

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HRI HOLDING CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Re: Docket Nos. 12 and 14

Hearing Date: December 5, 2019 at 2:00 pm (ET)

Objection Deadline: December 3, 2019 at 10:00 am (ET)²

OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTIONS FOR: (I) ENTRY OF A FINAL ORDER AUTHORIZING POSTPETITION FINANCING AND USE OF CASH COLLATERAL; AND (II) ENTRY OF AN ORDER APPROVING BIDDING PROCEDURES

The Official Committee of Unsecured Creditors (the "Committee") of HRI Holding Corp., *et al.*, the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its proposed undersigned counsel, hereby files this omnibus objection (the "Objection") to:

- (1) *Motion of the Debtors and Debtors-In-Possession for Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Liens and Superpriority Administrative Expense Claims to Post-Petition Lenders and (C) Utilize Cash Collateral, (II) Providing Adequate Protection to the Pre-Petition Secured Parties, (III) Modifying the Automatic Stay, (IV) Granting Related Relief, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364 and 507, and (V) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 (the "DIP Motion")*; and

¹ The Debtors in these cases are: HRI Holding Corp., Houlihan's Restaurants, Inc., HDJG Corp., Red Steer, Inc., Sam Wilson's/Kansas, Inc., Darryl's of St. Louis County, Inc., Darryl's of Overland Park, Inc., Houlihan's of Ohio, Inc., HRI O'Fallon, Inc., Algonquin Houlihan's Restaurant, L.L.C., Geneva Houlihan's Restaurant, L.L.C., Hanley Station Houlihan's Restaurant, LLC, Houlihan's Texas Holdings, Inc., Houlihan's Restaurants of Texas, Inc., JGIL Mill OP LLC, JGIL Millburn, LLC, JGIL Milburn Op LLC, JGIL, LLC, JGIL Holding Corp., JGIL Omaha, LLC, HOP NJ NY, LLC, HOP Farmingdale LLC, HOP Cherry Hill LLC, HOP Paramus LLC, HOP Lawrenceville LLC, HOP Brick LLC, HOP Secaucus LLC, HOP Heights LLC, HOP Bayonne LLC, HOP Fairfield LLC, HOP Ramsey LLC, HOP Bridgewater LLC, HOP Parsippany LLC, HOP Westbury LLC, HOP Weehawken LLC, HOP New Brunswick LLC, HOP Holmdel LLC, HOP Woodbridge LLC, and Houlihan's of Chesterfield, Inc.

² Extended as to the Committee with the consent of the Debtors.



- (2) *Motion of the Debtors for Entry of an Order (A) Approving Bidding Procedures in Connection With a Transaction by Public Auction; (B) Scheduling a Hearing to Consider the Transaction; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Contract Procedures; and (E) Granting Related Relief (the “Bid Procedures Motion”).*³

In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Bid Procedures Motion seeks approval of an extremely expedited sale process, with bids due in less than two weeks. Having only been formed the Friday before Thanksgiving, the Committee has spent the past week getting up to speed in these cases to assess the sufficiency of the Debtors’ marketing effort, and the potential impact on stakeholders from the accelerated timeline. The Committee has concerns regarding this expedited process, but also recognizes the Debtors’ liquidity constraints and the potential harm that could result from an extended process. While the Committee is still analyzing the propriety of the timeline, certain dates and deadlines must be established to allow interested parties time to analyze and respond. In particular, the Debtors must immediately disseminate adequate assurance information for the stalking horse bidder, and must serve adequate assurance information for competing bidders within 24 hours of the Bid Deadline to allow landlords time to assess the information and object if necessary.

2. As part of the DIP financing, the lenders are seeking inappropriate advance waivers of sections 506(c) and 552(b). The Committee acknowledges and appreciates the fact that the DIP budget includes payment of 503(b)(9) claims, other priority claims, and stub rent. Such payments, however, are not slated to be made until the final week of the budget. The waivers, however, are effective upon entry of the Final Order, leaving creditors exposed to the

³ Docket Nos. 12 and 14. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Motion and Bid Procedures Motion.

risk that the amounts are never paid in the event of a default or if the sale is not consummated. To prevent this result, the waivers should be conditioned on payment of the administrative claims which, given the timeline, represents only a minor delay for the lenders. The waivers should further be conditioned on an appropriate budget for all professionals.

3. In addition, there are potentially significant unencumbered assets, including chapter 5 avoidance actions and valuable liquor licenses that are not subject to encumbrance under applicable state law that must be preserved for the benefit of unsecured creditors. The DIP Liens and the adequate protection liens should be limited to safeguard these assets and any adequate protections liens and claims should be limited to the diminution in value as determined by the Court. The Committee and the lenders have agreed that the Final Order will resolve the Committee's issues on these points. Despite this progress, the lenders have not agreed to preserve the doctrine of marshalling and to look to their original collateral before looking to the proceeds of unencumbered assets.

4. The Court should not allow the Debtors to race through a truncated sale process unless the rights of unsecured creditors are preserved. If the Debtors, lenders and Landry's want to enjoy the benefits of the section 363 sale, then the sale and financing must be modified as set forth herein.

BACKGROUND

I. General Case Background

5. On November 14, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On November 22, 2019, the Office of the United States Trustee for Region 3 appointed a five member Committee consisting of: (i) Brookfield Property REIT, Inc.; (ii) Edward Don & Company; (iii) 1200 Harbor Boulevard, LLC; (iv) ADR Parc, LP; and (v) Washington Prime Group, Inc.⁴

7. The Committee selected Kelley Drye & Warren LLP as its lead counsel and Klehr Harrison Harvey Branzburg LLP as Delaware counsel. The Committee also selected Alvarez & Marsal North America, LLC to serve as its financial advisor.

II. The Prepetition Debt And Capital Structure

8. The Debtors entered into an amended credit facility, dated December 17, 2015 with CIT Bank, N.A. (“CIT”), as the agent and certain other lender parties (together, the “Lenders”), providing for \$52.6 million in term, revolving, and delayed-draw term loans.⁵

9. As of the Petition Date, the Debtors were purportedly indebted to the Lenders in the approximate amount of nearly \$47 million, including more than \$4.6 million of accrued and unpaid interest and fees.⁶ The prepetition debt is purportedly secured by substantially all of the Debtors’ assets.⁷

⁴ See Docket No. 78.

⁵ See *Declaration of Matthew R. Manning in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Manning Declaration”), ¶ 11. Docket No. 2.

⁶ See Interim DIP Order, ¶ D(2).

⁷ Manning Declaration, ¶ 11.

III. The Debtors' Restructuring Efforts

10. As of the Petition Date, the Debtors own and operate 47 restaurants in 14 states.⁸ Like much of the casual dining sector, the Debtors maintain they have suffered from industry headwinds, a shifting labor market, and unfavorable leases.⁹

11. In May 2019, the Debtors acquired 17 Houlihan's restaurants from A.C.E. Restaurant Group, Inc., the Debtors' largest franchisee at the time, to expand their footprint and refresh certain locations.¹⁰ Liquidity constraints, however, have limited the growth potential and the Debtors' ability to fund operations.¹¹ The Debtors have not paid interest or debt service since December 2018, resulting in over \$4.6 million of unpaid interest as of the Petition Date.¹²

12. In June 2019, the Debtors, the Lenders, and York Capital Management, the Debtors' sponsor, entered into a Forbearance and Sale Support Agreement (the "FSSA"), which required the company to hire an investment banker to commence a sale process.¹³ The Debtors retained Piper Jaffray & Co., who began marketing the Debtors' assets in August 2019.¹⁴

IV. The Stalking Horse APA And Bidding Procedures

13. The Debtors purportedly evaluated "various proposals" before selecting and entering into an asset purchase agreement (the "APA") with Landry's, LLC ("Landry's") as the stalking horse purchaser.¹⁵ Pursuant to the APA, Landry's will pay \$40 million to acquire

⁸ *Id.* ¶ 5.

⁹ *Id.*, ¶ 14.

¹⁰ *Id.*, ¶ 14.

¹¹ *Id.*, ¶ 16.

¹² *Id.*, ¶¶ 12, 16.

¹³ *Id.*, ¶ 17.

¹⁴ *Id.*

¹⁵ *Id.*, ¶ 20.

substantially all of the Debtors' assets, plus assume certain liabilities, including cure costs and 503(b)(9) claims.¹⁶

14. The Debtors will subject the Landry's bid to higher and better offers through an expedited auction process that affords parties just 15 days between the bid procedures hearing and the sale hearing.¹⁷ The sale timeline is as follows:

Event	Date
Bidding Procedures Hearing	December 5, 2019
Sale and Cure Objection Deadline	December 13, 2019
Bid Deadline	December 16, 2019
Auction	December 18, 2019
Sale Hearing	December 20, 2019
Sale Closing Deadline	December 31, 2019

15. In addition to a 10% deposit required for prospective bidders to participate, the Bidding Procedures propose an initial bid increment of \$1.75 million, consisting of: (i) a \$1.2 million break-up fee and up to \$300,000 of expense reimbursement, amounting to 3.75% of the purchase price; and (ii) an initial \$250,000 overbid requirement.¹⁸

V. **The Proposed DIP Financing**

16. To fund the sale process, CIT and certain of the Lenders (collectively, the "DIP Lenders") agreed to provide up to \$5 million in financing, secured by liens against all of the Debtors' assets, including previously unencumbered property (the "DIP Facility").¹⁹ In

¹⁶ *Id.*

¹⁷ *See* Bid Procedures Motion, Exhibit 2.

¹⁸ *Id.*, ¶ 13(B)(8).

¹⁹ *See* Interim DIP Order, Ex. B – DIP Credit Agreement, §§ 1.01, 2.01, 5.22.

exchange for the DIP Lenders' agreement to provide financing: (i) the Debtors will stipulate that the prepetition debt constitutes legal, valid, binding, and unavoidable obligations of the Debtors;²⁰ and (ii) the Debtors' estates will waive all rights under sections 506(c) and 552(b) of the Bankruptcy Code, as well as the equitable remedy of marshaling.²¹

OBJECTION

I. Necessary Revisions to the Final DIP Order

17. To obtain postpetition financing under section 364(d) of the Bankruptcy Code, a debtor must prove: (i) it is unable to obtain unsecured credit; (ii) the proposed credit is necessary to preserve the assets of the estate; and (iii) the terms of the financing are fair, reasonable and adequate.²² The Court should only approve postpetition financing to the extent it is "in the best interests of the general creditor body."²³

A. The 506(c)/552(b) Waivers Cannot Be Unconditionally Approved

18. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself.²⁴ This provision ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured creditor recoveries.²⁵ Courts have widely recognized that section 506(c) waivers are not to be

²⁰ See Interim Order, VII.E.

²¹ *Id.* ¶ IX.A. Following discussions with the DIP Lenders, the post-default carve-out now includes both the Debtors' professionals and the Committee's professionals, and the Committee's investigation budget has been increased to \$50,000. See Interim Order, ¶¶ V.A.-B.

²² *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990).

²³ *In re Roblin Indus.*, 52 B.R. 241, 244 (Bankr. W.D.N.Y. 1985).

²⁴ See 11 U.S.C. § 506(c).

²⁵ See, e.g., *Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) ("section 506(c) is designed to prevent a windfall to the secured creditor"); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) ("the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs").

granted lightly.²⁶ Indeed, in this jurisdiction, courts have explicitly provided that the waiver is not permitted without the consent of the committee.²⁷ Similarly, the “equities of the case” exception in section 552(b) of the Bankruptcy Code allows a debtor, committee or other party-in-interest to exclude postpetition proceeds from prepetition collateral on equitable grounds, including to avoid having unencumbered assets fund the cost of a secured lender’s foreclosure.²⁸

19. The quid pro quo for conducting the sale of a lender’s collateral in bankruptcy is, at a minimum, the establishment of a proper budget that pays the costs associated with such process. Courts in this district have routinely determined that administrative expenses must be accounted for and paid.²⁹

20. The detailed DIP Budget provided to the Committee projects paying section 503(b)(9) claims, other priority claims, and stub rent in the final week of the budget period. The advance 506(c) and 552(b) waivers, however, will be granted upon entry of the Final Order, but if the sale process fails and the DIP Facility terminates, the budgeted amounts will never be paid. To avoid this inequitable result, and assuming the Committee can verify the budgeted amounts, the Final Order should condition the 506(c) and 552(b) waivers on the payment of such amounts.

²⁶ See, e.g., *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 12 (2000) (finding that section 506(c) is a rule of fundamental fairness for all parties in interest and authorizing the surcharge of a secured lender’s collateral where reasonable and appropriate).

²⁷ See *In re Mortgage Lenders Network USA, Inc.*, Case No. 07-10146 (PJW), Hr’g Tr. (Docket No. 346) at 21 (Bankr. D. Del. March 20, 2007) (noting that without the committee’s prior approval, the 506(c) waiver may not be approved). Excerpts from the transcript are attached hereto as Exhibit A.

²⁸ See 11 U.S.C. § 552(b).

²⁹ See *In re Townsends, Inc.*, et al., Case No. 10-14092 (Bankr. D. Del. January 21, 2011); Hr’g Tr. at 23:25-24:22, an excerpt of which is attached hereto as Exhibit B (Judge Sontchi required a revised budget that included sufficient funds to pay 503(b)(9) claims, noting that “if it appears that the case is administratively insolvent, I would be inclined to...either convert or dismiss the case...”); see also *In re NEC Holdings Corp.*, et al., Case No. 10-11890 (Bankr. D. Del. July 13, 2010); Hr’g Tr. at 108:1-108:4, an excerpt of which is attached hereto as Exhibit C (Judge Sontchi, sitting for Judge Walsh, stated that he “need[s] some evidence that there’s a probability that admin claims are going to get paid in full, including 503(b)(9) claims or [he] won’t approve the financing.”).

21. The 506(c) and 552(b) waivers are also improper without an appropriate budget for the Committee's professionals.³⁰ The Committee's professionals are already addressing: (i) the approval of the DIP Facility; (ii) the Bidding Procedures, including the expedited sale timeline; (iii) the proposed key employee incentive and retention plans; and (iv) various first day motions, and the Committee will play an active role until the closing of any sale and in the assessment of the proper wind down strategy for these cases. The Committee's professionals should be allocated an appropriate budget to carry out its duties on the expedited timeline established by the Debtors.

B. The Equitable Doctrine Of Marshaling Should Be Preserved

22. Marshaling requires a secured creditor to first seek recovery from assets against which other creditors do not have a claim before looking to common assets.³¹ It "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security."³² It is well settled that bankruptcy courts can marshal a debtor's assets to effectuate an equitable distribution to creditors.³³

23. The Committee's right to invoke the doctrine of marshaling against the DIP Lenders must be preserved.³⁴ As set forth above, the Committee believes there are unencumbered liquor licenses with meaningful value, which may be the only source of value for

³⁰ While the filed DIP Budget did not delineate between the Debtors and Committee's professionals, the Committee now understands that the DIP Budget allocates \$1,555,000 for the Debtors' professionals and only \$450,000 for the Committee's advisors.

³¹ See *In re Advanced Marketing Servs., Inc.*, 360 B.R. 421, 427 n.8 (Bankr. D. Del. 2007) ("[Marshaling] requires the senior secured creditor to first collect its debt against the collateral other than that in which the junior secured creditor holds an interest, thereby leaving that collateral for the junior secured creditor's benefit.") (citation omitted); see also *In re Tampa Chain Co.*, 53 B.R. 772, 777 (Bankr. S.D.N.Y. 1985) (citing 2 J. Story, *Commentaries on Equity Jurisprudence* 230 (1884)).

³² See *Meyer v. United States*, 375 U.S. 233, 236 (1963).

³³ See *Tampa Chain Co.*, 53 B.R. at 777.

³⁴ See *In re America's Hobby Center, Inc.*, 223 B.R. 275 (Bankr. S.D.N.Y. 1998) (creditors' committee permitted to seek to assert marshaling defense against secured creditor on behalf of the debtor's estate).

unsecured creditors. To the extent the proceeds of such claims are not subject to the liens of the DIP Lenders, the DIP Lenders should not be authorized to look to those assets and their proceeds before looking to their original collateral.

II. The Bidding Procedures Must Be Modified to Ensure a Full and Fair Process

24. The Bidding Procedures require bids to be due by December 16—only 11 days following the December 5 hearing—with an Auction only 2 days later on December 18. The Committee is supportive of a fair marketing and sale process that is designed to maximize value for all of the Debtors’ stakeholders. The Committee, however, was formed just over one-week ago on the Friday before Thanksgiving and has not had an opportunity to properly assess the proposed sale process and its impact on the estates.

25. The Committee intends to continue working with the Debtors over the next several days to determine whether it can get comfortable with the truncated timeline. The Committee will raise its issues with the Court at the December 5 hearing if the process or timeline is unreasonable or inappropriate.

26. Even if the Committee determines that sale process is appropriate, there are certain provisions in the Bidding Procedures that must be modified before approval:

- Assets Subject to Bid: The Bidding Procedures should expressly authorize the submission of bids with respect to all or a subset of the assets.³⁵
- Timeline: The Bidding Procedures must provide creditors ample time to assess Landry’s adequate assurance package and the adequate assurance of prospective bidders. The timeline should be clarified/revised as follows:

³⁵ Bidding Procedures, p. 3.

Event	Date
Service of Landry's Adequate Assurance	No later than December 5, 2019
Bid Deadline	December 16, 2019
Service of Qualified Bidder's Adequate Assurance Information	Within 24 hours of Bid Deadline
Committee's Sale Objection Deadline	December 17, 2019
Adequate Assurance Objection Deadline for Non-Landry's Bids	Up to the Sale Hearing

- Termination Fee: The Termination Fee should only be paid from the proceeds of an Alternative Transaction. Landry's must submit an invoice detailing the fees and expenses it is seeking reimbursement of, with an opportunity for the Debtors and the Committee to object, prior to payment of the Expense Reimbursement. The Expense Reimbursement should be paid within three days after the expiration of such period.³⁶
- Landry's Backup Bidder Status: The Bidding Procedures require the Backup Bidder to keep its bid open for 21 days after the Sale Hearing (*i.e.*, until January 10, 2020) but Landry's is permitted to terminate the APA if the sale has not closed by December 31, even if Landry's is the Backup Bidder. The Debtors may not be incentivized to entertain potentially higher and better bids because they will be left without a Backup Bidder if Landry's is outbid at auction, the overbidder does not close, and Landry's subsequently terminates the APA.³⁷
- Consultation Rights: If the DIP Lenders submit a credit bid for some or all of the Debtors' assets, they should not be included as a consultation party. The Committee must be included as a consultation party, including with respect to any modifications to the procedures implemented by the Debtors at the auction.³⁸
- Auction Attendance/Notice: The Committee must be permitted to attend the auction and receive notice of all bids. Additionally, creditors that submit a request to the Debtors within three days of the start of the auction should be authorized to attend.³⁹

³⁶ Bidding Procedures, p. 7.

³⁷ Bidding Procedures, pp. 5-6.

³⁸ Bidding Procedures, p. 6.

³⁹ Bidding Procedures, pp. 3, 5.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Bid Procedures Motion and DIP Motion unless modified as set forth herein; and (ii) grant such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
December 3, 2019

**KLEHR HARRISON HARVEY
BRANZBURG LLP**

/s/ Richard M. Beck
Domenic E. Pacitti (DE Bar No. 3989)
Richard M. Beck (DE Bar No. 3370)
919 N. Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193
Email: dpacitti@klehr.com
rbeck@klehr.com

- and -

KELLEY DRYE & WARREN LLP
Eric R. Wilson (admitted *pro hac vice*)
Jason R. Adams (admitted *pro hac vice*)
Lauren S. Schlusel
Maeghan J. McLoughlin (admitted *pro hac vice*)
101 Park Avenue
New York, New York 10178
Tel: (212) 808-7800
Fax: (212) 808-7897
ewilson@kelleydrye.com
jadams@kelleydrye.com
lschlusel@kelleydrye.com
mmcloughlin@kelleydrye.com

*Proposed Counsel to the Official Committee of
Unsecured Creditors of HRI Holding Corp., et al.*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
MORTGAGE LENDERS NETWORK USA, .
INC., . Case No. 07-10146 (PJW)
Debtor. . (Jointly Administered)
. March 20, 2007 (2:06 p.m.)
. (Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 financing to get some sort of a surcharge waiver. I think
2 they're less standard in the context of a cash collateral use
3 request which is what we have here.

4 THE COURT: Well, I don't think they're standard in
5 a conventional DIP facility, not in my Court anyway.

6 MR. GODSHALL: Well, all right, well then -

7 THE COURT: Well, let me tell you what the law in
8 this Court's been for at least the last five years. If the
9 Committee doesn't agree with the waiver, it doesn't happen.
10 I've had a couple of cases where the Committee has agreed to
11 it because of exigent circumstances, but absent the
12 Committee's approval I can't remember the last time I
13 approved such a waiver, if I ever did.

14 MR. GODSHALL: All right, well, then, in that case,
15 Your Honor, RFC's going to have a decision to make, and this
16 wasn't, obviously, something that the debtor negotiated for.
17 This is something that RFC has required. Third objection I
18 heard, Your Honor, was RFC's control of the budget process
19 and this is maybe where your numbering and mine diverge
20 because under that heading I heard two separate objections,
21 and the first objection, Your Honor, is that this order only
22 permits professional fees to be paid in accordance with the
23 budget, and the budget has an amount of professional fees for
24 the Committee running through April 28 that is, I believe,
25 \$210,000 for Committee counsel and \$90,000, I believe, for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 10-14092 (CSS)

- - - - -x

In the Matter of:

TOWNSENDS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

January 21, 2011

1:09 PM

B E F O R E:
HON. CHRISTOPHER S. SONTCHI
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: DANA MOORE

1 collateral, the same million-eight will be available for the
2 503(b)(9) claimants, given their administrative priority status
3 is protected by the Code.

4 Unless Your Honor has any questions of the committee
5 position, that's why we have come to difficult conclusions, and
6 it's been a lot of conversation by the committee including
7 direct conversation between the committee members and the
8 bankers, yesterday, with no professionals on the phone call to
9 discuss these issues.

10 THE COURT: Okay.

11 MR. BUECHLER: Thank you.

12 THE COURT: Thank you, Mr. Buechler. Anybody else
13 wish to be heard?

14 Let me see if I understand, Mr. Abbott. Under no
15 scenario will the 503(b)(9) creditors be paid in full?

16 MR. ABBOTT: Your Honor, technically, it's possible;
17 practically, impossible. The range of values, given the amount
18 of debt, here, we just don't see a buyer clearing the secured
19 debt.

20 THE COURT: But other administrative claims will be
21 paid in full?

22 MR. ABBOTT: Post-petition administrative claims, we
23 expect to be paid in full under this revised budget, Your
24 Honor.

25 THE COURT: Well, we've got a problem. Not going to

1 run an administratively insolvent estate. There are benefits
2 to the current administrative claims that are accruing. There
3 are benefits to the unsecured creditors. But it can't be done
4 on the back of the 503(b)(9) admin claims, which are admin
5 claims. Congress has made that determination. So certainly I
6 would have a problem running any case that was administratively
7 insolvent. But one that is both administratively insolvent and
8 prefers one set of administrative creditors over another is
9 doubly troubling. So that's -- well, I'm not going to do it.

10 MR. ABBOTT: To clarify --

11 THE COURT: I'm not making -- I'm not making the --
12 this came up on Goody's, for example, Goody's I, and it turned
13 out we were all wrong. But the point there was there had to be
14 a set aside to pay these claims in the plan that the evidence
15 indicated was a reasonable estimate that they would get paid.
16 Turns out, it was wrong. But the point being, I'm not making
17 anyone guarantors or insurers of the fact that the case is
18 administratively solvent. But to go in with a path forward
19 that indicates -- and I certainly appreciate your candor to the
20 Court -- that a certain type of administrative expense claim
21 won't get paid in full but yet others will, I just -- I can't
22 run that kind of case.

23 MR. ABBOTT: I understand that, Your Honor. Could I
24 ask the -- well, is it --

25 THE COURT: Need help? Go ahead.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 10-11890-PJW

- - - - -x

In the Matter of:

NEC HOLDINGS CORP, ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court
824 North Market Street
Wilmington, Delaware

July 13, 2010
9:32 AM

B E F O R E:

HON. PETER J. WALSH

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGES

ECR OPERATOR: MICHAEL MILLER/LESLIE MURIN

1 THE COURT: And again, you're not a guarantor.
2 Nobody's a guarantor. But I need some evidence that there's a
3 probability that admin claims are going to get paid in full,
4 including 503(b)(9) claims or I won't approve the financing.

5 MR. ATHANAS: Your Honor, I understand where you
6 stand. Before we convert the case, I'd like --

7 THE COURT: Whoa. What?

8 MR. ATHANAS: -- I'd like to take a brief recess.

9 THE COURT: I didn't say we're converting the case.

10 MR. ATHANAS: Understood, Your Honor, but without
11 financing, it would be inevitable. So I'd ask for just a very
12 brief recess so I can talk to the parties and make sure they
13 really want what they're asking for.

14 MR. FEINSTEIN: We're okay with that, Your Honor.

15 THE COURT: All right. Take a recess.

16 (Recess from 4:08 p.m. until 4:51 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 MR. ATHANAS: Your Honor, Joe Athanas on behalf of the
20 debtors. Your Honor, we would ask for a continuance until
21 Friday morning. At that time we'll either put on evidence
22 regarding 503(b)(9) claims or maybe even there'll be a deal.
23 Who know?

24 THE COURT: All right. Let's see what I have. Pretty
25 wide open Friday. Any preference?

1 MR. FEINSTEIN: We'd like to go as early as possible,
2 if that's okay.

3 THE COURT: That's fine. I'll give you 9:30.

4 MR. ATHANAS: Thank you, Your Honor.

5 THE COURT: At that time, maybe I could get more
6 argument on this issue on the roll-up, specifically the
7 inability to cram down, the effect of that in this case. I
8 just haven't thought about those issues before.

9 MR. ATHANAS: Understood, Your Honor. And I think --

10 THE COURT: And I'm making no ruling right now one way
11 or the other. I just haven't thought of them.

12 MR. ATHANAS: Understood, Your Honor.

13 THE COURT: If somebody wants to submit a letter or
14 something like that, that's fine too.

15 MR. FEINSTEIN: We'll come prepared in any event, Your
16 Honor.

17 THE COURT: Very good.

18 MR. FEINSTEIN: Hopefully we can work out something
19 before then, but if not, we'll come prepared.

20 THE COURT: Okay. I guess we'll wait till then to put
21 on the other resolutions on the record, if you were going to.
22 I don't know.

23 MR. ATHANAS: Your Honor, I think, the only thing --
24 you mean the DIP financing?

25 THE COURT: Yes.

1 MR. ATHANAS: Yeah, I mean, let's resolve all the
2 other issues. I think it makes sense to just do it all at
3 once. Hopefully, the parties will be able to reach some kind
4 of agreement, and we'll save Your Honor a lot of time and
5 effort.

6 THE COURT: That's fine. I'm here.

7 Mr. Austin, you look like you'd like to say something?

8 MR. AUSTIN: Yes, Your Honor. I just wanted the Court
9 to be apprised and the record to be clear. GE's going to be
10 recommending to the lenders that it will continue to provide
11 funding. It will be an in formula funding between now and
12 Friday. And it is without -- that funding will be provided
13 without any waiver of any of the existing defaults or
14 circumstances under the DIP loan. I think we'll just have to
15 talk to the debtor about which budget we're funding against. I
16 think it's probably the updated budget that was to be presented
17 today, but we'll confirm that. I want to let the Court know,
18 the company would have funding through the remainder of the
19 week.

20 THE COURT: Okay. Very good. If you need any
21 enabling order, just send something over under certification.

22 MR. AUSTIN: We'll probably send over just a simple
23 order continuing the hearing and the interim order and changing
24 the operative final hearing date.

25 THE COURT: Very good. Thank you. Anything else?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

All right, hearing adjourned. Thank you.
(Proceedings concluded at 4:57 p.m.)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
HRI HOLDING CORP., <i>et al.</i> , ¹)	Case No. 19-12415 (MFW)
)	
Debtors.)	(Jointly Administered)
)	

CERTIFICATE OF SERVICE

I, Richard M. Beck, hereby certify that on December 3, 2019, I caused a true and correct copy of the *Omnibus Objection of the Official Committee of Unsecured Creditors to Debtors’ Motions for: (I) Entry of a Final Order Authorizing Postpetition Financing and Use of Cash Collateral; and (II) Entry of an Order Approving Bidding Procedures* to be served on the attached Service List via first class mail.

/s/ Richard M. Beck
Richard M. Beck (DE Bar No. 3370)

¹ The Debtors in these cases are: HRI Holding Corp., Houlihan’s Restaurants, Inc., HDJG Corp., Red Steer, Inc., Sam Wilson’s/Kansas, Inc., Darryl’s of St. Louis County, Inc., Darryl’s of Overland Park, Inc., Houlihan’s of Ohio, Inc., HRI O’Fallon, Inc., Algonquin Houlihan’s Restaurant, L.L.C., Geneva Houlihan’s Restaurant, L.L.C., Hanley Station Houlihan’s Restaurant, LLC, Houlihan’s Texas Holdings, Inc., Houlihan’s Restaurants of Texas, Inc., JGIL Mill OP LLC, JGIL Millburn, LLC, JGIL Milburn Op LLC, JGIL, LLC, JGIL Holding Corp., JGIL Omaha, LLC, HOP NJ NY, LLC, HOP Farmingdale LLC, HOP Cherry Hill LLC, HOP Paramus LLC, HOP Lawrenceville LLC, HOP Brick LLC, HOP Secaucus LLC, HOP Heights LLC, HOP Bayonne LLC, HOP Fairfield LLC, HOP Ramsey LLC, HOP Bridgewater LLC, HOP Parsippany LLC, HOP Westbury LLC, HOP Weehawken LLC, HOP New Brunswick LLC, HOP Holmdel LLC, HOP Woodbridge LLC, and Houlihan’s of Chesterfield, Inc.

Service List

HRI Holding Corp.
Attn: Michael Archer and Cindy Parres
8700 State Line Road, Suite 100
Leawood, KS 66206

Landis Rath & Cobb LLP
Adam G. Landis
Kimberly A. Brown
919 Market Street, Suite 1800
Wilmington, DE 19801

Piper Jaffray & Co.
Attn: Teri Stratton
2321 Rosecrans Avenue
Suite 3200
El Segundo, CA 90245

Hunton Andrews Kurth, LLP
Attn: Mark Arnold and Mark Young
600 Travis Street, Suite 4200
Houston, TX 71002

Cole Schotz P.C.
Attn: Noman L. Pernick
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801

Katten Muchin Rosenman LLP
Attn: William B. Freeman
515 South Flower Street, Suite 1000
Los Angeles, CA 90071-2212

Katten Muchin Rosenman LLP
Attn: Karen B. Dine
575 Madison Avenue
New York, NY 10022-2585

Office of the United States Trustee
Attn: Jane Leamy
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801