

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: Chapter 11
Case No. 09-10244-RDD
STAR TRIBUNE HOLDINGS
CORPORATION, et al,
New York, New York
Debtors. Friday, February 6, 2009
. 10:16 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 10:18 a.m.)

2 THE COURT: I'm going to take the Star Tribune. Good
3 morning.

4 MR. HUEBNER: Good morning, Your Honor. I am Marshall
5 Huebner of Davis, Polk & Wardwell, here on behalf of the Star
6 Tribune debtors. This, of course, as Your Honor knows, is the
7 hearing at which we're going to be considering the matters that
8 were filed on the first day of the case and a little bit
9 thereafter, in some cases, many of which, as is typical and
10 appropriate, were entered on an interim basis at the first-day
11 hearing and were scheduled for today.

12 There are two matters that are adjourned, Your Honor.
13 I think that we've gotten off to a pretty good start with the
14 creditors' committee. We have had them over to Davis Polk.
15 They now have proposed professionals in the form of the
16 Lowenstein Sandler firm and Capital Partners, and we're
17 beginning the sort of, you know, download of information
18 responding to the things they'd like to know more about.

19 The committee asked us to adjourn two of the motions
20 that were originally proposed for today. One is the cash
21 collateral order; the other is the Blackstone retention
22 application.

23 In Blackstone's -- to Blackstone's credit, I should
24 note that Blackstone has actually made a material, and I think
25 warmly received so far, offer to reduce fee structure, but the

1 committee asks that we take both Blackstone and cash collateral
2 up at the same time rather than doing one before the other.

3 THE COURT: Okay.

4 MR. HUEBNER: So, with that, I will only handle two of
5 --

6 THE COURT: Is there any -- so it's totally adjourned?
7 There's no interim --

8 MR. HUEBNER: No, Your Honor. Our cash collateral
9 order, I think, bridged us until the hearing, and I think that
10 because we have the consent of the agent to the adjournment
11 that we -- we generally structure our orders so we don't need a
12 further order of the Court, as long as the party whose money it
13 is consents to the adjournment.

14 THE COURT: And you've consented?

15 UNIDENTIFIED: Yeah. The banks have consented, Your
16 Honor.

17 THE COURT: Okay. Fine. Thank you.

18 MR. HUEBNER: So, Your Honor, there are two issues,
19 and maybe a whisper of a third issue, that are -- that need a
20 little bit of attention today. One is the debtors' wages
21 motion. As Your Honor assuredly saw from the docket, the U.S.
22 Trustee filed an objection at 1:30 yesterday afternoon.

23 Let me first, though, give the Court and the parties
24 comfort on one issue that was briefly discussed at the interim
25 hearing, which is the issue of expenses over \$1,000. Your

1 Honor may remember we spent some time discussing foot massages
2 and other related items at the interim hearing.

3 THE COURT: But those weren't done at the Star
4 Tribune. Those were done in another case.

5 MR. HUEBNER: Absolutely, Your Honor. I continue to
6 be comfortable representing that there are no massages of any
7 kind in connection with the Star Tribune case.

8 (Laughter.)

9 THE COURT: Okay.

10 MR. HUEBNER: Obviously, I will let the Fortunoff
11 people speak for themselves when they take the podium.

12 So the good news is that as a matter of empirical
13 reality there, in fact, have been no expenses over \$1,000
14 related to the pre-petition period tendered by any individual,
15 which is a pretty good sign. Your Honor had said that, you
16 know, you wanted to send a message that we were looking closely
17 at things, and it would be approved, you know, at the hearing -
18 - today's hearing. So the good news is while we've removed the
19 limitation on the thousand dollars, but left in all the no
20 luxury stuff which we were happy to represent and will continue
21 to enforce given that it's now a month into the case and not a
22 single person has to date presented a pre-petition expense bill
23 for above \$1,000, I think, happily, that ended up being a
24 debate that was entirely theoretical.

25 The other item, Your Honor, which as I'm sure the

1 Court remembers we also adjourned from the interim hearing, was
2 that the trustee, and to some extent seconded by the Court, had
3 asked that the interim hearing, we get authority to pay
4 severance up to \$10,950 per person, but that for the residual
5 authority that was originally requested in the filed motion
6 we'd wait until the final order.

7 To our surprise, to be candid, despite the fact that
8 they are the only party with a problem, the U.S. Trustee did
9 indicate by a voice mail Wednesday night, and following up with
10 a written objection on Thursday afternoon, that they in fact
11 had a problem with our, what I would characterize as extremely
12 modest request, which I will describe in a moment for the
13 Court, to pay severance for people above the ten nine-fifty per
14 person cap.

15 Your Honor, let me just put in context the numbers and
16 explain to the Court who we're talking about and what the
17 amounts are for which -- that we are seeking authority and as
18 to which there is unfortunately a dispute with the committee.

19 There is a grand total for the entire company of
20 \$436,000 of severance that is above the ten nine-fifty priority
21 amount. Three hundred and eighty-nine thousand dollars of
22 this, or eighty-nine percent is to unionize the employees who
23 have these promises pursuant to collective bargaining
24 agreements, and in many cases, frankly, who left the company,
25 you know, pursuant to concessionary agreements in which we

1 agreed to give people buyouts to get them off the payroll and
2 save the company money.

3 THE COURT: Was this within the hundred-and-eighty-day
4 period or --

5 MR. HUEBNER: A vast majority of the four thirty-six
6 was people who were terminated or left with buyout packages
7 within the hundred-and-eighty-day period. That's exactly
8 correct, Your Honor.

9 And equally importantly, of the only \$47,000 for the
10 entire company that relates to non-union employees, the average
11 above the priority amount is \$3,171 per person. So to be
12 clear, there are no insiders, there are no executives, and in
13 fact, not only is the overwhelming majority to unionized and
14 rank and file employees, but the amount over the priority
15 amount on average that is to non-union employees is really
16 almost fairly characterized as de minimis. It's \$3,100 on
17 average for each of the fifteen people.

18 One example, Your Honor, which is a good one to note,
19 Mr. Masumoto pulled out in his pleading that there is one
20 person who has a priority amount, you know, as high as -- has a
21 non-priority amount that is \$52,000. He's exactly correct, and
22 that's a good example.

23 Sharon Emery (phonetic) was a guild employee, a
24 unionized rank and file worker, who spent thirty-three years
25 with the Star Tribune. Thirty-three years. And pursuant --

1 THE COURT: The non-union employees, is their right to
2 severance under a company policy or under a buyout agreement,
3 or --

4 MR. HUEBNER: I think each one may be a somewhat
5 different situation. These were severance agreements that I
6 believe were contractually granted. It wasn't just a
7 longstanding policy of we give you X. I think that as people
8 left, there were, you know, promises that were made in large
9 part, frankly, to induce them to leave in order to get the
10 company's cost structure to move forward to where we need it.

11 THE COURT: Okay.

12 MR. HUEBNER: So, again, getting back to Ms. Emery,
13 which is ironically the example he culled out, she's a rank and
14 file union employee, thirty-three years at the company, and
15 pursuant to a recently agreed to concessionary contract with
16 the guild, in the summer agreed to leave the company in
17 exchange for a buyout package after three and a half decades of
18 service.

19 Your Honor, there are, of course, economic
20 stakeholders in this case. And I think it is quite important
21 to note that they all think that we should be paying this. We
22 have the Official Committee of Unsecured Creditors who happily
23 worked very quickly to look at this stuff with us. We met with
24 the advisors about it. They made a recommendation to their
25 clients, which I understand was accepted, and we also have our

1 lenders whose money it is. And I think, as Your Honor surely
2 remembers from the fact that we originally had one business
3 day's authority on cash collateral, they are being rather tight
4 about what they will consensually allow us to spend. And the
5 fact that they are willing to see us spend these funds is
6 probably a pretty good indication of the reasonableness of our
7 request.

8 Let me explain, though, because I think the Court
9 deserves its own explanation about why we want to pay this,
10 because we are, in fact, being very, very careful with every
11 dollar. First, as to Mr. Masumoto's objection, I just note
12 analytically that I find it a little bit confusing because the
13 whole objection seems to say, there are amounts above priority
14 under 5074, and they cannot be paid. I don't -- there's a
15 reason there's no case law in that motion, which is it's true
16 that there is a practice that Courts are especially comfortable
17 with wage payments that are within a priority map because
18 they're priority. But the obverse of that statement is
19 certainly not true. In fact, critical vendor relief, which is
20 authorized in every case, often in the millions, tens of
21 millions or hundreds of millions, is never a priority.
22 Sometimes these days there is a 503 which is brand new.

23 But I think that people have generally not approached
24 this as if you have a priority, maybe I'll let you pay a pre-
25 petition or critical vendor claim. The issue is, is there a

1 category of payments that is in the best interests of the
2 estate, and were the payments not made, the estate would either
3 lose money or be damaged in a way that makes it rational to pay
4 them. So, you know, this test that is implied by the U.S.
5 Trustee's objection that somehow if it's above the priority
6 amount, it either can't or it even shouldn't be paid is one
7 that I think really has no basis in reason or in thought.

8 So why do we want to pay \$436,000 to all these people
9 when they are no longer actually providing services to the
10 company? One, because it will save us money. It is cheaper to
11 pay this for Star Tribune than to not pay it. In fact, it
12 maybe substantially cheaper to pay it than to not pay it.

13 The unions have already begun to grieve the non-
14 payment of various amounts, including these, and we can talk
15 until we're blue in the face about the automatic stay and the
16 filing date, but we still need to expend the time and resources
17 and attorneys' fees to address these grievances. And given
18 that the amount of money is very small, and given that we could
19 easily wrap up this amount in professional fees just talking
20 about it, that's one reason that it's rational to pay it.

21 Number two, and I want to be very clear, they are
22 wrong if they ever try to assert that 1113 requires these to be
23 paid. I have very strong views about ionosphere and I'm happy
24 to litigate it, but I also respect the fact that not everyone
25 has to agree with my understanding of statutory bankruptcy law.

1 The unions may well take the position that because these
2 severance promises arise under a CBA, that 1113 requires that
3 they be paid absent relief, and might even theoretically argue
4 that we're disqualified from seeking 1113 relief because we're
5 not complying with the contracts.

6 Let me say it again. They are wrong. And we will
7 prevail. I'm very confident about that. But it doesn't matter
8 because there's so little money at issue here that to even
9 start off just the pure legal bills alone, with fighting with
10 the unions over this, is just an ill-advised use of estate
11 resources.

12 Number two, putting actual cash aside, we believe that
13 it is quite important to our labor negotiations to not begin on
14 the absolute wrongest foot that one could want. As Your Honor
15 knows from our first-day presentation, we really need to do two
16 things in this case. We need to equitize all of or almost all
17 of, or a huge chunk of our debt, and we need to have very
18 substantial changes to our labor costs.

19 To begin union negotiations asking for material
20 concessions and, in part, offering buyouts when hours or days
21 before you have breached recently made promises to pay people
22 buyouts for leaving the premises is something that we think is
23 highly destructive. Once again, we could talk until we're blue
24 in the face about the fact that those promises are different
25 and we don't have to honor them because they were, quote, "pre-

1 petition." You go tell that to a union in a negotiation and
2 see how well it goes.

3 I note that a lot of the severance, again as I said at
4 the outset, is specifically money was given up by people in
5 similar negotiations that recently took place. And so I think
6 that the sense of the debtors' breach of trust and inability to
7 be trusted and inability to deliver on promises that were made
8 in a concessionary environment is something that we believe is
9 very damaging.

10 I would also note with a little bit of irony that many
11 of the employees that are covered are guild employees. They
12 are our reporters and journalists and the people that help
13 craft the news and the story that we can't always control about
14 the Star Tribune. So it's particularly ironic that those with
15 the microphone are, in fact, in no small part those who might
16 feel themselves rather aggrieved by not having their
17 compatriots receiving the severance that they were so recently
18 promised.

19 Back to sort of a combination, Your Honor, of
20 reputation and 1113 credibility and money, I also note that
21 even a delay in getting the 1113 that we -- 1113 relief that we
22 need would very substantially economically outweigh this very
23 modest \$436,000. The amount that we're seeking suggests that
24 even if we lost a very small number of weeks because of fallout
25 or a single bow went the wrong way because people thought that

1 we couldn't be trusted would outweigh potentially many times
2 over the very small amount of severance that we are talking
3 about.

4 So to be clear, this is not an issue of, you know,
5 giving in to the fear that unions will attack us. This is just
6 simple economic rationality. We have a lot to do in this case.
7 A lot of it has to do with the unions, a lot of it has to do
8 with honoring promises to them and having credibility with
9 them.

10 And this leads to Point 3, Your Honor, which is soft
11 costs. You know, in general, I think that Courts I think
12 correctly cast a somewhat cautious eye at debtors talking about
13 the need to pay lots of money to things for morale purposes.
14 And I think that if that were the only prong on which this
15 motion rested, I think we might have a more skeptical bench to
16 face. But I think that as a, you know, additional matter, you
17 know, it is the reality that this is a small, tightly knit
18 community, it's a relatively small tightly-knit city, and there
19 is a lot of connectivity between the recently departed union
20 employees and those that are still at the company. It is a
21 news business. We have an arch competitor in town that is
22 thrilled to making hay about our faltering nature and our
23 inability to pay our bills and honor our promises. And the
24 whole sort of weltanschauung of the case which is that this is
25 largely business as usual but for the need to do a financial

1 restructuring, obviously will be, I think, substantially
2 damaged if people are able to make a lot of hay out of the fact
3 that we're already breaching promises and leaving those who are
4 rather disadvantaged in the scheme of things unpaid, despite
5 having originally promised to do so.

6 So very quick summary, the aggregate amounts are tiny,
7 the non-union amounts are de minimis, the committee is fine
8 with it, the lenders are fine with it, the unions are fine with
9 it, we're fine with it, every economic constituent is fine with
10 it; I really don't understand, frankly, anywhere in my heart or
11 mind why the trustee is objecting, but I will allow them to
12 speak, obviously, for themselves.

13 THE COURT: Okay.

14 MR. MASUMOTO: Good morning, Your Honor. Brian
15 Masumoto for the Offices of the United States Trustee.

16 Your Honor, before I begin, let me just clear with Mr.
17 Huebner, on Wednesday afternoon Mr. Huebner provided me with a
18 copy of a spreadsheet detailing the payments to the -- with
19 respect to the severance payments. He asked that it be kept
20 confidential, and that's why it was not attached to any of the
21 pleadings. But I do believe counsel shouldn't have any
22 objection to the Court being able to view this spreadsheet.

23 MR. HUEBNER: Of course not.

24 THE COURT: Okay.

25 MR. MASUMOTO: If I may approach, Your Honor?

1 THE COURT: Yes.

2 MR. HUEBNER: And, Your Honor, if anyone else in the
3 courtroom needs to see it, we actually created one that took
4 out the names and ID numbers and just replaced with Employee 1,
5 2, 3, 4, 5. So there also is a publicly viewable copy if
6 someone has a legitimate need to see the breakdown.

7 MR. MASUMOTO: Your Honor, as indicated, it was only
8 on Wednesday that we were advised of the amount of the
9 severance payments that were to be made to the respective
10 individuals. As Mr. Huebner indicated, although I believe he
11 was giving you figures, I believe he indicated the average was
12 3,100. As you see from the spreadsheet, that applies to the
13 independent employees, or non-union employees of which there
14 are fifteen, not all of which are receiving amounts in excess
15 of the 10,950, but in fact the overall average for all forty-
16 three employees who are covered by the -- by this proposed
17 order is 10,000. And of that amount, the union obviously has
18 the lion's share of the payments. Three hundred and eighty-
19 eight thousand dollars will be paid to twenty-eight employees.

20 And, in fact, you can see from the breakdown the
21 amounts that are received by the respective individuals. And
22 therein, Your Honor, I guess is the problem that the U.S.
23 Trustee had.

24 I mean, Your Honor is aware that in other cases where
25 severance amounts in excess of the priority amounts were

1 proposed, if the amounts were truly de minimis the U.S.
2 Trustee, in fact, did not object. Unfortunately, given the
3 amounts -- this significant amounts due to a rather substantial
4 number of individuals that were far in excess of the 10,950
5 amount compelled us to file the objection because we do believe
6 that the amounts are not de minimis, even if you take into
7 account the so-called average. As indicated, I believe the
8 average includes individuals who are really not receiving any
9 distribution under the current excess payment because, in fact,
10 as indicated, some of the individuals received the maximum
11 amount allowable in the first round of payments.

12 So, therefore, from our perspective, the amounts are
13 not de minimis. Certainly, you can try to minimize them by
14 pointing to averages and so forth, but if you look at the
15 individual payments to a significant number of employees, we're
16 talking about very substantial sums.

17 And the issue here is that the statute does impose a
18 limitation. And part of the rationale for the priority
19 payment, in fact, is the idea to assist employees who are
20 continuing to be -- who are continuing to be employed or
21 recently terminated not to suffer any disruption in their
22 operations. Congress decided that there have to be limits to
23 that priority amount, and they established it.

24 There are always justifications to be made for
25 payments in excess of those amounts. And, yes, Your Honor, if

1 the amounts are truly de minimis, I don't think it's in
2 anyone's interest to object. Here, however, they are
3 substantial. Now, whether or not the creditors' committee does
4 or does not support it, from their standpoint, it may be -- it
5 may be a strict determination as to where they want to place
6 their efforts and where they want to fight. This may not be an
7 issue that they deem sufficiently important for them to
8 exercise their efforts at this point. However, the statute
9 does limit the amounts based upon the legislative intent of
10 protecting the existing employees in their continued employment
11 with the debtor.

12 In this case, obviously, the terminated employees do
13 not serve that purpose, and, accordingly, do not serve as a
14 justification for these excess payments. The debtor has bent
15 over backwards in making the payments up to the 10,950.

16 As Your Honor knows, and Your Honor asked, the other
17 requirement under Section 507(a)(4) is that these severance
18 payments be earned within 180 days. I believe counsel
19 indicated that they were terminated within the hundred-and-
20 eighty-day period, which does not necessarily answer the
21 question as to whether or not those amounts were actually
22 earned in the hundred-and-eighty-day period. So in fact, we
23 are not quite clear as to whether or not that element of the
24 statute is currently satisfied.

25 But, again, from their standpoint, these amounts are

1 necessary for the -- in order to avoid any disruption, in order
2 to avoid any negative morale consequences, or perhaps given, as
3 he indicated, the employees' access to the microphone
4 publicizing the failure of these terminated employees to
5 receive their benefits.

6 With all due respect to the employees and the union
7 who were terminated, the possibility of bankruptcy, I'm sure,
8 was contemplated at the time the severance payments and buyouts
9 were offered. These were not surprised. I'm sure that they
10 were, in fact, the subject of very strenuous negotiations. So
11 the fact that the debtor filed bankruptcy certainly was
12 contemplated during the course of the negotiations with the
13 union prior to the filing of the petition.

14 Accordingly, we do believe that the statutory maximum
15 of 10,950, which has already been met with respect to these
16 employees, should not be exceeded through additional payment.

17 THE COURT: Okay.

18 MR. MASUMOTO: Thank you, Your Honor.

19 THE COURT: All right. I have before me the debtors'
20 request for final authorization to pay pre-petition wages,
21 salaries, employee benefits, and other compensation, et cetera.
22 I granted interim relief at the initial hearing in this case,
23 and the issue that is contested here was deferred until the
24 final hearing.

25 The trustee objects -- the U.S. Trustee objects to the

1 payment of pre-petition severance in excess of individual's
2 statutory priority and the debtor, supported by its secured
3 lenders, as well as the unsecured creditors' committee, seeks
4 the payment.

5 The basis for the payment of all of this debt is
6 Section 363(b) of the Code which authorizes the debtor to take
7 an action out of the ordinary course in the debtors' exercise
8 of its business judgment, or more appropriately, actually, the
9 Court's review of the business judgment of the debtor. It is
10 often the case that payments of pre-petition wages and other
11 employee benefits including severance is capped at the
12 statutory priority, but the statute does not authorize in the
13 priority section the pre-petition payment -- I'm sorry, the
14 payment of such pre-petition debt. It simply gives a priority.
15 The reason it is, as a rule of thumb, often capped at the
16 priority amount is that, ultimately, that priority has to be
17 paid for a plan to be confirmed, and in most cases, there's a
18 secured creditor who is senior in terms of the source of the
19 payment to that priority who is consenting, and whose money it
20 is, and, therefore, it's easy to -- or relatively easy to
21 approve such a payment.

22 Here, since the payments were in excess of the
23 statutory priority, it seemed to me that the unsecured
24 creditors' committee, which is a fiduciary for all unsecured
25 creditors, should have the opportunity to review the proposal

1 to pay the excess amount since, in essence, it was their
2 constituents' money that was being spent as well as,
3 ultimately, the estate's money. Obviously, the excess amount
4 does not prime them, just as the secured creditor is not primed
5 by any of the amount.

6 But the committee has had the chance to review the
7 payments and confirmed the logic in making the payments, which
8 I essentially saw at the first hearing. And I believe that the
9 payment, which is far and away primarily to employees covered
10 by collective bargaining agreements, is a valid exercise of
11 good business judgment here, taking into account the debtors'
12 ability to pay these amounts, in the alternative, in what the
13 Courts refer to as tiny bankruptcy dollars. And it appears to
14 me to be the case that the debtors' judgment, supported by the
15 judgment of the secured creditors and the creditors' committee
16 to pay these amounts in hundred-cent dollars is warranted given
17 the cost to the estate of not doing so, including the
18 litigation issues raised by 1113 of the Code, as well as the
19 posture that non-payment would put the negotiation of the
20 collective bargaining agreements that the debtor has clearly
21 signaled it intends to pursue as a primary aspect of this case
22 on the wrong foot if these amounts were not paid. So, clearly,
23 the payments, again, which is by far and away the largest
24 amount to the union employees I believe were supported by valid
25 business judgment. The remaining amounts to non-union

1 employees are relatively small and, again, it appears to me
2 that it makes sense to defer to the judgment of the people
3 whose money is really at stake here, which is the debtor, of
4 course, as fiduciary for all constituents, but the unsecured
5 creditors who, by not opposing this relief, are acknowledging
6 that it makes business sense to pay these relatively small
7 amounts to the non-union employees as well.

8 So I'll approve the relief sought on a final basis.
9 I've reviewed the order, and I have no substantive changes to
10 it.

11 MR. HUEBNER: Thank you very much, Your Honor. Just
12 one tiny point, just so Mr. Masumoto takes comfort.

13 We are not, in fact, at all, as I think he may have
14 thought, bending over backwards to get people money as fast as
15 we can. In fact, we've stretched all these people out into
16 salary continuation and have not even paid the priority amounts
17 yet in order to continue to preserve liquidity.

18 THE COURT: Well, that's, again, a context of this
19 case. The debtor has made it clear, and I'm sure has made it
20 clear to the unsecured creditors' committee, that this is a
21 case where a key theme is going to be sacrifice. And I'm
22 assuming that the committee, as well as any other constituent
23 in this case, is very careful to ferret out any instance where
24 that theme is not being followed, and in fact, perhaps someone
25 is getting too good a deal. And in light of that, in

1 particular -- in light of the particular circumstances of this
2 case, it seems to me that the judgment of the people whose
3 money is at stake here should be followed.

4 MR. HUEBNER: Thank you, Your Honor.

5 That takes us to the uncontested matters. I was going
6 to turn the podium over to my colleague Lynn Poss for the
7 remainder of the hearing, unless there are questions about
8 Davis Polk because it's mean to make an associate do those. So
9 I'll take those back if there are any issues.

10 THE COURT: All right.

11 MR. MASUMOTO: Excuse me, Your Honor. Just one
12 clarification. Just prior to the hearing, I was approached by
13 the debtors' counsel about a change to one of the orders which
14 I believe has -- will result in objection by the U.S. Trustee.

15 THE COURT: Which one -- which one is that?

16 MR. MASUMOTO: It's the cash management order. I just
17 saw a red-lined copy. My understanding is the intent of the
18 debtors is that the accounts will not be collateralized or
19 secure. They're essentially asking for waiver of the 345 so
20 that the account -- the debtors' accounts would not be
21 protected.

22 MR. HUEBNER: Your Honor, we'll hit that in order and
23 explain it. We were planning to make that part of our
24 affirmative presentation.

25 THE COURT: All right.

1 MS. POSS: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. POSS: My name is Lynn Poss from Davis Polk,
4 appearing on behalf of the debtors, Star Tribune.

5 All of the motions that I will be addressing are those
6 for which there are no objections filed. As Mr. Masumoto
7 mentioned, he has some concerns on our cash management motion
8 which I will address when we come to that motion. And I would
9 also like the Court to know that even though there have been no
10 objections filed on the docket to any of the motions I am
11 addressing, there have been a number of questions and concerns
12 raised by parties in these cases to some of those motions and
13 our proposed order, particularly from counsel to the creditors'
14 committee. And we are very pleased to report, as Mr. Huebner
15 mentioned, that we have been able to meet with and have calls
16 with counsel to the creditors' committee and resolve what we
17 believe to be all of their concerns on the motions on which
18 they had concerns. And as we walk through the motions I will
19 present, I will highlight the changes we made in discussion
20 with the creditors' committee.

21 THE COURT: Okay.

22 MS. POSS: If it's acceptable to Your Honor, I'd like
23 to start with the motions related to the debtors' business
24 operations, and then turn to the retention applications.

25 THE COURT: Okay.

1 MS. POSS: The first motion I'd like to address is our
2 motion seeking authority to pay certain pre-petition
3 obligations of our critical vendors. This -- an order was
4 entered on an interim basis on the first day of the case.
5 There have been no objections received to this motion or
6 following the entry of the interim order, and unless the Court
7 has questions or other people in the courtroom have concerns,
8 we would ask that the final relief be granted.

9 THE COURT: Let me just look at the tab here.

10 MS. POSS: Sure. It's Tab 6 of your binder.

11 THE COURT: Tab 6, okay.

12 (Court reviews document.)

13 THE COURT: No, I reviewed the proposed order and
14 reviewed the motion, and I will enter that order on a final
15 basis.

16 MS. POSS: Thank you, Your Honor.

17 The next motion I would like to turn to is the motion
18 seeking authorization for the debtors to continue to use their
19 existing cash management systems and bank accounts. This
20 relief was also granted on an interim basis at the first day
21 hearing. This is in Tab 7 of your binder, Your Honor.

22 THE COURT: Right.

23 MS. POSS: So while no objections have been received
24 by us to this motion, we did have discussions with the
25 creditors' committee regarding this motion. And the creditors'

1 committee raised concerns that because the holding company of
2 Star Tribune and the operating company are not substantively
3 consolidated, that there could potentially be intercompany
4 transfers between the two entities that could prejudice one or
5 the other of the estates. To address that concern, even though
6 in reality there are two -- I believe two franchise tax
7 payments amounting to \$8,000 a year that the holding company
8 makes, we have added language to our proposed order that to the
9 extent this order prejudices the rights of any of the creditors
10 of the estate, the creditors' committee can object to the
11 relief after the order is entered.

12 We have also added language pursuant to our discussion
13 with Wells Fargo who, among other things, operates the debtors'
14 purchasing card program. We have added language requested by
15 Wells Fargo to address requirements under 345(b) of the
16 Bankruptcy Code, and to seek a waiver of any requirement to
17 post a bond or deposit securities. We have made this change
18 pursuant to our discussions with Wells Fargo yesterday and the
19 day before in order to lessen the potential burden on Wells
20 Fargo to have to post the securities and to lessen the expense
21 that the estate may have to incur if the --

22 THE COURT: There's no one else that the debtor
23 deposits money with in its business, other than banks?

24 MS. POSS: Oh, no.

25 THE COURT: There's no, like -- there's no one else

1 holding money for the debtor? It's really Wells Fargo we're
2 talking about.

3 (Counsel confer.)

4 MS. POSS: There's -- I've been told that there's a
5 very small account with U.S. Bank, but it's --

6 THE COURT: But it's a bank account?

7 MS. POSS: Correct.

8 THE COURT: All right. That's fine. Okay.

9 MS. POSS: So I understand that Mr. Masumoto has some
10 concerns with the language that we've added regarding Section
11 345(b) of the Bankruptcy Code.

12 THE COURT: Okay.

13 MR. MASUMOTO: Your Honor, do you want me to address
14 the --

15 THE COURT: Well, is there language you want to add,
16 or --

17 MR. MASUMOTO: Your Honor, I would ask that Your Honor
18 not grant a waiver of Section 345, that in fact, these accounts
19 should be protected under 345.

20 The debtor does not establish cause for waiver of the
21 requirement that collateral be posted with respect to the
22 account -- the amounts of the account. If, in fact, there were
23 any problems with respect to those accounts, the amounts in
24 excess of the FDIC protected amounts would not be protected in
25 those accounts. And that's the very reason for 345.

1 As Your Honor knows, prior to the current credit
2 crisis, including the banking problems, a lot of large mega
3 debtor -- mega cases resulted in waivers by the Court believing
4 that uncollateralized accounts could be used because they might
5 yield a greater return. I think under the current
6 circumstances, I think it's foolhardy not to have the amounts
7 properly protected. Many banks that were regarded as being
8 quite solvent and solid have appeared to suffer a great deal of
9 credit problems. And under the circumstances, that -- again,
10 it makes absolutely no sense.

11 I mean, clearly, it makes sense for the bank to try to
12 minimize its costs, but the bank is doing so at the risk of the
13 estate's funds. And certainly there's -- there does not appear
14 to be even the justification that used to be advanced which is
15 that they could yield a better return for the estate in a non-
16 collateralized account. Here --

17 THE COURT: But this is the collateral agent, right?
18 What role does Wells Fargo play in this capacity?

19 MS. POSS: The debtor has a number of bank accounts
20 with Wells Fargo. They also handle the debtors' purchasing
21 card program, the credit card by which the employees make
22 business purchases. And I would just also like to note that
23 Wells Fargo is an approved depository --

24 THE COURT: And how much money are we talking about
25 that's normally in these accounts?

1 MS. POSS: There are several different accounts. I'll
2 have to --

3 MR. MASUMOTO: Your Honor, I'd like to comment --

4 THE COURT: Well, is it in excess of the -- let me
5 look at it. It says in excess of the FDIC protected amount.

6 MR. HUEBNER: Your Honor, let me just help for a
7 second to save Ms. Poss from -- it's the debtors' cash balance
8 which is about \$28 million. We were asked to put it in an
9 authorized depository, and we did. And all we're asking now is
10 that the typical waiver --

11 THE COURT: And this is -- but it's held by a secured
12 creditor, right?

13 MR. HUEBNER: Well, the banks have a lien --

14 THE COURT: No, the banks have a lien on it.

15 MR. HUEBNER: -- obviously, in the cash, but it's just
16 -- it's a regular bank account. There's --

17 THE COURT: But they have a lien on it.

18 MR. HUEBNER: Yeah.

19 UNIDENTIFIED: Yes, Your Honor. There's a securities
20 account control with Wells Fargo with respect to the cash.

21 THE COURT: Okay.

22 MR. HUEBNER: There's nothing esoteric here, Your
23 Honor. This is not a company that has esoterica. This is just
24 the bank account at a very large bank which is an authorized
25 depository on which the secured lenders have control over and a

1 perfected lien.

2 MR. MASUMOTO: Your Honor --

3 THE COURT: Have you looked at the cost of getting a
4 bond?

5 MR. HUEBNER: Your Honor --

6 THE COURT: I'm going to authorize it for now and have
7 the debtors look at the cost of getting a bond.

8 MR. HUEBNER: Okay. We'll talk to Wells Fargo, Your
9 Honor. One of our concerns, obviously, since the comment came
10 from them was that they may just not agree to do this if -- in
11 other words, they said this is what we need to do it, and I
12 don't think they thought this was unusual. And we'll look into
13 it --

14 THE COURT: Well, you all would pay for the bond; they
15 wouldn't pay for it. So --

16 MR. HUEBNER: If there was -- yeah. I think that's a
17 -- we're happy to look into it. Nobody desires to be imprudent
18 here. But if it's something that we can work out with Wells
19 Fargo, what our costs are --

20 THE COURT: Okay. So why don't you report to the U.S.
21 Trustee and the creditors' committee in thirty days -- within
22 thirty days, hopefully, well before then, about the cost of
23 obtaining -- and ability to obtain a bond.

24 UNIDENTIFIED: And, Your Honor, and to the agent as
25 well?

1 THE COURT: I'm not sure who would issue a bond, who
2 would be equally creditworthy.

3 MR. MASUMOTO: Your Honor, if I may --

4 THE COURT: Maybe the Government.

5 (Laughter.)

6 MR. HUEBNER: I'm not going to touch that one, Your
7 Honor.

8 THE COURT: I think that the concerns from the statute
9 just assumed a very different environment than we're in today.

10 MR. MASUMOTO: Your Honor --

11 THE COURT: I don't have anything more to say about
12 that. But I may be speculating, so I think the debtor should
13 look into it.

14 MR. HUEBNER: And we will, Your Honor.

15 THE COURT: Okay.

16 MR. MASUMOTO: Your Honor, I'm sorry. I just would
17 like to make one just clarification for the record. I mean,
18 the reference that -- to Wells Fargo as being an authorized
19 depository is not entirely accurate. The whole point of being
20 an authorized depository is the willingness of these banks to
21 post collateral to protect the accounts. If, in fact, that's
22 not what Wells Fargo intends to do, they're not depositing
23 funds with an authorized depository under the sense of the
24 word. And that -- again, I just want to make that clear. The
25 whole purpose of the authorized depository is to indicate that

1 the funds are protected.

2 Thank you, Your Honor.

3 THE COURT: All right. So I'm not going to put that
4 in the order, but, obviously, you all understand that that's
5 something you need to do.

6 MS. POSS: Yes, we understand.

7 THE COURT: Okay.

8 MS. POSS: Thank you, Your Honor.

9 The next motion I'd like to discuss is the debtors'
10 motion to renew and maintain their insurance programs. This is
11 in Tab 8 of your binder. This motion was granted on an interim
12 basis at the first-day hearing. We have not received any
13 objections or any comments to this motion, and we would ask
14 that final relief be granted.

15 THE COURT: Okay. I've reviewed the final order and
16 it's fine. And I'll approve it.

17 MS. POSS: Thank you, Your Honor.

18 I'd like to turn now to the debtors' motion
19 restricting certain transfers of interest in the debtors'
20 estates. This motion is designed to --

21 THE COURT: This is the tax motion?

22 MS. POSS: Correct. This is designed to protect the
23 Star Tribune's NOLs and credit carry forwards, Your Honor.

24 THE COURT: And it's really addressed to the
25 shareholders, as Mr. Huebner outlined at the last hearing?

1 MS. POSS: Correct, Your Honor.

2 THE COURT: Okay. Did they -- they were served with
3 this? They were aware of this and --

4 MS. POSS: Oh, yes, they were served, correct.

5 THE COURT: All right.

6 MS. POSS: I would just like to note that the black
7 line that you see in the proposed is a result of our
8 discussions with the creditors' committee who asked to receive
9 service --

10 THE COURT: Right.

11 MS. POSS: -- of certain --

12 THE COURT: And they reserved their right to oppose
13 the debtors' waiver of the order?

14 MS. POSS: Yes, Your Honor.

15 THE COURT: Okay. And that all seemed like a good
16 idea, so I'm prepared to approve this order.

17 MS. POSS: Thank you, Your Honor. I'd also like to
18 note that creditors' committee has -- they've asked that
19 counsel be specifically mentioned as receiving service, so we
20 would propose to make that change to the order that you have.

21 THE COURT: Okay. All right.

22 MS. POSS: Thank you, Your Honor.

23 Then I --

24 THE COURT: I think you all should assume, though,
25 that whenever there's an order that requires notice to the

1 creditors' committee that it should go to counsel for the
2 committee.

3 MS. POSS: Yes. They specifically would like both to
4 be referenced, and so we would ask to make that change.

5 THE COURT: Okay.

6 MS. POSS: Thank you.

7 I then turn to Tab 10 of your binder, which is our
8 motion to grant administrative expense status to certain of the
9 debtors' obligations on account of goods ordered pre-petition,
10 but delivered post-petition.

11 THE COURT: Right.

12 MS. POSS: This was also granted on an interim basis
13 at the first-day hearing, and we have not received any
14 objections or comments. And we would ask that the final relief
15 be granted for this motion.

16 THE COURT: Okay. And I've reviewed this order as
17 well, and I'm prepared to enter it.

18 MS. POSS: Thank you, Your Honor.

19 Turning to Tab 11, the debtors' motion authorizing the
20 debtors to employ ordinary course professionals, this order
21 would establish a procedure by which the ordinary course
22 professionals that are listed on an exhibit to the motion that
23 we filed, and then further ordinary course professionals that
24 may be retained during the course of these cases would submit a
25 declaration and affidavit regarding their work for the debtors.

1 We have discussed this motion with the creditors'
2 committee as well, and made certain changes to the motion based
3 on those discussions. The creditors' committee has again asked
4 for service and an objection right in certain circumstances,
5 and we've revised the order to reflect that the creditors'
6 committee will be served with the ordinary course professionals
7 declaration and affidavit, and the creditors' committee will
8 have the opportunity to object to the declaration or affidavit.

9 We've also, in conjunction with the creditors'
10 committee, made a change to the proposed order that any
11 additional ordinary course professionals that the debtors
12 propose to hire will be -- that list will be filed with the
13 court and then served on certain parties so that the public is
14 aware of who those ordinary course professionals are.

15 Also, pursuant to these procedures, in the event that
16 any ordinary course professional has a bill that amounts to
17 either more than \$50,000 a month or \$600,000 over the life of
18 these cases, they will serve their monthly fee statement on
19 certain interested parties and those parties will have the
20 right to request that the ordinary course professional have to
21 file a fee application and be retained as -- by a further
22 order.

23 THE COURT: Okay.

24 MS. POSS: And we understand that, as proposed, this
25 order is fully agreed, and we would ask that the relief sought

1 be granted.

2 THE COURT: Okay. I marked this up a little bit to
3 make it clear that the people that don't have to submit -- the
4 de minimis people --

5 MS. POSS: Uh-huh.

6 THE COURT: -- I'd like their bills to say that -- and
7 they can just put this on their bill, they certify that they
8 don't represent an interest that's adverse and they're not
9 sharing with anyone other than the people in their own firm.
10 And then if they trip the limit, then they should be governed
11 by the procedures pertaining to ordinary course professionals.
12 I think the other changes are going to be self-explanatory to
13 you.

14 MS. POSS: Okay.

15 THE COURT: So with those changes, and the ones you
16 agreed to with the committee, I'll approve the motion.

17 MS. POSS: Thank you, Your Honor.

18 I then turn to Tab 12, which is the debtors' motion to
19 establish certain reclamation procedures. This motion and the
20 proposed order are intended to streamline and simplify the
21 process for Star Tribune's reclamation vendors to submit any
22 potential reclamation claims. Particularly we thought it was
23 important to streamline this process where the goods that the
24 reclamation vendor may have supplied are subject to a floating
25 lien of the secured lenders.

1 This is another motion that we discussed at some
2 length with the creditors' committee. We have made changes
3 that the creditors' committee requested that we think actually
4 helped streamline this process, and we were very agreeable to -
5 - we have made a change that you'll see reflected in the black
6 line that the reclamation vendor can either submit the attached
7 form that we filed, or any other document that complies with
8 Section 546(c) of the Bankruptcy Code and the UCC.

9 We have also made a change so that the reclamation
10 vendor does not have to submit its reclamation demand to the
11 debtors' claims agent.

12 We have also been requested, and I note on the record
13 that we've -- we provided in our order that the reclamation
14 demand will be served on both the debtors and Davis Polk. We
15 note on the record that in the event that a reclamation vendor
16 does not serve Davis Polk, they will not be barred from
17 asserting an otherwise valid reclamation claim. We've also
18 added a provision to the proposed order allowing for the
19 reclamation vendor to inspect the goods that it delivered, and
20 we've added that at the request of the creditors' committee.

21 We've also made minor modifications to when the
22 reclamation report will be filed. We've changed it from 120
23 days after the order is entered to ninety days, and clarified
24 what detail will be provided in that report.

25 We also note on the record, pursuant to our

1 discussions with the creditors' committee, that in the event
2 that a reclamation vendor does not commence an adversary
3 proceeding or take advantage of other self-help remedies, that
4 will not prejudice them from asserting an otherwise valid
5 reclamation claim. So we note that on the record, that there
6 is -- we're intending to streamline this process, and so we're
7 encouraging people --

8 THE COURT: I think you had that already in here.
9 But, anyway, that's fine.

10 MS. POSS: The further clarification on the record.
11 Thank you, Your Honor.

12 THE COURT: Okay.

13 MS. POSS: So there have been no objections filed and
14 we understand that, as revised, this was agreeable to the
15 creditors' committee, and we would ask the Court to grant this
16 relief.

17 THE COURT: All right. Well, I think all the changes
18 are good, and I actually had similar changes in here. I have
19 left over from the changes I had that you all have put in here
20 a couple that I think will be self-explanatory, such as just
21 simply tracking the language of the statute, and rather than
22 saying, "before forty-five days after the receipt," it should
23 be, "not later than," because that gives people the extra day
24 the statute gives them.

25 MS. POSS: Okay.

1 THE COURT: But I -- there's a fundamental issue I
2 have here, and it's been somewhat dealt with by the last
3 paragraph that says that:

4 "All the defenses are preserved, including the fact
5 that allowed reclamation claims remain subject to the defense
6 of the debtors' secured lenders may maintain a blanket lien
7 over the goods," which is -- I don't understand the basis for
8 giving the debtor a blanket authority to allow administrative
9 claims here. This 2005 amendment to the statute took out that
10 language and just simply cross-referenced 503(b)(9), and now
11 there's a disconnect between the reclamation right which covers
12 forty-five days, and (b)(9), which covers twenty.

13 So unless you're providing adequate protection to
14 someone because you're not giving them the goods back, there
15 are many scenarios where they wouldn't be entitled to an
16 administrative claim under any circumstances, i.e., their
17 reclamation claim was outside of the twenty days under (b)(9),
18 it's still within the forty-five days but it's outside the
19 (b)(9) date, and you have the full lien, and, of course, you
20 know, the lien may or may not be undersecured, but I think the
21 lenders are asserting that it's oversecured, and the unsecured
22 creditors are going to say it's oversecured.

23 So, you know, under the case law, there used to be a
24 dispute as to whether, under those circumstances, reclamation
25 claimants could still get an administrative claim. I think the

1 better cases, including ones you've cited, said, no; you know,
2 Judge Schwartzberg's case and other cases. So I think if
3 you're going to have the right to grant an administrative claim
4 here, it really needs to be guided by parties' actual rights.

5 I mean, I don't have a problem with you giving people
6 what they're entitled to, including maybe adequate protection
7 of an interest. But there has to be some process here where
8 either you communicate with the committee about it or there are
9 parameters set for it.

10 So other than that, you know, I can give you my mark-
11 up and you can harmonize the two, and I think that will be
12 pretty easy to do. But I think you need to do some -- I was
13 just uncomfortable giving you all this blanket authority when
14 it seemed like there's a gap there, and I was authorizing you
15 to do things that would not get any more review and that might
16 be spending money that wasn't supposed to be spent.

17 So, you know, I don't have a problem with the
18 committee reviewing it as a check on that, or putting in
19 parameters here on when you grant the claim, but the way it's
20 drafted now, I think it's too broad. So -- but I'll approve it
21 on the condition that you send me back an order that deals with
22 that issue.

23 MS. POSS: Thank you, Your Honor. We'll work with you
24 to make those changes. Thank you.

25 THE COURT: Okay. And I'll give you my mark-up.

1 MS. POSS: Great. Thank you.

2 So the next motion I'd like to address is our
3 utilities motion, which is in Tab 13 of your binder. This is a
4 motion seeking to establish procedures for providing the
5 debtors' utilities with adequate assurance pursuant to Section
6 366 of the Bankruptcy Code.

7 We believe that the two-week deposit that we proposed
8 to provide to utilities that request it complies with Section
9 366's requirements to provide adequate assurance. We haven't
10 received any objections to this motion or any comments, for
11 that matter, and we would ask that, unless the Court has
12 concerns, that the relief be granted.

13 THE COURT: I had a couple very small changes on this,
14 which I think you'll find self-explanatory. With those
15 changes, I'll approve it.

16 MS. POSS: Thank you, Your Honor.

17 The next motion is our motion to establish interim
18 compensation procedures for the professionals in these cases.
19 These are procedures that I'm sure Your Honor is very, very
20 familiar with. We would propose that retained professionals
21 submit monthly bills twenty days after the end of the month
22 during which they worked. If no objections are received to
23 those bills within fifteen days after that twentieth day, so
24 thirty-five days after the end of the month in which the
25 professional worked, that the professionals would then be paid

1 with a twenty-percent holdback. And then we also propose as
2 part of these compensation procedures quarterly fee application
3 hearings.

4 THE COURT: Okay. There's a -- I have no problems
5 with the order. It's a standard order.

6 I want to alert people in particular to people that
7 don't do bankruptcy work that much that fall within this order,
8 and maybe there isn't anyone in this group that is in that
9 position that I've noticed something in other cases recently
10 where there's a fair amount of money spent on the monthly
11 bills, and I don't think people really contemplated that. You
12 know, getting a monthly payment is a good thing for a law firm,
13 and I don't have a problem with people being compensated for
14 preparing fee applications. But having to -- the estate pay
15 both for providing a monthly bill and a fee application means
16 that I'm going to be looking at those aspects of fee
17 applications more narrowly.

18 I think the smartest thing is for people to make the
19 monthly bills as -- the preparation of monthly bills as
20 overhead and, you know, charge for the fee application, but I
21 don't see why people can't just do a monthly bill, and -- I
22 mean, I never billed a client for a monthly bill. And it's not
23 that different really. You're not writing a fee application;
24 you're just providing a bill with time entries. So it's just
25 sort of fair warning to people. I'd rather you just treat it

1 as overhead and just charge for the fee application.

2 But I'll enter this order.

3 MS. POSS: Thank you, Your Honor.

4 Then if we may turn to the retention applications.

5 THE COURT: Right.

6 MS. POSS: The first retention application is one that
7 was granted on an interim basis at the first-day hearing. It's
8 for Garden City, the debtors' noticing and claims agent. This
9 --

10 THE COURT: I have no problem with that. That's fine.

11 MS. POSS: Okay. Thank you, Your Honor.

12 The next retention application is Curtis Mallet's --

13 THE COURT: And I have no problem with that one,
14 either. That's fine.

15 MS. POSS: Thank you, Your Honor.

16 And then --

17 THE COURT: I put in some language about you all
18 coordinating so you don't duplicate efforts, but I'm sure
19 you'll do that.

20 MS. POSS: Okay. Thank you, Your Honor.

21 And then the next retention applications is Jones
22 Day's application for special labor counsel. Bob Ford has been
23 very, very involved in all of the debtors' labor negotiations,
24 and he's been absolutely integral to the process. And there
25 are procedures in place as between Davis Polk and Bob Ford to

1 make sure there is not duplication of efforts in matters
2 related to the debtors' workforce.

3 THE COURT: Okay. But on this point, I'm going to say
4 what would normally be antithetical. I think that, while I
5 appreciate you not having duplication of work, I think it's
6 really important that the bankruptcy lawyers -- I don't know
7 Mr. Ford. He may know this drill completely. But I think it's
8 very important that the bankruptcy lawyers, if you're engaging
9 in 1113 and 1114 type of negotiations, to make sure that there
10 is a real dialogue. Don't worry about duplication of effort.
11 It's -- that's a team process. And, you know, I won't fault
12 the two firms for coordinating on how 1113 works. In fact,
13 just the opposite. I want them to do that.

14 MS. POSS: Okay. Thank you, Your Honor.

15 THE COURT: Okay.

16 MS. POSS: And there has been that dialogue occurring.

17 THE COURT: Okay.

18 MS. POSS: Thank you.

19 THE COURT: So I approve that retention.

20 MS. POSS: Thank you, Your Honor.

21 Then, if I may, for the Davis Polk retention
22 application, Mr. Huebner will speak.

23 THE COURT: Okay. On this one, and I don't want to
24 steal all your thunder, but the only thing that caught my eye
25 here is that the firm has represented the shareholder in

1 matters pertaining to its ownership interest in the debtor.
2 And I know you have conflict counsel. But I guess the issue is
3 do you foresee a situation where you're negotiating a plan in
4 connection with, you know, the shareholder's interest in the
5 company and how counsel would be involved in that process?

6 MR. HUEBNER: Great question, and in fact, it caught
7 my eye, too, and I'm going to say a couple things about it.

8 THE COURT: Okay.

9 MR. HUEBNER: I think that you're right, that that is
10 something that is worth illuminating for the Court and for the
11 benefit of the record.

12 There is, of course, no objection by any party to
13 Davis Polk's retention.

14 THE COURT: Right. And it's well disclosed here. I
15 mean, you know, so --

16 MR. HUEBNER: We love disclosure.

17 THE COURT: All right.

18 MR. HUEBNER: Let the sun shine.

19 The United States Trustee asked us a bunch of
20 questions about various parties in interest in the case, and
21 it's most poignant questions, unsurprisingly, since they are
22 the right questions, concerned our former representation on
23 this matter of Avista (phonetic).

24 I want to be clear, because we are very comfortable,
25 and I think with good reason, why it is more than fine for us

1 to be here and be qualified under 327(a).

2 Number one, as we did set forth, we completely
3 disengaged from any representation of Avista on these matters
4 last May in a formal written documented way, including at board
5 meetings at Star Tribune, to make it very clear that the
6 company Avista had to pick a path for us and this is where
7 everybody collectively wanted us.

8 Number two, we have done basically no work for Avista
9 for about a year already, moving towards a year, and in fact,
10 our 2008 billings for the last thirteen months for Avista are
11 either zero, on all matters, zero dollars and zero cents, or if
12 you include the litigation against Star Tribune in which Avista
13 was a co-defendant, even if you could that, it's \$65,600, which
14 is measurably less than one-one-hundredth of one percent of the
15 revenues of Davis Polk. So to the extent that Avista is even a
16 current client at all of the firm and that's sort of
17 esoterically because I don't think that, you know, I need to
18 get into that aspect of it at that level of detail, I think
19 it's fair to say that we have done nothing for them in a very,
20 very long time. Even counting the few dollars that did go out,
21 not only are they, you know, as low as Ms. Emery's severance,
22 but they are also really on account of Star Tribune and not on
23 account of Avista at all. They were simply a co-defendant in
24 the litigation that had been brought.

25 We have, obviously, as Your Honor also noted, Steve

1 Reisman of the Curtis Mallet firm, an extremely serious and
2 credible conflicts counsel, that will be there to handle any
3 matters.

4 We also went to the trouble, since we're rather
5 conservative about things like this, of getting a written
6 conflict waiver from Avista on top of everything else.

7 But then there's your question which is the right one,
8 which is that's all fabulous and comforting, but do you foresee
9 a real possibility where, you know, within the parameters of
10 your conflict waiver or even with conflict counsel there are
11 material plan negotiations going on with Avista. And I think
12 the answer -- I certainly would never want to make a record on
13 valuation a month into the case. But as Your Honor may
14 remember from the first-day hearing, the first lien debt, which
15 is now substantially over \$400 million in amount, is trading at
16 twenty cents on the dollar.

17 THE COURT: But in any event, if you had those
18 negotiations, Curtis Mallet would be doing them?

19 MR. HUEBNER: Correct. We would not be doing them.

20 THE COURT: Okay.

21 MR. HUEBNER: But, again, if the market values are to
22 be believed, or at least taken as an indicia, equity is
23 hundreds of millions of dollars out of the money here --

24 THE COURT: Okay.

25 MR. HUEBNER: -- as are second lienholders, as are

1 unsecured creditors. So if we thought, frankly, that this was
2 really a case where a former client that we represented on this
3 matter was the fulcrum security and likely to be in the middle
4 of the thick of things, I think we'd have a more complex
5 equation. Happily, this case is very, very far from that fact
6 pattern, and I think the combination of their extremely small
7 status as a client of the firm coupled with the disengagement,
8 the conflict waivers, the disclosure, the conflicts counsel
9 and, once again, the comfort of both the creditors' committee
10 and the lenders, who of course were aware of these things also,
11 A, on their own, and, B, since Mr. Masumoto I think made quite
12 sure they were aware of them and they don't have a problem with
13 it, I think suggests that the Court should be as comfortable as
14 we are, even taking a very conservative approach to the ethics
15 of retention.

16 THE COURT: Okay.

17 MR. MASUMOTO: Your Honor, if I may, as Mr. Huebner
18 indicated, we did have our discussions, and in fact, I believe
19 at the conclusion, we essentially reserved our rights. Should,
20 in fact, the concern Your Honor raised, that the equity holders
21 become involved in the case or in the planning, that we would
22 certainly revisit --

23 THE COURT: Well, right. I mean, the conflict issue
24 is always in the case, so --

25 MR. MASUMOTO: And we made that clear to, I believe,

1 the debtors' counsel.

2 THE COURT: Okay.

3 MR. HUEBNER: Yeah. I just want to be clear from my
4 end, Your Honor, "reserve your rights" doesn't mean that we can
5 retroactively say that you are not disinterested in the case --

6 THE COURT: No, no. It comes up -- it comes up when
7 you do fee applications because the same issues are always
8 there.

9 MR. HUEBNER: Correct.

10 THE COURT: If there's a material change, then,
11 obviously, you'll alert people to it, and --

12 MR. HUEBNER: Exactly. You know, should a
13 circumstance develop that from that point forward --

14 THE COURT: Right.

15 MR. HUEBNER: -- either we -- that's what you mean,
16 not that, you know, let's now go back and guillotine you.

17 THE COURT: Right. That's what you mean.

18 MR. MASUMOTO: That's correct, Your Honor.

19 THE COURT: Okay.

20 MR. HUEBNER: Two very tiny points, Your Honor, just
21 so that the record is clear. Number one, we certainly do
22 intend to coordinate with Jones Day, and we are fielding calls
23 many times a day from at least sort of a fits-and-starts labor
24 negotiation that has already begun, and we intend to, and I
25 personally intend to remain involved in the union negotiations

1 and try to ensure that they're moving along. I keep calling
2 Mr. Simon and inviting him to join us in court and keep the
3 dialogue going and get his assistance even on various matters
4 where it's appropriate.

5 And then just one small point so that the Court
6 understands, the reason that you sometimes see, although,
7 frankly, I'm kind of with you and I write off a fair bit of it
8 which is why I don't think I've yet had a problem, but the
9 reason that you sometimes see billing on monthly bills is
10 because a lot of the work that ultimately goes into the
11 quarterly fee application actually does have to be done each
12 month because, frankly, going through the time records for
13 privilege purposes, for consistency purposes and for ultimate
14 compliance with the rules, what you don't want to do is serve a
15 monthly bill that has things that are problematic --

16 THE COURT: I just want people to be sensitive to it.

17 MR. HUEBNER: Yeah. And I quite agree with that. I
18 think that --

19 THE COURT: And I'm not referring to any of the firms
20 here, but I have seen recently in some fee applications firms
21 that I think didn't set parameters in place early to have the
22 time keepers bill properly, and then they delegated someone to
23 fix it every month, and it just seemed wasteful to me.

24 MR. HUEBNER: Yes. And as it happened -- it's funny
25 you say that, Your Honor, because literally only yesterday I

1 decided we are convening an all-firm meeting at which we're
2 going to read basically all the lawyers and assistants the riot
3 act about getting your time right the first time. It seems
4 that e-mails don't quite work, and we do a lot of writing off
5 of time fixing it.

6 But my only point is just to be fair to the other
7 firms --

8 THE COURT: Your colleagues are all looking around
9 now.

10 (Laughter.)

11 THE COURT: All right. That's fine.

12 MR. HUEBNER: I apologize. Not to their firms, just
13 to our own firm.

14 THE COURT: No, no, your colleagues at Davis Polk are
15 looking at each other.

16 MR. HUEBNER: No, they know it's coming. We have some
17 pretty Stentorian e-mails.

18 THE COURT: All right.

19 MR. HUEBNER: But there is some amount of work each
20 month I think is fair because the vast majority of the number
21 of cases --

22 THE COURT: I just don't want to see it twice, that's
23 all.

24 MR. HUEBNER: Yeah. That -- and that is certainly
25 correct.

1 THE COURT: Okay.

2 MR. HUEBNER: So, with that, Your Honor, unless other
3 people want to surprise us with questions or comments, I think
4 the Star Tribune hearing is completed and, as always, we thank
5 the Court for its careful reading and its attention.

6 THE COURT: All right.

7 (Proceedings concluded at 11:26 a.m.)

8 *****

9 CERTIFICATION

10 I certify that the foregoing is a correct transcript
11 from the electronic sound recording of the proceedings in the
12 above-entitled matter.

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February 10, 2009

18 Cathryn Lynch, NJ Cert. No. 565

19 Certified Court Transcriptionist

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