

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) Chapter 11
OTB HOLDING, LLC,) Case No. 25-52415-SMS
Debtors.) (Jointly Administered)

TRANSCRIPT OF HEARING ON DEBTORS' UTILITIES MOTION, BIDDING
PROCEDURES MOTION AND DIP MOTION

BEFORE: Judge Sage M. Sigler
DATE: April 3, 2025
PLACE: Courtroom 1201
United States Bankruptcy Court
Atlanta, Georgia

IN ATTENDANCE:

Counsel for Debtors: Jeff Dutson
Brooke Bean
Alice Song
King & Spalding
1180 Peachtree St NE
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1 **Appearances Cont'd**

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1 **Appearances Cont'd**

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23	<u>Exhibits</u>	<u>ID.</u>	<u>EVD.</u>
24			
25	Declaration of Richard Klein	23	23

P R O C E E D I N G S

1:30 p.m.

THE COURTROOM DEPUTY: All right. May I have your attention please? May I have your attention please? I will now call Judge Sigler's 1:30 p.m. calendar. May I have your attention please? I'll now call Judge Sigler's 1:30 p.m. calendar. In the case of OTB Holding, LLC. We have Debtors' Utilities Motion filed at docket number 10, Debtors' DIP Motion filed at docket number 17 and Debtors' Bidding Procedures, Bidding Procedures Motion filed at docket number 62. I will now take appearances of parties for the record starting with counsel for the Debtors.

MR. DUTSON: Jeff Dutson with King and Spalding on behalf of the Debtors. Also with the Brooke Bean and Alice Song.

THE COURTROOM DEPUTY: All right. Counsel for Creditors Committee.

MR. MEYERS: Todd Meyers, Eversheds Sutherland for the Official Committee of Unsecured Creditors. Also with me is Nathan DeLoatch.

THE COURTROOM DEPUTY: All right. Counsel for the U.S. Trustee?

MR. WEIDENBAUM: Yeah. Well, good afternoon, David Weidenbaum and Alan Hinderleider provider for the United States Trustee.

1 THE COURTROOM DEPUTY: All right.

2 MR. ENGLISH: Good afternoon. Eric English from
3 Porter Hedges, LLP on behalf of the DIP Lender, OTB
4 Acquisition, LLC.

5 THE COURTROOM DEPUTY: All right. Now, uh, I'll
6 now take appearances of the parties that's appearing by
7 Zoom.

8 MS. FRANKLIN: Good morning. Allison Franklin with
9 Greenberg Traurig on behalf of JF IV Holdings, LLC.

10 MS. WOLGAST: Good afternoon. Lisa Wolgast from
11 Barnes and Thornburg, on behalf of CrossFirst Bank.

12 MS. ROGLEN: Good afternoon. Laurel Roglen of
13 Ballard Spahr, LLP on behalf of landlord Acadia Realty
14 Trust, the ARC landlord, Beltline/Airport Freeway, Ltd. and
15 Rivertown Crossings Mall, LLC.

16 MS. TZOBERI: Good afternoon. Samantha Tzoberi on
17 behalf of Katronel Properties.

18 MR. SHAW: Good afternoon, Your Honor. Brian Shaw
19 behalf of U.S. Foods.

20 MR. SAULS: Berk Sauls on behalf of Sankalp, LLC.

21 MR. YACHIK: Good afternoon. Steven Yachik on
22 behalf of Realty, Inc., uh, Regency Centers, LP and Realty
23 Income Corporation.

24 THE COURTROOM DEPUTY: Anyone else?

25 MR. PETREE: Good afternoon. Jonathan Petree of

1 Munsch, Hardt, Kopf & Harr, P.C. appearing on behalf of TSCA
2 250, LP.

3 THE COURTROOM DEPUTY: All right. Hold on one
4 second, Mr. Petree. What's the name of your client again?

5 MR. PETREE: It is TSCA 250, LP.

6 THE COURTROOM DEPUTY: All right. Anyone else?

7 MS. SMITH: This is Ruel Smith appearing on behalf
8 of landlord creditor, Kimco Lake Prairie TC LP. My pro hac
9 vice admission is being filed contemporaneous and therefore
10 I'm monitoring only.

11 THE COURTROOM DEPUTY: All right. Anyone else? All
12 right. Please hold. Judge Sigler will take the bench
13 shortly. All rise in the courtroom. Court is now in session.
14 The Honorable Sage Sigler presiding.

15 THE COURT: Good afternoon. Please be seated.

16 THE COURTROOM DEPUTY: All right. In the case of
17 OTB Holding, LLC, case number 25-52415. We have Debtors'
18 Utilities Motion filed at docket number 10, Debtors' DIP
19 Motion filed at docket number 17 and Debtors' Bidding
20 Procedures Motion filed at docket number 62.

21 THE COURT: All right. Thank you. Mr. Dutson?

22 MR. DUTSON: Good afternoon, Your Honor. Jeff
23 Dutson with King and Spalding, on behalf of the Debtors in
24 these Chapter 11 cases. Your Honor, with me today in the
25 courtroom I have my colleagues from King and Spalding,

1 Brooke Bean and Alice Song. Also joined by Jonathan Titus
2 (ph) who's the Debtors' Chief Restructuring Officer. Andrew
3 Papai with Alvarez and Marsal and Richard Klein with Hilco
4 Corporate Finance, the Debtors' investment banker.

5 Your Honor, I will give just a very quick overview
6 before we jump in. We were here before the Court on Tuesday.
7 I'm grateful for the time that we have today to go through
8 these three remaining motions. On March 7th, we executed an
9 APA with our proposed stalking horse who's an affiliate of
10 our DIP lender and we've also reached a resolution of the
11 Committee's concerns with respect to these motions. And just
12 recently reached a resolution with the objecting landlords
13 that have filed objections to the relief. So, because of the
14 hard work of all those parties for which we are grateful, we
15 are here on what we believe will be a consensual basis with
16 respect to these motions. If it pleases the Court, we would
17 like to start with the DIP Motion and then go to the Bidding
18 Procedures and then finish up the Utilities Motion.

19 THE COURT: That's fine.

20 MR. DUTSON: Wonderful. Your Honor, the Debtors'
21 DIP financing motion was filed at ECF number 17. The Debtors
22 filed this motion in connection with the commencement of
23 these cases seeking financing from their DIP lender and
24 authorizing the use of cash collateral and granting liens
25 and seeking related relief. An interim order was entered by

1 the Court on March 17th. The relief sought is supported by
2 the Declaration of Jonathan Titus in his first day
3 declaration as well as his declaration in support of the,
4 the DIP Motion. Both of those were admitted into evidence
5 during the first day hearing. As the Court may recall, our
6 DIP lender in this case was not our incumbent lender. It is
7 an affiliate of Pappas Restaurants Group and they've made
8 the loans to the Debtors in connection with a stalking horse
9 proposal to acquire substantially all of the Debtors'
10 assets. They want to be the winning bidder, but they
11 recognize that their bid is subject to higher or better
12 offers.

13 In February, when they closed the - what we refer
14 to as the prepetition bridge financing, the Debtors did not
15 have cash and went to our existing incumbent lender,
16 CrossFirst seeking additional cash. They were not obligated
17 to make us anymore loans and at that time they were unable
18 to extend us further credit. So the Debtors were very much
19 in a difficult position, but went out seeking financing from
20 various parties. This proposal, the bridge proposal, emerged
21 as the one that was best for the Debtors and it was closed
22 on February 17th, a few weeks before we filed these cases.
23 That was in the amount of \$4 million.

24 In connection with the DIP Motion and the DIP
25 financing, they offered a \$10 million new credit - new money

1 credit facility, which would include a roll-up of their
2 prepetition loan. When the interim order was entered, the
3 Debtors borrowed, with this Court's authority, \$7.5 million
4 of that new money financing and the \$4 million was rolled
5 up. The DIP facility carries an interest rate of 12 percent,
6 which in our estimation is extremely reasonable given the
7 circumstances and a facility fee of point five percent.
8 Importantly, all the interest and fees with respect to the
9 DIP facility are paid in kind. Which minimizes the amount
10 that the Debtors need to borrow.

11 We're now here seeking authority under the - with
12 this motion - approval of this motion on a final basis. When
13 the Committee was appointed, they immediately flagged a
14 number of issues that raised concerns with them and and I'm
15 pleased to report that after substantial negotiations
16 between the DIP lender, the Debtors and the Committee with
17 input from the Office of the United States Trustee, we, we -
18 the Debtors submitted a proposed final order on Tuesday
19 evening that included a number of changes that were part of
20 that resolution of the Committee's concerns. I will flag
21 just a few for the Court. The first - and then the redline
22 was filed Tuesday evening in connection with the, with the
23 final orders so the parties in interest can see the changes
24 that have been made.

25 THE COURT: That's docket 180?

1 MR. DUTSON: That is correct.

2 THE COURT: Yeah.

3 MR. DUTSON: One is a soft marshalling concept
4 where we defined and identified certain previously
5 unencumbered DIP collateral. This was the Debtors' liquor
6 licenses solely to the extent they were not subject to a
7 prepetition lien, the proceeds of non-residential real
8 property leasehold interest, commercial tort claims, cause
9 of action against insiders and avoidance actions. That term,
10 previously, unencumbered DIP collateral comes up in a number
11 of places, but for these purposes right now the, the DIP
12 lender agreed that when it comes to seeking repayment that
13 they will marshal away from those and seek repayment first
14 from DIP collateral that is not previously unencumbered DIP
15 collateral.

16 We also added a challenge period to the, the order
17 with respect to the Debtors' stipulations. In connection
18 with that, the, the DIP lender was agreeable to that only
19 insofar as we would parse out the funding that the DIP
20 lender is going to make available to the Debtors with a full
21 amount of that funding being released once the challenge
22 period has been satisfied. So, upon entry of this final
23 order, \$750,000 of the remaining amount will be released to
24 the Debtors. And then the challenge period with respect to
25 the lien releases, once that has expired, we will get an

1 additional \$215,000 and then when it comes to the Debtors'
2 release of the DIP lender, that challenge period is 21 days
3 after the entry of the order which we hope will be today,
4 uh, the Debtors will be able to borrow the remaining amount.

5 Also, with respect to the previously unencumbered
6 property, the DIP lender agreed that, that would not secure
7 the roll-up portion of the DIP loan, the \$4 million
8 prepetition amount. But the DIP lender is permitted to apply
9 the other collateral first to the roll-up portion of the, of
10 the DIP loan. There's also an important concept for the
11 Committee. If there's a going concern sale and this is in
12 paragraph five - if there's a going concern sale, uh, of the
13 Debtors' assets and the APA has been terminated - so, if
14 we're not selling to the stalking horse - terminated other
15 than due to a material default by the Debtors, then the
16 liens on sale excluded assets have to be released.

17 Part of the negotiations with the Committee
18 involved the Committee identifying certain assets that they
19 believed should be excluded from the sale and and that's
20 what's reflected here. We've also will talk about APA once
21 we get to the bidding procedures motion. Also made it clear
22 that the APA - under the APA, they're not acquiring those
23 sale excluded assets. The assets that are in that definition
24 are commercial tort claims against non-trade parties,
25 avoidance actions against non-trade parties. With respect to

1 both of this from the buyer's perspective it's important
2 that the buyer - the buyer wants to acquire and then release
3 those avoidance actions. As they continue the business they
4 want to ensure the, the vendors that they're still doing
5 business with are not subject to clawback actions. In the
6 other category of sale excluded assets are causes of action,
7 if any, against insiders of the Debtors.

8 Your Honor, the other - just a few other things I
9 would flag is the Debtors agreed to increase the budget for
10 the Committee's professionals so that they can assist the
11 Committee in fulfilling their fiduciary duties under the
12 Bankruptcy Code. We filed a new budget today actually, with
13 the agreement of our DIP lender that increases the budget
14 for the Debtors' - the Committee's professionals to \$850,000
15 which was the agreed upon amount.

16 THE COURT: Yeah, I think I've got - I have
17 today's budget.

18 MR. DUTSON: And that, that budget includes the -
19 really the material changes there are \$850,000 additional
20 for or total for the Committee professionals. It reflects
21 March actuals, and then there's a million - one million
22 dollar incremental amount that we'll talk about in just a
23 second that's with respect to March rents that was the
24 subject of the landlords' objections. Paragraph 39 is only
25 other change that I would flag for the Court right now,

1 which is just some language that certain taxing authorities
2 ask that we add into the final order and the Debtors were
3 happy, happy to add.

4 THE COURT: That was the Texas entities?

5 MR. DUTSON: Exactly.

6 THE COURT: Okay.

7 MR. DUTSON: Paragraph 39. So, there were a number
8 of changes in that redline which, which I've not addressed
9 in these comments. There have been, since that was filed, a
10 few additional changes which I will describe to the Court at
11 this point. And this is with respect to the few landlords
12 that objected to the DIP financing. The concern that they
13 raised was March rents became due before the Debtors' filed.
14 We then filed. The Debtors did not pay any of those March
15 rent payments. They were unable to. We then filed, got our
16 DIP financing and we have paid April and we have budgeted
17 amounts for May. In the budget, that was attached to the
18 interim order, we did not have funds to pay March rents
19 because those were due and payable prior to the petition
20 date. The landlords raised an objection that, that negated
21 or should negate the ability of the DIP lender to receive a
22 506(c) carveout and we were thankfully able to resolve that
23 issue from their perspective through negotiations with both
24 the landlords and our DIP lender and the Committee.

25 The, the primary - there's really two things that

1 address it. We have an agreed upon - agreed upon order with
2 language reflecting this. We've not had an opportunity to
3 file it with the Court. I have - there's only two kind of
4 material changes that I can walk through. Also happy to
5 provide the Court with a copy of the change pages or if that
6 would be helpful or --

7 THE COURT: This would be an order on, on what?

8 MR. DUTSON: This is, this is changes to the DIP
9 Order.

10 THE COURT: Further changes to the DIP Order
11 beyond what I have in front of me right now?

12 MR. DUTSON: That's right.

13 THE COURT: Okay.

14 MR. DUTSON: These were changes that --

15 THE COURT: To address the landlords' objections.

16 MR. DUTSON: That's right.

17 THE COURT: All right. Got it. I mean, if you have
18 one, I can look at it while you're talking me through it.

19 MR. DUTSON: May I approach?

20 THE COURT: Yes.

21 MR. DUTSON: And what I handed you is just the
22 changed pages. Paragraph one is the part of the order that
23 approves the DIP facility and what's reflected here is the
24 agreement of the DIP lender to loan an additional
25 incremental amount of one million dollars. That incremental

1 amount will be available once the release challenge period
2 has expired, 21 days from we hope today. And then that
3 incremental availability shall not be used to pay any other
4 amounts other than obligations accruing under the Debtors'
5 non-residential real property leases during the month of
6 March 2025. In order to make this work, we needed to obtain
7 the consent of our prepetition secured lender CrossFirst and
8 they, they agreed to have this money come in ahead of their
9 liens. We view this as a very good result because it
10 provides more money which the Debtors can potentially use to
11 pay admin expenses associated with that March rent.

12 I will add that the way the APA is set up, and
13 we'll talk a little bit more about this when we get to the
14 bidding procedures, the stalking horse had agreed to assume
15 those amounts regardless of whether the stalking horse was
16 taking any particular store. So, those amounts were going to
17 get paid. It was just a matter of timing. This potentially
18 allows us to pay it a little more quickly.

19 THE COURT: All right.

20 MR. DUTSON: We changed, in paragraph 17C, a
21 deadline that would be in the event of default if we don't
22 have a sale order. It previously said May 9th. We've changed
23 that to May 16th, which is a (indiscernible) change for the
24 Debtors. Um, we've referenced the amended Asset Purchase
25 Agreement that was filed Tuesday evening. And then on page

1 41 of the redline this is the, the kind of second
2 substantive change, is essentially a carveout that provides
3 that the 506(c) waiver shall not be affected with respect to
4 any costs and expenses payable to the objecting landlords
5 pursuant to the Debtors' non-residential real property
6 leases on account of regular recurring monthly obligations
7 for the period from the petition date through March 31st,
8 2025. And objecting landlords would include Regency Centers
9 Realty Income Corporation, Kite Realty Group, which is the
10 managing agent of KRG Townsend Square, KRG Las Vegas and
11 Centennial Gateway, Acadia Realty Trust, ARC NCCHRNC001,
12 Beltline/Airport Freeway, Rivertown Crossing Mall and then
13 Katronel Properties as well.

14 THE COURT: But presumably, I mean you're using
15 the incremental availability to pay the stub rent, so it
16 should end up being moot and this is just a protection for
17 the landlords, right?

18 MR. DUTSON: That's exactly right, belt and
19 suspenders.

20 THE COURT: All right.

21 MR. DUTSON: Or moot.

22 THE COURT: Very good.

23 MR. DUTSON: Those are the changes with respect to
24 the DIP Order, Your Honor. For the reasons set forth in the
25 motion, the Debtors would, would respectfully request that

1 the Court grant the relief requested.

2 THE COURT: All right. Thank you. Mr. Meyers?

3 MR. MEYERS: Good afternoon, Your Honor. Todd
4 Meyers, uh, Eversheds Sutherland, proposed counsel to the
5 Official Creditors Committee. I'll be very brief. We, as Mr.
6 Dutson noted, we from the time we were appointment - that
7 the Committee was appointed and hired professionals, we dove
8 into this and we've worked very hard to negotiate what we
9 thought was an appropriate deal under the circumstances that
10 would provide the opportunity for unsecured creditors to
11 ultimately recover in this case. We certainly recognize the
12 Debtors or recognized the Debtors' need for financing.
13 However, we felt that the creditors shouldn't be worse off
14 in that, there were certain unencumbered assets and we
15 wanted to make sure that we had the chance to realize from
16 those assets. And so, the, the deal that Mr. Dutson
17 announced does give us the chance to do that. There is -
18 it's not without risk. If there is a meltdown and ultimately
19 not a sale, then, then those previously unencumbered assets,
20 they are pledged to the, to the DIP lender with respect to,
21 new money and so they will in all likelihood be lost. But
22 we're, we're hopeful and confident that there will be a sale
23 here. And so in that event those assets will be left behind
24 and hopefully they can be utilized for the benefit of
25 unsecured creditors.

1 Just a couple of notes with respect to this 506(c)
2 surcharge waiver. While we, we're willing to support the
3 waiver, we did negotiate a provision that is in there that
4 if the DIP lender calls a default and there are previous -
5 there are budgeted and incurred expenses, those can still be
6 paid so that it doesn't - the music doesn't just stop
7 immediately. People that are supplying goods and services
8 postpetition that are budgeted, should get paid and so that
9 provision allows for that. With respect to the other
10 provision, which Mr. Dutson just mentioned, that's still in
11 there, about about the carveout for stub rent, um, while
12 that shouldn't be necessary because the incremental loan is
13 gonna hopefully pay the stub rent.

14 The challenge - if you remember, Mr. Dutson
15 mentioned that, that money does - some of the money doesn't
16 come in until the challenge period expires. The Committee
17 has to do its diligence. I've never had a shorter challenge
18 period than I have in this case, but we will, we will do our
19 diligence. But if we do believe that a challenge is
20 necessary, um, one of the, uh, one of the results of that is
21 the DIP lender doesn't have to lend the additional money
22 including the, the stub rent money. So, the surcharge waiver
23 needs to - or the surcharge waiver exception for stub rent
24 needs to stay in there until those, you know, because those
25 periods haven't cleared.

1 I think that that's probably - I think that's
2 probably it for the, the DIP Order and the DIP Motion and we
3 are supportive of Your Honor granting that motion.

4 THE COURT: Great. Thank you. Mr. Weidenbaum?

5 MR. WEIDENBAUM: Yeah, I'll be very quick Your
6 Honor. The U.S. Trustee sort of echoes what Mr. Meyer says
7 in connection with - I support the entry of the DIP - of the
8 agreed upon DIP Order. Um, after the first day hearings,
9 Your Honor, I know U.S. Trustee did express to Mr. Dutson
10 and to the Debtors' team some concerns we had with the DIP
11 Motion, but we also made it clear that we were not gonna be
12 an impediment if that - if in fact, the Debtor was able to
13 work something out with the Committee, which it has. So,
14 we're very happy to see that resolution and we approve -
15 and, um, support the agreement as it's articulated in the
16 order, Your Honor. Thank you.

17 THE COURT: Thank you. Does anyone else wish to be
18 heard with respect to the DIP Motion?

19 MR. ENGLISH: Good afternoon, Your Honor. Eric
20 English from Porter Hedges on behalf of the DIP lender. I
21 just rise to, to echo the comments that it was a lot of work
22 to put this together. We negotiated these changes the same
23 way we negotiated the interim order and the asset purchase
24 agreement, uh, trying to be commercial and recognize the
25 reasonable requests of the of the various parties in trying

1 to accommodate them where we could. I think the result of,
2 of this is an order that, that shows the good faith
3 negotiations of all parties so, thank you.

4 THE COURT: All right. Thank you. Does anyone else
5 wish to be heard?

6 MS. WOLGAST: Your Honor, Lisa Wolgast on behalf
7 of CrossFirst. We have agreed to subordinate and under
8 certain, certain circumstances, the subordination with the
9 DIP lender and has been, you know, obviously very - taken a
10 big support of the Debtors in doing so. And so, we're very
11 hopeful that, uh, you know, a robust sale certainly merits
12 something for both us as well as (indiscernible) possible.
13 And so, um, we hope that, that can get done. And like you
14 said with respect to the incremental, the new million
15 dollars, we were very as to how that could be used. And it
16 is limited to the March rents, and that's within the order
17 as well.

18 THE COURT: All right. Thank you. Final call. Ms.
19 Roglen?

20 MS. ROGLEN: Good afternoon. Good afternoon, Your
21 Honor. Laurel Roglen and Ballard Spahr on behalf of certain
22 of the objecting landlords. I just want to echo the hard
23 work and the appreciation that went into the resolution
24 that's been the latest form of DIP Order and the further
25 incremental changes that counsel read into the record. We

1 have been working very well with the parties throughout this
2 case and we're already well on our way to a resolution, but
3 weren't there yet when we had to file our objection. So that
4 was why we had to get those on file, but since that time we
5 appreciate the willingness of the Debtors and the lender and
6 Committee to all reach what I think is a commercially
7 reasonable and appropriate resolution in this case. And we
8 support the entry of the final DIP Order as revised.

9 THE COURT: All right. Thank you. Mr. Yachik, you
10 turned your camera on. Would you like to be heard?

11 MR. YACHIK: Yes, Your Honor. Thank you. Steven
12 Yachik of Kelly, Drye & Warren on behalf of Realty Income
13 Corporation, Kite Realty Group and Regency Centers. Just to
14 echo what Ms. Roglen said, we're very appreciative of
15 counsel for the DIP lenders and counsel for the Debtors for
16 coming with us, uh, resolution that we think resolves our
17 client's concerns, especially with respect to the carveout
18 from the 506(c) waiver. And we also appreciate that the DIP
19 lender is willing to be flexible to expand the loan for the
20 purposes of funding stub rent, showing that it's willing to
21 pay to play in these cases and provide the landlords with
22 adequate production. So, thank you.

23 THE COURT: All right. Thank you. Any final
24 comments? All right. So, the Court has reviewed all of the
25 changes and I appreciate the parties walking me through all

1 of that just to make sure that I understand exactly how some
2 of these different mechanisms work. Similar to Mr.
3 Weidenbaum's comments, you know, when the DIP lender, the
4 Debtor, the Committee and everybody else all agrees on it,
5 I'm not going to start picking things apart. And
6 particularly here, I mean even the things the Court would
7 typically be concerned about 506(c) waiver, things of that
8 nature.

9 The parties have really come up with a mechanism
10 that seems to protect everybody's interest to the best that
11 it sort of can with the 506(c) waiver not fully coming into
12 effect until there's been a challenge period and other
13 various parties have gotten paid their stub rent, etcetera.
14 So, with all of that, the Court is comfortable with the
15 redline order. Um, well, we've got the redline at docket
16 number 180 plus some of the additional changes that you
17 walked me through. So, with that, the Court doesn't have any
18 further concerns, will approve the motion. You may upload
19 the order.

20 I did see somewhere in some of these papers maybe
21 it was the the bidding procedures, but, um, you had a
22 deadline of today to serve something? Maybe it was the cure
23 notices. So, I can get things signed and docketed this
24 afternoon, but just make sure - so we're - you know the
25 Clerk's Office closes at 4:00. We do have people here later.

1 But we often just have to reach out to somebody in the
2 clerk's office to ask them to docket it. Otherwise, even if
3 I sign it, it'll just sit until the morning. So just make
4 sure that you reach out to chambers to let us know that
5 those orders are waiting on me so that I can sign them and
6 get somebody in the Clerk's Office to docket them.

7 MR. DUTSON: Absolutely. Thank you, Your Honor. We
8 very much appreciate that.

9 THE COURT: All right. So, that disposes of the
10 DIP Motion.

11 MR. DUTSON: Wonderful. Your Honor, the next item
12 that we would like to address with your permission is our
13 Bidding Procedures Motion.

14 THE COURT: That's fine.

15 MR. DUTSON: This was filed at ECF number 62. By
16 this motion, the Debtors are requesting approval of the
17 stalking horse bid and approval of our proposed bidding
18 procedures, including scheduling an auction to solicit the
19 highest or best bid and approving certain bid protections in
20 favor of our stalking horse. The motion is supported by the
21 Declaration of Richard Klein, which we filed at ECF number
22 186. Your Honor, we would move that, that Declaration be
23 moved into evidence.

24 THE COURT: Any objections? All right. The
25 Declaration of Richard Klein, docketed at docket number 186

1 will be admitted into evidence.

2 MR. DUTSON: Thank you, Your Honor. The, the bid
3 procedures that are set forth on the motion do reflect
4 substantial negotiations between the parties, including our
5 DIP lender/stalking horse and the Debtors. Based on input
6 from our investment banker and the Debtors' other advisors,
7 we do think that the timeline set forth is sufficient to
8 allow for a competitive marketing and sale process that will
9 result in the highest or otherwise best bid for the Debtors'
10 assets. The timeline is found at Page 10 and 11 at paragraph
11 H of the proposed modified bidding procedure order, which we
12 call at ECF number 181.

13 The first deadline I was gonna mention is the one
14 that Your Honor already saw, which was today's cure notice.
15 After consulting with our stalking - proposed stalking
16 horse, um, we will have a few other small modifications to
17 the, to the order that I'll go through. The one I did want
18 to flag is that we're gonna propose to move that to April
19 8th. Importantly, we are also going to change the deadline
20 to object to that. So, it'll still be 14 days after the --

21 THE COURT: All right.

22 MR. DUTSON: -- the filing of that notice.

23 THE COURT: All right. And that's fine. I just
24 wanted to make sure y'all are not sitting at your office
25 waiting for an order to come if we don't know --

1 MR. DUTSON: What --

2 THE COURT: -- we need to get in on the docket.

3 MR. DUTSON: Thank you, Your Honor. And I should
4 note that even with that date moving, our deadline to have
5 the DIP Order entered under our DIP credit facility is, is
6 today. So, we certainly are going to do everything we can
7 and have orders ready to be uploaded as soon as we, uh, get
8 back to the office.

9 THE COURT: Very good.

10 MR. DUTSON: The proposed bid deadline is May 1st
11 by which time other competing bidders would have to submit a
12 qualified bid. The bidding procedures set forth, standard
13 terms and provisions governing what constitutes a qualified
14 bid. If needed, an auction would be held on May 6th at 10:00
15 a.m. at our offices here in Atlanta and then the sale
16 objection deadline would be May 9th. The sale hearing date
17 would be no later than ten days after the auction. I think
18 at the last hearing we mentioned we're looking at hopefully
19 sometime the week of May 12th. If it works with the Court's
20 calendar, we would request that it be closer to the end of
21 that week and potentially even May 16th. The deadline to
22 consummate the sale transaction remains May 24th.

23 Your Honor, the - we did attach a proposed order
24 as Exhibit A to the motion, a modified proposed order which
25 reflected some of the concessions from the stalking horse

1 buyer as well as well some concessions from the Debtors was
2 filed at ECF number 181. I think that the primary item I
3 would flag with respect to those - to that amended order is
4 the reduction of the breakup fee from \$600,000 to \$550,000.
5 The bid protection is in favor of the stalking horse. And I
6 should backup and note that I think when Hilco was retained,
7 the Debtors were not - we were hopeful, but not particularly
8 optimistic that we would have a stalking horse by the time
9 we filed these cases. And we technically didn't, but we had
10 a party, when we filed, that was funding us and very
11 interested in signing up a stalking horse agreement, which I
12 think was far more than any of us had expected. And they've
13 come forward and they set the floor for the, for the sale
14 process. And from the Debtors' standpoint, they're obviously
15 credit bidding their DIP and providing some additional cash
16 consideration.

17 One of the things that the Debtors were certainly
18 very careful to ensure was reflected in that agreement, is
19 the assumption of certain postpetition liabilities to ensure
20 that the postpetition wages - that the March rent - the
21 postpetition portion of the March rent and other, other
22 items were taken care of and that's reflected in the APA. In
23 exchange for serving as that floor bid, the stalking horse
24 and the Debtors negotiated bidding protections consisting of
25 a breakup fee and an expense reimbursement capped at

1 \$350,000. We believe these bid protections are consistent
2 with the market for sale this type after consulting with our
3 investment banker and particularly with the reduction in the
4 breakup fee that came after the filing of the APA are very
5 comfortable with those bid protections.

6 Your Honor, I mentioned the order that was filed.
7 A lot of those changes were at the Committee's request and a
8 few at the landlords' request. I won't, I won't belabor all
9 of those. I mentioned the reduction in the breakup fee. The,
10 the other thing to note is the bid protections or the
11 bidding procedures order will refer to the amended and
12 restated APA, which was also filed Tuesday night. With
13 respect to that document, a few of the important changes, we
14 inserted the definition of - well, revised the definition of
15 excluded claims to include those excluded sale assets that
16 we refer to in the DIP Order to ensure that when the sale
17 closes, those assets stay with the estate. We clarify that
18 liquor licenses other than those for the continuing
19 restaurants and for any New Jersey restaurants. So
20 continuing in New Jersey are purchased. Anything else
21 remains with the Debtors.

22 The other significant change is the addition of a
23 designation rights period under the APA. And this
24 essentially, in short, will give the buyer the ability to
25 continue negotiating with landlords with respect to stores

1 that may be on the bubble. That, that may not necessarily be
2 ones that the buyer would wanna take, absent certain
3 concessions from the landlords. So, to the extent those
4 negotiations are ongoing, we can still close. And the final
5 decision as to whether to assume or reject that lease would
6 be deferred, potentially up to 30 days. There's the concept
7 in there of a transition services agreement which would
8 ensure that all the costs of that process are borne by the
9 stalking horse. The Debtors don't have funds to do that.
10 This is a credit bid. So, it will be important to ensure
11 that the stalking horse bears those costs. But we think
12 that, that additional 30 days will be helpful to the process
13 and also potentially for other bidders, increase the value
14 of the Debtors' assets.

15 THE COURT: And will it be noted? So, when the
16 assumption and assignment notices go out, will a landlord
17 know if they're subject to this designation rights period?

18 MR. DUTSON: They, they, they won't know when the
19 cure notice goes out.

20 THE COURT: Okay.

21 MR. DUTSON: But I believe we'll know before the
22 sale hearing, two days before the auction.

23 UNIDENTIFIED FEMALE SPEAKER: Two days before
24 closing.

25 MR. DUTSON: Before closing.

1 UNIDENTIFIED FEMALE SPEAKER: Yeah.

2 MR. DUTSON: So we would file before, before we
3 close, we could let people know if they're an assumed lease
4 and then if they're designation rights lease, there would be
5 ongoing negotiations and then another notice would be filed
6 with respect to whether they are then assumed --

7 THE COURT: Okay.

8 MR. DUTSON: -- and if they're not assumed, they
9 would be rejected. The last assumed liability that I was
10 gonna mention that was added, is with respect to the Hilco
11 real estate advisor. We negotiated with the DIP lender to
12 assume any liabilities related to that agreement. That
13 agreement actually has not been approved by the Court yet.
14 It was something that the Debtors determined after we filed
15 these cases that it would be helpful to have a real estate
16 advisor negotiating with the landlords on the Debtors'
17 behalf. We do have an agreement that's in final form and I
18 believe we'll be in a position to file that motion for
19 approval today. It's been shared with - the agreement has
20 been shared with our DIP lender and with the Committee as
21 well.

22 THE COURT: And whatever fees are associated with
23 that are already in the budget I assume?

24 MR. DUTSON: They, um, they're not in the budget,
25 but the APA - the revised APA provides that the buyer will

1 assume all of those costs.

2 THE COURT: Gotcha.

3 MR. DUTSON: So, the buyer sort of gets the
4 benefit of that - all that effort. And so the - because the
5 Debtors don't have cash to pay the fees, the buyer will be
6 paying those fees that come due.

7 THE COURT: All right.

8 MR. DUTSON: That, Your Honor, was the the last
9 change I was gonna highlight with respect to the revised
10 order that we filed. Just like with the DIP Order, we do
11 have a few changes in a redline. It's not been filed yet.
12 We've just been working on it up until this, this hearing. I
13 have a copy that I can share with the Court that might be
14 helpful.

15 THE COURT: Yes, please approach.

16 MR. DUTSON: This again is just changed pages. The
17 first page reflects some cleanup changes, including
18 inserting the date of this hearing, April 3rd. The next, uh,
19 change is in paragraph B. That paragraph used to refer to
20 the agreement, which was a defined term in the motion, which
21 was our stalking horse purchase agreement that was filed
22 when we filed the motion. The changes now define the term
23 agreement to be the amended restated APA, which was filed
24 Tuesday night and, and part of the negotiation among the
25 parties. We have a clean-up change on the next page. The

1 next substantive change is paragraph - is page ten, and this
2 pops up in a few, few pages later as well. The original
3 bidding procedures contemplated a publication notice in the
4 Wall Street Journal. Given the nature of this case, we had
5 discussions with our stalking horse and they agreed for cost
6 reasons, we could not publish the sale notice.

7 I believe our Bar Date Motion, which we filed this
8 week, will be heard in a few weeks, still contemplates
9 notice by publication. So, there will be a publication
10 notice with respect to the claims in this case it's just not
11 with respect to the sale.

12 THE COURT: That makes sense.

13 MR. DUTSON: Um, page 11, you'll see the change
14 for the serving of the cure notice will now be April 8th to
15 give the parties some additional time. The cure projection
16 deadline will be April 22nd. The next page is page 12.
17 Paragraphs 8 and 9 have been deleted because those were the
18 publication notice that we just spoke about. Uh, one of the
19 requests from the landlords that was reflected in the order
20 that was filed on Tuesday night was that the bidders submit
21 additional adequate assurance of future performance
22 information. Parties have the ability to request copies of
23 those. The order that was filed said that the notice that
24 you can request that would be in the auction notice. The
25 auction notice is served on the full creditors matrix.

1 Whereas, the cure notice, which is what this would really
2 apply to, is served on a more limited universe. In order to
3 be cost conscious, we thought it prudent to move that notice
4 from the auction notice to cure notice.

5 THE COURT: Makes sense.

6 MR. DUTSON: The next several pages are just
7 paragraphs that have changed. The next substantive change is
8 that adequate assurance information point being moved, like
9 we said, from the auction notice to the cure notice. We
10 added the date for the APA. We, uh, made some changes to the
11 signature block. Not, not because Ms. Beane or Ms. Song are
12 leaving the firm, but just to again, get it down to three
13 pages and save a little bit of money.

14 THE COURT: Always important to get it on --

15 MR. DUTSON: That's right.

16 THE COURT: -- as few, few pages as possible.

17 MR. DUTSON: The next change you'll see with
18 respect to the cure notice is just funneling out that cure
19 objection deadline to the 22nd of April, of April because
20 we'll be filing it later. And then the, the addition that we
21 spoke about with respect to, um, the cure notice. And those,
22 those are the proposed changes that were not reflected in
23 the redline that was filed, but that we would propose be
24 included within the order. The Debtors believe that the
25 bidding procedures and the bidding protections in the

1 stalking horse APA are appropriate and reasonable in the
2 sound exercise of their business judgment. They were
3 definitely negotiated at arm's length and in good faith and
4 we would respectfully request that they be approved by the
5 Court.

6 THE COURT: All right. Thank you. Mr. Meyers?

7 MR. MEYERS: Again for record, Todd Meyers for the
8 Official Committee. Your Honor, I should have mentioned
9 earlier that Mr. Ryan Maupin in the courtroom with Deloitte
10 He's leading the engagement for them. They are the
11 Committee's proposed financial advisor and he's assisting
12 the Committee, among other things, with the sale process.
13 Your Honor, I think, Mr. Dutson, adequately covered it. The
14 Committee had several comments to the bid procedures. We, we
15 were interested in negotiating down the the bid protections.
16 Obviously, the lower those are, the more money there is
17 available for others. There was a modest change. We
18 certainly were hoping for more, but in the overall package
19 between the DIP and the bid procedures, it was acceptable.
20 Obviously there are a bunch of consultation rights for the
21 Committee with respect to the bid procedures so that we make
22 sure that, you know, nobody is precluded from being in the
23 game without us knowing about it and having some input in
24 that.

25 One other, one other change we made that relates

1 to the bid procedures, but it was actually change in the DIP
2 Order. It relates to the milestones. You know the milestones
3 are in the DIP Order and in the credit agreement. The
4 Committee was very focused on the possibility that, um, that
5 there would need to be an extension. The DIP lender was
6 unwilling to extend those milestones as part of the DIP, but
7 we made clear in the DIP Order with a change that, that the
8 Debtor is not bound by Court order to those dates. It's a
9 default if the Debtor misses those dates, and we all know a
10 default is serious and we don't think that likely. But it
11 does give the Debtor, who controls its own rules in essence
12 for the auction or the Committee if it were to come into
13 Court - convince Your Honor that notwithstanding a default,
14 that it made sense to extend the deadline, we would at least
15 have the opportunity to do that. And so, that was a change
16 that we negotiated with that we thought was important.

17 Finally, the the Hilco real estate advisor
18 application. We are looking at that and we'll provide
19 comments to the Debtor. We haven't signed off on that yet,
20 but we, you know, we certainly respect that Hilco, is, is,
21 um, very knowledgeable in that area. We just need to make
22 sure. We had a lot of paper flowing back and forth last
23 week. We just haven't had a chance to to fully sign off on
24 that or get our comments to the Debtor, but we will and I
25 expect - I, I don't expect that there will be an objection

1 to that employment.

2 THE COURT: All right. Thank you.

3 MR. MEYERS: Thank you, Your Honor.

4 THE COURT: Mr. Weidenbaum?

5 MR. WEIDENBAUM: Your Honor, just like with the
6 DIP Order, Mr. Dutson was kind enough to provide an audience
7 for Mr. Hinderleider and myself to express some concerns
8 that we had with the Bid Procedures Motion, but we also made
9 it clear that if they were able to work out a deal with the
10 Committee, we'd be okay and that's where we are today. We
11 stand in support of, uh, the request by the Debtor, Your
12 Honor.

13 THE COURT: All right. Thank you. Does anyone else
14 wish to be heard with respect to the Bid Procedures Motion?
15 I don't see anyone else on Zoom at the moment. All right.
16 Well, thank you for walking me through those changes.
17 Certainly, I understand the Committee would also - would
18 always like a further reduction, as would of course the
19 Court and the Debtor. But, you know, there was some
20 reduction to the break-up fee and, and looking at it, I
21 mean, it's not at the low end of the spectrum necessarily,
22 but it's within the range of reasonableness that we see for
23 break-up fees in these types of cases.

24 So with all of that, I'm just looking at what,
25 what other notes I scribbled down here. I appreciate the

1 explanation on the leases. I mean we've got, you know, in
2 addition to the Committee, we also have some very active
3 landlords' counsel. So, I - if they had any concerns about
4 that process, someone would have spoken up by now. So, with
5 all of that, the Court is comfortable with the changes and
6 the bid procedures generally will approve that motion and
7 you may upload that order.

8 MR. DUTSON: Thank you very much, Your Honor.

9 THE COURT: And then do we wanna pick the hearing
10 date?

11 MR. DUTSON: We do. Uh, and I think after
12 consulting with the parties subject, of course, to the
13 Court's availability, later in that week and even ideally,
14 the the 16th of May would be wonderful if that happens to
15 work for the Court.

16 THE COURT: All right. I - we have the, the
17 bankruptcy section of the Atlanta Bar has the Pollard Award
18 on Thursday anyway and I definitely don't wanna get sideways
19 with folks for scheduling hearings when you know the bar
20 wants everybody to be there. And I will be there. So I can
21 do Friday. What time is best for you on Friday? I don't know
22 if you have folks traveling.

23 MR. DUTSON: Morning would be --

24 THE COURT: Okay, 10:00 a.m.?

25 MR. DUTSON: 10:00 a.m. would be wonderful.

1 THE COURT: All right, 10:00 a.m. on Friday the
2 16th.

3 MR. DUTSON: Your Honor, I think that just leaves
4 our Utilities Motion and if it's okay with the Court, I will
5 yield the podium to Ms. Beane.

6 THE COURT: Yes. Thank you.

7 MR. DUTSON: Thank you.

8 THE COURT: Good afternoon, Ms. Beane.

9 MS. BEANE: Good afternoon. Good afternoon, Your
10 Honor. Uh, for the record, Brooke Beane of King and
11 Spalding, counsel for the Debtors. The last item on our
12 agenda today is, as Mr. Dutson said, the Utilities Motion
13 that was filed at ECF number 10. Interim relief was entered
14 on this motion at ECF number 51. As stated in the motion,
15 the Debtors used various utilities for operation and
16 business - water and sewer, natural gas, waste, among
17 others. The list of utility providers was attached to the
18 motion as Exhibit A. In accordance with Section 366© of the
19 Bankruptcy Code, the Debtors are required to provide utility
20 providers of adequate assurance in exchange for not cutting
21 off services and I, I will say, in accordance with the
22 interim the Debtors have deposited the adequate assurance
23 deposit into the adequate assurance account.

24 As I'm sure Your Honor saw, we did have one
25 objection that was filed to the entry (indiscernible) relief

1 at ECF number 113. That objection largely was an objection
2 to the adequate assurance deposit for those utility
3 providers and happy to report that that's been resolved as
4 reflected by the withdrawal of the objection at ECF number
5 168. Um, we did not receive any other formal or informal
6 comments to the final order. We are finalizing one other,
7 uh, one other resolution with the party that reached out on
8 adequate assurance, but that should be done either today or
9 tomorrow. But otherwise, we have not receive any other
10 formal or informal objections to the motion. Unless, Your
11 Honor, has any question, would ask that the final order be
12 granted. And I, I apologize. I should know we did file it, a
13 revised form of proposed final order at ECF number 183. That
14 solely reflects a couple clean-up changes to mirror the
15 language to show it was an interim order.

16 THE COURT: That was really my only question. So,
17 the withdrawal of the objection, whatever that resolution
18 was, which I don't, if I'm not signing it in the order, I
19 guess I --

20 MS. BEANE: Yeah.

21 THE COURT: -- don't need to know. But the order
22 there really weren't any substantial changes to the order
23 so, okay.

24 MS. BEANE: No. The only changes, yeah. The only
25 changes as shown on ECF 183, are clean-up changes. One of

1 which is to just reflect that the final hearing was moved to
2 today as opposed to March 28th. And then the changes in
3 paragraph one and paragraph three are clean-up changes that
4 match the language in the interim order.

5 THE COURT: Okay. All right. Very well. Does
6 anyone wish to be heard with respect to the utilities
7 motion? All right. Well, as you indicated, the only
8 objection on the docket has been withdrawn and all looks in
9 order to the Court. So, I will grant the motion. You may
10 upload that order.

11 MS. BEANE: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. DUTSON: Your Honor, that's all we have on the
14 agenda today. We have a hearing, uh, April 16th that has one
15 or two items already set. But I think that's our next
16 omnibus date and the Debtors will, of course, continue with
17 their sale process.

18 THE COURT: All right. So, okay. So, we have the
19 date on April 16th. We will have the sale hearing on May the
20 16th. Do you want an omnibus date sometime in between those
21 two in late April or early May? And I mean, I can give you
22 some options. So I do have a 711 calendar on the 30th, so
23 you could always set down anything you wanted then. But if
24 we're gonna have a courtroom of people come - which I'm
25 happy to have people come down don't get me wrong. But, um,

1 just so that people aren't waiting around, you can always
2 contact chambers and we can give you a specially set time.
3 So you're not waiting through the rest of the calendar.

4 MR. DUTSON: I think that would be our preference
5 would be - at this point in time I don't think we know of
6 any needs --

7 THE COURT: Okay.

8 MR. DUTSON: -- for a hearing on that date, but we
9 might reach out and see if the Court is available for
10 another omnibus date.

11 THE COURT: Okay. That, that's fine. Uh, that's
12 fine. All right. Well, then I will see you back here on
13 April the 16th unless something pops up before then. The
14 Court is adjourned. Thank you all.

15 THE COURTROOM DEPUTY: All rise.

16 [END OF AUDIO]

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the proceedings in the above-entitled matter; that this
transcript was done to the best of my ability based on what
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This 10th day of April, 2025.

/s/ Felicia A. Harris

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