

**AMERICAN BANKRUPTCY INSTITUTE
CENTRAL STATES BANKRUPTCY WORKSHOP
JUNE 15-18, 2006**

*CHAPTER 11 FINANCING ORDER ISSUES:
CASTING THE DIE FOR THE CASE?*

Richard E. Kruger
Jaffe, Raitt, Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, MI 48034
(248) 351-000 (Main)
(248) 727-1417 (Direct)
(248) 351-3082 (Fax)
Email: rkruger@jaffelaw.com

Brian L. Shaw
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC
321 N. Clark St., Suite 800
Chicago, IL 60610
(312) 666-2833
(312) 980-3888 (Fax)
Email: bshaw100@shawgussis.com

Timothy G. Skillman
Alvarez & Marsal
2000 Town Center, Suite 1900
Southfield, MI 48075
(248) 351-2670
(248) 396-8901 (Fax)
Email: tskillman@alvarezandmarsal.com

Honorable Thomas J. Tucker
United States Bankruptcy Court
Eastern District Michigan
211 W. Fort St., Suite 1900
Detroit, Michigan 48226

- I. Why Lenders Are Exerting (Or Attempting To Exert) More Control Over A Chapter 11 Roadmap?
 - A. Current Litigious Atmosphere
 - B. Trend of More Bankruptcy Cases Strictly Helping Secured Creditor
 - C. Because They Can - Difference Between Cash Collateral Secured Creditor and DIP Lender
 - D. Market for Senior Secured Claims – Increasing Participation by Hedge Funds in Restructuring Process
 - a. Efficiency of the Market in Purchase & Sale of Secured Claims
- II. Manner In Which Increased Control Manifests Itself Throughout A Case
 - A. Allowance of Secured Claim
 - 1. Stipulation of Validity By Debtor
 - 2. Limitation on Attack by Committee and Others
 - A. Time Limitation
 - B. Use of Carveout, Secured Lender Dollars
 - 3. Valuation and Adequate Protection Payments
 - B. Professional Fee Carveouts
 - 1. Limitations on Amount and Use
 - 2. Question of Whether Required to Give One For Committee Counsel
 - 3. Question About Sanctity of Language
 - C. Case Controlling Default Provisions
 - 1. Sale Benchmarks
 - 2. Plan Provisions
 - 3. Accommodation and Access Agreements
 - 4. Ominous Modification of Automatic Stay Provision Upon Default
 - D. And Those Old Time Favorites of Secured Creditors
 - 1. Getting Chapter 5 Recoveries As Collateral
 - A. Either directly as a lien or indirectly via superpriority administrative expense

B. Does a post-petition lender need this protection

2. Being Allowed to Roll Up or Cross Collateralize Their Debt

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ROUGH STATE**

In re:)	Chapter 11
)	
KNEAD THE DOUGH BAKERY, INC.,)	Case No.
)	
Debtor.)	Hon. I. Tryon Merittt
)	

**STIPULATION AND INTERIM ORDER (I) AUTHORIZING (A)
SECURED POST-PETITION FINANCING ON A SUPER PRIORITY BASIS
PURSUANT TO 11 U.S.C. § 364, (B) USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363 AND (C) GRANT OF ADEQUATE
PROTECTION PURSUANT TO 11 U.S.C. §§ 363 AND 364 AND (II)
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c)**

Upon the motion (the "Motion") dated April 1, 2006 of Knead the Dough Bakery, Inc., debtor and debtor-in-possession (the "Debtor"), (a) seeking this Court's authorization pursuant to Section 363(c) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code") and Rules 2002, 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the Debtor, inter alia, (i) to obtain post-petition financing (the "Post-Petition Financing"), up to an aggregate principal amount not to exceed \$150,000, exclusive of accrued interest on the aggregate principal amount (the "Commitment") from Vulture Financing, N.A. (the "Lender"); (ii) to grant the Lender, pursuant to Bankruptcy Code § 364(c), security interests in all of the Debtor's currently owned and after acquired property to secure the Debtor's obligations under the Post-Petition Financing and (iii) to grant the Lender priority in payment with respect to such obligations over any and all administrative expenses of the kinds specified in Bankruptcy Code §§ 503(b) and 507(b), other than as described below; (b) seeking this Court's authorization to use the Lender's cash collateral within the meaning of Bankruptcy Code § 363(a) (the "Cash Collateral"), pursuant to

Bankruptcy Code § 363(c) and to provide adequate protection, pursuant to Bankruptcy Code §§ 361, 363(e) and 364(d) to the Lender; and (c) seeking a preliminary hearing (the “Preliminary Hearing”) on the Motion to consider entry of an interim order pursuant to Bankruptcy Rule 4001 (this “Order”) authorizing the Debtor to borrow from the Lender under the Post-Petition Financing up to an aggregate of \$150,000, exclusive of accrued interest on the aggregate principal amount upon the terms and conditions set forth in this Order pending the Final Hearing referred to below; and (c) requesting that a final hearing (the “Final Hearing”) be scheduled by this Court to consider entry of a final order (the “Final Order”) authorizing on a final basis, inter alia, the Post-Petition Financing; and due and sufficient notice of the Motion under the circumstances having been given; and the Preliminary Hearing on the Motion having been held before this Court; and upon the entire record made at the Preliminary Hearing, and this Court having found good and sufficient cause appearing therefor;

The Debtor and the Lender STIPULATE for all purposes in this Chapter 11 Case (as defined below), and, subject to entry of the Final Order, the Court hereby makes the following FINDINGS:

A. On April 1, 2006 (the “Filing Date”), the Debtor filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor is continuing in possession of its property, and operating and managing its business, as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

B. This Court has jurisdiction over the Chapter 11 Case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. The Lender, as lender, and Knead the Dough Bakery, Inc. (the “Borrower”), as borrower, are party to that certain Loan and Security Agreement, dated as of October 31, 2005 (as amended, supplemented or otherwise modified prior to the commencement of this Chapter 11 Case, the “Pre-Petition Credit Agreement”) and all collateral and ancillary documents executed in connection therewith (the “Pre-Petition Loan Documents”). Unless otherwise specified, all capitalized terms used but not defined herein shall have the meanings given in the Pre-Petition Credit Agreement.

D. Without prejudice to the rights of any other party (but subject to the flimsy and otherwise useless limitations described in paragraph 26 below), the Debtor admits that, in accordance with the terms of the Pre-Petition Loan Documents, the Borrower is truly and justly indebted to the Lender under the Pre-Petition Credit Agreement, without defense, counterclaim or offset of any kind, and that as of the Filing Date (i) the Debtor was liable to the Lender in the aggregate principal amount of \$523,493.47 in respect of loans made by the Lender to the Debtor pursuant to the Pre-Petition Credit Agreement (including attorneys’ fees, costs and default interest accrued and unpaid thereon and late fees) (the “Pre-Petition Indebtedness”) and (ii) as of the Filing Date, the Debtor, in consideration of the Post-Petition Financing to be made under the Commitment, waive and release any and all causes of action and claims against the Lender and its agents, representatives, assigns and successors. The provisions of this paragraph D constitute a stipulation by the Debtor and not a finding by the Court, subject to the flimsy and otherwise useless limitations set forth in paragraph 26 of this Order.

E. The Debtor, subject to the flimsy and otherwise useless limitations described in paragraph 26 below, further admits that, by reason of the Pre-Petition Loan Documents, the Pre-Petition Indebtedness is secured by enforceable liens and security interests granted by the Debtor

to the Lender, upon every single one of the Debtor's tangible and intangible assets and property, including, but not limited to, all of the Debtor's real property and all of the Debtor's other assets and property in which a security interest can be obtained under the Uniform Commercial Code (including the setoff rights described below, the "Pre-Petition Collateral"), including without limitation, equipment, inventory, officers and their spouses, children and pets, accounts receivable, instruments, chattel paper, general intangibles, contracts, documents of title, and all other tangible and intangible personal property and the proceeds and products thereof.

F. The Debtor is party to the following subordination agreement: that certain Subordination Agreement dated as of October 31, 2005, between Borrower and Truly N. Ept, the sole officer and director of Borrower (the "Subordination Agreement"). Pursuant to the terms of the Subordination Agreement, all of the subordinated parties pursuant to the Subordination Agreements have been properly notified by the Lender of the existence of certain Events of Default under the Pre-Petition Credit Agreement. As a result, such subordinated parties may not ask, demand, sue for, accept or receive, and Borrower may not pay to (i) such subordinated parties, any salary, distribution or payment of any Junior Debt (as defined in the Subordination Agreement) or (ii) relatives of subordinated parties, distributions or salary, until the Indebtedness (as defined below) is indefeasibly paid in full in cash.

G. The Debtor does not have sufficient available sources of working capital and financing to carry on the operation of its business without the Post-Petition Financing and the use of the Lender's Cash Collateral. The ability of the Debtor to maintain business relationships with its vendors and suppliers, to purchase new inventory and otherwise finance its operations, is essential to the Debtor's continued viability. In addition, the Debtor's critical need for financing is immediate. In the absence of the Post-Petition Financing and such use of the Cash Collateral,

the continued operation of the Debtor's business would not be possible and serious and irreparable harm to the Debtor and its estate would occur. The preservation, maintenance and enhancement of the going concern value of the Debtor is of the utmost significance and importance to a successful reorganization of the Debtor under Chapter 11 of the Bankruptcy Code.

H. Given the Debtor's current financial condition and capital structure, the Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense. Financing on a post-petition basis is not otherwise available without the Debtor granting, pursuant to Bankruptcy Code § 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in Bankruptcy Code §§ 503(b) and 507(b), other than as described below, and securing such indebtedness and obligations (including undrawn Letters of Credit) with the security interests in and the liens upon the property described below pursuant to Bankruptcy Code § 364(c) and (d).

I. Not less than one business hour's notice of this Preliminary Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) the creditors holding the 20 largest unsecured claims against the Debtor; and (iii) known holders of pre-petition liens against the Debtor's property. No official committee of unsecured creditors (the "Committee") has been appointed in any of the Chapter 11 Case. This Preliminary Hearing is being held pursuant to the provisions of Bankruptcy Rule 4001(c)(2).

J. Based on the record presented to this Court by the Debtor, it appears (and the Debtor and the Lender have stipulated) that the Post-Petition Financing has been negotiated in good faith and at arm's-length between the Debtor and the Lender, and any credit extended and loans made to the Debtor pursuant to this Order shall be deemed to have been extended, issued or

made, as the case may be, in good faith as required by, and within the meaning of, Bankruptcy Code § 364(e).

K. Based on the record before this Court, it appears (and the Debtor and the Lender have stipulated) that the terms of this Order, including, without limitation, the terms of the Post-Petition Financing, are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(c)(2). The permission granted herein to use Cash Collateral and enter into the Post-Petition Financing and obtain funds thereunder is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the best interests of the Debtor's estate and creditors as its implementation will, among other things, allow for the flow of supplies and services to the Debtor necessary to sustain the operation of the Debtor's existing business and enhance the Debtor's prospects for a successful reorganization or sale.

Based upon the foregoing findings, stipulations, and conclusions, and upon the record made before this Court at the Preliminary Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted, subject to the terms and conditions set forth in this Order.
2. Authorization. The Debtor is expressly authorized and empowered to (i) borrow money, use Cash Collateral, and perform its obligations pursuant to the provisions of this Order and (ii) enter into such agreements, instruments and documents (collectively, if any, the "DIP Loan Documents") as may be necessary or required to evidence its obligations to the

Lender, to consummate the terms and provisions of the Motion and this Order and to evidence perfection of the liens and security interests to be given to the Lender pursuant hereto and thereto; provided that such DIP Loan Documents are consistent with this Order. All post-petition loans and all other indebtedness and obligations (including undrawn Letters of Credit) incurred on or after the Filing Date by the Debtor to the Lender pursuant to this Order and the DIP Loan Documents (including principal, accrued and unpaid interest, and costs and expenses) are referred to herein as the “DIP Indebtedness,” and, together with the Pre-Petition Indebtedness, as the “Indebtedness.”

3. Borrowing; Use of Cash Collateral. Subject to the terms and conditions of this Order and the DIP Loan Documents, (a) the Lender hereby consents to the Debtor’s limited use of the Lender’s Cash Collateral and (b) the Lender will make post-petition loans to the Debtor, in each case in an aggregate amount not to exceed the Commitment. Notwithstanding the foregoing, if the Lender in its sole discretion advances funds or other extensions of credit in excess of these limitations (or any other limitations in the DIP Loan Documents), such advances (and any other indebtedness in excess of such amount) shall constitute DIP Indebtedness entitled to the benefits of the DIP Loan Documents and this Order.

4. Existing Events of Default. Nothing herein or in any of the DIP Loan Documents shall constitute or be deemed to constitute a waiver by the Lender of any existing or future Events of Default (including, without limitation, the Events of Default arising from the commencement of this Chapter 11 Case). Without prejudice to, or waiver of, the Lender’s rights and remedies against the Debtor in respect of any Events of Default other than the Existing Defaults (as defined below), the Lender agrees to forbear from foreclosing its liens on any DIP Collateral (as defined below) or otherwise taking enforcement action against the Debtor based

solely on any Event of Default which occurred prior to the entry of this Order and of which the Lender had actual knowledge as of such date (collectively, the “Existing Defaults”); provided that such forbearance shall terminate upon the earlier of (i) the occurrence of any Event of Default other than an Existing Default or (ii) the Loan Payment Date (as defined below).

5. Interest, Fees, Costs and Expenses. All Indebtedness shall bear interest at the default rate set forth in the Pre-Petition Credit Agreement. Interest shall be payable monthly in arrears on the last day of each month. All fees payable under the Pre-Petition Credit Agreement shall be applicable to the Post-Petition Financing. On a monthly basis, the Lender shall be entitled to recover all of its reasonable out-of-pocket expenses, including an audit expense of \$750 per person per day plus any additional out-of-pocket expenses, and including reasonable consultants', attorneys' and paralegals' fees, costs and expenses incurred in connection with the Indebtedness to the extent provided in the Pre-Petition Credit Agreement.

6. Termination of Post-Petition Credit. The Lender's willingness to make loans hereunder and the Lender's consent to the Debtor's use of Cash Collateral shall immediately and automatically terminate (except as the Lender may otherwise agree in writing in its sole discretion), and all Indebtedness shall be immediately due and payable in cash (except as the Lender may otherwise agree in writing in its sole discretion) upon the earliest to occur of the following (the “Loan Payment Date”):

(i) the Final Hearing Date (as defined below) or, if a Final Order is entered on or before the Final Hearing Date, August 1, 2006;

(ii) the date of final indefeasible payment and satisfaction in full in cash of the Indebtedness;

(iii) the effective date of any confirmed plan of reorganization in the Chapter 11 Case;

(iv) the consummation of the sale or other disposition of all or substantially all of the assets of the Debtor;

(v) the failure to consummate the sale or disposition of all or substantially all of the assets of the Debtor on or before June 15, 2006;

(vi) the occurrence of any violation by the Debtor of this Order (including, but not limited to, a violation of the covenants set forth in ordering paragraph 16 of this Order) or the Final Order, or any Event of Default (as defined in the Pre-Petition Credit Agreement) other than the Existing Defaults;

(vii) the dismissal of the Chapter 11 Case or the conversion of the Chapter 11 Case into a case under Chapter 7 of the Bankruptcy Code;

(viii) a trustee or an examiner with enlarged powers (beyond those set forth in §§ 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business of the Debtor is appointed in the Chapter 11 Case without the prior written consent of the Lender (which consent may be withheld in its sole discretion), or the Debtor applies for, consents to, or acquiesces in, any such appointment without the prior written consent of the Lender (which consent may be withheld in its sole discretion);

(ix) this Order or the Final Order is stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Lender (which consent may be withheld in its sole discretion);

(x) this or any other Court enters an order or judgment in the Chapter 11 Case modifying, limiting, subordinating or avoiding the priority of any Indebtedness or the perfection, priority or validity of the Lender's pre-petition or post-petition liens on any DIP Collateral or imposing, surcharging or assessing against the Lender or its claims or any DIP Collateral any costs or expenses, whether pursuant to § 506(c) of the Bankruptcy Code or otherwise;

(xi) the Debtor files any application for approval or allowance of, or any order is entered approving or allowing, any administrative expense claim in the Chapter 11 Case, having any priority over, or being pari passu with, the superadministrative priority of the Indebtedness;

(xii) an order is entered in the Chapter 11 Case granting relief from the automatic stay of Section 362 of the Bankruptcy Code to any holder or holders of a lien on any material collateral in allowing such holder or holders to foreclose or otherwise realize upon such liens; or

(xiii) any motion or application is filed by or on behalf of the Debtor in the Chapter 11 Case seeking the entry of an order, or an order is entered in the Chapter 11 Case, approving any subsequent debtor-in-possession facility for borrowed money or other extensions of credit unless such subsequent facility and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash to the Lender of all Indebtedness prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility.

7. Security for Indebtedness.

(a) The Lender is hereby granted as security for the repayment of all amounts of the Lender's Cash Collateral used by the Debtor and for the DIP Indebtedness, pursuant to §§ 363, 364(c)(2) and 364(c)(3) of the Bankruptcy Code, a valid and perfected first lien, subject only to Prior Claims (as defined below), on all present and after-acquired intangible, personal and real property of the Debtor of any nature whatsoever, including, without limitation, all cash contained in any account maintained by the Debtor, all causes of action existing as of the Filing Date and the proceeds thereof, all causes of action arising under the Bankruptcy Code including avoidance actions under Bankruptcy Code §§ 544 through 553 inclusive, and proceeds thereof, the officers and their spouses, children and pets, all claims for relief arising under Bankruptcy Code § 506 and proceeds thereof and all real property, the title to which is held by the Debtor, or possession of which is held by the Debtor pursuant to leasehold interest (collectively with all proceeds and products of any or all of the foregoing, the "DIP Collateral"). As used herein, the term "Prior Claims" shall mean (i) the pre-petition liens and security interests of the Lender and (ii) any non-avoidable valid, enforceable and perfected liens and security interests in favor of any person or entity on or in the assets of the Debtor, as pre-petition debtor, which existed on the Filing Date and are not subject to § 552(a) of the Bankruptcy Code, but only to the extent such liens and security interests are superior in priority to the liens and security interests of the Lender, after giving effect to any existing subordination or intercreditor arrangements and the applicable lien holder timely files a notice of such superiority with the Court within ten (10) days of the entry of this Order. Other than the first priority liens and security interests in favor of the Lender pursuant to the DIP Loan Documents and this Order and the Prior Claims, no other claims, liens or security interests whether prior to or pari passu with the claims, liens or security interests of the Lender shall attach to the DIP Collateral in this or

any subsequent or superseding case (including, without limitation, any conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto, the “Successor Case”) without the express written consent of the Lender (which consent may be withheld in its sole discretion). The Lender at its option may release at any time from its liens and security interests any assets determined by the Lender to have a risk of environmental liabilities which the Lender in its sole discretion deems unacceptable. In addition, except to the extent otherwise expressly set forth in this Order, or in a written instrument, agreement or other document executed by one or more duly authorized representatives of the Lender, no liens or security interests granted to the Lender, and no claim of the Lender, shall be subject to subordination to any other liens, security interests or claims under § 510 of the Bankruptcy Code or otherwise. Any security interest or lien upon the DIP Collateral which is avoided or otherwise preserved for the benefit of the Debtor’s estate under § 551 or any other provision of the Bankruptcy Code shall be subordinate to the security interests in and liens of the Lender upon the DIP Collateral.

(b) All Cash Collateral used by the Debtor and all DIP Indebtedness shall be deemed to be part of the Liabilities (as defined in the Pre-Petition Credit Agreement) of the Debtor, as well as obligations and indebtedness of the Debtor hereunder.

8. No Limitations on Post-Petition Liens and Cross Collateralization. The post-petition liens and security interests granted in the DIP Collateral under the DIP Loan Documents and this Order shall also secure the Pre-Petition Indebtedness. The Lender shall also be entitled to all of the rights accorded to it pursuant to § 507(b) of the Bankruptcy Code.

9. Perfection of New Liens. All liens and security interests on or in the DIP Collateral granted to the Lender by this Order and the DIP Loan Documents shall be, and they

hereby are, deemed duly perfected and recorded under all applicable federal or state or other laws as of the date hereof, and no notice, filing, mortgage recordation, possession, further order, landlord or warehousemen lien waivers or other third party consents or other act, shall be required to effect such perfection; provided, however, that notwithstanding the provisions of § 362 of the Bankruptcy Code, (i) the Lender may, at its sole option, file or record or cause the Debtor to obtain any such landlord or warehousemen lien waivers or other third party consents or execute, file or record, at the Debtor's expense, any such UCC financing statements, notices of liens and security interests, mortgages and other similar documents as the Lender may require, and (ii) the Lender may require the Debtor to deliver to the Lender any chattel paper, instruments or securities evidencing or constituting any DIP Collateral, and the Debtor is directed to cooperate and comply therewith. If the Lender, in its sole discretion, shall elect for any reason to cause to be obtained any landlord or warehouse lien waivers or other third party consents or cause to be filed or recorded any such notices, financing statements, mortgages or other documents with respect to such security interests and liens, or if the Lender, in accordance with the DIP Loan Documents, shall elect to take possession of any DIP Collateral, all such landlord or warehouse lien waivers or other third party consents, financing statements or similar documents or taking possession shall be deemed to have been filed or recorded or taken in this Chapter 11 Case as of the commencement of this Chapter 11 Case but with the priorities as set forth herein. The Lender may (in its discretion) but shall not be required to, file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property and such filing or recording shall be accepted and shall constitute further evidence of perfection of the Lender's interests in the DIP Collateral.

10. Waiver. The Debtor and its estate (and any party in interest acting on behalf of the Debtor) hereby irrevocably waive, and are barred from asserting or exercising any right, (a) without the Lender's prior written consent (which may be withheld in its sole discretion), or (b) without prior indefeasible payment and satisfaction in full in cash of the Indebtedness: (i) to grant or impose, or request that the Court grant or impose, under § 364 of the Bankruptcy Code or otherwise, liens on or security interests in any DIP Collateral, which are pari passu with or superior to the Lender's liens on and security interests in such DIP Collateral; (ii) to return goods pursuant to § 546(g) of the Bankruptcy Code to any creditor of the Debtor or to consent to any creditor taking any setoff against any of such creditor's pre-petition indebtedness based upon any such return pursuant to § 553(b)(1) of the Bankruptcy Code or otherwise; or (iii) to modify or affect any of the rights of the Lender under this Order or any DIP Loan Documents by any order entered in the Chapter 11 Case or any Successor Case.

11. Modification of Automatic Stay; Other Remedies.

(a) Except as set forth in subparagraph (b) of this paragraph, which governs any action by the Lender to foreclose on its liens on any DIP Collateral or to exercise any other default-related remedies (other than those specifically referenced in the next sentence), the automatic stay pursuant to § 362 of the Bankruptcy Code is hereby vacated as to the Lender to permit it to perform in accordance with, and exercise, enjoy and enforce its rights, benefits, privileges and remedies pursuant to this Order and the other DIP Loan Documents without further application or motion to, or order from, the Court, and regardless of any change in circumstances (whether or not foreseeable), neither § 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the Lender's exercise, enjoyment and enforcement of any of such rights, benefits, privileges and remedies.

The Lender is hereby granted leave, among other things, to (a) receive and apply payments of the Indebtedness and collections on and proceeds of the Pre-Petition Collateral and the DIP Collateral to the Indebtedness in the manner specified in this Order and the DIP Loan Documents, (b) file or record any financing statements, mortgages or other instruments or other documents to evidence the security interests in and liens upon the DIP Collateral, (c) to the extent permitted by § 506(b) of the Bankruptcy Code, charge and collect any interest, fees, costs, and expenses and other amounts accruing at any time under the DIP Loan Documents or this Order as provided therein, (d) to give the Debtor any notice provided for in any of the DIP Loan Documents or this Order, (e) cease making loans or other extensions of credit and/or suspend or terminate any obligation of the Lender to make loans or other extensions of credit under the DIP Loan Documents or this Order, and (f) upon the occurrence of an Event of Default other than any Existing Default, or upon the Loan Payment Date, and without application or motion to, or order from the Court or any other court, (i) terminate the Pre-Petition Credit Agreement and the Post-Petition Financing under this Order and the other DIP Loan Documents, (ii) declare all Indebtedness immediately due and payable, and require that all contingent Indebtedness (if any) be cash collateralized or terminated without liability to the Lender, and (iii) revoke the Debtor's right, if any, under this Order and/or the other DIP Loan Documents to use Cash Collateral.

(b) Upon the occurrence of any Event of Default other than any Existing Defaults, or upon the Loan Payment Date, the Lender is granted leave, without further Court Order, from the automatic stay for the purpose of foreclosing or otherwise enforcing its liens on any or all of the DIP Collateral and/or to exercise any other default-related remedies under the DIP Loan Documents, this Order or applicable law. The Lender shall be entitled to such relief from the automatic stay upon one business hour's notice to the Debtor that one or

more Events of Default (other than any Existing Default) have occurred and are then continuing or that the Loan Payment Date has occurred. Upon one business hour's notice to the Debtor, of Lender's intent to enforce its liens or to exercise any other default-related remedies, (i) the Lender may exercise any remedies available to the Lender under this Order, the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents or applicable law, including to foreclose on the Pre-Petition Collateral and the DIP Collateral, (ii) provided that the Lender in its sole discretion has made available to the Debtor (through additional post-petition Loans or by consenting to Debtor's use of Cash Collateral) sufficient funds to pay the costs thereof, the Debtor shall cooperate with the Lender in connection with any enforcement action by the Lender by, among other things, (A) providing access to its premises to representatives of the Lender, (B) providing the Lender access to its books and records, (C) performing all other obligations set forth in the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, this Order and/or the other DIP Loan Documents, and (D) taking reasonable steps to safeguard and protect the Pre-Petition Collateral and the DIP Collateral until the Lender can make adequate provision to protect and safeguard the Pre-Petition Collateral and the DIP Collateral, and the Debtor shall not otherwise interfere or encourage others to interfere with the Lender's enforcement of its rights. In addition, upon the occurrence of any Event of Default (as determined by mutual agreement of the Debtor and the Lender, or in the absence of such agreement, by the Court) other than any Existing Default, or upon the Loan Payment Date, and provided that the Lender in its sole discretion has made available to the Debtor (through additional post-petition loans or by consenting to the Debtor's use of Cash Collateral) sufficient funds to pay the costs thereof, the Debtor shall, at the request of the Lender, use commercially reasonable efforts to sell or otherwise dispose of the DIP Collateral on terms and conditions acceptable to the Lender and

shall turn over the proceeds of such sale(s) or other disposition(s) to the Lender for application to the Indebtedness in accordance with the provisions hereof and the DIP Loan Documents.

12. Priority Claims Subject to the Carve-Out described in ordering paragraph 13 below, the DIP Indebtedness shall have the highest administrative priority under § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or otherwise (whether incurred in the Chapter 11 Case or any Successor Case), and shall at all times be senior to the rights of the Debtor, any successor trustee or estate representative in the Chapter 11 Case or any Successor Case. Nothing in this Order shall constitute the consent by the Lender to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, the Commitment) against the Lender, its claims or its collateral under § 506(c) of the Bankruptcy Code or otherwise and the Debtor waives its right to assert any such claims against the Lender under §506(c).

13. Carve-Out.

(a) Subject to the remaining provisions of this paragraph, the Lender's liens on and security interests in the DIP Collateral and its administrative claims under § 364(c)(1) and 507(b) of the Bankruptcy Code shall be subject only to (a) the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930, (b) the payment of allowed and unpaid fees and disbursements incurred by Grin & Barrett, LLC pursuant to § 327 of the Bankruptcy Code (collectively, the "Debtor Professionals") and the professionals retained by any Committee pursuant to § 1103(a) of the Bankruptcy Code (collectively, the "Committee Professionals") in an aggregate amount not to exceed \$25,000, less all post-petition amounts paid to any Debtor

Professionals and any Committee Professionals (the amounts specified in clauses (a) and (b) including the limitations therein, collectively, the "Carve-Out").

(b) Notwithstanding anything to the contrary in this Order or the DIP Loan Documents, the pre-petition and post-petition liens and security interests and the administrative priority claims of the Lender shall be senior to, and no proceeds of Indebtedness or Cash Collateral (including any pre-petition retainer funded by the Lender pursuant to the Pre-Petition Loan Documents) nor any Pre-Petition Collateral or DIP Collateral (or proceeds thereof) may be used to pay, any and all claims for services rendered by any of the Debtor Professionals or the Committee Professionals in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek or the result of which would be to obtain any order, judgment, determination, declaration or similar relief: (x) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Indebtedness or the liens and security interests of the Lender in the Pre-Petition Collateral or the DIP Collateral; or (y) preventing, hindering or otherwise delaying, whether directly or indirectly, the exercise by the Lender of any of its rights and remedies under the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, this Order and/or the DIP Loan Documents or the Lender's enforcement or realization upon any of the liens on or security interests in any Pre-Petition Collateral or DIP Collateral.

14. Cash Collection Procedures. From and after the date of the entry of this Order all collections and proceeds of any DIP Collateral or services provided by the Debtor and all other cash or cash equivalents which shall at any time come into the possession or control of the Debtor, or to which the Debtor shall become entitled at any time shall be deposited in the same bank accounts into which the collections and proceeds of the Pre-Petition Collateral were

deposited under the Pre-Petition Credit Agreement (or in such other accounts as are designated by the Lender from time to time), and such collections and proceeds upon such deposit shall become the sole and exclusive property of the Lender and shall be applied against the Pre-Petition Indebtedness and the DIP Indebtedness as provided in this Order. All cash and cash equivalents of the Debtor currently in any account of the Debtor or otherwise in the possession or control of the Debtor constitutes proceeds of the Pre-Petition Collateral and shall be immediately remitted to the Lender for application against the Pre-Petition Indebtedness. All financial institutions in which any lockboxes, blocked accounts or other accounts of the Debtor are located are hereby authorized and directed to comply with any request of the Lender to turnover to the Lender all funds therein without offset or deduction of any kind.

15. Use of Loan and Collateral Proceeds. Except as otherwise provided in ordering paragraphs 17 and 18 hereof, the proceeds of any loans or other extensions of credit made by the Lender to the Debtor pursuant to this Order and the DIP Loan Documents, all proceeds of DIP Collateral and all Cash Collateral shall be used only as follows: (a) prior to the Loan Payment Date, for the payment of the Debtor's expenses incurred in the ordinary course of business, or any fees and expenses of the Debtor Professionals and the Committee Professionals (to the extent of any unused portion of the Carve-Out), and any portion of the Indebtedness, and (b) on or after the Loan Payment Date, first for the payment of any amounts constituting any part of the unused Carve-Out, second, for indefeasible payment in full in cash of the Indebtedness, and third, upon payment in full thereof in cash, then for the payment of any allowed administrative expenses or other claims in accordance with the provisions of the Bankruptcy Code and orders of this Court. The Lender shall have no obligation with respect to the Debtor's use of the proceeds of the Post-Petition Financing, the DIP Collateral or Cash Collateral, and

shall not be obligated to pay (directly or indirectly from its DIP Collateral) any expenses incurred by the Debtor. Funds borrowed under this Order and Cash Collateral used under this Order shall be used by the Debtor in accordance with this Order. The Lender's consent to the use of Cash Collateral hereunder or the extension of Post-Petition Financing shall not be construed as a consent to the use of any Cash Collateral or a commitment to continue to provide Post-Petition Financing after the occurrence of an Event of Default (other than the Existing Defaults) or beyond the Loan Payment Date, regardless of whether the entire Commitment has been expended. To induce the Lender to permit the Debtor to use Cash Collateral and borrow additional funds, the Debtor has agreed, and this Court hereby orders, that as long as any Indebtedness is outstanding, the Debtor shall not seek, assert, argue for, encourage or support the use of Cash Collateral of the Lender by the Debtor except as expressly permitted and consented to by the Lender pursuant to the terms of this Order.

16. Covenants. The Debtor shall timely comply with all of the covenants set forth in the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, this Order and the other DIP Loan Documents.

17. Application of Collateral Proceeds. All proceeds of Pre-Petition Collateral and DIP Collateral consisting of inventory sold in the ordinary course of the Debtor's business shall be applied (A) first, to the DIP Indebtedness (in such order as determined by the Lender in its sole discretion) until paid in full, and (B) second, to the Pre-Petition Indebtedness (in such order as determined by the Lender in its sole discretion). All other proceeds of Pre-Petition Collateral and, to the extent permitted under ordering paragraph 8 of this Order, all proceeds of DIP Collateral, shall be applied (A) first, to the Pre-Petition Indebtedness (in such order as determined by the Lender in its sole discretion) until paid in full, and (B) second, to the DIP

Indebtedness (in such order as determined by the Lender in its sole discretion). The Debtor shall not have the right to direct the manner of application of any payments to the Lender or any other receipts by the Lender of proceeds of any of the Pre-Petition Collateral or DIP Collateral other than in the manner set forth in this ordering paragraph and the Pre-Petition Credit Agreement.

18. Non-Ordinary Course Dispositions. No sale, lease or other disposition of Pre-Petition Collateral or DIP Collateral outside the ordinary course of business (including any auction or other similar sales) may be done without the Lender's written consent.

19. Books and Records. The Debtor shall permit the Lender and any authorized representatives designated by the Lender (including, without limitation, its auditors, appraisers and financial advisors) to visit and inspect any of the properties of the Debtor, including the Debtor's financial and accounting records, and to make copies and take extracts therefrom, and to discuss the Debtor's affairs, finances and business with such Debtor's officers and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably requested. Without limiting the generality of the foregoing, the Debtor shall promptly provide to the Lender and the Lender's designated representatives any information or data reasonably requested to monitor the Debtor's compliance with the covenants in the Pre-Petition Credit Agreement and the provisions of the DIP Loan Documents and this Order and to perform appraisals or other valuation analyses of any property of the Debtor.

20. Authorized Signatories. The signature of Truly N. Ept or the Debtor's attorneys shall bind the Debtor, and no other approval shall be necessary.

21. The Lender's Reservation of Rights; No Waiver. The Lender does not waive, and expressly reserves, any and all claims, defenses, rights and remedies it has pursuant to any or all of the DIP Loan Documents, the Bankruptcy Code and/or other applicable law

against the Debtor and any officer, director, employee, agent or other representative of the Debtor. In addition, the rights and obligations of the Debtor and the rights, claims, liens, security interests and priorities of the Lender arising under this Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtor, in its pre-petition capacity, under the Pre-Petition Loan Documents. Without limiting the generality of the foregoing, the Lender may petition this Court for any such additional protection it may reasonably require with respect to the Pre-Petition Indebtedness, the DIP Indebtedness or otherwise, and nothing in this Order constitutes a finding with respect to the adequacy of the protection of the Lender's interests in the Pre-Petition Collateral.

22. Order Completely Binding on Successors. The provisions of this Order shall be binding upon and inure to the benefit of the Lender, the Debtor, and its successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtor's estate or of any estate in any Successor Case); provided, however, that the Carve Out provisions of this Order shall not inure to the benefit of any chapter 11 or chapter 7 trustee. Except as otherwise explicitly set forth in this Order, no third parties are intended to be or shall be deemed to be third party beneficiaries of this Order or the DIP Loan Documents.

23. Effect of Dismissal, Conversion or Substantive Consolidation. If the Chapter 11 Case is dismissed, converted, otherwise superseded or substantively consolidated, the Lender's rights and remedies under this Order and the DIP Loan Documents shall be and remain in full force and effect as if the Chapter 11 Case had not been dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding any such dismissal, conversion, supercession or substantive consolidation, all of the terms and conditions of this Order, including,

without limitation, the liens and the priorities granted hereunder, shall remain in full force and effect.

24. Releases and Validation of Pre-Petition Indebtedness and Liens:

Allowance of Secured Claim. The release, discharge, waivers and agreements set forth in this ordering paragraph will be deemed effective upon the entry of a Final Order incorporating this paragraph, subject only to the very limited right of any Committee to object on the flimsy and otherwise useless terms and conditions set forth in paragraph 26 below. The Debtor and its estate, hereby: (a) releases and discharges the Lender, together with its affiliates, agents, attorneys, officers, directors and employees from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the Pre-Petition Loan Documents, any aspect of the pre-petition relationship between the Lender and the Debtor, or any other acts or omissions by the Lender in connection with any of the Pre-Petition Loan Documents or its pre-petition relationship with the Debtor; (b) waives any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and nonavoidability (under §§ 510, 544, 545, 547, 548, 550, 551, 552 or 553 of the Bankruptcy Code or otherwise) of the Pre-Petition Indebtedness and the security interests in and liens on the Pre-Petition Collateral in favor of the Lender (which liens and security interests are first priority subject only to the Prior Claims); and (c) agrees, without further Court order and without the need for the filing of any proof of claim, to the allowance of the pre-petition claims of the Lender pursuant to §§ 502 and 506 of the Bankruptcy Code on account of the Pre-Petition Indebtedness as fully secured claims according to the Lender's books and records, the principal amount of which is not less than \$523,497.47 as of the Filing Date (including accrued default

interest, late fees, expenses and other amounts chargeable under the Pre-Petition Loan Documents.)

25. The Lender's Relationship with the Debtor. In making decisions to advance any Loans or other extensions of credit to the Debtor, in administering any Loans or other extensions of credit, or in taking any other actions reasonably related to this Order or the Indebtedness or the DIP Loan Documents, and regardless of the controlling nature of the Loan Documents or this Order, the Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtor or to be acting as a "controlling person," "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar Federal or state statute), and the Lender's relationship with the Debtor shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the Lender and the Debtor.

26. Objections by Parties in Interest. Except as set forth in finding paragraphs D and E, in paragraph 24 and in this paragraph, all of the provisions of this Order shall be final and binding on the Debtor and all creditors and other parties in interest. The Committee shall have until April 30, 2006, within which to file, on behalf of the Debtor, and to serve upon counsel for the Lender, objections or complaints respecting (a) the claims, causes of actions and defenses released by the Debtor pursuant to ordering paragraph 24 above or (b) the validity, extent, priority, avoidability, or enforceability of the Pre-Petition Indebtedness or the Lender's pre-petition liens on and pre-petition security interests in the Pre-Petition Collateral; provided however, that the Committee will have no money to investigate or pursue any such action. In the

event that no objections or complaints are filed with this Court and served upon counsel of record for the Lender within the time period set forth above and no final order of this Court granting such objections or the relief requested in such complaints is entered on or prior to June 30, 2006, the provisions of ordering paragraph 24 of this Order shall become final and binding on all such parties.

28. Subordination Agreements. Pursuant to Bankruptcy Code § 510, the Subordination Agreement remains in full force and effect. Having been properly notified of the existence of various Events of Default under the Pre-Petition Credit Agreement, as described in finding paragraph N of this Order, the subordinated party to the Subordination Agreement may not ask, demand, sue for, accept or receive, and the Borrower may not pay to (a) such subordinated parties, any salary, distribution or payment of any Subordinated Debt (as defined in the Subordination Agreement) and (ii) a relative of such subordinated party, a distribution or salary.

29. Effect of Modification of Order. The Debtor shall not, without the Lender's prior written consent, seek to modify, vacate or amend this Order or any DIP Loan Documents; and if the Debtor's attempts any modification without Lender's consent, such action will constitute an Event of Default hereunder. If any of the provisions of this Order are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacatur shall not affect the validity of any Indebtedness outstanding immediately prior to the effective time of such stay, modification or vacation, or the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to any such Indebtedness. Notwithstanding any such stay, modification or vacatur, any Indebtedness outstanding immediately prior to the effective time of such modification, stay or

vacatur shall be governed in all respects by the original provisions of this Order, and the Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted herein, with respect to all such Indebtedness.

30. Plan of Reorganization. If the Debtor has complied with the terms of this Order, and any proposed Plan of Reorganization proposes to pay Lender in full, Lender is obligated to vote in favor of such Plan. If any such Plan does not propose to pay Lender in full, or serves to modify the terms of this Order (or protections provided to Lender herein), then the proposal of such Plan will be considered an event of default under this Order.

31. Safe Harbor. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtor to obtain credit on the terms and conditions upon which the Debtor and the Lender have agreed. Thus, each of such terms and conditions constitutes a part of the authorization under § 364 of the Bankruptcy Code, and is, therefore, subject to the protections contained in § 364(e) of the Bankruptcy Code.

32. Subsequent Hearing; Procedure for Objections and Entry of Final Order. The Motion is set for a Final Hearing before this Court at 9:00 a.m. on April 17, 2006 (such date or such later date to which the Final Hearing is adjourned or continued with the Lender's consent, the "Final Hearing Date"), at which time any party in interest may present any timely filed objections to the entry of a Final Order, in form and substance acceptable to the Lender in its sole discretion. The Debtor shall promptly serve a notice of entry of this Order and the Final Hearing, together with a copy of this Order, by regular mail upon (i) the parties identified in finding paragraph I hereof, and (ii) any other party which theretofore has filed in the Chapter 11 Case a request for special notice with this Court and served such request upon Debtor's counsel.

The notice of the entry of this Order and the Final Hearing shall state that objections to the entry of a Final Order on the Motion shall be in writing and shall be filed with the United States Bankruptcy Clerk for the Northern District of Illinois no later than April 7, 2006, which objections shall be served so that the same are received on or before 4:00 p.m. (Central time) of such date by (i) Grin & Barrett, LLC, Attention: Dan D. Mann, 111 N. Beyond Hope Street, Needmore, IL 54321, counsel to the Debtor; (ii) Browbeatum, Flogem & Harassem, LLP, Attention: Frank N. Stein, Corner of High & Normal Streets, Ketchum, ID, 12345, counsel to the Lender; and (iii) the United States Trustee. Any objections by creditors or other parties in interest to any of the provisions of this Order shall be deemed waived unless filed and served in accordance with this paragraph.

33. No Marshaling. The Lender shall not be under any obligation to marshal any assets in favor of the Debtor or any other party or against or in payment of any or all of the Indebtedness.

34. Objections Overruled or Withdrawn. All objections to the entry of this Order have been withdrawn or overruled.

35. Controlling Effect of Order. To the extent any provisions in this Order conflict with any provisions of the Motion, any Pre-Petition Loan Documents or any DIP Loan Documents, the provisions of this Order shall control.

36. Order Effective. This Order shall be effective as of the date of signature by the Court.

IT IS SO ORDERED.

DATED this ____ day of April 2006.

I. TRYON MERITT
UNITED STATES BANKRUPTCY JUDGE

Stipulated and Agreed:

By: _____
Dan D. Mann
Grin & Barrett, LLC
111 Beyond Hope St.
Needmore, IL 54321
Attorneys for Debtor

By: _____
Frank N. Stein
Browbeatum, Flogem & Harassem, LLP
Corner of High & Normal Streets
Ketchum, ID 12345
Attorneys for Lender

EXHIBIT A

Pre-Petition Credit Agreement

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ROUGH STATE**

In Re:)	
)	
KNEAD THE DOUGH BAKERY, INC.,)	Case No.
)	Chapter 11
Debtor.)	Hon. I. Tryon Meritt

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE
ENTRY OF A FINAL ORDER ON THE STIPULATION AND INTERIM ORDER (I)
AUTHORIZING (A) SECURED POSTPETITION FINANCING ON A SUPER
PRIORITY BASIS PURSUANT TO 11 U.S.C. § 364, (B) USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363 AND (C) GRANT OF ADEQUATE PROTECTION
PURSUANT TO 11 U.S.C. §§ 363 AND 364 AND (II) SCHEDULING A FINAL
HEARING PURSUANT TO BANKRUPTCY RULE 4001(C)**

The Official Committee of Unsecured Creditors (the "Committee"), objects to the entry of a final order in the form of the Stipulation and Interim Order (I) Authorizing (A) Secured Postpetition Financing on a Super Priority Basis Pursuant to 11 U.S.C. § 364, (B) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 363 and 364; and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(C), which was entered by this Court on April 3, 2006 (the "Interim Order")¹, as follows:

BACKGROUND

1. Knead The Dough Bakery, Inc., ("Debtor") filed its voluntary petition under Chapter 11 of the Bankruptcy Code on April 1, 2006 (the "Petition Date"). The Committee questions just how voluntary the petition was as the only party that will benefit from this foreclosure by bankruptcy case will be Vulture Financing, N.A., (the "Lender").

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Interim Order.

2. The Debtor seemingly is operating its business and managing its property as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code; however, by the terms of the Interim Order it is clear that the Lender is really in control.

3. No trustee or examiner has been appointed in these cases and cannot be so appointed by the terms of the Interim Order despite what the "Bankruptcy Code" might provide.

4. The Committee was formed on April 6, 2006. Despite the flimsy and otherwise useless ability it has to object to the Interim Order, it does so anyway.

INTRODUCTION

5. The Interim Order should not become a final order because the Bankruptcy Code does not provide for foreclosure by bankruptcy. The Interim Order makes clear that the sole purpose of this case is to allow the Lender to enhance its pre-petition secured position while obtaining waivers and releases from claims it faces for running roughshod over all other parties in interest and the Bankruptcy Code and Bankruptcy Rules. If the Interim Order were to become a final order, the Lender will have achieved total control of the Debtor and neither the Debtor, the Committee, this Court nor anybody else will have any ability to stop them from proceeding as they see fit.

6. The Interim Order should be terminated and the Committee should be granted full control over the Debtor to either reorganize or liquidate the Debtor's assets as the Committee sees fit.

7. In the unlikely event that the Court allows the Debtor to operate under its current proposed financing, the Committee objects to the Interim Order becoming a final order because (i) the Lender is the cause of the Debtor's inability to fund its operations and to seek financing on less restrictive terms; (ii) neither the Court nor the Committee has seen the Pre-Petition Loan Documents which are the bases of the pre- and post-petition loans and for determining whether

the Lender was a secured creditor on a pre-petition basis and, if so, in what amount; (iii) there is absolutely no basis for the complete waiver and release of claims against the Lender; and (iv) many of the provisions violate the Bankruptcy Code.

ARGUMENT

I. THE LENDER IMPROPERLY CREATED THE NEED FOR THIS FINANCING AND SHOULD NOT BE ALLOWED TO BENEFIT FROM ITS OVERBEARING APPROACH

8. Not surprisingly, the Interim Order fails to recount the days before this case was commenced. It was in the few days before the Petition Date that the Lender decided to seize control over the Debtor and obtain foreclosure by bankruptcy.

9. Prior to the Petition Date, the Debtor was operating profitably and paying its debts as they became due until that fateful day, two days before the Petition Date, when the Lender visited the Debtor's operations.

10. On that visit, the Lender's representative noticed that a number of Debtor's employees were either absent due to illness or working while ill.

11. Fearing that a flu epidemic might force the Debtor to cease operations, the Debtor declared a default on the Pre-Petition Credit Agreement, invoking the "Lender is nervous" default provision.²

12. Fully seizing the opportunity at hand, the Lender delivered the Interim Order to the Debtor and instructed the Debtor to commence this case and obtain entry of the Interim Order. Thinking the Debtor had no options, the Debtor did so without hesitation.³

² Truly N. Ept was unable to provide the Committee with the Pre-Petition Loan Documents but did provide it with a copy of the default letter.

³ Mr. Ept even failed to notice that he gave up his, and others, spouses, pets and children as collateral to the Lender.

13. By the terms of paragraph 5 of the Interim Order, the pre- and post-petition loans are incurring interest at the default rate, which rate is unknown since no documentation has been provided, and the Debtor must pay the Lender audit expenses of \$750 per day plus any additional out-of-pocket expenses and for the cost of Lenders' professionals. Moreover, the Debtor is to be sold by June 15, 2006 and not reorganized.

14. Pursuant to the Committee's calculations, any funds that would otherwise be available to the unsecured creditors in this case will be exhausted by the increased interest and fees and expenses to be paid to the Lender.

15. In other words, because the Lender was nervous, the Debtor will now operate solely for the benefit of the Lender while the Debtor's assets are marketed in a procedure controlled solely by the Lender. This is a foreclosure by bankruptcy designed to benefit the Lender to the detriment of the unsecured creditors.

16. Importantly, given the swiftness of the Lender's assertion of default and the commencement of this case, there is absolutely no way the Debtor sought less restrictive financing.

17. The Committee should be placed in charge of the Debtor. It represents the real stakeholders in this case. If the Lender is properly secured then the Committee will have the incentive to pay Lender as soon as possible to maximize the distribution to unsecured creditors. And if the Lender argues that the unsecured creditors are "out of the money" then this case should be dismissed because state law, not the Bankruptcy Code, governs foreclosures. Conversion is not an option because the terms of the Interim Order are completely binding on a Chapter 7 trustee. Interim Order paragraph 22.

**II. THE INTERIM ORDER TAKEN AS A WHOLE IS
OUTSIDE THE BOUNDS OF REASONABLENESS AND
IS NOT PERMISSABLE BY LAW.**

18. The Interim Order is overbearing and cripples the ability of anyone but the Lender to enforce its rights, even those rights preserved or even granted by the Bankruptcy Code.

19. The Interim Order was entered on “not less than one business hour’s notice,” yet it portends to have a binding impact on the rights of all unsecured creditors and all secured creditors other than the Lender.

20. The Interim Order was entered without sufficient notice and dramatically affects too many rights of too many parties for it to be conscionable. This case is similar to that of *In re Colad Group, Inc.*, 324 B.R. 208 (Bankr.W.D.N.Y. 2005). The *Colad* Court stated:

The interim order was inappropriately complex, and thereby denied to the court a sufficient basis of confidence in the reasonableness of its terms. ... Based on its cursory review, the court discovered that the proposed order would change substantive and procedural rights, without allowing any reasonable opportunity for creditor objection. For example, the interim loan arrangement included a grant of relief from the automatic stay in the event of default, limitations on the debtor’s right to propose a plan of reorganization, and a waiver of various claims the debtor might assert against [Lender]. Particularly troublesome were the provisions of section 11.6 of the Loan Agreement, which purported to require, as a condition of interim funding, the disavowal and waiver of various “rights and remedies provided under the Bankruptcy Code, the Federal Rules of Civil Procedure, and the Bankruptcy Rules.” *Id.* at 218.

21. The Interim Order in this case created similar problems to those addressed in *Colad*.

22. As for the Interim Order becoming a final order, in determining whether to approve a financing transaction, Bankruptcy Courts act in their informed discretion. *In re Ames Department Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). The Bankruptcy Court must consider the delicate balance of the hope of debtors to reorganize against the expectations of creditors for payment on their claims:

[T]he courts have focused their attention on proposed terms that would tilt the conduct of the bankruptcy case; prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers for

the benefit of all creditors; or leverages the Chapter 11 process by preventing motions by parties-in-interest from being decided on their merits. They recognize that debtors-in-possession generally enjoy little negotiating power with a lender At the same time, however, they permit debtors-in-possession to exercise a basic business judgment consistent with their fiduciary duties. (citations omitted)

Id. at 37-38.

23. While it is certainly true that many Chapter 11 debtors depend on the availability of post-petition financing in order to continue their business operations, a lender should not be allowed to be over-reaching in its financing order. The *Ames* Court concluded that:

[T]he Court's decision under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised **so long as the financing arrangement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.**

Id. at 40 (*emphasis added*).

24. Moreover, although Code § 364(c) provides that a Bankruptcy Court “may approve” a financing order, there are statutory requirements that must be satisfied.

25. A Bankruptcy Court may authorize the obtaining of credit under Code § 364(c) only if “the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) as an administrative expense.” In other words, a debtor must show that it is unable to obtain credit by less drastic means. *See In re Au Natural Restaurant, Inc.*, 63 B.R. 575 (Bankr. S.D.N.Y. 1986). The Bankruptcy Court must specifically make a finding as to Debtors’ efforts in this regard. *See In re Executive Air Services*, 62 B.R. 474 (D. Utah 1986).

26. The Court in *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992) further stated:

While certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy

process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender. Thus, courts look to whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties-in-interest.

27. Further, the *Ames* Court, 115 B.R. 34, discussed a financing order in the *In re Tenney Village Co.*, 104 B.R. 562 (Bankr.D.N.H. 1989) case, which included similar concessions as in the Interim Order. The *Ames* Court stated the following about the *Tenney* case:

[t]he bank was to effectively operate the debtor's business; its pre-petition liens would be immunized from attack by not only the debtor but by a creditors' committee even prior to the appointment of counsel; preference, fraudulent conveyance, lender liability and subordination claims of the estate would be waived; debtor's counsel would not be entitled to payment for any work in dispute with the bank. Thus, the arrangement would skew the conduct of the bankruptcy case, destroy the adversary process that contemplates representation by counsel, and deprive the estate of possible rights and powers before the creditors' committee counsel would have a reasonable time to examine whether the estate had viable claims.

In re Ames Department Stores, Inc., 115 B.R. at 38.

28. The unsecured creditors are the true parties-in-interest with an economic stake in Debtor's business and Debtor's assets, and they will be unduly prejudiced by the entry of the proposed final order.

III. The Interim Order Contains Unsupported Findings and Allows a Secured Claim in this Case Without the Production of Documents and Without the Filing of a Proof of Claim.

29. The Interim Order contains numerous findings relating to the pre-petition loan arrangements between Lender and the Debtor, yet no evidence was supplied in support of the findings.

30. The Interim Order contains findings about the amount of the debt and the extent, validity and priority of Lender's liens.

31. The net effect of the unsupported findings is that Lender is to have an **uncontestable** claim against the Debtor that is fully secured by an **uncontestable** lien without Lender having to take any further steps, such as proving it is fully secured or even filing a proof of claim itemizing not only the principal and interest of the loan amount, **but also any fees that Lender adds to the loan balance.**

32. None of the Pre-Petition Loan Documents were produced as part of this proceeding; however, they are approved and incorporated by reference in the Interim Order.

33. The Committee objects to the findings in the Interim Order and should be given access to the Pre-Petition Loan Documents for review prior to any binding factual determinations that Lender has a valid secured claim in any amount. Further, Lender should not be granted an allowed secured claim, which claim includes interest, costs and fees, without submitting a proof of claim to this Court and serving that claim on parties in interest. It is not clear from the information provided that Lender is secured at all, much less oversecured. Therefore, Lender may not be entitled to interest, fees and costs pursuant to 11 U.S.C. § 506(c) and should be required to file a claim for review, like any other party in this case, before it is allowed.

34. Given the Lender's actions to date, the Debtor should also be required to put on sufficient evidence to support that the Lender is entitled to the safe harbor protections of Section 364(e). *See, e.g., Colad*, 324 B.R. at 225 ("At the hearing on the motion, the debtor offered only one witness and his statements about good faith were conclusory.... Any finding of good faith is more appropriately made with the benefit of testimony and argument after a reversal or modification on appeal.")

IV. The Interim Order Impermissibly Authorizes a "Roll-up" (Cross-Collateralization) by Converting Lender's Pre-Petition Debt Into Post-Petition Debt

35. The Interim Order is designed to allow Lender to transform its pre-petition debt into a post-petition debt, sometimes known as a “roll-up.” Interim Order paragraph 8. Roll-ups are disfavored. *See Official Committee of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co.*, 322 B.R. 560, n.4, (M.D. Pa. 2005) (defining a roll-up and citing to *Shapiro v. Saybrook Manuf. Co. (In re Saybrook Mfg. Co.)*, 963 F.2d 1490,1491 (11th Cir. 1992), regarding how cross-collateralization/ roll-ups are disfavored).

36. The Lender should be prohibited from applying proceeds of post-petition collateral to pay pre-petition debt.

37. The proposed roll-up in this case is even more questionable considering that neither the Debtor nor Lender have produced the Pre-Petition Loan Documents. The Interim Order could be authorizing Lender to convert an unsecured pre-petition claim into a fully secured post-petition claim.

V. The Interim Order Provides for Inconsistent and Improper Payments to Lender

38. Paragraph 5 of the Interim Order essentially requires the Debtor to make adequate protection payments. “The Supreme Court has determined that ‘adequate protection’ is intended by the Bankruptcy Code only to assure that a secured creditor, during the pendency of a bankruptcy case, does not suffer a loss in the value of its interest in property of the bankruptcy estate . . .” *In re Markos Gurnee Partnership*, 252 B.R. 712, 716 (Bankr. N.D. Ill 1997) (citing *United Sav. Ass’n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988)). Therefore, Lender is not entitled to adequate protection payments if it is oversecured. And paragraph 5 of the Interim Order requires the Debtor to pay the Lender interest monthly on the entire loan balance. On the other hand, Lender is only entitled to interest if it is oversecured. 11 U.S.C. § 506(b). Lender is seemingly requiring adequate protection payments while asserting it is oversecured in clear contradiction of one, if not two, bankruptcy code provisions.

39. Additionally, there are no disgorgement provisions whereby the Lender would return any inappropriate payments it received.

VI. Chapter 5 Recoveries Should Not Be Collateral for Lender's Lien

40. Paragraph 7 of the Interim Order describes the collateral that is to secure Lender's lien. Included in that description is "avoidance actions under Bankruptcy Code §§ 544 through 553 inclusive, and proceeds thereof," otherwise known as Chapter 5 avoidance actions or recoveries.

41. A debtor in possession may not pledge avoidance actions as security for postpetition financing. *See Official Comm. Of Unsecured Creditors v. Goold Electronics Corp. (In re Goold Electronics Corp.)* 1993 U.S. Dist. LEXIS 14318, at *12 (N.D. Ill., Sept. 22, 1993) (vacating bankruptcy court order approving post-petition financing "to the extent that the order assigns to the bank a security interest in the debtor's preference actions."). This is because avoidance actions are not the personal property of a debtor. *See, e.g., 5 Collier on Bankruptcy* 541.14 at n.1 ("The avoiding powers of a debtor in possession granted in chapter 5 of the [Bankruptcy] Code are not property of the estate but statutorily created powers to recover property.").

42. The "avoidance actions under Bankruptcy Code §§ 544 through 553 inclusive, and proceeds thereof," should not be included in Lender's collateral, but rather preserved for the benefit of the unsecured creditors of the estate.

43. Moreover, paragraph 12 of the Interim Order purports to grant the Lender a super-priority administrative expense claim of the "highest administrative priority." The Lender is not entitled to such a priority unsecured claim as it would effectively back-door an improper interest in the avoidance actions.

VII. Automatic Termination of the Automatic Stay is in Violation of the Bankruptcy Code and Rules

44. The Interim Order identifies numerous events of default and provides that the automatic stay terminates **one business hour** after Lender delivers notice of default to the Debtor. *See e.g.*, Interim Order paragraph 11(b). There is absolutely no basis or justification for this procedure.

45. Bankruptcy Code Section 362 and Bankruptcy Rule 4001 provide the substance and process for obtaining relief from the automatic stay. Section 362 provides that relief from the stay should only be granted for cause. No such cause has been exhibited or established in this case. *See In re Dalen*, 259 B.R. 586, 608 n.30 (Bankr.W.D.MI 2001) (court should not approve drop dead stay relief absent a showing that the creditor is entitled to such relief). Moreover, Bankruptcy Rule 4001 provides that a motion for relief from the stay shall be made in accordance with Bankruptcy Rule 9014 and served on the Committee. Finally, Bankruptcy Rule 4001(a)(2) describes the procedure whereby ex-parte relief from the stay may be obtained. None of these requirements have been satisfied.

46. The Lender is essentially requesting this Court for the opportunity to obtain ex-parte relief from the automatic stay without having to provide specific facts by an affidavit or verified motion that the Lender will suffer immediate and irreparable injury, loss or damage if relief is not granted before notice is given, as required by Bankruptcy Rule 4001(a)(2).

47. Termination of the automatic stay should not occur upon the issuance of a notice of a default without the opportunity to cure or challenge the default. For example, the Lender may take the position that the Debtor has defaulted and that position may be subject to dispute. For these reasons, the Debtor as well as the Committee should have the opportunity to raise any issues regarding the default with the Bankruptcy Court. Under the Interim Order, the Debtor and

Committee would not have this opportunity and the Lender could unilaterally decide to shut down the Debtor to the detriment of the unsecured creditors.

48. The proposed “automatic” stay relief provisions are not proper.

VIII. The Prohibition Against Surcharge is Contrary to the Bankruptcy Code

49. The Interim Order indicates that no surcharge is allowed pursuant to section 506(c). Interim Order paragraph 12.

50. Section 506(c) does not require a secured creditor to consent to surcharge and the Order should not impose any requirements not required by the Bankruptcy Code. *See Colad*, 324 B.R. at 224 (stating that the “debtor and its secured creditor do not constitute a legislature” when striking provisions attempting to prohibit surcharge of collateral under Section 506).

51. The imposition of a section 506(c) bar in this case is especially offensive since the Debtor is being forced to liquidate for the Lender’s benefit.

IX. The Binding Nature of Interim Order is Improper

52. Paragraph 22 of the Interim Order provides that it is binding on any and all Chapter 7 and Chapter 11 trustees.

53. Even if the numerous illegal and improper provisions of the Interim Order are rectified, there is no reason to bind a Chapter 11 or 7 trustee. The Chapter 11 or 7 trustee would have fiduciary duties to the estate that would be hamstrung by the Lender’s attempted control of the Debtor’s operations as set forth in the Interim Order.

X. The Interim Order Includes Illegal Release of Claims

54. Paragraph 26 provides for a global release of essentially all claims by the estate against the Lender and anyone that has ever been involved with the Lender.

55. Such a broad release of so many parties is not warranted at this time, if ever. *See In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (non-debtors should only receive

protections under “unusual circumstances” which the Lender has not addressed). Moreover, if the Debtor seeks to compromise claims it has against the Lender, it may do so provided it complies with Federal Rule of Bankruptcy Procedure 9019.

XI. The Interim Order Replaces the Debtor’s Business Judgment With That of the Lender and Insulates the Lender from Exercising Such Judgment

56. The Interim Order dictates a sales procedure that must be completed by June 15, 2006.

57. The Debtor does not have a proposed purchaser and has not filed its motion seeking a § 363 sale. Rather, the Lender has decided the Debtor must sell its assets by a particular date.

58. This proscribed sales procedure not only takes the Debtor’s business judgment away, it also guarantees that the Debtor’s assets will be sold at a reduced value. Everyone knows that the Debtor must sell its assets, so the Debtor will not have the ability to negotiate a “highest and best offer” that would benefit the unsecured creditors.

59. On the other hand, the Lender is guaranteed a full recovery, plus the recovery of its additional fees and expenses in “assisting” the Debtor to sell its assets for Lender’s own benefit.

60. Adding insult to injury, the Interim Order insulates the Lender and provides that the “Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtor or to be acting as a ‘controlling person,’ ‘responsible person’ or ‘owner and operator’ with respect to the operation or management of the Debtor.” Interim Order paragraph 25.

61. The Lender should not be allowed to dictate the Debtor’s business operations without running the risk of doing so.

XII. Committee Access and Notice

62. The Committee should be given access to the Debtor's premises and records similar to the access provided to Lender.

63. The Committee should receive all reports that the Debtor is to provide to Lender or any other party in this case at the same time and in the same manner any other party receives the reports.

64. The Committee should receive any notices that Lender is to provide to the Debtor at the same time and in the same matter as the Debtor is to receive such notice.

XIII. The Limitations on the Committee Professional Fee Carve Out are Improper

65. Paragraph 13 of the Interim Order contains Lender's consent to payment of Debtor's and Committee's professional fees of a total of \$25,000, less all quarterly fees to be paid to the United States Trustee. Moreover, paragraph 26 provides that the Committee shall have no funds to investigate or bring any causes of action against Lender. The amount of the Carve Out is extremely low and is most likely less than the amount of fees and costs charged by the Lender through the date of this objection. Moreover, the limitation on the Carve Out restricts the Committee's ability to perform their most basic functions.

66. A creditors' committees' professionals are entitled to be fairly compensated to fulfill their legal and ethical obligations to represent the Committee. *In re Ames Department Stores, Inc.*, 115 B.R. 34 (Bankr. S.D.N.Y. 1990). *In re Tenney Village Co., Inc.*, 104 B.R. 562 (Bankr. D.N.H. 1989). The Court in *In re Tenney Village* stated that "[i]t is said that a Chapter 11 lender should not be required to finance the prosecution of claims and defenses against it. That is true. If the lender believes that this will occur, it can elect not to make the loan. It cannot expect, however, to change the rules of a Chapter 11 case." *Id.* at 569.

67. The total Carve Out amount is most likely grossly inadequate when compared to what the Lender's professionals will be paid.

68. The low Carve Out amount and the limitation of use by the Committee to investigate and bring claims against the Lender are representative of the numerous overreaching provisions in the Interim Order which seeks to turn over the control of this case to Lender.

XIV. There is No Basis for Limitations on Marshaling and the Cleansing of Pre-Petition Liens

69. The terms of the Interim Order are overreaching as to other secured creditors as well.

70. Paragraph 7(a) provides that the Lender's liens are superior to any and all other liens unless any party asserting a priming lien files a notice of such superiority within ten (10) days of entry of the order.

71. Paragraph 33 also provides that the Lender is not subject to any obligation to marshal assets.

72. The rationale for those provisions is clear—the Lender wants to prevent any and all parties from getting in the way of its foreclosure. However, the legal basis for those provisions is not apparent because it is non-existent.

73. “While the debtor may seek authority to waive its own rights, it cannot waive the marshaling rights of parties who have not consented and may not have even received notice of debtor's motion.” *In re Colad Group, Inc.*, 324 B.R. 208, 224 (Bankr. W.D. N.Y. 2005).

74. The Lender's attempt to hamstring the rights of all parties in this case is all too evident.

XV. The Interim Order Includes Illegal Lock-Up Provisions

75. Paragraph 30 of the Interim Order includes an illegal lock-up agreement.

76. A “lock-up” refers to an agreement between a creditor and a debtor (or prospective debtor) in which the creditor becomes legally bound to vote for a plan of reorganization so long as certain key plan provisions are included.” *Official Committee of Unsecured Creditors v. New World Pasta Company (In re New World Pasta Company)*, 322 B.R. 560, 568 (M.D.Pa. 2005).

77. Paragraph 30 obligates the Lender to vote in favor of any plan that proposes to pay it in full, provided the Debtor does not first violate the terms of the Interim Order.

78. “When courts have struck down lock-up provisions, they have done so on the ground that votes to accept a reorganization plan cast by a party that signed the lock-up agreement post-petition and prior to the publication of a court-approved disclosure statement may not be counted.” *Id.* (citing to Daniel J. DeFranceschi, *Delaware Bankruptcy Court Announces Bright-Line Rule For Use of Lock-Up Agreements in Chapter 11 Cases*, Am. Bankr. Inst. J., Feb. 16, 2003).

79. The Debtor has not filed a plan or disclosure statement, therefore, paragraph 30 includes an illegal lock-up.

XVI. CONCLUSION

80. Neither the Debtor nor Lender have provided sufficient information to this Court or the Committee to support many of the findings contained in the Interim Order. Many of the provisions of the Interim Order violate the Bankruptcy Code and it is not clear that the financing to be provided for in the Interim Order is in the best interest of creditors. The Lender requires that the Debtor be liquidated and the Interim Order is designed to ensure that all proceeds from the liquidation go to pay the Lender and its professionals in full at the expense of ALL other parties in this case. The Interim Order should not allowed to become a final order.

WHEREFORE, the Committee respectfully requests that the Court deny the Debtor's request to have the Interim Order become a final order, place the Committee in charge of the Debtor and grant such other and further relief the Court deems just and proper.

Respectfully submitted:

GIVEM, ACHANCE, TORECOVER & SURVIVE
Committee Counsel

By: _____
Don T. Screwus
32 Steps Behind Blvd.
Uphill, MI 12345

**RULE 3022-1 NOTICE TO CLOSE CASE OR ENTER FINAL DECREE IN
CHAPTER 11 CASES**

Unless the court orders otherwise, debtors or other parties in interest moving after chapter 11 plan confirmation either to close the case or enter a final decree shall (1) give notice of such motion to the United States Trustee, any chapter 11 trustee, and all creditors, and (2) state within the notice or motion the actual status of payments due to each class under the confirmed plan.

Committee Note: This Rule establishes a uniform procedure for closing chapter 11 cases or entering final decrees after plan confirmation. It also informs creditors what payments the debtor contends have been made.

**RULE 4001-1 MOTIONS - DATE OF REQUEST TO MODIFY STAY UNDER 11
U.S.C. § 362**

Under § 362(e) of the Bankruptcy Code, the date of the “request” for relief from the automatic stay is deemed to be the date of presentment of the motion, provided that the movant has complied with the notice requirements under Fed. R. Bankr. P. 9014 and any other applicable notice requirements of these Rules.

RULE 4001-2 CASH COLLATERAL AND FINANCING ORDERS

A. Motions

- (1) Except as provided in these Rules, all cash collateral and financing requests under §§363 and 364 of the Bankruptcy Code shall be heard by motion filed pursuant to Fed.R.Bankr.P. 2002, 4001 and 9014 (“Financing Motions”).
- (2) Provisions to be Highlighted. All Financing Motions must (a) recite whether the proposed form of order or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation or loan agreement, and (c) state the justification for the inclusion of such provision:
 - (a) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditors (i.e., clauses that secure pre-petition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law).
 - (b) Provisions or findings of fact that bind the estate or all parties in interest with

respect to the validity, perfection or amount of the secured creditor's pre-petition lien or debt or the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate such matters.

- (c) Provisions that seek to waive any rights the estate may have under §506(c) of the Bankruptcy Code.
 - (d) Provisions that immediately grant to the pre-petition secured creditor liens on the debtor's claims and causes of action arising under §§544, 545, 547, 548, and 549 of the Bankruptcy Code.
 - (e) Provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt, other than as provided in §552(b) of the Bankruptcy Code.
 - (f) Provisions that provide treatment for the professionals retained by a committee appointed by the United States Trustee different from that provided for the professionals retained by the debtor with respect to a professional fee carve-out, and provisions that limit the committee counsel's use of the carve-out.
 - (g) Provisions that prime any secured lien, without the consent of that lienor.
 - (h) A declaration that the order does not impose lender liability on any secured creditor.
 - (i) Provisions that grant the lender expedited relief from the automatic stay in § 362 of the Bankruptcy Code, or relief from the automatic stay without further order of court.
- (3) All Financing Motions shall also provide a summary of all provisions that must be highlighted under section (A)(2) of this Rule and a summary of the essential terms of the proposed use of cash collateral or financing, including the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under §§363 and 364 of the Bankruptcy Code.
 - (4) All Financing Motions shall also provide a budget covering the time period in which the order shall remain in effect. The budget shall state in as much detail as is reasonably practical the amount of projected receipts and disbursements during the period covered by the budget.
 - (5) The court may deem unenforceable any provision not highlighted as required under section (A)(2) of this Rule.

B. Interim Relief

When Financing Motions are filed with the court on or shortly after the date of the entry of the order for relief, the court may grant interim relief pending review by the interested parties of the proposed

debtor-in-possession financing arrangements. Such interim relief should only be granted to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court shall not approve interim financing orders that include any of the provisions previously identified in section (A)(2)(a) through (A)(2)(I) of this Rule.

C. Final Orders

A final order shall be entered only after notice and a hearing pursuant to Fed.R.Bankr.P. 4001. If formation of a creditors' committee is anticipated, no final hearing shall be held until at least ten (10) days following the organizational meeting of the creditors' committee contemplated by § 1102 of the Bankruptcy Code unless the court orders otherwise.

Committee Note: This rule was added to assist the court in managing the volume of papers frequently filed shortly after the filing of a Chapter 11 case. By highlighting the provisions described in section A, counsel assists the court in locating clauses that it would seek to review in any case. Section B allows the court to provide relief while taking the time necessary to properly review the parties' financing arrangements. Furthermore, it allows interested parties other than the court to find easily the highlighted provisions.

RULE 4020-1 CROSS REFERENCE TO RULE REGARDING DISMISSAL OF PROCEEDINGS TO DENY OR REVOKE DISCHARGE

See Rule 7041-1.

RULE 5005-1 PLACE AND METHOD OF FILING

A. Office of the Clerk of the Court

All papers shall be filed with the office of the clerk of the United States Bankruptcy Court located in Chicago, Illinois for the Eastern Division or the office of the clerk of the United States Bankruptcy Court located in Rockford, Illinois for the Western Division.

B. Materials to Be Filed in Division in which Venue Lies

Documents commencing a bankruptcy case shall be filed with the clerk in the division of the court in which venue is appropriate. Unless otherwise ordered by the court, following the filing of a case all materials relating to that case shall be filed in the division to which the case is assigned at the time of the filing.

C. Electronic Case Filing

~~Interests of all parties known, or discoverable upon reasonable investigation, to claim an interest in the property in question and shall identify the property, and state the amount of the outstanding indebtedness and the fair market value of the property. The motion shall be accompanied by a legible and complete copy of all relevant loan and security agreements and evidence of perfection, unless such documents are voluminous. A copy of any prior orders of the Court upon which the motion relies shall be attached. A motion for relief from the stay shall be so entitled.~~

Rule 4001-2 Motion For Use of Cash Collateral or to Obtain Financing

(a) A motion for use of cash collateral under 11 U.S.C. § 363(c)(2) or to obtain credit under 11 U.S.C. § 364(c) or (d) shall explicitly state the adequate protection offered the creditor, the moving party's position as to the value of each of the secured interests to be protected, and shall contain a summary of the other essential terms of the proposed use of cash collateral or post-petition financing, including, in the case of a motion to obtain credit under § 364(c) or (d), the interest rate, maturity date and a statement of the total amount of credit sought. Appraisals and projections, to the extent pertinent, shall be summarized in the motion.

(b) The motion shall be filed with a cover sheet in the form attached as Appendix 1 to these rules. The requirement to identify the location in the proposed order of the provisions set forth in Appendix 1 is not to be construed as an approval of or prohibition against the inclusion of any such provisions in the order in any particular case. The Court will make such determination in each case based upon an assessment of all the facts and circumstances.

(c) If a debtor files a motion for the entry of an order approving an agreement for the use of cash collateral or to obtain credit on an expedited basis, the Court may enter the order without a hearing if:

- (1) the order is approved by all creditors who may have an interest in the cash collateral to be used or the credit to be extended, by the chairperson or attorney for each official committee and by the United States Trustee;
- (2) the order provides for the debtor to use cash collateral or to obtain credit in a maximum specified dollar amount necessary to avoid immediate and irreparable harm only until the earlier of a final hearing or the order becoming a final order;

- (3) the order provides for a final hearing, the date and time for which shall be filled in by the Court when the order is entered;
- (4) the order provides that the debtor shall, within 24 hours of its entry, serve a copy of the motion with its attachments and the order upon all parties who are required to be served under Bankruptcy Rule 4001(d);
- (5) the order provides:
- (A) that objections to the order must be filed within 15 days from the entry of the order, except that an official committee may file objections within 15 days after it is served with the order;
 - (B) that upon filing of an objection, the final hearing will be held; and
 - (C) that if no objections are timely filed, the order may become a final order; and
- (6) the motion is accompanied by an affidavit or declaration of the debtor or a principal of the debtor stating the facts upon which the debtor relies in seeking the entry of the order on an expedited basis, and the amount of money needed to avoid immediate and irreparable harm.
- (d) If a debtor files a motion for authority to use cash collateral or to obtain post-petition financing, but the debtor's pre-petition secured creditors have not consented to the relief sought in the motion, the Court may enter an interim order granting the relief requested on an expedited basis if:
- (1) the debtor has served a copy of the motion and proposed order, and a notice of the hearing on the motion, upon the non-consenting secured creditors in the manner set forth in Local Rules 9013-1;
 - (2) the Court has held a hearing on the motion at which the non-consenting secured creditors were given an opportunity to be heard;
 - (3) the order complies with each of the requirements of subparagraphs (c)(2) - (c)(6) of this rule; and,
 - (4) the Court makes a specific finding of fact that the protection offered to the non-consenting secured creditor is adequate and such adequate protection is incorporated into the interim order.
- If the Court enters an interim order under this subparagraph over the objection of a secured creditor, or if a secured creditor does not appear at the hearing or object to the motion, such secured creditor will have the right to object to the interim order as provided in subparagraph (c)(5) of this rule.

(e) On timely motion, the Court may enlarge or reduce the time within which an objection must be filed, except that the Court may not reduce the time within which a non-consenting secured creditor must file an objection under subparagraph (c)(5) of this rule. In its discretion, the Court may schedule a hearing on the debtor's motion at any time, with such notice as it deems appropriate, provided such notice and hearing are consistent with subparagraph (d) of this rule.

Rule 4001-3 Federal Tax Refunds in a Chapter 7 Case

Unless directed otherwise in writing by the trustee, the Internal Revenue Service may make income tax refunds, in the ordinary course of business, to debtors in chapter 7 cases 60 days after the first date set for the Code §341 meeting of creditors.

**Rule 4001-4 Implementation of Code §521(2) -- Statement of
Consumer Debtor's Intentions in a Chapter 7 Case
(Applicable only to cases filed before October 17, 2005)**

Upon failure by the debtor to timely comply with the requirements of 11 U.S.C. §521(2) with respect to property securing consumer debts, the automatic stay imposed by §362(a) for the benefit of the debtor shall be deemed lifted as to that property without further order of the Court.

Rule 4001-5 Motion for Payment of Prepetition Claims of Critical Vendors

(a) A motion to authorize payment of prepetition claims of critical vendors shall be accompanied by a brief on the issue of whether the bankruptcy court has the statutory authority to grant this relief.

(b) Such a motion shall contain at a minimum the following information:

- (1) The aggregate amount to be paid to all critical vendors.
- (2) The individual vendor(s) to be paid and the amount to be paid to such vendor(s), which information may be filed under seal.
- (3) The reason each vendor is "critical" or "indispensable" to the operations or preservation of the estate.
- (4) The loss of economic advantage to the estate or to the debtor's going concern value by the nonpayment of the prepetition claim of each of the particular vendors for whom a request is contained in the motion.

Appendix 1 - Cover Sheet for Motion Under Rule 4001-2

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN _____ DIVISION

In re:

_____ ,

Debtor.

_____ /

Case No. _____

Chapter 11

Hon. _____

COVER SHEET FOR MOTION TO USE CASH COLLATERAL OR TO OBTAIN CREDIT

The debtor has filed a motion to use cash collateral or to obtain postpetition financing, which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

Provision	Contained in Proposed Order	Location in Proposed Order
(1) Provisions that grant liens on the estate's claims and causes of action arising under Chapter 5 of the Code.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __

(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(5) Provisions that prime any lien without that lienholder's consent.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(7) Provisions for the payment of professional fees of the debtor or any committees, including any carve-outs for such payments.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(8) Provisions for the payment of prepetition debt.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(11) Provisions that require or prohibit specific terms in the debtor's plan.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the secured creditor's consent.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __

(16) Provisions that purport to bind a subsequent trustee.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __

 [Debtor's counsel]

Date: _____

Appendix 1 - Cover Sheet for Motion Under Rule 4001-2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
_____ DIVISION

In re:

Debtor.

_____ /

Case No. _____

Chapter 11

Hon. _____

**COVER SHEET FOR MOTION TO USE CASH
COLLATERAL OR TO OBTAIN CREDIT**

The debtor has filed a motion to use cash collateral or to obtain postpetition financing, which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

Provision	Contained in Proposed Order	Location in Proposed Order
(1) Provisions that grant liens on the estate's claims and causes of action arising under Chapter 5 of the Code.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ ____
(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ ____
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ ____

(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(5) Provisions that prime any lien without that lienholder's consent.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(7) Provisions for the payment of professional fees of the debtor or any committees, including any carve-outs for such payments.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(8) Provisions for the payment of prepetition debt.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(11) Provisions that require or prohibit specific terms in the debtor's plan.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the secured creditor's consent.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __

(16) Provisions that purport to bind a subsequent trustee.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page ____, ¶ __

[Debtor's counsel]

Date: _____

LOCAL RULE 4001-2
Motions for Use of Cash Collateral or to Obtain Credit

(a) A motion for use of cash collateral under section 363(c) of the Code or to obtain credit under section 364(c) or (d) of the Code, shall explicitly state the adequate protection offered the creditor and shall aver the moving party's position as to the value of each of the secured interests to be protected. Appraisals and projections, to the extent pertinent and available, are to be summarized in the motion.

(b) If a debtor files a motion for the entry of an order approving an agreement for the use of cash collateral or to obtain credit on an expedited basis, the Court may enter the order without a hearing if:

(1) The order is approved by all creditors who may have an interest in the cash collateral to be used, by any entity extending the requested credit, by the chairperson or attorney for each official committee (if any), and by the United States Trustee;

(2) The order provides for the debtor to use cash collateral or to obtain credit in a maximum specified dollar amount necessary to avoid immediate and irreparable harm only until the earlier of:

(A) a final hearing, or

(B) the order becomes a final order;

(3) The order provides for a final hearing, the date and time for which shall be scheduled by the Court when the order is entered;

(4) The order provides that the debtor shall serve a copy of the motion with its attachments and the order upon all parties who are required to be served under FED. R. BANKR. P. 4001(d);

(5) The order provides:

(A) That objections to the order must be filed within 15 days from the service of the order, except that an unsecured creditors' committee may file objections within 15 days of its formation;

(B) That upon the filing of an objection, the final hearing shall be held; and

(C) That if no objections are timely filed, the order may become a final order; and

(6) The motion is accompanied by an affidavit or a declaration of the debtor or a principal of the debtor stating the facts upon which the debtor relies in seeking the entry of the order on an expedited basis, and the amount of money needed to avoid immediate and irreparable harm.

(c) On timely motion, the Court may enlarge or reduce the time within which an objection must be filed. In its discretion, the Court may schedule a hearing on the debtor's motion at any time, with such notice as it deems appropriate.

(d) Certification by Movant; Order by Clerk. In chapter 7 cases, if no response is filed to the motion, the movant shall, no sooner than twenty-five (25) days after making the motion, follow the procedure set forth in LBR 9021-1 for entry of a form order by the clerk. In chapter 11, 12, and 13 cases, if no response is filed to the motion, the movant shall, within seven (7) days after the date set for the filing of a responsive pleading to the motion as described in (f) below, follow the procedure set forth in LBR 9021-1 for entry of a form order by the clerk.

(e) Response. Any response to such motion shall state with particularity the reasons that the motion is opposed and, if appropriate, make a specific offer of adequate protection.

(f) Procedure in Reorganization Cases. Upon the filing of a motion for relief from the stay in chapter 11, 12, or 13 or from the codebtor stay in chapters 12 or 13, the court will issue an order providing that a hearing shall be held on a date set within thirty (30) days of the filing of the motion, fixing a day for the filing of any responsive pleading to the motion, providing that the stay shall be continued pending the hearing, and providing that the hearing will not be held should a responsive pleading not be timely filed.

(g) Preliminary Hearing. Any party may request a preliminary hearing on the motion, which request may be included in the motion or response, supported by a memorandum providing the grounds for the request. The request shall be made in writing, filed and served by the requesting party on all parties entitled to notice pursuant to LBR 9013-3. Any such request shall be filed by the later of ten (10) days after entry of the order setting the final hearing or service of the motion.

(h) Separate Motion. A motion for relief from the stay or for relief from the codebtor stay shall be filed separately from and not combined in the same pleading with any other request for relief except:

(1) a request in the alternative for adequate protection may be included; and

(2) a motion for relief from the stay imposed by § 362 of the Code may be combined with a motion for relief from the codebtor stay imposed by § 1201 or § 1301 of the Code.

(i) Effect of Relief in Chapter 12 and 13 Cases. In chapter 12 and 13 cases the effect of relief from stay upon an entity holding an allowed secured claim is governed by LBR 3001-1(d)(3).

4001-2 CASH COLLATERAL

(a) Motion. Except as provided herein and elsewhere in these Local Rules, in a chapter 11 case, all cash collateral and financing requests under §§ 363 and 364 of the Code shall be heard by motion filed pursuant to Rules 2002, 4001 and 9014. Stipulations or agreed orders

regarding the use of cash collateral or financing requests are subject to the provisions of this rule. A motion shall contain a description of the cash collateral to be used, sold, or leased; a description of the interest claimed by any other entity in the cash collateral; and the reasons for which the debtor seeks authorization to use, sell, or lease the cash collateral or a description of the financing request.

(1) Provisions to be Highlighted. A motion must (1) recite whether the proposed form of order and/or underlying cash collateral stipulation or financing request contains any provision of the type listed below, (2) identify and highlight the location of any such provision in the proposed form of order, cash collateral stipulation and/or financing request, and (3) set forth the justification for the inclusion of such provision. The provisions to be identified and highlighted are:

(A) Cross-collateralization clauses, i.e., clauses that secure the repayment of prepetition debt with postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law.

(B) Roll-up clauses, i.e., clauses that provide for the proceeds of a postpetition loan to pay prepetition debt.

(C) Provisions or findings of fact that bind the estate or all parties in interest with respect to the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matters.

(D) Provisions or findings of fact that bind the estate and all parties in interest with respect to the validity, perfection, amount or relative priority of the secured creditor's prepetition lien and liens held by persons who are not party to the financing agreement or stipulation, without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matters.

(E) Provisions that create a lien senior or equal to any existing lien without the consent of that lienholder.

(F) Provisions that seek a waiver, without notice, of rights the estate may have under § 506(c) of the Code.

(G) Provisions that grant immediately to the prepetition secured creditor liens on the debtor's claims and causes of action arising under §§ 544, 545, 547, 548, and 549 of the Code.

(H) Provisions that provide disparate treatment with regard to professional fee carveouts for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor.

(I) Provisions that prime chapter 7 administrative expenses.

(J) Provisions that operate to divest the debtor of any discretion by requiring a creditor's consent in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.

(K) Provisions that purport to release the secured creditor's liability for alleged prepetition torts or breaches of contract.

(L) Provisions that grant automatic relief from stay upon default, conversion to chapter 7, or the appointment of a trustee.

(M) Provisions that waive the procedural requirements for foreclosure required under applicable non-bankruptcy law.

(N) Provisions that waive avoidance actions arising under the Code.

(O) Provisions that waive, effective upon default or expiration, the debtor's right to move for a court order pursuant to § 363(c)(2)(B) of the Code authorizing the use of cash collateral in the absence of the secured party's consent.

(P) Provisions that grant a lien in an amount in excess of the dollar amount of cash collateral authorized under the applicable cash collateral order.

(Q) Findings of fact on matters extraneous to the approval process.

(R) Provisions that bar the debtor from future bankruptcy filings.

(2) Summary of Terms. A motion shall contain a separate summary page(s) of the essential terms of the proposed use of cash collateral and/or financing request (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under §§ 363 and 364 of the Code).

(3) Checklist. A motion shall be accompanied by a checklist in the format adopted as Form 4001-2 identifying the location and type of each highlighted provision.

(4) Documents. A motion shall be accompanied by copies of all documents by which the interest of all entities in the cash collateral was created or perfected, or if any of those documents is unavailable, the reason for the unavailability. The debtor shall make its best effort to obtain and file any documents that are unavailable as soon as possible after the motion is filed and unless otherwise approved by the court, not later than seven (7) business days after the filing of the motion.

(b) Interim Relief at Outset of Case. When a motion is filed with the court on or shortly after the date of the entry of the order for relief, the court may grant interim relief pending review of the proposed debtor-in-possession financing arrangements by the interested parties. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court will not approve interim financing orders that include any of the provisions previously identified in subsection (a)(1)(A) through (a)(1)(R) above.

(c) Immediate Relief During Pendency of Case. If, during the pendency of the case, the debtor asserts an immediate need for the use of cash collateral, the court may schedule a preliminary hearing on the motion after notice has been provided to any entity claiming an interest in the cash collateral. Notice provided pursuant to LBR 9013-3 may be by telephone or telecopier (fax) or email if time does not permit notification by mail.

(d) Final Orders. A final order shall be entered only after notice and a hearing pursuant to Rule 4001 and LBR 9013-1 and 9013-3.

4001-3 OBTAINING CREDIT

(a) Chapter 11 Cases. All financing motions and stipulations or agreed orders related to financing motions filed shall comply with LBR 4001-2.

(b) Chapter 13 Cases. The debtor may not incur non-emergency consumer debt in excess of one thousand dollars (\$1,000.00), including the refinancing of real property debt, without written approval of the trustee or order of the court under the procedure set forth herein.

(1) Application Directed to Trustee. The debtor shall first request approval to incur debt by written application to the trustee which shall include the items in (c) below. Such application shall not be filed with the clerk. If approved by the trustee, the trustee shall file the application and the approval and the debtor may incur the debt in accordance with the terms and conditions approved by the trustee.

(2) Motion Directed to Court. If the debtor's application is not approved by the trustee, the debtor may file a motion to incur such debt. The motion shall contain a copy of the trustee's denial of the application.

(c) Contents of Application or Motion. Any motion filed under Rule 4001(c), including any application or motion pursuant to (b) above, shall contain:

(1) a statement in support of the feasibility of the request:

(2) a description of the item to be purchased or the collateral affected by the credit to be obtained;

(3) a description of the interest held by any other entity in any collateral affected by the credit;

(4) the reasons for which the debtor has the need for the credit;

(5) the terms of any financing involved, including the interest rate;

(6) a description of any method or proposal by which the interest held by any other entity in the collateral affected by the credit may be protected; and

(7) copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the unavailability. The debtor shall make its best effort to obtain and file any documents which are unavailable as soon as possible after the motion is filed.

(d) Preliminary Hearing. If the debtor asserts an immediate need for the obtaining of credit, the court may schedule a preliminary hearing on the motion after notice has been provided to any entity claiming an interest in the collateral affected by the credit to be obtained. Notice provided pursuant to LBR 9013-3 may be by telephone, telecopier (fax) or email if time does not permit notification by mail.

4002-1 DEBTOR — DUTIES

(a) Procedure.

(1) Requests by Case Trustee. The debtor shall comply promptly with all trustee requests for information whether oral or written. Not later than twenty (20) days after service of any written request on the debtor and the debtor's counsel, debtor shall serve on the trustee the information and/or documents requested, or shall file and serve on the trustee a written motion for a protective order, a memorandum in support and a request for a hearing.

(2) Information to be Brought to § 341 Meeting by Debtor. Each debtor in a chapter 7 case shall bring to the § 341 meeting either the following documentation, if applicable, or a statement using the designated letter for identification, setting forth why such documentation is not applicable or available.

(A) Suitable identification of each debtor including a photograph of each individual debtor and confirmation of the debtor's social security or tax identification number.

Form 4001-2**Cash Collateral / Postpetition Financing Provisions**

The Debtor, through a separately filed motion, agreed order or stipulation has requested the approval of the use of cash collateral, or postpetition financing, or both. Attached to the motion as Exhibit ____ is a true and correct copy of the agreement for use of cash collateral or postpetition financing (the "Agreement"), which contains the following provisions:

Page No.	Line No. (If Applicable)	Description of Provision
<input type="checkbox"/> _____	_____	(A) Cross-collateralization clauses, i.e., clauses that secure the repayment of prepetition debt with postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law.
<input type="checkbox"/> _____	_____	(B) Roll-up clauses, i.e., clauses that provide for the proceeds of a postpetition loan to pay prepetition debt.
<input type="checkbox"/> _____	_____	(C) Provisions or findings of fact that bind the estate or all parties in interest with respect to the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matters.
<input type="checkbox"/> _____	_____	(D) Provisions or findings of fact that bind the estate and all parties in interest with respect to the validity, perfection, amount or relative priority of the secured creditor's prepetition lien and liens held by persons who are not party to the financing agreement or stipulation, without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matters.
<input type="checkbox"/> _____	_____	(E) Provisions that create a lien senior or equal to any existing lien without the consent of that lienholder.
<input type="checkbox"/> _____	_____	(F) Provisions that seek a waiver, without notice, of rights the estate may have under § 506(c) of the Code.
<input type="checkbox"/> _____	_____	(G) Provisions that grant immediately to the prepetition secured creditor liens on the debtor's claims and causes of action arising under §§ 544, 545, 547, 548, and 549 of the Code.

- ☐ _____ **(H)** Provisions that provide disparate treatment with regard to professional fee carveouts for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor.
- ☐ _____ **(I)** Provisions that prime chapter 7 administrative expenses.
- ☐ _____ **(J)** Provisions that operate to divest the debtor of any discretion by requiring a creditor's consent in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.
- ☐ _____ **(K)** Provisions that purport to release the secured creditor's liability for alleged prepetition torts or breaches of contract.
- ☐ _____ **(L)** Provisions that grant automatic relief from stay upon default, conversion to chapter 7, or the appointment of a trustee.
- ☐ _____ **(M)** Provisions that waive the procedural requirements for foreclosure required under applicable non-bankruptcy law.
- ☐ _____ **(N)** Provisions that waive avoidance actions arising under the Code.
- ☐ _____ **(O)** Provisions that waive, effective upon default or expiration, the debtor's right to move for a court order pursuant to § 363(c)(2)(B) of the Code authorizing the use of cash collateral in the absence of the secured party's consent.
- ☐ _____ **(P)** Provisions that grant a lien in an amount in excess of the dollar amount of cash collateral authorized under the applicable cash collateral order.
- ☐ _____ **(Q)** Findings of fact on matters extraneous to the approval process.
- ☐ _____ **(R)** Provisions that bar the debtor from future bankruptcy filings.

- (b) **Declaration of Counsel for Creditors' Committee.** Where counsel has represented a pre-petition Creditors' Committee and anticipates representing the Official Creditors' Committee when appointed, counsel should submit a declaration covering the following points:
- (1) **Retention of Counsel.** The date counsel was retained by the Committee, the approximate number of hours of professional time expended pre-petition, compensation paid to counsel pre-petition including source of payment and the approximate amount of accrued but unpaid compensation.
 - (2) **Investigation of Committee and Counsel.** A summary description of the scope and results of any investigation into the debtor's affairs conducted by the Committee and/or its counsel.
 - (3) **Communication with Creditors.** A description of any written communications of the Committee or its counsel with substantially all of debtor's creditors during the pre-petition reorganization process relating to the workout or plan process. Copies should be attached. If letters contain confidential information, they need not be attached but the court may require in-camera inspection.
 - (4) **Involvement in Formulation of Plan and Disclosure Statement.** A description of the Committee's and counsel's involvement in the formulation of the plan and disclosure statement.

LR 4001 Cash Collateral and Financing Orders.

- (a) **Motions.** Except as provided herein and elsewhere in these Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed pursuant to Bankruptcy Rules 2002, 4001 and 9014 ("Financing Motions").
- (b) **Provisions to be Highlighted.** All Financing Motions must (1) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below; (2) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement; and (3) provide the justification for the inclusion of such provision:
 - (1) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditors (i.e., clauses that secure pre-petition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law).

- (2) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor's pre-petition lien or debt or the waiver of claims against the secured creditor without first giving parties-in-interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate such matters.
 - (3) Provisions that seek to waive, without notice, whatever rights the state may have under 11 U.S.C. § 506(c).
 - (4) Provisions that grant immediately to the pre-petition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549.
 - (5) Provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt, other than as provided in 11 U.S.C. § 552(b).
 - (6) Provisions that provide for a substantially smaller or no professional fee carve-out for the professionals retained by a creditor's committee as compared to the professional fee carve-out for the professionals retained by the debtor.
 - (7) Provisions that prime any secured lien, without the consent of that lienor.
 - (8) Super-priority positions unless a significant carve-out is proposed.
 - (9) A secured creditor obtaining a higher administrative expense priority than Chapter 11 expenses of administration or Chapter 7 expenses of administration in the event of a conversion from Chapter 11.
 - (10) Automatic perfection of security interests in "replacement lien collateral" without filing or re-filing UCC statements.
- (c) **Summary of Terms.** All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).

- (d) **Interim Relief.** When Financing Motions are filed with the Court on or shortly after the date of the entry of the order for relief, the Court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. Interim financing orders that include any of the provisions previously identified in subsection (b)(1) through (b)(10) of this Rule may not be approved.
- (e) **Final Orders.** A final order shall be entered only after notice and a hearing pursuant to Bankruptcy Rule 4001 and LR 9014. Ordinarily, the final hearing shall be held at least ten (10) days following the organizational meeting of the creditors' committee contemplated by 11 U.S.C. § 1102.

LR 4001.1 Lifting of the Automatic Stay. All motions for relief from the Stay shall be served on the trustee administering the case.

LR 5005 Electronic Filing. The court will accept for filing documents submitted, signed or verified by electronic means that comply with procedures established by the court.

LR 5005.1 Facsimile Filing.

- (a) Upon application certifying exceptional circumstances and such notices as the court may require, the court may authorize the filing by facsimile transmission of documents other than bankruptcy schedules or amendments thereto.
- (b) A facsimile filing is deemed to occur upon the print out and receipt of the document in the office of the clerk except as otherwise provided in this rule.
- (c) Where the facsimile filing occurs after 4:30 p.m. weekdays, on a Saturday, Sunday or legal holiday, the filing is deemed to have occurred at 8:30 a.m. on the next business day.
- (d) Such filing may be disregarded unless the original document is filed in the office of the clerk within five days after such filing.

LR 6004 The Sale of Substantially all Assets Under Section 363 Within 60 Days of the Filing of the Petition.

- (a) **Declaration of Counsel for Debtor-in-Possession.** In connection with any hearing to approve the sale of substantially all assets within 60 days of the filing of the petition, the request for an emergency hearing or the sale motion ("Sale Motion") itself when regularly noticed, should be supported by a separate declaration by counsel for the debtor-in-possession covering the following points: