge is prosecuted in this case that it's possible for these amounts to be paid in full under this definition. This is not a customary term that we would see in a DIP order and I don't think it should be approved here.

The next objection raised, Your Honor, is on the very next page. This is in paragraph J, which in my version has the heading Sections 506(c) and 552(b).

Your Honor, the objection we raised here was with respect to the 552(b) equities of the case language. If you look at subparagraph (x) here, about four lines from the bottom of the page, it says, "A waiver of any equities" --

THE COURT: Wait, wait, wait, I'm not there.

MR. BATES: I apologize, Your Honor.

THE COURT: J(x)?

MR. BATES: Yes, Your Honor.

THE COURT: Okay, sorry.

MR. BATES: No problem at all. I have a very bad habit of moving too quickly.

THE COURT: No, that's okay.

MR. BATES: So, this paragraph -- basically, the subparagraph (x) reads, "A waiver of any equities of the case exceptions or claims under Section 552(b) of the Bankruptcy Code, and the waiver of unjust enrichment and similar equitable relief, as set forth below," Your Honor, we're just asking for the language after Section 552(b) of the Bankruptcy Code to be stricken. Again, this is language we're not accustomed to seeing in DIP orders and I'm not sure what the basis for this is, but we think the order should track the statute.

I'm going to jump ahead now, Your Honor, to paragraph 26, that appears on page 49 of the version I'm consulting.

THE COURT: Are you -- paragraph 26, indemnification?

MR. BATES: Indemnification, Your Honor, yes. The comment we have given the debtors here is that this paragraph should include language that, to the extent a party brings a successful challenge the debtors' estate should not be required to indemnify the parties that would otherwise be entitled to indemnification for costs and fees incurred in connection with that challenge. We think this renders the indemnification provision illusory, essentially.

To the extent this -- the Court feels that this does not need to be addressed in the interim order, we would

want to reserve rights on this with respect to the final order, but that was the objection that we had lodged with the debtors.

THE COURT: Wait, can you make your argument again on this provision?

MR. BATES: Of course, Your Honor. The comment we had made is that if a prepetition lender party is the subject of a successful challenge and they would otherwise be entitled to indemnification, the order should make clear that they're not entitled to indemnification for costs and fees that they incurred in connection with that successful challenge, and that it essentially renders the challenge procedures illusory because the debtors' estates are remunerating the lender that was the subject of the challenge in either scenario.

THE COURT: Okay. Thank you.

MR. BATES: Your Honor, I already addressed the release provision in paragraph 34 on page 59; I won't go through that again. Instead, I'll go to paragraph 44, which begins on page 63, but my objection relates to language on page 64. And this is the challenge deadline, Your Honor.

THE COURT: Did you say 64?

MR. BATES: 64 in my version, Your Honor. I could be wrong.

(Pause)

MR. BATES: It looks like this could be on page 67 of the version Your Honor has. I'm not sure.

THE COURT: Okay.

MR. BATES: Okay. Your Honor, the language with respect to the challenge deadline currently provides that it will be the earlier of, one, subject to entry of the final order concurrent with the hearing approving a sale of substantially all of the debtors' asset or confirming a plan of reorganization; and, two, 75 calendar days after entry of the interim order. We'd like to strike everything before 75 days after entry of the interim order. We don't think it's appropriate to tee this up in the interim order this way. The local rules provide that parties are entitled to the full 75 days after entry of the interim order.

If the lenders would like to seek this relief in connection with the final order, they're entitled to. We would reserve all rights with respect to that, but we believe it's not appropriate to include the language in the interim order.

And the last issue we have, Your Honor, is in paragraph 45, it ought to be on the very next page, and this is the credit bidding paragraph. And, Your Honor, as with several other provisions we've identified, we think that credit bid rights should be subject to entry of the final order granting that relief. We understand that credit

bidding is subject to Section 363 and challenge rights in paragraph 44, but we also believe that it's customary in these orders to have credit bids made subject to the final order, in particular in cases involving an insider DIP.

THE COURT: Okay. Thank you.

MR. VENTOLA: May I respond, Your Honor?

THE COURT: Yes.

MR. VENTOLA: John Ventola of Choate Hall & Stewart on behalf of Second Avenue Capital Partners, Your Honor. So I'll try to respond in order to the issues that the U.S. Trustee raised and ask the court to overrule those objections.

So, first, Your Honor, with respect to the release provisions, these are extremely customary releases because they -- at the interim order stage -- because they are limited specifically to the Debtors. And as you've already heard through testimony live today and through the declarations, there is going to be immediate funding that is necessary to preserve the value of these estates by my client.

And I think it is only fair -- and I have never seen a DIP that doesn't have a provision like this where the Debtors release the lenders who are making that new financing available.

THE COURT: Even an insider transactions like

these?

MR. VENTOLA: Again, I've never seen a DIP that doesn't have a comparable provision, Your Honor. And what is, I think, the reason why it's become so customary is that the rights of every other party are fully preserved through the challenge provisions in paragraph 44, the committee, any other party in interest, and we certainly believe that a committee will be appointed in this case, given the size of it and the number of creditors.

So all we're asking is to not enter into a new loan facility with someone who might bring an action against us. We don't believe there is any possibility of a claim by the Debtors here, but we are simply asking to eliminate that risk in exchange for the new financing that's being provided.

You already heard, Your Honor, that new financing is coming from material increases in the borrowing base advance rates, which I think is quite unusual in most DIPs in my experience. So we believe the release by the Debtors at the (inaudible) stages is extremely fair given the challenge provisions, Your Honor.

The U.S. Trustee made a note that there's a kind of an immediate roll-up. Just to be clear, Your Honor, I think this was covered in the motion as well. This is a so-called creeping roll-up. We're not asking to roll up in full at this stage, Your Honor. Just wanted to make sure

there was no confusion about that.

Similarly, Your Honor, with respect to footnote four, as the U.S. Trustee highlighted, that term is only used in the interim order with respect to the grant of adequate protection to the ABL lenders and the -- we're not asking for a lease now binding on other parties. It's simply saying until we are paid in full, as defined, the adequate protection continues.

I'm sure there'll be further discussions about when that occurs, when the full payoff will occur, when we're paid in full. But I believe the U.S. Trustee himself said that this should apply to the indefeasible payment in full of the ABL. And that's what that footnote says, effectively, Your Honor, is we're paid and we're released from any further --

THE COURT: Why do you need it? Why redefine a term that's pretty customary?

MR. VENTOLA: Well, I think we are defining it, Your Honor. Again, if it's only used for that specific provision, we're giving notice to parties what we would expect the adequate protection to be and the duration of the adequate protection. That's why we included the definition, Your Honor.

The next point, Your Honor, on page 21, I believe its finding with respect -- I'm sorry, I lost my page, Your

Honor. With respect to Section 506(c) and 552(b), again, Your Honor, the lead-in to this paragraph is that the Debtors have agreed to these things.

Further on in the order, as is customary, the 506(c) waiver, the 552 waivers are subject to the entry of the final order. All this finding says that the Debtors have agreed as a condition to obtaining financing to these various provisions, including clause nine, which is, I believe, what the U.S. Trustee was focused on. So again, that's a Debtor agreement. It's not --

THE COURT: So why is it in the stipulations as opposed to a so-ordered paragraph?

MR. VENTOLA: We could move -- Your Honor, again, there's a number of findings that relate to what the Debtors have agreed to, which I think is a factual question, which is why I customarily see this as a finding that the Debtors have agreed to these terms.

The next point that was raised, Your Honor, was in paragraph 26 with respect to the indemnity. And I think this is covered, Your Honor, in paragraph 44, which specifically says the last sentence of paragraph 44, which is the challenge provisions, that upon a successful challenge, the Court can implement any appropriate remedy. And one of those remedies would be to look at our indemnification rights.

It seems so what the U.S. Trustee is saying that

you should rule now that we're not entitled to an indemnity if there's a successful challenge. And I just don't think that's right as a matter of law, Your Honor.

We have indemnification rights, contractually, if we assert -- if we dispute a challenge, we might be entitled to indemnification. We're not asking you to rule on that now. What we're saying is that you shouldn't rule on it in any direction now. And again, you clearly have authority under paragraph 44 to implement any appropriate remedy if the there is, in fact, a successful challenge.

THE COURT: Can this be held to a final order so that you can provide further support for that proposition?

MR. VENTOLA: That we're entitled to indemnity at all, Your Honor?

THE COURT: Not that you're entitled to indemnity at all, but the issue of fees and costs shouldn't be determined until that -- till the issue becomes ripe.

MR. VENTOLA: Oh, I agree with you, Your Honor. I think that would -- in my mind, that is covered by you having the ability to implement an appropriate remedy --

THE COURT: I understand what your argument is. I don't think -- what I'm saying is I'm not hearing a clear argument from both sides. Is this something that can be looked at, can be subject to final order so that we can address this issue at the final hearing is what I'm asking.

MR. VENTOLA: I guess I would ask, Your Honor, this is a corner case hypothetical. But if we ask for indemnity before the final hearing, for some reason, I would ask you to rule at that time. So I don't think the issue is ripe either way right now. So whenever it becomes ripe, we would ask you to rule on it.

Someone could sue us tomorrow, Your Honor, and we might be entitled to indemnity based on that. And again, we're not asking you to say we're entitled to it now, but we're also -- I don't think it's appropriate to say we're not --

THE COURT: Well, maybe you could clean the language up in the proposed paragraph.

MR. VENTOLA: We can do that, Your Honor. We could do that.

And then next, Your Honor, in the challenge provision, what the U.S. Trustee's objected to, this is, in fact, subject to the entry of a final order. What we were trying to do is give notice in this paragraph, Your Honor, that at the final hearing we will ask for the challenge period to be in accordance with what's set forth here. So we're not asking to change the -- we view this as a notice --

THE COURT: Okay, so I've seen this before, that you can't subsequently renegotiate the challenge period if you haven't put parties on notice that you may be seeking a

modified challenge period. That's what you're doing here.

I understand the argument of the United States Trustee. The local rule is what the local rule is. That does not mean that you cannot drop a footnote or put in your notice a hearing of the final DIP hearing that you will be seeking modification of this provision.

MR. VENTOLA: Okay.

THE COURT: But I think I would sustain the U.S. Trustee's argument that they are correct, that under the local rules it's a 75-day period.

MR. VENTOLA: Would it be okay if we put it in the footnote here? I think it's -- if it's in the order itself that we plan to seek that the final hearing -- is that acceptable, Your Honor?

THE COURT: I think you need to do it in that and your notice to make it conspicuous to parties --

MR. VENTOLA: Sure, that's --

THE COURT: -- what you're going to be seeking. But I am aware of other cases that have followed that path and then subsequently agreed to what they had argued they were seeking. And that's the notice for seeking a modification of the challenge period after the interim order.

MR. VENTOLA: Presuming that's okay with the Debtors, that's certainly okay with us to include it in the notice of the final hearing, Your Honor.

And then I believe the last point, Your Honor, is in paragraph 45 with respect to credit bidding, which again, the lead-in to this paragraph is says subject to paragraph 44, which is the challenge periods and the rights of parties and interest under Section 363(k) of the code, we have these credit bid rights.

So I'm not sure there's a dispute here, Your Honor. I believe what the U.S. Trustee was saying, this would be subject to the challenge period, which I believe the lead-in --

THE COURT: I think they're -- I'm sorry for interrupting you, but I think what the U.S. Trustee is arguing, it has become commonplace that the provision in the form of interim order is subject to entry of a final order.

MR. VENTOLA: That's fine, Your Honor.

THE COURT: Okay.

MR. VENTOLA: We certainly don't expect to be credit bidding --

THE COURT: Okay.

MR. VENTOLA: We reserve the right to, but we're not planning to. So we can add that language in, Your Honor, if that resolves it.

And then I would just say, Your Honor, we certainly urge the Court to enter the order, the interim order today, given the funding needs, the undisputed

testimony of Mr. Victor by his declaration that there's no other financing available and everything else you've heard today, Your Honor.

THE COURT: Okay, so did we -- did I rule on all the issues? Because I don't think the argument -- I know we did challenge deadline. You're going to work on language on the indemnification provision. JX or paragraph J Romanette x, strike anything after the code provision. It should read like the code.

And I am going to overrule the U.S. Trustee's objection on the Debtor release. I agree that this is solely as to the Debtors and all other parties' rights are reserved with respect to that provision.

I'm sorry, Mr. Bates, was that everything?

MR. BATES: I just want to make sure, Your Honor. I'm sorry if I missed Your Honor's ruling on this, but with respect to -- and perhaps Your Honor's ruling on releases answers this question. But with respect to the definition in footnote four, will we leave that as is or as the --

THE COURT: This was about the indefeasible repayment.

MR. BATES: That's correct, Your Honor.

THE COURT: I actually wanted to hear if you had further comment on that based on counsel's argument.

MR. BATES: Your Honor, if I understood the

argument correctly, it's that the language that we've identified says that, you know, all we're saying here is that the lenders are entitled to be paid in full. And if that's the case, we view this as surplusage.

THE COURT: Okay.

MR. BATES: And if it's not the case, and this actually goes further than that and incorporates the lease concept, then we have a separate independent objection to that.

THE COURT: Okay, that was exactly the comment I had. Is this overly broad surplusage.

MR. BATES: Okay. And with that, Your Honor --

THE COURT: Well, I think --

MR. BATES: Sorry.

THE COURT: I think that you may be close to resolution of this, but I just want to make sure.

MR. VENTOLA: Your Honor, John Ventola. I would also note, PNC's counsel may have come -- maybe it's easier to just say that we've been indefeasibly paid in full because I think it's hard for me to understand how we'd be indefeasibly paid in full if we haven't been released. But if using the word indefeasible resolves the objection, I think that would -- maybe that's a way to split this.

MR. BATES: Sure, Your Honor.

THE COURT: Okay.

MR. VENTOLA: Thank you, Your Honor.

THE COURT: Okay. So I think that resolves all the U.S. Trustee's comments. I had a few comments. When are the -- there are a lot of fees in this case or in this financing, I should say. And I understand Mr. Victor's declaration. Let me just make a couple of comments.

So, with respect to the budget, are the occupancy charges -- is that landlords anticipating a crowd of people at our next hearing?

MR. LITVAK: Yes, Your Honor.

THE COURT: Okay. And what is the one-time restructuring that was in the budget? I think it's line 10. Yeah. Other one-time restructuring, that's a cost. So is that fees, but -- that lender fees.

MR. LITVAK: Your Honor, I don't know the specific answer to that. I would have to ask Mr. Morando.

THE COURT: Okay. The only other question I have, I think, with respect to the formal order, well, this is actually more substantive. I do have comments on the order. But with respect to these indemnity accounts, there are two of them. They total half a million dollars. And my question is, these are not getting paid until closing anyway. Can these be subject to final order?

MR. VENTOLA: Yes, Your Honor. Just to be clear, they're not paid until closing of the sale.

THE COURT: Right. The sale. To be clear, that's the sale. The bidding procedures are to be filed, that sale. Right?

MR. VENTOLA: Correct. Assuming we close the DIP tomorrow, it will be long after that.

THE COURT: Okay.

MR. VENTOLA: So we can make that subject to the final order.

THE COURT: Okay. All right. Well, I do have a couple comments, but just let me note that very -- I very much appreciate the supplemental testimony here today. That was very helpful.

So, based on the record that's been presented, the proposed DIP financing facility is an exercise of the Debtors' sound business judgment as supported by the First Day declaration, the DIP financing declaration and the testimony here today. The record does establish the Debtors require financing and the use of cash collateral to fund the sale process and the Chapter 11 cases and to maximize value of the Debtors' estates.

So based on the uncontroverted Victor declaration, the DIP facility is the best and only viable financing option currently available to these Debtors. Mr. Morando's testimony establishes that negotiations were conducted at arm's length in good faith with the parties represented by

separate counsel. And the terms are fair and responsible and in the best interest of the estate.

So I will approve the order. I do have some comments on the order. So -- and I run through these quickly and some of these may have been picked up in the modified order.

On page 4, there is a reference to Warznick (phonetic) declaration. And I think that should probably be Scott Victor's or the testimony here today. That's on page 4, right after M. Also, on page 4, you need to include the hearing date. On paragraph A, you need to include the petition date. This is F-8 and I'm looking at the black line on page 14. This is about control. This is a no control provision. And I ask that you modify this to say something that -- something to the effect of solely in their capacity as DIP lender.

As we discussed, paragraph 27 and 28 should say subject to final order or entry of a final order.

MR. LITVAK: Your Honor, I apologize. On that last comment from the Court, are you saying that can we leave in the pre-petition ABL agent and term loan agent there, the pre-petition creditors, as well, solely in their capacities as such?

THE COURT: Yes. Yes.

MR. LITVAK: Okay. Thank you.

THE COURT: I just want to clarify. It's solely in that capacity. You need to insert the scheduling for the final hearing. Paragraph 52 addresses notice. And I just want to make sure that the notice here is consistent with the local rules with respect to service out of a DIP. Because it doesn't really cite a rule or who's saying it's being served.

Let me just say it needs to be compliant with the local and the federal rules for service. And if you could just modify that because there are parties that aren't identified, and I just want to make sure that service is complete.

And then paragraph 53, you need to insert an objection deadline. And with respect to the jurisdiction paragraph, it should just read this court retains jurisdiction.

Now, I am a little confused where we are with respect to scheduling on the final DIP hearing. When is -- so --

MR. VENTOLA: I believe you -- I'm sorry, Your Honor, I believe you set that for January 5th at 1:00 p.m.

THE COURT: Okay. Just want to make sure that that's on that date. So if you could make the objection deadline should be seven days before, unless it's a holiday or --

MS. DAVIS JONES: It's not, Your Honor.

THE COURT: Okay.

MS. DAVIS JONES: It's like the 28th.

THE COURT: Thank you.

MS. DAVIS JONES: The 29th --

THE COURT: All right. And let me just express my gratitude to the Office of United States Trustee for reviewing these pleadings. I know, as Ms. Davis Jones said, you're coming off a furlough, and I very much appreciate the time you spent on the case. Okay. GOB?

MS. DAVIS JONES: Thank you, Your Honor. It's our last matter scheduled for the hearing, and Your Honor, let me thank you on behalf of all of us that you and your staff have stayed with us. We know you've had some long weeks, as well, so we appreciate that.

Your Honor, on the assumption of the consulting agreement and the conducting the store closing sales, we're seeking bid approval on an interim basis of assuming the consulting agreement entered into in September of 2025, by which the consultant assists in liquidating and closing those five identified stores, which was then amended to add 28 more stores.

As provided in the Morando declaration, the testimony today and as set forth in the motion, the Debtors' consultant has already been advertising and conducting liquidation sales at these stores which are scheduled to end

at the end of December of 2025 and in January of 2026.

Your Honor, we set forth in detail in the motion the key terms of the agreement. And we ask the Court to give us authority to move forward despite any lease restrictions or other applicable laws. We do discuss our intention to comply with the fast pay laws.

And we do have an active group of landlords, Your Honor, who have already met. I think I mentioned this a couple hours ago. We have a lot of people in this case, and we had a group of landlords who already met with and SB360 counsel to talk about their concerns, and they're already working out their issues.

The Trustee has raised issues with respect to the affiliation that this, again, another affiliated company and to the economics. And Your Honor, I think the testimony of Mr. Morando, which is uncontroverted, by the way, there's no other independent evidence against this, was that he has experience in the retail industry and indeed quite a bit of it, and that he reviewed the terms of the SB360 contract and he was fine with it.

Secondly, Your Honor, he testified that there is a conflicts committee of the board that also reviewed this, and he said that they spent quite a bit of time talking about it. So they can review transactions. And so that should give us some comfort.

And then, Your Honor, probably the most important for me is he's a co-CRO, and he has uncontroverted business judgment that this agreement made sense. It's in place. It would be efficient to keep going with it. And he thought, as a matter of business judgment, which we all look to, that it was important to keep going.

So I think, Your Honor, with the added coverage of our conflicts committee that looks at these related transactions, I think Your Honor could probably take judicial notice of hundreds of dockets where SB360 has done the work that's being -- they are being asked to do here. This isn't something new.

But, Your Honor, that issue aside, I think with the credit -- with the conflicts committee being okay with it, with the co-CROs being fine with it, the one co-CRO having unredacted -- uncontroverted evidence that he was fine with it as a matter of business judgment, and that given his experience in the retail industry, having looked at these types of agreements and looked at the comps, that he was fine with it, I think it should be approved, Your Honor.

THE COURT: Ms. Jones, let me ask you a technical question.

MS. DAVIS JONES: Yes, ma'am.

THE COURT: Granting this motion on an interim basis, what would that mean in terms of assumption of the

consulting agreement?

MS. DAVIS JONES: Your Honor, that's one issue we talked about quite a bit, is whether you can assume, and I was -- I was, frankly, think that the U.S. Trustee's Office might be a little concerned about that particular issue, and not only just from a precedent perspective, but just a legal perspective.

And so we talked about it with counsel, and it's one of those, Your Honor, that if we had to find a way around it and have it be 363 until we got to the final hearing, I think that's fine. That'll be fine with SB360, Your Honor.

I can make arguments for why assumption does work. And there have been -- you know, assumption is only as good as the order that approves it. So if the Court has it on an interim basis and says I can undo, then you can undo. And it would unravel things back to where it was, except for somebody could probably argue if there's -- for the new efforts, but picking up old cures and what have you, you would have to undo, Your Honor.

I don't know if I've answered your question, but what I've seen the folks do on occasion where the issue's been raised is move to 363 on the interim period.

THE COURT: Okay. All right, well, let me hear -- I'm not sure exactly what the U.S. Trustee has to say because I haven't heard from him.

Can we take one pause?

MR. FOX: Of course, Your Honor.

THE COURT: Thank you, Mr. Fox.

MR. FOX: I'm at your pleasure, Your Honor. May it please the Court, Tim Fox on behalf of the United States Trustee. Your Honor, the U.S. Trustee objects to the consultant motion as being sought today on an interim basis. And I think maybe some historical context might help the Court as to why we're objecting, in total, to the relief being sought here today as opposed to being focused on specific terms. I will echo that the --

THE COURT: You're objecting in its entirety?

MR. FOX: For approval today or in the near future, we would ask that at least a committee have a chance to be appointed to evaluate the terms of the item or to have a more fulsome hearing on additional notice to better develop the record.

But as the record stands here today, Your Honor, the testimony is uncontroverted that, in evaluating the terms of the consultants' agreement, there was not any consideration of whether or not those other consultants had been affiliates of the Chapter 11 Debtors that were seeking to engage their services.

And that structural fact, in terms of there being an affiliate that is seeking to be employed by the Debtor, is

an instance that I'm aware of having occurred only once before, and that was in front of Judge Horan in the HDC or CCM matter.

THE COURT: Wait, what is the matter?

MR. FOX: It's complicated. It was Dirt Cheap was the retail trade name, but they went by HDC or CCM as a result of that not being the most, I guess, enticing moniker as you look to monetize assets. But bear with me while I find my --

THE COURT: And that was -- let me just ask. That was a situation in which the consultant was actually connected or affiliated with the Debtor.

MR. FOX: So in HDC Holdings 2 LLC, et al., which was at lead case number 24-12307, again which was pending before Judge Horan, Hilco Merchant Resources was proposed to do the store closings going out of business sale services. And Hilco Trading or Hilco Global, its corporate parent, was the ultimate beneficial owner of the HDC Holdings 2 LLC enterprise that were Chapter 11 Debtors pending before Judge Horan.

The terms of that agency or consulting agreement -- again, I'll use several different names because the cases are full of different vocabulary that gets used -- had Hilco Merchant Resources, the store closings/liquidation consultant, providing services on an expense reimbursement

basis, but with no fees sought by that consultant for doing the work for its affiliated Chapter 11 Debtors that were under common ownership.

The Debtors here before you today are seeking to approve an agreement that includes fees for services when they are an affiliate of the Chapter 11 Debtors, which is not a formulation or posture that the U.S. Trustee is aware of, having been sought and approved previously, and which again the witness today testified that he was not aware of such an instance.

While the U.S. Trustee has, in the past, asserted that these store closing consultants should be treated as professionals, I'm not making that argument here today, but it highlights the complicated nature of having someone serve and provide services for a Debtor that is then also wearing multiple hats as it relates to the Debtors' Chapter 11 case.

And here, affiliates of SB360 and that are ultimately beneficially owned by the Schottenstein family are also serving as DIP lender and proposed stalking horse, and again, the concern is that, given the historical progression, where the witness could not testify as to how the engagement with SB360 materialized back in September of 2025, that the Debtors here should not be seeking to approve terms with an affiliate of the Debtors to provide services for a fee on an emergent interim basis.

While Ms. Davis Jones referred to business judgment, this is a situation where a heightened standard, enhanced scrutiny, or entire fairness may be applicable. And in the HDC Holdings 2 matter again, case number 24-12307 in front of Judge Horan, by eliminating the fee for service, they were arguing that they would, of course, satisfy an entire fairness because you can't do much better than doing services at cost in terms of the approach here.

The U.S. Trustee doesn't believe we should proceed with this relief, again, on an interim emergent basis. It highlights all of the concerns that we've articulated in the past about the nature of these relationships.

The timing here suggests that this agreement was reached, and while it may have been ratified by the Conflicts Committee at a later date, as Ms.-Davis Jones has argued, that should be subject to additional notice and an opportunity for parties to be heard, most keenly a creditors committee that can test the economic assumptions and ensure that this is the best deal that is available for these Chapter 11 Debtors.

So Your Honor, I'm happy to walk through any additional background or history. I would just note the last time I was in this courtroom arguing or assisting with argument on a store closings motion where the Court denied relief, it was right before COVID. We were in front of Judge

Sontchi in the Art Van Furniture case and that also featured a novel approach in that Hilco or one of the other consultants had agreed to not take a fee, but had bought into the second lien debt and would get their fees by recovering on the debt, which Judge Sontchi ultimately indicated he would not approve on an interim basis in that matter.

Again, this is different than that. But again, it's the morphing circumstances and the many hats that the liquidators are seeking to wear that prompts the extreme concern from the United States Trustee.

THE COURT: Thank you.

MR. FOX: Thank you.

THE COURT: Does anyone else want to be heard?

MS. RUSSELL: Yes, Your Honor. Maura Russell of Leichtman Law PLLC on behalf of SB360 Capital Partners. Thank you, Your Honor.

So the U.S. Trustee's Office -- and I understand that they have raised issues regarding the timing and the speed which all of this is moving under. But unfortunately, we find ourselves this is the timeline that we are in.

Just because SB360 does have an affiliation with the Debtors does not mean that there is anything untoward or anything inappropriate that has gone on. SB360 has been supportive of this Debtor and their efforts. Unfortunately, the bottom has fallen out, and the company finds itself in

the situation that it's in. And SB360 has stepped up and is prepared to work with the Debtors, to support the Debtors, guide them through a store closing sale process.

We've been doing a great job. We are ahead of plan. As the testimony has indicated, the fees that are being paid to SB360 are, in our view, they are below market, but they are certainly at market. There's no hidden fees. The budget has been agreed to on what reimbursed expenses will be. Our fee is a straight percentage of sales. There's nothing hidden in that. There's the projected on what those amounts would be, and they fluctuate based upon what the sales numbers are.

Given where we are prior to the Thanksgiving weekend, where significant sales and promotions have been planned, we believe that it would be very detrimental to the Debtor, their sale process, and the recovery that they would receive on these assets if the sales were not to move forward with the assistance of SB360.

As Ms. Davis Jones indicated, although the motion did request for interim assumption today, in an effort to move the matter along, SB360 would be okay if the Court authorized it to continue to perform under the agreement and to be reimbursed the expenses that it is incurring as well as for the payment of its fees and to defer approval of the assumption of the agreement to a later date and to afford us

the opportunity to, between now and that hearing or an objection deadline, to supplement the record with additional declarations, information on what led up, experience in the industry, and so on and so forth.

We also note that SB360's experience in the furniture industry is, what I would say, unparalleled. There's a list of all major furniture liquidation deals that SB360 has handled. So we would request that the Court enter an order, authorizing us to continue on an interim basis to perform under the contract. And we could deal with the assumption of the agreement at a final hearing at a point where the creditors committee will be in place and we can get them comfortable with where things stand. Thank you, Your Honor.

THE COURT: Thank you.

MS. DAVIS JONES: Your Honor, from the Debtors' perspective, you know, we have to look at each case on its own facts. And I appreciate that there are other cases that may have happened in this district which are not precedential on Your Honor, but could be illustrative. I was not involved in the case that was brought up, so I don't know really the facts behind it.

But Your Honor, I think when we look at this case, you can't ignore that we have an unrefuted declaration and unrefuted testimony of Mr. Morando that, one, this is an

affiliate. Two, that there was a conflicts committee that looks at these affiliated transactions. Three, that he has a wealth of retail experience, and he thought this is fine, he's going forward with it.

Your Honor, and also cannot ignore the reality of we are, as Ms. Russell was just saying, we are on the eve of a holiday weekend. These are sales that are already in place. This is probably the busiest weekend coming up here to get these sales in and the advertising's in place and frankly the only one that suffers, Your Honor, from this kind of -- I'm not sure what is going on here, but this kind of like let's not take the conflicts committee at its word. Let's not take Mr. Morando at his word, who doesn't have any affiliation with SB either.

And the only one that's -- the collateral damage here is going to be the Debtor because there's going to be more money that's not going to be brought in, and there's a carry cost of this stuff sitting around.

So Your Honor, I think someone raised -- it might have been the U.S. Trustee raised the idea of entire fairness if we went there. Your Honor, my corporate law training tells me the fact that we've set up a separate committee of the board that is just dealing with conflicts on these affiliated transactions, that's about as good as you get on entire fairness.

The only thing would be to bring in an outside expert that would look at your conflicts committee of your board and would say is he doing along with his counsel what he should be doing and was it an arm's length -- is it an arm's length situation? So Your Honor, we'd ask that it be approved.

THE COURT: Before -- I have a question, and that is I don't understand or fully comprehend how -- the comment was made in order to move this matter along, you defer approval of the assumption to a later date. And what exactly does that mean?

Because I'll tell you, I understand the timing, okay? I can't do anything about that. The Debtor chose to file when it filed. But what I am concerned about is process and sanctity of the Bankruptcy Court.

And so my question is -- this is different. This isn't a case -- this is a case where the Debtor is directly related to this entity. And so, and I'm not aware of any other case like this. I now have heard from the U.S. Trustee about Dirt, something. Sorry.

MR. FOX: Dirt Cheap.

THE COURT: Dirt Cheap. Thank you. But I wasn't aware of that before, and I am very familiar prior arguments that have been made by the U.S. Trustee with respect to retention. But I have never been confronted with this issue,

and I'm struggling with it.

And so what does it mean to approve process but defer approval of assumption to a later date?

MS. DAVIS JONES: And Your Honor, I think that was the comment that Ms. Russell made, probably piggybacking on what I said, which is that in the interim, if the Court struggles with the concept of assumption of a contract and everything that assumption could bring on a first day of a case, the way to deal with it -- and so that -- and I think what Ms. Russell is trying to say on behalf of SB360, trying to help the Debtor here, is that, fine, we will honor that contract under 363. Give us Court approval to continue on in that contract. 363 because money is going to them and then looking at the final hearing whether assumption would have been right in the first instance. But having had the benefit of that period of time for parties to look at it.

So while we get the benefit of the sales, we get the benefit of this holiday weekend and so forth, we, as the Debtor, the SB will get their fees, but they're taking the risk of whether it will be assumed or not. And Ms. Russell, I apologize, I may have stepped in for you, but that from the Debtors' perspective, that's what I thought you were telling us.

MS. RUSSELL: Yes, Your Honor, that's -- thank you, Laura. Yes, that's what I was saying. And I also do

want to note that 40 percent of SB360 is actually owned by non-Schottenstein affiliates. So SB360 does have a standalone existence and has parties -- that have an ownership in them.

And consistent with what Ms. Davis Jones has said, we just want, to the extent we continue performing under this agreement, that we do have Court approval and that the expenses that we incur, as well as the fees that would be earned, would also -- would be paid to us.

THE COURT: Right. So if I get a committee that comes in here, and for whatever reason, finds that this is untoward, then it's not subject to disgorgement is what you're telling me?

MS. RUSSELL: We would not want it to be disgorgement, but Your Honor would have the ability -- again, for not approving the assumption would be one thing, but we did -- consistent with performing under any contract post-petition part to the extent that their amounts due and owing as a result of both parties performing under that contract post-petition, we would expect to be paid.

However, if a committee comes in and raises an issue and we're not able to reach a consensus with the committee and with the U.S. Trustee's office, and then Your Honor does not approve the assumption of the agreement, then we don't go forward.

THE COURT: Don't go forward, but let's assume for a moment that you are conflicted. So you would want to be a professional who's conflicted, who gets compensated for the service --

MS. RUSSELL: Not a professional, Your Honor. We're a party to a contract. And that ties to the 327 argument that has been litigated both in the Heritage Home Group bankruptcy case, Brookstone. Those would be two cases that were decided in Delaware, but that we just -- if we perform under the contract post-petition and we incur expenses and we are entitled to fees, we would want to be paid.

But to the extent Your Honor says I'm not approving an assumption of this agreement, then that's it. That's where our involvement on the consulting agreement would end.

THE COURT: Okay.

MS. RUSSELL: But the Debtor would have the benefit of the services specifically going through this holiday weekend there.

THE COURT: First of all, Mr. Fox, can you wait a minute?

MR. FOX: Of course.

THE COURT: Mr. Gold has his hand raised.

MR. GOLD: Thank you, Your Honor. And I'm not

here to oppose the sale. My client is Tempur World, LLC, Your Honor. And we've just retained local counsel, and we're in process of filing my papers for pro hac. So I'd ask that I be able to address Limited issues with the court today.

THE COURT: You may.

MR. GOLD: Thank you, Your Honor. Once again, for the record, Ronald Gold, Frost, Brown Todd, on behalf of Tempur World LLC. Tempur is the parent for a Tempur-Pedic Sealy Mattress and Sherwood East, three of the Debtors' largest unsecured creditors. We have a retailer agreement with the Debtors from 2021.

We have raised certain issues with the Debtors and the consultant regarding the conduct of the sale that addresses advertising, signage, augmentation and rebates as it relates to Tempur products. We have sent a proposed side letter with to the Debtors and the consultant. We're optimistic, as we have in the past with this group, that we will reach an agreement.

But in the event that we are unable to, Your Honor, we'll have to address those issues with the Court. We wanted just to make sure the Court was aware of those issues. We are the exclusive mattress retailer for the Debtors, so our issues are unique.

THE COURT: Okay, thank you.

MR. GOLD: Thank you, Your Honor.

MR. VENTOLA: Your Honor, John Ventola, on behalf of Second Avenue. Just briefly, Your Honor, wanted to rise to urge the Court to grant the interim approval that the Debtors are seeking with respect to this contract as modified during the argument today.

I just want to reemphasize, Your Honor, how important it is not to disrupt these sales leading into the most important shopping period of the entire year. Second Ave is being asked to lend starting tomorrow and is prepared to start lending tomorrow. Once the interim order's entered. The interim DIP order. But that has all been predicated on a budget developed in parallel with the proposed sale process, Your Honor.

So it's vitally important to us that the sales not be disrupted. And I agree with really everything that Ms. Davis Jones said earlier, other than the collateral damage could be to the DIP lenders. If our collateral is not being sort of monetized in the way that the Debtors have presented to us, if the sale is interrupted, that could be very detrimental to us, Your Honor. So we would urge the Court to enter the interim relief that's being asked today. Thank you.

THE COURT: Mr. Fox?

MR. FOX: Your Honor, it may please the Court. Tim Fox, on behalf of the United States Trustee, just rising

to point out that the parties that are requesting this relief to be approved are the ones that were at the negotiating table and had the control over the levers on the process leading us into court here today.

Again, evidence today indicates that there wasn't any additional marketing or seeking of proposals from unaffiliated parties. This configuration and adding of responsibilities to a liquidator that is both lender and equity owner is a situation that requires additional process and an ability for parties to evaluate whether the transactions that are being proposed should be approved.

This is not a situation that has many direct antecedents. Again, the configuration here is what is prompting the concern from the U.S. Trustee and this objection that this configuration is the problem and why there needs to be additional guardrails beyond what was addressed in Judge Shannon's Brookstone opinion in terms of disclosure --

THE COURT: They're factually distinguishable.

MR. FOX: Yes. And Your Honor, as to comments on entire fairness and the structure with the conflicts committee, again, I'm not a corporate litigator by any stretch, but it's, you know, fair price and fair process.

The process seems to be driven by the fact that we need to get this done in order to capitalize on the Black

Friday sales that are going to be pushed out and to meet the sales timeline that's being requested subject to the hearing on December 9th as to bid procedures.

Again, I would point out that the current stalking horse is yet another affiliate of the Debtors and SB360 and under common equity ownership, that proposed stalking horse agreement doesn't contemplate a going concern as Ms. Davis Jones, you know, identified at the podium here today and as a result may mean more fees and more work going directly to SB360 to the extent the whole chain liquidation is then contemplated.

That outcome and that concern that there hasn't been an appropriate check on whether or not another party would do this at more benefit or value to the estate is the reason that this should not be approved today, and it should be left for further hearing, hopefully with a committee constituted to test the economic propositions that are being put forward by the Debtors' co-CROs and the Debtor with respect to the value that would be added by engaging an agent like SB360.

THE COURT: Did your office contemplate the position set forth by Ms. Russell.

MR. FOX: In terms of they would be entitled to be paid post-petition, so --

THE COURT: Like a proposed 363 retention.

MR. FOX: So we had flagged -- and I don't think this is invading settlement discussions because --

THE COURT: And I don't want you to.

MR. FOX: Okay, so let me state that the U.S. Trustee doesn't believe this should be approved under any circumstances as they sit before Your Honor here today and on the record before you.

Your Honor has asked questions regarding the concept of assumption, and my understanding and forgive me if I've missed this in orders in cases that I wasn't directly involved in, but that assumption usually is reserved for final as a matter of course anyway and isn't included in this interim order.

I would say that there is still harm even if this is a 363 engagement because fees are going out the door to an affiliate, which in the context where a liquidation consultant agent is not an affiliate is not a problem. Because again there's -- even in the context of a conflicts committee and the other items that we've discussed here today, there's a remove from the Debtor that this isn't funds flowing from the Debtor to a related party who isn't subject to the Court's jurisdiction as a Debtor in Possession or otherwise being approved for such payment pursuant to Section 327 or a different provision of the code.

Again, this unique posture that liquidation

consultants carve out as part of this process, given that there's only about six of them that do this type of work, is driving what is a concerning outcome and something that you know has been a source of concern in terms of doing this as emergent first day relief, but usually with additional remove from the items I flagged as problematic here today.

THE COURT: Thank you.

MR. FOX: Thank you, Your Honor.

THE COURT: Ms. Jones.

MS. DAVIS JONES: Your Honor, again, I think we're straying from reality a little bit here, and we're starting to ignore where this case is. You know, I heard the, you know this is that and then the whole chain will be done this way.

Your Honor, we have an investment banker in there was already testimony on what our investment banker is going to be doing and what they're looking to. We have a stalking horse. Yes, it is an affiliate but we haven't done anything nor will we do anything to discourage other bidders here.

Your Honor, also we keep ignoring the testimony of Mr. Morando that, from his experience as the chief restructuring officer, having been with BRG for 10 years, having a wealth of retail experience, that he thinks this looks fair is very helpful. But I keep coming back, Your Honor, to our conflicts committee who like Mr. Morando has no

connection to anyone except trying to get value into this estate, sitting with a -- as a chief restructuring officer, he's sitting with a fiduciary duty to maximize value as is our independent director.

So Your Honor, I implore that with the CROs' backing, with the independent director, with Ms. Russell saying that her client will look at this on an interim basis as a 363 engagement, so they only paid for those things that they are doing, and you don't have to wrestle with this assumption concept at a first day hearing which isn't that unusual. It happens quite a bit.

But I hear you because of the -- and I hear the parties because they're worried about the affiliation. That I think this could be the one time that on the facts of this case that we don't look for an assumption first day. We look for 363 as a solution that really benefits the Debtor here, which is where we all have a fiduciary duty to be and at the same time puts guardrails on this as Mr. Fox has asked for. So we'd ask Your Honor that it be approved with that modification.

THE COURT: Mr. Klein.

MR. KLEIN: Thank you, Your Honor, Randy Klein, on behalf of PNC Bank.

I ask to be heard on a limited basis here. PNC Bank is the largest secured creditor in this estate. We're

not providing the DIP. Our affiliates are not liquidating collateral. But we are very interested in the going concern sale process.

I would suggest, Your Honor, and I echo the comments that were just made by Ms. Jones. I think that Your Honor can find authority under Rule 4001(b) with respect to use of cash collateral because really the issue the United States Trustee is complaining about are the fees that would be paid to the affiliate. Use of cash collateral, pay those fees to avoid immediate and irreparable harm to the estate pending a final hearing.

Mr. Ventola commented that the ABL facility is integrally tied to the cash receipts and the use of those receipts to pay for the liquidation services, which Your Honor has heard testimony about being within, you know, the range of reasonableness for third-party services would be necessary to avoid immediate and irreparable harm from our perspective and the adequate protection package that was offered to our clients.

So from PNC's perspective, we would urge Your Honor to approve this on an interim basis.

THE COURT: Okay. I have to stop this hearing because we have people who need to get transportation. But I am going to pick up tomorrow. I will make a ruling tomorrow. We can do it by Zoom. Can -- are parties available tomorrow?

I know it's the eve of a holiday, but let me look at my calendar and chambers, Mr. Logano, can he email? Since the live objector is a U.S. Trustee, Mr. Fox, do you have availability tomorrow?

MR. FOX: Yes, my office will make it work.

THE COURT: Okay. I'll try to get it done in the morning. And so I will have Mr. Logano reach out to you, Ms. Davis Jones and Mr. Fox, with respect to scheduling.

And let me ask, may we use the same link as today? Okay, let's use the same dial in. Okay. And I will try to make sure that we schedule before noon tomorrow.

MS. DAVIS JONES: Thank you, Your Honor. Your Honor, can I ask you one -- just one housekeeping item?

THE COURT: Certainly.

MS. DAVIS JONES: The bid procedures on for December 9, given the tightness in time there, Your Honor, would -- do you -- when would you like to see objections set for that so that we could upload that order or the notice?

THE COURT: How many days out is the 9th? I think you're going to end up communicating with the committee on this anyway.

MS. DAVIS JONES: It's a Tuesday, Your Honor. The 9th. So --

THE COURT: And this is the one we're reserving the committee's rights?

MR. FOX: Yes.

THE COURT: If that's what --

MR. FOX: Sorry, Your Honor, may it please the Court, Tim Fox, on behalf of the United States Trustee. The agenda would be due under the local rules on the 5th. I would say as much time as possible for parties would be appropriate, given it is two days from today. And I am not signed up on CMECF for this case, so I don't know if it's been filed while we've been in court.

But to provide as much notice, setting the objection deadline at or before the agenda seems appropriate and allows for an avoidance of an extension if the committee's up and running.

THE COURT: What if we did 10:00 a.m. on the 5th and gave your office until 1:30 to do the agenda? Would that work?

MS. DAVIS JONES: Absolutely. That's fine, Your Honor. That's fine.

MR. FOX: Thank you, Your Honor.

THE COURT: And then we'll have the weekend to read. Okay. We will reach out to chambers about tomorrow morning. Okay. Thank you all for your time. I appreciate it.

MS. DAVIS JONES: Thank you, Your Honor. We appreciate it.

MS. RUSSELL: Thank you, Your Honor.

MR. FOX: Thank you, Your Honor.

MS. RUSSELL: Thank you.

THE COURT: Oh, excuse me. Are you submitting orders tonight?

MR. KEANE: We'll try to, Your Honor, as many as we can that are resolved.

THE COURT: I know you need a DIP, so.

(Proceedings concluded at 7:01 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling November 26, 2025
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski November 26, 2025
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams November 26, 2025
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Wendy K. Sawyer November 26, 2025
Wendy K. Sawyer, CDLT
Certified Court Transcriptionist
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