

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
MUZAK HOLDINGS LLC, *et al.*, .
 . Case No. 09-10422 (KJC)
 . (Jointly Administration
 . Requested)
 .
 . February 12, 2009
 . 11:30 a.m.
 Debtors. . (Wilmington)
 .

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Domenic Pacitti, Esq.
Klehr, Harrison, Harvey,
Branzburg & Ellers, LLP

Edward Sassower, Esq.
Joshua Sussberg, Esq.
Andrew Genser, Esq.
Kirkland & Ellis, LLP

For the Majority Lenders: Andrew Gallo, Esq.
Bingham McCutchen, LLP

For the US Trustee: David Klauder, Esq.
United States Trustee's Office

For the Ad Hoc Committee of
Non-Insider Holders of
Senior Notes: William Baldiga, Esq.
Brown Rudnick, LLP

For Silver Point Capital: Robin Spigel, Esq.
Willkie, Farr & Gallagher, LLP

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1 THE CLERK: All rise.

2 THE COURT: Good morning, all.

3 ALL: Good morning, Your Honor.

4 MR. PACITTI: Good morning, Your Honor. Domenic
5 Pacitti of Klehr, Harrison, Harvey, Branzburg & Ellers on
6 behalf of Muzak Holdings, LLC, and it's related Debtors.
7 Your Honor, thank you for taking the opportunity to schedule
8 this on quick notice, and to hear us on our first day
9 matters. I have one housekeeping matter first. I'd like to
10 introduce to the Court my co-counsel from Kirkland & Ellis,
11 we filed *pro hac vices* for each of them, and each will
12 participate today. First is Edward Sassower - -

13 THE COURT: Nice to see you again, Mr. Sassower.

14 MR. SASSOWER: Thank you, Your Honor.

15 MR. PACITTI: - - who you'd know from other cases,
16 I'm sure. Next is Joshua Sussberg, and lastly Andrew Genser.
17 We have filed *pro hacs* Your Honor. They're on record, and I
18 would move their admission for purposes of this case.

19 THE COURT: Very well.

20 MR. PACITTI: Your Honor, I turn the podium over to
21 Mr. Sassower who will address, preliminarily, background of
22 the case, and then move forward from there.

23 THE COURT: All right. Thank you.

24 MR. PACITTI: Thank you, Your Honor.

25 MR. SASSOWER: Thank you, Your Honor. Edward

1 Sassower of Kirkland & Ellis, proposed counsel to the
2 Debtors. Your Honor I'd like to start the hearing by
3 introducing the management team and my colleagues who are in
4 the courtroom today. Your Honor here today we have Steve
5 Villa who's the Chief Executive Officer of the company. And
6 to Steve's right is Mike Zendan, the General Counsel of the
7 company. And to Steve's left is Dodd Haynes, who's the Chief
8 Financial Officer and Treasurer of the company. And Mr.
9 Haynes is also the first day declarant. And to the extent
10 necessary, is prepared to supplement his 70 page first day
11 declaration by providing live testimony or having that
12 testimony proffered in support of any or all of the first day
13 motions. Also joining me in the courtroom today is my
14 restructuring colleague, Joshua Sussberg, who I'll be ceding
15 the podium to in just a few moments. And my litigation
16 partner, Andrew Genser, who is going to be handling the
17 motion to seal. Lastly, I'd like to introduce Anish Aswani
18 of Moelis & Company, who's the company's proposed financial
19 advisor. The company has not hired a turnaround firm or a
20 CRO. I'd like to provide Your Honor with a brief overview of
21 the company. Tracing its roots back to 1934, the company is
22 the pioneer of business media services. Which is basically
23 to say that they're in the business of selling music. It's a
24 hyper-competitive industry, but the company and it's over 12
25 hundred employees, it's exceptionally good at it, and does

1 more of it than anybody else. Odds are, if you're in a
2 store, or a restaurant and you hear music, Muzak is the
3 provider of that music. The company relies on its library of
4 2.6 million songs to tailor play lists for its many
5 customers. For example, a clothing retailer targeting
6 teenagers may want a rap and rock mix, but they may want,
7 between the hours of ten and three, when the teenagers are in
8 school, to tone it down a little bit, because the store may
9 be more likely filled with their parents who are shopping on
10 their behalf. And then after three or on the weekends, when
11 the store is most likely to be filled with the teenagers
12 themselves, to, you know, to dial the music up a little bit.
13 Essentially, the company specializes in establishing and
14 setting moods for their many customers. The company's core
15 business is quite strong. In 2007 the company recorded
16 revenues of approximately \$250 million, and EBITDA of
17 approximately \$68 million. And in 2008, the company recorded
18 revenues of approximately \$249 million, and EBITDA of
19 approximately \$65 million. However, the company is over
20 leveraged. The company's capital structure is fairly
21 straightforward. I have a chart I prepared for Your Honor.
22 May I approach?

23 THE COURT: Yes. Thank you.

24 MR. SASSOWER: This is a chart establishing the
25 company's corporate and capital structure. As you can see,

1 they've got approximately \$100 million of secured bank debt,
2 \$220 million of senior notes, \$115 million of junior notes,
3 and \$24 million of holding company notes that are
4 structurally subordinated to both the senior and junior
5 notes. All of this funded debt matures in the first quarter
6 of this year, and with the company unable to refinance their
7 debt in these capital markets, it had no choice but to seek
8 the protection of this court. Your Honor, now I'd like to
9 highlight a few points that may dictate the direction that
10 this case may take. First, the company does not require
11 major operational restructuring. As I said, its core
12 business is very strong. This is essentially a financial
13 restructuring. Simply put, the company needs to reduce its
14 leverage, and that new debt must have later maturity dates.
15 Second, the company does not need a DIP. The company
16 projects that it has enough cash on hand to fund the entire
17 case. Moreover, the company has negotiated a consensual cash
18 collateral order with its bank group that grants the company
19 access to that cash. The cash collateral order does contain
20 fairly aggressive milestones that the banks insisted on. The
21 alternative was to fight with the banks in court about cash
22 collateral on the first day of this case. Your Honor, we're
23 confident that we could fairly easily win that cash
24 collateral fight. After all, the banks have conceded they're
25 over secured. However, we're trying to build consensus, and

1 not pick fights. We're also confident that if the parties
2 are reasonable, that we'll be able to hit the milestones.
3 And if the parties are not reasonable, then we may be back in
4 front of Your Honor seeking to amend the cash collateral
5 order. Lastly, leading up to the filing, we've engaged in
6 constructive negotiations with our various creditor
7 constituencies. These efforts have been aided by the fact
8 that Silver Point, a hedge fund, owns a large amount of the
9 bank debt, the bond debt, and the subordinated notes. Thus
10 you essentially have three groups in this case. The bank
11 group, the non-Silver Point senior note holders, and then
12 Silver Point, which holds a majority of the subordinated
13 notes. Your Honor, we don't have a deal yet, but we are
14 making very good progress. As for the first day motions, we
15 provided binders to all three groups, and have not received
16 any comments. Also, for the better part of the last week,
17 we've been in constant contact with the Office of the United
18 States Trustee, and I'm pleased to apprise Your Honor that
19 we've been able to resolve all of their comments, except for
20 their comments to the motion to seal and one comment
21 regarding the timing, but not the amounts, of the payments
22 that are over the \$10,950 cap. We have not received any
23 other objections, Your Honor. Your Honor, unless you have
24 any other questions or comments, at this time I'd like to
25 cede the podium to my colleague Mr. Sussberg.

1 THE COURT: I have no questions or comments at this
2 point.

3 MR. SASSOWER: Thank you, Your Honor.

4 MR. SUSSBERG: Good morning, Your Honor. Joshua
5 Sussberg from Kirkland & Ellis on behalf of the Debtors.
6 Your Honor, we've proposed a comprehensive package of first
7 day relief, and as Mr. Sassower mentioned, we have not had
8 objections from our creditor constituencies, and we've worked
9 collectively with the Trustee's Office to resolve as many of
10 the issues that have been raised as possible. The first day
11 relief was targeted to ensure that operations were
12 stabilized, and that we could in fact make the reality that
13 this is truly a financial restructuring come true. With
14 that, we've put together a comprehensive communications plan
15 that has been rolled out to all of our major constituencies,
16 customers, clients, licensees, etcetera. And we've told
17 everybody about our intentions with this case, and that we
18 hope to move efficiently through this process. As Mr.
19 Sassower mentioned, this is a highly competitive industry,
20 and the relief that we're seeking today is tailored to
21 address that very situation, and ensure that we remain
22 competitive in these times when we address our financial
23 restructuring issues. The motions that we filed were served
24 on, as we've mentioned, the US Trustee - - well over a week
25 ago - - the top 30 unsecured creditors - - including the

1 indentured trustee for each of the three indentures - -
2 counsel to the ad hoc group of secured lenders, counsel to
3 the ad hoc group of senior note holders other than Silver
4 Point, counsel to Silver point, counsel to the International
5 Plan Music Association, which is the industry-formed group
6 that represents the interests of the licensees that utilize
7 Muzak's proprietary trademarks and sell our product and music
8 out in the field across the country. And they are in the
9 courtroom today. And I'm happy to report that we've worked
10 through all first day related issues with the IPMA and their
11 outside counsel. We've also served notice of the first day
12 motions on counsel to our preferred equity holder, counsel to
13 our equity sponsor, the IRS, and various specific parties
14 that are affected by the relief, including insurance
15 companies and utility providers. In connection with
16 discussions with the US Trustee over the course of the last
17 week, we have resolved all of our issues, and there are a few
18 changes to a few of the first day orders. And we have black
19 lines today. I'm happy to run through the agenda as it's
20 been presented to the Court, or address specific questions
21 that Your Honor may have.

22 THE COURT: I'll have specific questions with some
23 as we go, but let's just go through the agenda.

24 MR. SUSSBERG: Very well. The first item on the
25 agenda, item no. 4, is the joint administration motion. We

1 are seeking to consolidate, for administrative purposes only,
2 the 15 cases that relate to Muzak Holdings, LLC. We believe
3 this will prove administratively convenient and efficient for
4 all parties involved, and we understand this is a routine
5 request, and we would request that Your Honor entertain that
6 motion.

7 THE COURT: Let me ask for the record, does anyone
8 else care to be heard in connection with this motion? I hear
9 no response. I have no questions.

10 MR. SUSSBERG: Thank you, Your Honor. If you would
11 prefer, I can hold orders until the end or pass them up as we
12 go.

13 THE COURT: Why don't we hold them until the end,
14 because a couple of them will involve picking dates, and - -

15 MR. SUSSBERG: Excellent. Thank you, Your Honor.

16 THE COURT: Yeah.

17 MR. SUSSBERG: Your Honor, item no. 5 on the agenda
18 is the cash collateral motion. As Mr. Sassower mentioned, we
19 are presenting today a consensual agreement concerning the
20 use of cash collateral which, believe it or not, was
21 negotiated well in advance of this Chapter 11 filing in
22 connection with an amendment that we entered into with our
23 term loan lenders back in January to extend the maturity date
24 for a 22 day period. During that 22 day period, we utilized
25 the time afforded to us to begin negotiations and discussions

1 with each of the creditor groups that Mr. Sassower mentioned,
2 and we are hopeful that we will continue to build upon the
3 momentum that we've developed over that period of time. With
4 respect to the cash collateral order itself, we believe we've
5 addressed all questions and concerns of the US Trustee,
6 although I'll leave it for Mr. Klauder to correct me if I'm
7 wrong. The motion complies with Local Rule 4001-2, as we've
8 highlighted any extraordinary provisions, even those ones we
9 don't necessarily believe are extraordinary, but may be
10 considered extraordinary. There is a budget attached to the
11 cash collateral order. It's based upon a 13 week cash flow
12 that was developed back in January. So if Your Honor looks
13 at the budget, it will show an 8 week period. That budget
14 will be readjusted at the end of that 8 week period, and in
15 consecutive periods thereafter, for 13 weeks. There are two
16 covenants with respect to testing under the cash collateral
17 order. There is an actual amount of net cash flow, which is
18 total receipts minus total disbursements. And we cannot fall
19 below the budgeted amount, subject to a variance of 10% on
20 our total receipts. That test will be on a four week, four
21 week, five week basis in accordance with the 13 week cash
22 flow. The additional covenant test is that for any 13 week
23 period net cash flow over the period cannot fall below
24 negative \$4 million. The company negotiated at arm's length
25 with respect to these covenants, and is confident in its

1 ability to achieve these covenants over the course of the
2 Chapter 11 case. As set forth in the order, we intend to
3 provide both adequate protection liens, and claims related
4 thereto, in connection with the diminution in value of the
5 pre-petition collateral and our use thereof. It's important
6 to note, and we will discuss this throughout the day with
7 respect to the relief we're seeking, but cash collateral
8 specifically excludes cash that Muzak collects on behalf of
9 its licensees. And as we discuss in our critical vendor
10 motion where we include a discussion regarding licensees, the
11 cash that is in fact collected by Muzak is collected on
12 behalf of the licensees. And Muzak essentially serves as a
13 clearing house for distribution of that cash, and is an agent
14 under applicable license agreements, and various agreements
15 related thereto with respect to our licensees, who are
16 represented by the International Plan Music Association. The
17 adequate protection liens and claims are junior to the carve
18 out which is set forth in the cash collateral order. There
19 is a budget for professional fees, we will attach that to the
20 interim order upon presentment, and there is a post-default
21 set aside as well. There are amounts set forth for the
22 Debtors, as well as for the Committee. Those amounts are not
23 equal, and in accordance with the Local Rules we did, in
24 fact, point that out. It's based upon the fact that the
25 Debtors will likely have more work in the case than the

1 Creditors Committee, although we believe that a Creditors
2 Committee will in fact weigh in upon this once they are, in
3 fact, appointed.

4 THE COURT: You could probably count on that.

5 MR. SUSSBERG: I would take that to the bank, Your
6 Honor. The adequate protection payments that we intend to
7 make under the cash collateral order involve current cash pay
8 of non-default rate interest, there's a pick component with
9 respect to 2% of interest that was negotiated back in the
10 amendment when we entered into that in July. And that 2% of
11 interest that was added to the prior rate will pick for a
12 period of time from now until July 31st. To the extent we are
13 able to refinance the secured debt before July 31st, that pick
14 interest will in fact be waived. In addition, we've agreed
15 to pay for the fees and expenses of counsel for the agent,
16 the pre-petition group of ad hoc lenders, and their financial
17 advisor as well. And we've set forth procedures by which
18 they will submit their invoices to both the Debtors, a
19 committee of creditors once appointed, and the US Trustee for
20 reasonable review. I would also like to note there's an
21 indemnity account that we've set up in the cash collateral
22 order which will set aside \$500 thousand in connection with
23 the defense of any claims or rights that people may assert
24 with respect to the pre-petition collateral once and after
25 the pre-petition lenders have been satisfied in the case. As

1 Mr. Sassower explained, there are case milestones included in
2 the event of default section. To highlight a few of them
3 that will be relevant for all parties in this room, and that
4 everyone is well aware of, a final order approving cash
5 collateral must be approved within 40 days of February 10th,
6 the petition date. A plan and disclosure statement must be
7 on file on or before May 5th, 2009. An order approving such
8 disclosure statement must be entered by June 15th, 2009. And
9 an order confirming a plan must be entered by August 9th,
10 2009.

11 THE COURT: The proposed form of order said the 10th,
12 I think.

13 MR. SUSSBERG: I'm happy with the 10th. Even better.

14 THE COURT: The motion said the 9th, and I think the
15 form of order said the 10th.

16 MR. SUSSBERG: Let's go with August 10th, then.

17 Thank you, Your Honor. We'll make a note of that. The order
18 further provides that the Debtors have acknowledged the
19 validity, extent, and priority of the first liens and claims.
20 There is a challenge period. The period time to object to
21 those liens and claims of the first lien lenders is
22 sufficient for purposes of the Local Rules. And there is \$25
23 thousand that the lenders have agreed to make available in
24 connection with the Committee's investigation of those liens
25 and claims. I would also like to note that with respect to

1 the 506(c) waive that the lenders have requested, that will
2 not be before Your Honor in the form of the interim order,
3 but will only be considered at the time of the final hearing.
4 And finally, in connection with any event of default under
5 the cash collateral order, there's a remedies notice period
6 pursuant to which the lenders must provide the Debtors with a
7 notice of an event of default, and the Debtors have five
8 business days within which to come to Your Honor and contest
9 the occurrence of that event of default. With that, Your
10 Honor, I'd be happy to answer any questions you may have on
11 the proposed interim cash collateral order.

12 THE COURT: Bear with me for just one moment. So I
13 take it that the provision that's in the order that was
14 submitted in paragraph 7 concerning treatment of the bank
15 professionals has changed consistent with what you, your oral
16 presentation.

17 MR. SUSSBERG: I believe it says, and I hope we're
18 working off the same version, but that those invoices will be
19 paid within 10 days upon delivery. I think it should
20 probably say in there subject to review as well.

21 THE COURT: Yeah. I'm looking at the provision that
22 says the professionals entitled to receive payment of fees
23 pursuant to this paragraph shall not be required to comply
24 with US Trustee fee guidelines, and such fees and expenses
25 shall not be subject to allowance by the Court.

1 MR. SUSSBERG: That is correct, Your Honor. We do
2 not intend to have the lenders submit fee applications.

3 THE COURT: Right. But there's a review and
4 objection period with respect to the US Trustee and the
5 Committee once it's appointed.

6 MR. SUSSBERG: There is.

7 THE COURT: Okay.

8 MR. SUSSBERG: And we will clarify that. Unless Mr.
9 Gallo has any questions or concerns.

10 MR. GALLO: Your Honor, Andrew Gallo. Good morning,
11 Your Honor, Andrew Gallo from Bingham McCutchen. We
12 represent a majority of the senior secured lenders. I think
13 what the procedure that we had contemplated and discussed
14 with the submission of the invoices, a 10 day notice period,
15 and then payment if there's no objection. And if there is an
16 objection by the Committee - - and the US Trustee, or the
17 Committee, or the Debtor would have 10 days to file an
18 objection.

19 THE COURT: All right. That's the usual
20 arraignment. Thank you.

21 MR. SUSSBERG: We will work quickly to modify that
22 as it is important for the cash collateral order to be
23 entered today if Your Honor is willing to entertain it.

24 THE COURT: Very well. I have no other questions at
25 this point.

1 MR. SUSSBERG: Thank you, Your Honor. Your Honor,
2 item no. 6 on the agenda - -

3 THE COURT: I'm sorry, before you move on.

4 MR. SUSSBERG: Yes.

5 THE COURT: I'm thinking that it might be
6 appropriate for you at this point to move the admission of
7 the Haynes declaration in support of this and the other first
8 day motions.

9 MR. SUSSBERG: Absolutely, Your Honor.

10 THE COURT: All right. Is there any objection?
11 It's admitted without objection.

12 MR. SUSSBERG: Thank you.

13 THE COURT: All right. Does anyone else care to be
14 heard in connection with the cash collateral motion? I hear
15 no response. You may proceed.

16 MR. SUSSBERG: Thank you. Item no. 6 on the agenda
17 is the wage and benefits motion. A standard motion in
18 Chapter 11 cases, but a very important motion. And a very
19 important motion to Muzak, whose employees are the life blood
20 of this operation. I've been told by the management team
21 that there is nearly nothing harder than selling music to
22 individuals across this country. And they value the time
23 dedication of each and every employee that's part of the
24 chain of command in distributing this product. The Debtors
25 currently employ 1,239 employees. All at the Muzak, LLC

1 entity. 1,213 are full time, 26 are part time. 130 of which
2 are union members. There are 11 temporary employees. 7 from
3 employment agencies and 4 month-to-month temporary employees.
4 Your Honor, the motion seeks to pay pre-petition wages,
5 benefits, and I will discuss in a moment, incentive related
6 pay in a small amount up to \$1.64 million which is due and
7 owing on account of pre-petition obligations. Of the 1,239
8 employees, we have identified 4 employees that exceed the
9 statutory permitted cap under 507(a).

10 THE COURT: Okay. The papers said 3, but you've
11 found a 4th.

12 MR. SUSSBERG: Correct, Your Honor.

13 THE COURT: All right.

14 MR. SUSSBERG: We ran the numbers again yesterday,
15 and there was a 4th employee whose amount over and above the
16 cap is \$940.08. In discussing this issue with the US
17 Trustee, we don't believe there to be any concern with the
18 overall amount that's above the cap. And with respect to
19 each of the 4 employees, the aggregate total is \$31,047.32.
20 And while I'll let Mr. Klauder comment on this issue, we
21 believe it is extremely important today to authorize the
22 payment over and above the cap for several reasons. The most
23 important reason is that the employees in question, each of
24 the 4, are almost paid entirely upon commissions. In fact, 2
25 of the 4 have no base salary, and are only driven commissions

1 and bonus pay. It is important that these employees
2 understand that the sales that they have generated, which
3 themselves have generated significant revenue for the
4 company, will in fact be compensated in accordance with the
5 structure that they've entered into. We believe that
6 delaying the determination on the \$30 thousand in the
7 aggregate until a final hearing, which may in fact be at a
8 time where everybody agrees to it, would be more detrimental
9 than approving the payment over and above the cap today,
10 because of the concerns that these employees are paid solely
11 on commissions and it will generate additional sales at a
12 time when it's extremely important.

13 THE COURT: When are or were these payments due?

14 MR. SUSSBERG: These payments become due and owing
15 tomorrow. Our next payroll is tomorrow. I do not believe,
16 Your Honor, that any of the large, unsecured creditor
17 constituencies, specifically the ones that we've communicated
18 with over the course of the last several days regarding the
19 first day relief, have any issue with this request. The
20 concern that the company has is that by delaying this payment
21 until a final hearing, it may have the unintended consequence
22 of undoing exactly what it is we're seeking to do under this
23 wage motion. And that is, generating ill will among our
24 employees who don't necessarily understand a statutory cap,
25 and the reason that the payment won't be made for three weeks

1 in time. And because it's generally a *de minimis* amount, we
2 would request that Your Honor authorize payments over and
3 above the cap today, on a final basis, so that payment may be
4 made tomorrow.

5 THE COURT: All right. Anything further on the wage
6 motion?

7 MR. SUSSBERG: The other point I would like to make
8 to Your Honor is the fact that our wage motion, in addition
9 to health and benefits of the sorts, includes certain
10 incentive related programs. The incentive programs that
11 we're seeking approval of today are solely incentive programs
12 related to rank and file employees. The total amount that
13 we're seeking to have paid under the incentive programs is
14 \$455 thousand, approximately. Excuse me, I don't have the
15 figure necessarily in front of me. The incentive programs
16 that are incorporated in this overall relief includes sales
17 and clients relation bonus programs, monthly team bonus
18 programs, referral awards programs, and a discretionary bonus
19 program. As well as a senior management bonus program. With
20 respect to the senior management bonus program and the
21 discretionary bonus program, the Debtors do not today seek
22 relief with respect to those programs. Those may involve
23 non-insider employees, or insider employees, and we are
24 seeking no relief with respect to those two incentive
25 programs today. We are only seeking relief with respect to

1 the rank and file programs.

2 THE COURT: All right. I have read the motion, but
3 I was wondering if you could put a finer point on the
4 differences between what are called the incentive awards, the
5 sales and client relations bonuses, and the team bonuses.

6 MR. SUSSBERG: Absolutely, Your Honor. The team
7 bonuses, and, which we're seeking to have paid today, amount
8 to \$12 hundred in pre-petition amounts. The team bonuses
9 involve discretion on the team leader to award cash or
10 credits for goods based upon a specific performance of the
11 team. Generally in \$200 to \$300 incremental amounts. It's
12 on a relatively inconsistent basis just based upon
13 performance on that day and that moment in time. The sales
14 and clients relation bonus program is specific and tailored
15 to individual employees. And like the employees that we
16 mentioned before that may be above the cap, these employees
17 have specific agreements pursuant to which if they sell a
18 specific number of accounts, or they install equipment across
19 the country at various venders, they in fact will be
20 incentivized to do so on a higher volume amount and be paid
21 accordingly.

22 THE COURT: Okay. Are there specific thresholds to
23 be reached in connection with those bonuses, or again is it
24 discretionary?

25 MR. SUSSBERG: There are specific thresholds to be

1 reached - -

2 THE COURT: Okay.

3 MR. SUSSBERG: - - in accordance with those
4 programs, yes.

5 THE COURT: All right. And the incentive awards?
6 What makes them different from the other two?

7 MR. SUSSBERG: The senior programs?

8 THE COURT: No, the - - I'm looking at page 11 of
9 the motion. And is that just the overall description for the
10 incentive?

11 MR. SUSSBERG: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. SUSSBERG: It's an introductory paragraph to
14 help guide the reader.

15 THE COURT: All right. Thank you.

16 MR. SUSSBERG: Thank you, Your Honor. One other
17 point I would like to make. In connection with expense
18 reimbursement, the company has credit card programs, one
19 particular with American Express. American Express called
20 the company several days ago, in advance of the filing, and
21 suggested that in order for the credit card program to
22 continue, they would require a letter of credit or
23 certificate of deposit. We believe it's very important for
24 our card program to continue. We intend to discuss this
25 situation with American Express and incorporate relief in the

1 final cash collateral order over the course of the next
2 several weeks.

3 THE COURT: Well, from the written submissions, it
4 sounded a little bit more than a suggestion. And the amount
5 that was suggested was \$500 thousand. So what you're telling
6 me is there's been, as yet, no agreement about what amount,
7 if any, to put up for that.

8 MR. SUSSBERG: Absolutely, Your Honor. To err on
9 the side of caution, we included the request that American
10 Express had made. Although we intend to do our best and
11 negotiate an amount that we think is reasonable and tied to
12 charges on an average per monthly basis.

13 THE COURT: Understood.

14 MR. SUSSBERG: Thank you, Your Honor. With that, I
15 have nothing further on the wage motion.

16 THE COURT: Okay. I don't have any further
17 questions on the wage motion, except is it the Debtors'
18 intention at this point, at least, to maintain all of the
19 benefit, all the benefits that were described in the motion?

20 MR. SUSSBERG: Yes, with the - -

21 THE COURT: Including things like tuition
22 assistance, fitness subsidy, those kinds of things?

23 MR. SUSSBERG: It is the Debtors' intention to
24 maintain all of those programs. I will note that payments,
25 as far as pre-petition dollar amounts are concerned, are

1 current on those programs. The one item that's worth
2 mentioning is the 401K match, which the company has
3 determined to temporarily suspend effective March 1st.

4 THE COURT: All right. Thank you. Does anyone else
5 care to be heard in connection with the wage motion?

6 MR. KLAUDER: Your Honor, I would. Can I have a
7 moment to - -

8 THE COURT: You may.

9 MR. KLAUDER: For clarification with Mr. Sussberg?

10 THE COURT: Yes.

11 MR. KLAUDER: Good afternoon, Your Honor. David
12 Klauder for the United States Trustee's Office. I just want
13 to make one point of clarification from what Mr. Sussberg
14 presented on, with regard to those incentive programs. You
15 will see in the order a number, it's actually in paragraph 3
16 of the wage order, you will see a cap number on the incentive
17 programs. That actually is a total of commissions and the,
18 and the incentives, the non-management, non-discretionary
19 incentives. Nothing's being done on that today. So I just
20 want to make that clear for the record. We went over the
21 non-management, non-discretionary incentives with the Debtors
22 pretty heavily, got a number of lists, and ultimately it came
23 to, our conclusion was that it was an appropriate amount to
24 be paid by the Debtors. And adding that in with all other
25 wages that employees get, other than the 4 that have been

1 specifically mentioned, nobody is above the cap. And that,
2 of course, leads to the second point, which is our position
3 that the timing of the payments above the cap should be at
4 least pushed off. Again, at this point, I have no reason to
5 argue with the numbers. I don't know if that would happen
6 later. And we'd certainly want to see if a Committee has any
7 interest in at least looking at that, and taking a position
8 on that. But as I'm sure you've heard from our office
9 before, we believe the priority cap should be set in stone on
10 the first day, and anything above that should be pushed out.
11 Thank you.

12 THE COURT: All right. Does anyone else care to be
13 heard on the wage motion?

14 MR. BALDIGA: Good afternoon, Your Honor. Briefly,
15 William Baldiga of Brown Rudnick. As you heard from Mr.
16 Sussberg, we represent the majority of the holders of the
17 non-Silver Point holdings of the senior notes. Which is by
18 far the largest part of the unsecured claims in the case at
19 that level. The, we support payment of those employees, Your
20 Honor. This is, as described, a balance sheet restructuring
21 case, and not an operational case, and we think given the *de*
22 *minimis* amount there that we'll spend more than \$30 thousand
23 dealing with that issue, and it would be a good thing to have
24 the Debtor report back to its employees that the full relief
25 was granted. Thank you.

1 THE COURT: Thank you. Does anyone else care to be
2 heard in connection with the wage motion?

3 MS. SPIGEL: Good morning, Your Honor. Robin
4 Spigel, Willkie, Farr & Gallagher, LLP, counsel for Silver
5 Point Capital, LP. As you've heard from Mr. Sassower, Silver
6 Point Capital is the largest unsecured creditor in these
7 cases. It holds at least a third of the debt in each
8 tranche, and it supports, generally, the first day relief
9 requested, but also specifically supports the payment of
10 these commissions. We think that it is a *de minimis* amount,
11 and it will support employee moral. I also would just like
12 to note that Silver Point has been actively negotiating with
13 other creditors, and does anticipate that these will be quick
14 cases. Thank you.

15 THE COURT: All right. Thank you. Does anyone else
16 care to be heard in connection with the wage motion? All
17 right. Is it possible, without divulging more information
18 than the Debtor would like, to tell me a little more
19 specifically about the employees involved? Are any of them
20 management employees?

21 MR. SUSSBERG: These are non-insider employees.
22 Non-management, rank and file, sales field type employees.

23 THE COURT: Well, there appears to be no dispute
24 that the Debtors' business is heavily sales driven, which
25 depend entirely on individual efforts. So I'm going to

1 approve the payment of the four over the cap. But I'm going
2 to say something else that I want everybody else to hear.
3 And that is, this is not to be considered a precedent of any
4 kind. Based on my experience, outlying decisions, I'll call
5 them, like this one, are often raised in subsequent matters.
6 I agree with the US Trustee's Office that the cap really
7 ought to be hard and fast, however under these circumstances,
8 with the support of really all of the constituents, and I
9 would say while it may be ultimately, when a Committee is
10 formed, there will be possibly some more diverse
11 representation, I feel as if maybe I already have the
12 majority of what would be the Committee's views today on that
13 issue anyway. So for those reasons, I'm willing to make that
14 approval under these unique circumstances in this case.

15 MR. SUSSBERG: We appreciate it. Thank you, Your
16 Honor.

17 THE COURT: All right.

18 MR. SUSSBERG: Your Honor, one point of
19 clarification. Mr. Baldiga, who's from Brown Rudnick
20 representing certain senior noteholders, I believe mentioned
21 that he represents the majority of unsecured creditors. I
22 think it's that he represents the non-Silver Point senior
23 noteholders.

24 MR. BALDIGA: That's exactly right.

25 MR. SUSSBERG: Okay. Just wanted to make that clear

1 for the record. Your Honor, agenda item no. 7 is the cash
2 management motion pursuant to which we seek to keep in place
3 our integrated cash management system pursuant to which we
4 collect, transfer and disburse our funds. As set forth in
5 the motion, the Debtors maintain 33 accounts at both Wachovia
6 and Bank of America, in addition to one letter of credit
7 account at JP Morgan. We have been in communication with our
8 banks. Our proposed order includes language that they have
9 suggested, and we believe the process that we've implemented
10 through our motion will run without problem with respect to
11 any cash, checks, wires of the sort that the Debtors request
12 to honor, or otherwise pay, whether they be pre-petition or
13 post-petition. I would like to note one change to the
14 proposed order which we've included at the request of the US
15 Trustee's Office. And that is to state that the Debtors are
16 directed to contact the banks to internally code each of the
17 bank accounts as Debtor-in-Possession accounts to ensure
18 compliance with §345 of the Bankruptcy Code. And we are
19 directed to provide any such correspondence to the Office of
20 the US Trustee. And we have in fact included that comment in
21 the order.

22 THE COURT: All right. Does anyone else care to be
23 heard in connection with the cash management motion? I hear
24 no response. I have no questions.

25 MR. SUSSBERG: Thank you, Your Honor. Your Honor,

1 agenda item no. 8 is the critical vendor motion. And under
2 our critical vendor motion, we seek to pay specific types of
3 vendors. And there's a specific section, separate section,
4 excuse me, in our critical vendor motion where we discuss the
5 relationship we have with our licensees. The products and
6 the services that the Debtors sell to the customers are the
7 culmination of a highly choreographed product development,
8 purchasing, music programming, and delivery system. Along
9 that chain, the Debtors must ensure that everything moves
10 along as it should. And in connection therewith, we have sat
11 with the company, *ad nauseam*, and worked through their vendor
12 list to ensure that we narrowly tailor the relief we're
13 requesting from Your Honor today with respect to pre-petition
14 amounts that may be due and owing to those vendors that we
15 believe are absolutely critical to that supply chain. In
16 connection therewith, as I've mentioned, we devoted a
17 substantial amount of time in working through, with the
18 management team, those minimal vendors that we'll identify
19 for the Court today. And Mr. Haynes, as mentioned earlier,
20 is here to testify to that process, as well as to the
21 irreparable harm that the company will suffer if the relief
22 requested in this motion is not granted. Your Honor, I'm
23 happy to proffer Mr. Haynes' testimony if you believe that is
24 appropriate, or move along to the relief that's being
25 requested.

1 THE COURT: Well, the motion was very detailed, and
2 the declaration in support of it, but I will ask if anyone
3 wishes to examine Mr. Haynes in connection with this motion.
4 I hear no response. I don't have any questions. I consider
5 the record having been made by virtue of the admission of the
6 declaration sufficient. I have no questions with respect to
7 the relief that's been requested. I do agree, as you say,
8 that it is extremely focused with respect to the various
9 constituencies who are to be, that are to be covered by such
10 a motion. But let me ask if anyone else wishes to be heard.

11 MR. KLAUDER: Your Honor, I think will you note some
12 specific changes - -

13 MR. SUSSBERG: Yeah. I'll walk through them.

14 MR. KLAUDER: Okay. And Mr. Sussberg is going to
15 walk through those primarily related to the lien claimants
16 and the licensees.

17 THE COURT: Okay.

18 MR. SUSSBERG: As Mr. Klauder mentioned, we worked
19 through this motion on multiple occasions with the US
20 Trustee's Office, and we have incorporated certain changes to
21 the proposed order. Specifically, with respect to lien
22 claimants, some of which we've yet to identify, although we
23 know generally who has the ability to perfect a lien. We've
24 set up a procedure pursuant to which we will provide notice
25 to the US Trustee, and to the Creditors Committee once it is

1 appointed, of our intention to make a payment on account of a
2 lien claim. Even though that lien claim has not necessarily
3 been perfected. The Debtors will, in their review of the
4 claim, determine that they have lienable rights, and serve
5 notice, and have a period of time by which parties may
6 object. And with respect to the licensees, Your Honor, in
7 the order we've made clear that licensee payables will ride
8 through during the case, even with respect to the pre-
9 petition amounts. And at Mr. Klauder's suggestion, we made
10 clear that with respect to subcontract services that are
11 provided by the licensees, the pre-petition payments will not
12 exceed \$100 thousand. And that's been clarified in the
13 order.

14 THE COURT: All right. And this is interim relief
15 as I see also.

16 MR. SUSSBERG: That is correct, Your Honor.

17 THE COURT: Okay.

18 MR. KLAUDER: And with those changes, Your Honor, we
19 have no objection.

20 THE COURT: All right.

21 MR. SUSSBERG: Your Honor, item no. 9 on the agenda
22 is the utility services motion. The uninterrupted service of
23 utilities is obviously very important to day-to-day operation
24 of the business. The company averages \$81,790 per month for
25 utility services. As is common practice in the district and

1 elsewhere, we've agreed to not only pay post-petition
2 obligations current, but in addition provide a deposit of
3 \$40,895, which is the estimated aggregate cost of two weeks
4 of service calculated as a historical average over the last
5 12 months. We will facilitate the opening of an account to
6 include that deposit. To the extent any utility has any
7 concern with the procedures that we've set up, or the deposit
8 that we've proposed to set aside, they have the opportunity
9 to object prior to a final hearing. And as is common, we
10 intend to work with any utility that does have such an
11 objection, and hopefully come back to Your Honor with a
12 consensual final order.

13 THE COURT: All right. Does anyone else care to be
14 heard in connection with this motion? I hear no response. I
15 have no questions.

16 MR. SUSSBERG: Thank you, Your Honor. Your Honor,
17 item no. 10 on the agenda is the customer programs motion.
18 Consistent with the theme that we've suggested here today,
19 loyalty and goodwill is absolutely critical to our operation.
20 And in order to ensure that this is truly just a financial
21 restructuring, it is important for us to be able to honor our
22 customer programs. With that said, the relief we're seeking,
23 again, I believe is narrowly tailored. The dollar amount in
24 question that we seek to honor with respect to customer
25 programs is \$512 thousand in the aggregate. Only \$1,000 and

1 change of which represents a cash payment. Customer programs
2 include, as examples, promotional offers, pre-payment
3 billing-type adjustments, customer deposits that are
4 ultimately applied to a customer payable, equipment
5 maintenance and warranty service, charitable contributions
6 that customers sometimes make to our non-for-profit agency,
7 Heart and Soul Foundation, which is a foundation that's set
8 up for music education for young children across the country.
9 And we also have an allowance and rebate contract with
10 certain of our larger clientele to incentivize them to use
11 additional services and product of the company. I believe
12 there have been no questions or concerns with respect to the
13 customer programs. And with that, I'm happy to answer any
14 questions Your Honor may have.

15 THE COURT: I do not have any questions. But let me
16 ask if anyone else would like to be heard in connection with
17 this motion. I hear no response.

18 MR. SUSSBERG: Thank you, Your Honor. Your Honor,
19 item no. 11 on the agenda is our taxes and fees motion. It's
20 important to note at the outset, when we present this relief,
21 that certain of the tax amounts and fees do in fact come due
22 and owing within the first 20 days of this case, and
23 therefore the relief that we've requested is in fact
24 necessary to avoid the immediate and irreparable harm as is
25 set forth in Bankruptcy Rule 6003. Specifically for the

1 record I would note that sales taxes of 780 thousand and
2 property taxes of 35 thousand will become due and owing
3 before the end of this month. As described in Mr. Haynes'
4 declaration, certain of the Debtors' policies are required by
5 state and federal law and we are required in those
6 jurisdictions to pay various taxable amounts as set forth in
7 the motion. Sales and use tax, franchise and income tax,
8 real and personal property taxes on our properties, and
9 various business license fees, contractor licenses, and other
10 amounts associated with the operation of this company. We
11 are subject to certain audits that have been commenced by
12 both federal jurisdictional authority and state authorities.
13 There have been no amounts, or fees, or penalties awarded in
14 connection with those audits, we simply noted in the motion
15 that those audits are pending, and we reserve the right to
16 come to Your Honor at any time to facilitate a resolution of
17 these pre-petition audits. With that, I'm happy to answer
18 any questions you may have on the taxes and fees. I don't
19 believe there have been any objections.

20 THE COURT: I don't have any questions. Let me ask
21 if anyone else would care to be heard in connection with this
22 motion. I hear no response.

23 MR. SUSSBERG: Thank you, Your Honor. Your Honor,
24 item no. 12 on the agenda is the motion for continuation of
25 our insurance program. It is obviously very important and

1 required by federal and state law for the Debtors to maintain
2 their current coverage, and we've also sought authority to
3 maintain our existing premium financing agreement, which
4 helps us deal with the fact that payments on account of our
5 various policies, if all due and owing at the same time,
6 would be a tremendous cash expenditure. Maintaining the
7 policies, as I mentioned, is required not only by regulations
8 and applicable laws, but also in the Bankruptcy Code in
9 §1112(b)(4)(c). Approximately 1.18 million of pre-petition
10 amounts is contemplated to be paid in connection with our
11 insurance policies. We use two insurance brokers, Your
12 Honor, to procure and negotiate our insurance coverage. As
13 noted in the motion and the order, no pre-petition amounts
14 are due and owing to those brokers at this time. We do, in
15 fact, have a premium payment in connection with our PFA, that
16 is due and owing on February 28th. That is in the amount of
17 \$114 thousand and change. And the rest of the motion details
18 the various insurance policies that are commonplace for most
19 companies. I will note that the company does also have
20 satellite transponder insurance, which is obviously very
21 important to this company, which transmits its music across
22 the country via satellite. With that, Your Honor, there were
23 no objections to the motion, and I'm happy to answer any
24 questions that you may have.

25 THE COURT: I don't have any questions. Does anyone

1 else care to be heard in connection with this motion? I hear
2 no response.

3 MR. SUSSBERG: Your Honor, if I may jump out of
4 order slightly on the agenda and save item no 13 for the end.
5 Which is the seal motion with respect to our creditor matrix,
6 and Mr. Genser will handle that. Item no. 14 on the agenda
7 is the retention application of Epiq, who will serve as
8 proposed notice, claims, balloting agent in connection with
9 the Chapter 11 cases. The application clearly sets forth
10 their qualifications, and the terms of their service and
11 retention. It was supported by a declaration of Daniel
12 McElhinney, where they've conducted a conflicts analysis,
13 even though no such conflicts analysis is required. And in
14 accordance with 28 USC §156, and the recently amended Local
15 Rule 2002-1(f), we would submit for approval the application
16 of Epiq with respect to the notice, claims, and balloting
17 services.

18 THE COURT: All right. I don't have any questions.
19 Does anyone care to be heard in connection with this
20 application? I hear no response.

21 MR. SUSSBERG: Thank you, Your Honor. At this time,
22 I will cede the podium to my colleague Mr. Genser who will
23 handle item no. 13.

24 THE COURT: All right.

25 MR. SUSSBERG: Thank you, Your Honor.

1 MR. GENSER: Thank you. Good morning, Your Honor.
2 Andrew Genser for Kirkland & Ellis for the Debtors. The last
3 item on the agenda is the motion for permission to file under
4 seal the creditor matrix, certain aspects of the creditor
5 matrix, and schedules, and statements of affairs in the case.
6 This motion is intended to allow the Debtors to protect
7 certain vital, confidential business information from public
8 disclosure to its competitors. The disclosure of which could
9 be extremely damaging to the going concern value of the
10 Debtors, and their ability to successfully complete this
11 reorganization. What we are attempting to do is get
12 permission to redact from the creditor matrix, and these
13 other filings, two specific categories of information. The
14 first is the Debtors' customer list. And the second is a
15 very narrow set of employees who are considered to be key to
16 protect their identities and their salaries. And obviously
17 the concern is that, especially in the vulnerable time of
18 this bankruptcy proceeding, if competitors were to have
19 access to this information, which is not public, and which is
20 confidential, that they would exploit that, and pick apart,
21 or attempt to pick apart, and have a higher degree of success
22 than they otherwise would, the Debtors' customers and the key
23 employees that are essential to keeping those customers.

24 THE COURT: Yeah. I mean, the proposition is you
25 assume that those attempts will be made anyway, but the

1 relief requested here is designed not to make it any easier
2 than it would be.

3 MR. GENSER: That's absolutely right, Your Honor.
4 And there's every reason to think that those attempts will be
5 made, but currently if they're going to be made, it's going
6 to be an even playing field in which no one knows exactly who
7 each other's customers are, and no one knows exactly who each
8 others key employees are. But if we're not allowed to file
9 under seal in this manner, the Debtors would be at a distinct
10 competitive disadvantage, because in this highly competitive
11 industry, they alone would have disclosed to the world and
12 given out a road map to their key employees and their key
13 customers. I understand that there's no objection to this
14 other than a general proposition that sealing shouldn't be
15 done casually, and it should be done if there's, only if
16 there's a good reason. And that the US Trustee has, as
17 they're entitled to do, asked us to articulate what that good
18 reason is. And we're happy to do that. We've also attempted
19 to narrowly tailor our request so that we're only limiting
20 the information as necessary to accomplish this legitimate
21 goal of avoiding competitive harm. And we've sought to do
22 that by requesting that we can file redacted versions of
23 these documents publicly, and provide unredacted version of
24 these documents to representatives of the major constituents
25 in the case. The only people who won't have access under our

1 proposal are our competitors, who we can only think would
2 have, would want to see this information for an improper
3 competitive reason, or to gain an unfair advantage.

4 THE COURT: The, just so that I understand, customer
5 names would appear either, I guess, as creditors or as
6 counter parties in executory contracts?

7 MR. GENSER: That's correct, Your Honor.

8 THE COURT: And employees, key employees, including
9 you'd like to redact compensation data, would appear as those
10 to whom pre-petition amount were owed? Or in what other - -

11 MR. GENSER: I think they would also - -

12 THE COURT: - - situations?

13 MR. GENSER: - - they would also appear in the
14 statement of financial affairs, and the list of insiders.
15 The group, it's a group of about, I think between 20 and 30
16 key employees who are at the Vice Presidential, they're, they
17 have the title of Vice President, so they would be considered
18 officers, and they would have to be listed. And this is the
19 group that really owns and manages the sales relationships
20 with the customers. And so just as we're trying to protect
21 the customer base, you know, if these employees were widely
22 known, and open to being poached by competitors, there's a
23 concern that that would certainly potentially undermine and
24 erode the customer base as well. And they'd be
25 irreplaceable. But it would be that, that filing that we're

1 concerned about.

2 THE COURT: All right. Does anyone else care to be
3 heard in connection with this motion?

4 MR. GENSER: Oh, and I'm sorry, Your Honor, to the
5 extent necessary, I'd be happy to make a proffer of any
6 additional testimony that, if the Court thinks there's
7 additional information that it needs to support our
8 application.

9 THE COURT: All right. Thank you.

10 MR. GENSER: Thanks.

11 MR. KLAUDER: Good afternoon, Your Honor. David
12 Klauder for the United States Trustee's Office. I think
13 right off the bat, we would probably need something on the
14 point of clarification. Because there's sort of two requests
15 being asked for here. One being redacting of the creditor
16 matrix, and then two, redaction of certain information on the
17 schedules. In our discussions prior to court, I thought we
18 were going to just really address the creditor matrix issue
19 today, being that that's kind of a first day issue, the
20 creditor matrix has to be filed fairly quickly. The
21 schedules are not filed, although the Debtor tells me that
22 they're going to be quicker than the typical cases here in
23 Delaware. You know, we're not going to see that 60 days down
24 the road, or something, and I don't believe they're going to
25 ask for an extension. And quite frankly, maybe Your Honor's

1 ruling on the matrix issue will sort of frame the issue for
2 the schedules, because as we've told the Debtors, we may work
3 with them. There may be a ways to protect the information
4 that they don't want disclosed on the schedules, but we
5 really don't believe that any part of the matrix should be
6 redacted. So I'm happy to address it all. Quite frankly,
7 I'm ready to really just address the matrix issue right now.
8 I do believe the Debtors should put on an adequate record as
9 to why this is appropriate. I have argument. I'm happy to
10 go forward with that now, if Your Honor would like to hear
11 our position on that, or hear the Debtors' record, if Your
12 Honor thinks that is appropriate.

13 THE COURT: Well I guess my first reaction is I'd
14 like to order today, assuming that I'm going to do so, only
15 that relief which is necessary prior to the second day
16 hearings, so that sufficient notice can be given to others in
17 connection with the relief that's requested. So I would, I
18 would say let's narrow the presentations to only that which
19 is necessary for today's purposes.

20 MR. SASSOWER: Your Honor, Edward Sassower from
21 Kirkland. I apologize to the Office of the United States
22 Trustee. There was some miscommunication. I think we did
23 have aspirations for filing of schedules as soon as possible,
24 and possibly before the second day hearing. But in order to
25 smooth this issue over, we're happy to bifurcate the request.

1 And we'll wait to file our schedules until after the second
2 day hearing. And therefore, the relief requested will just
3 pertain to the matrix.

4 THE COURT: All right.

5 MR. KLAUDER: That's fine, then. Thank you for
6 that, for that clarification. Your Honor, let me just
7 address a few points, and then we'll proceed accordingly. I
8 know of little, if any, precedent of the sealing or the
9 redaction of a creditor matrix. As Your Honor knows, when a
10 company files bankruptcy, debtors come in with certain
11 obligations, and they have to play by the rules and standards
12 and statutes set out in the Bankruptcy Code. And one of
13 those obligations is that their filings must be made public.
14 And that their information must be made public. And the Code
15 does provide for a limited exception under 107(b), and, but
16 the Debtor has to make out a case as to why this particular
17 information would fit under that limited exception. And as
18 Your Honor knows, federal courts understand the importance of
19 public disclosure and transparency of proceedings, and it's,
20 it's a limited exception, and should only be granted as an
21 extraordinary remedy. If we look at the particular
22 information that the Debtor is seeking to redact, put under
23 seal, the Debtors do not want their customer list made
24 public. Which in and of itself is a legitimate concern. But
25 that argument would probably carry greater weight if there

1 was a particular list that had to be filed that said,
2 Customer List, or particular schedule that we had to deal
3 with related to customer lists. What we're talking about
4 here is a matrix of creditors. This is a list of names and
5 contact information. And other than that, there's no other
6 distinguishing characteristics to it. It's not delineated
7 customers, or anything like that. So - -

8 THE COURT: Well, look it strikes me that with
9 respect to many industries, maybe most, if a competitor were
10 to get the matrix and look at the names, I'll bet the
11 exercise of determining, you know, who is a vendor, and who
12 is a customer, and who is a lender probably wouldn't be all
13 that difficult. But if you think I'm wrong about that, tell
14 me why.

15 MR. KLAUDER: I probably agree with that. I mean,
16 I, you know, these are sophisticated parties. I think that
17 that could happen. But that sort of leads to my second
18 argument. Is that could apply to pretty much every Chapter
19 11 debtor that comes before this Court. I mean, every debtor
20 is going to have competitors, every debtor is going to argue
21 that they're in a competitive industry, and that their
22 customers are at risk. So why is this case any different?
23 And that may go to - -

24 THE COURT: Well, they say they're going to
25 reorganize. That might be one difference.

1 MR. KLAUDER: Well, this is actually the second
2 straight first day I've had where the debtors have come in
3 and said they're reorganizing.

4 THE COURT: Well maybe it's a trend. I don't know.

5 MR. KLAUDER: So, and I didn't see a sealing motion
6 for customer lists on that. So, I mean, the point being, I
7 mean, this really could apply to anyone, so, or any Chapter
8 11 debtor, so I don't see why this is any different. And
9 quite frankly, I have never seen this before, at least as it
10 relates to a matrix. So I think we're sort of on uncharted
11 ground here. Your Honor, with relation to the employee
12 information, again, just dealing with the matrix, I don't see
13 why the identification of key employees, i.e. senior
14 management, is harmful, or a problem, problematic.

15 THE COURT: Well, actually, it strikes me - - well,
16 I don't know. I mean, I guess there could be executory
17 contract issues, or they may be owed money. But - -

18 MR. KLAUDER: Right.

19 THE COURT: - - it seems to me those would be the
20 only two circumstances. But if, as the Debtor indicated,
21 these names would largely just appear on the statement of
22 financial affairs, it may not be that they'd be required to
23 be added to the matrix.

24 MR. KLAUDER: It may not be. I mean, they may be
25 owed, they may be Schedule E creditors, or something like

1 that. So, and the Debtors can address that. I mean, that,
2 that's a good point. We certainly asked about the customers.
3 Why are they on a creditor matrix? And we kind of went
4 through that back and forth as to why they would be on that
5 list. So again, I don't think the identification of the
6 employees warrants a redaction of that, of those names. So,
7 I mean, those are our arguments. I think we really are sort
8 of on uncharted territory here, and the Debtor, you know,
9 needs to make out its case as to why this information should
10 be redacted.

11 THE COURT: All right.

12 MR. KLAUDER: Thank you.

13 THE COURT: Thank you.

14 MR. GENSER: Your Honor, I'd be happy to respond to
15 some of those points, and supplement the record, if the Court
16 thinks that's necessary.

17 THE COURT: If you would.

18 MR. GENSER: Let me just first begin by stating that
19 this is not unprecedented or unusual.

20 THE COURT: Oh, it's unusual.

21 MR. GENSER: Okay.

22 THE COURT: It's unusual.

23 MR. GENSER: Well, it's not unprecedented.

24 THE COURT: It may not be.

25 MR. GENSER: It might be unusual.

1 THE COURT: I just, I don't remember ordering that,
2 but it's possible someone else has.

3 MR. GENSER: Well, in the first instance, we're all
4 in agreement that we're going to be bifurcating this relief,
5 so I'll focus on the creditor matrix, and just confirm that
6 with respect to the creditor matrix, we are only concerned
7 about disclosing the customers. The employees are only an
8 issue for the schedules that will be filed later. So we
9 don't need to deal with that right now.

10 THE COURT: Okay.

11 MR. GENSER: But as counsel mentioned, the
12 Bankruptcy Code, under §107(b), does grant the Court
13 authority to protect the confidential information of any
14 party in interest. And we cite in our motion quite a bit of
15 precedent in the District of Delaware on page 14, in which,
16 in which exactly the type of information that we're seeking
17 to protect was protected. And - - I'm sorry, it's on page 8.
18 And so we have the in re: Maxide case, the in re: Cable &
19 Wireless case, in re: Peregrine, and in re: Exide, are all
20 examples where under the authority of §107(b), Rule 107(b),
21 for good cause, things like customer lists were allowed to be
22 protected and redacted from schedules and other matters that
23 were filed with the Court in the proceeding. Now the - -

24 THE COURT: Now do you know whether any of those
25 requests were opposed?

1 MR. GENSER: I don't know. I don't have -- I don't
2 know whether they were opposed. But I do know that, you
3 know, that courts have granted that relief, and there is a
4 provision of the rules that specifically contemplates
5 granting that relief. And then to respond to the question,
6 which I think is the core of the opposition, which is that if
7 you grant this relief here, well, why wouldn't you grant it
8 in any case. I think the difference is that in this case,
9 the nature of the industry makes the customer list critical
10 to the going value, and the ability of this company to
11 proceed. This is, this industry is unique in several ways.
12 This is not like the sale of clothing or gasoline or food,
13 where everybody needs those things, and those, and all people
14 are potentially customers of the product. The Debtors have
15 spent 70 years developing relationships with customers, and
16 convincing them, and getting them to appreciate the value of
17 the product that they offer, which is music. And 70% of
18 those customers are what we consider regional or local
19 customers. So they are not readily identifiable, they are,
20 they can be rural, they can be disbursed throughout the
21 country, and very difficult for other competitors to
22 identify. And that's significant, because this customer base
23 that has been cultivated over 70 years through a great
24 expenditure of resources and an investment of time, and
25 energy, and money, cannot be replicated easily. And this is

1 a ready-made pool of businesses who already recognize the
2 value of the service that the Debtors offer. And currently,
3 they are in a, in a field of hundreds of thousands of other
4 businesses that may or may not recognize the value of the
5 service that Muzak offers, and would require the great
6 expenditure of resources and energy to bring on as customers.
7 And so - -

8 THE COURT: Let me - -

9 MR. GENSER: Yes.

10 THE COURT: Let me ask you a question. What happens
11 if a party, other than the Debtor or those to whom the list
12 will be shared, files a motion and is required to notify
13 everyone on the matrix? What happens then?

14 MR. GENSER: In that situation I'm, I believe we
15 could work out an arrangement where we could provide the
16 notice, and with the involvement of the US Trustee, in a
17 manner that would be sufficient to provide that notice.

18 THE COURT: Well, who files the certificate of
19 service?

20 MR. GENSER: Your Honor, I mean, that's a good
21 question. But I think that the answer to that is something
22 that we could work out with agreement of the other parties in
23 the proceeding. And to their satisfaction. And perhaps the
24 certificate of service could recite that we have certified
25 that we have served notice on individuals whose identities

1 have been redacted. And on that basis, another certificate
2 could be filed that relies on that that states that notice
3 has been served, and we could provide proof of that to the
4 Court, and to US Trustees, anyone else in interest without
5 revealing that information for the public. But I would point
6 out that, you know, if that is an issue, it would be an issue
7 that would come up in any case in which there'd be a customer
8 list that would need to be protected. And so I would hope
9 that there would be a way to work around that, and there
10 would be a way to protect a customer list. Because it really
11 is, in this case, a precious asset of the Debtors, and one of
12 the crown jewels that brings value. And we would like this
13 to be a financing, or a refinancing type of a reorganization.

14 MR. SUSSBERG: Your Honor, just one quick point.
15 Under 28 USC 156, we can make an arrangement under an order
16 so that Epiq, which is serving as an agent of the Court,
17 could, in fact, serve, to the extent required, any and all
18 motions, applications, and the like that would be required to
19 be served upon all constituencies, including the customers,
20 and they could file the certificate of service on behalf of
21 the party filing the motion as an agent of this Court. And
22 we're happy to include that in the form of order if it
23 pleases Your Honor.

24 THE COURT: Does anyone else care to be heard in
25 connection with this matter? Okay. Here's what I'm going to

1 do. I am, on an interim basis only, going to grant relief
2 with respect to the Debtors' request to redact certain
3 information from a matrix. And in fact, I think what I'd
4 probably prefer to do at this point is to just have the
5 Debtor not file it until I have a chance to address it on the
6 second day hearings in connection with revisiting this issue,
7 and then the balance of the issues that the Debtor raises.
8 In the interim, I'd like the Debtor to provide me with copies
9 of all the orders that it cited in support of its relief. I
10 take it from the forms of the citations that there are no
11 reported cases, I'll note that Cable & Wireless is now my
12 case, but I will tell you either the predecessor judge signed
13 that order, or I signed it without opposition. Because it,
14 I'm not saying that I remember everything in my life, but
15 that one doesn't stick. And the other - -

16 MR. SASSOWER: Your Honor - -

17 THE COURT: - - Exide, I did, I did, but I'm
18 guessing that may have been in connection with the dispute
19 between Exide and Enersys. I actually had a whole hearing
20 under seal in connection with a proposed rejection of an
21 executory contract. So, and I, I'm thinking that might have
22 been it. So, then that circumstance was a little bit
23 different.

24 MR. SASSOWER: Your Honor, just to clarify. Yes,
25 the Cable & Wireless was signed by a, the prior, the

1 predecessor judge. The, we will be happy to provide Your
2 Honor with copies of all the orders. Not all of the orders,
3 the Exide one in particular, did not relate to customer
4 lists. That related to officer salaries.

5 THE COURT: Okay.

6 MR. SASSOWER: Interestingly, one of the orders,
7 Maxide Acquisition, Inc., which the case where Mr. Klauder
8 was the US Trustee, was a customer list case. That was a, it
9 was a motion to seal the schedules and statements that
10 related to customer contracts and client information. This
11 is a competitor which has now been reformatted as DMX. Of
12 Muzak.

13 THE COURT: Well, any explanation that you'd like to
14 provide, along with submission of the orders, would be
15 helpful. Mr. Klauder.

16 MR. KLAUDER: I was just going to add, I was
17 involved in the Maxide case. I guess I'm getting the
18 elevator music cases. But, that dealt with schedules. And I
19 think we filed an objection and then worked it out. So.

20 THE COURT: Yeah. I tend to think, you know,
21 subject to reading the orders, we may be cutting new ground,
22 as you say, and I want, I think I would like a little more
23 time to think about it, because it will undoubtedly be
24 requested again if I order it. So I'd like to be very
25 careful about approaching this issue. And I'm in general

1 agreement that, with the US Trustee that filing a Chapter 11
2 means subjecting yourself to public scrutiny. And that's
3 just, that's just one of the tradeoffs that are made. But
4 there may be circumstances here which I may ultimately
5 conclude entitle the Debtor to relief. The other benefit, I
6 think, to ordering only interim relief at this point is it
7 will give the parties the opportunity to talk through issues
8 like others who need to notify the whole creditor body, and
9 the like. So maybe, and this is often the case, the parties
10 will come up with a better solution than the Court will. So
11 I would say confer and submit an order that makes those
12 provisions, and we'll consider final relief on the second day
13 hearing, whenever we choose that to be.

14 MR. SASSOWER: We appreciate that Your Honor, and
15 we'll absolutely do so. I just want to note for the record
16 that we did file the redacted matrix already. And so we will
17 hold off on filing the unredacted matrix until the second day
18 hearing.

19 THE COURT: Okay.

20 MR. SASSOWER: Thank you.

21 THE COURT: Now understanding that this is a first
22 day hearing, and none of the parties would have had an
23 opportunity to, or at least other than the Debtor, make
24 extensive submissions, Mr. Klauder, if you'd like to make a
25 formal written submission, or anyone else would, I, it might

1 be helpful to me. Assuming you're unable to work out some
2 other process. So once we've picked a hearing date for the
3 second date for the second days, we'll back into a filing
4 schedule.

5 MR. KLAUDER: That'd be great.

6 THE COURT: Okay. Anything else in connection with
7 that motion? All right. Shall we talk about dates?

8 MR. SUSSBERG: Yes, Your Honor. Thank you. That
9 does in fact conclude the agenda for today. So if we could
10 talk about a second day hearing date it would be helpful.

11 THE COURT: All right. Mr. Klauder, any notion on a
12 formation meeting yet?

13 MR. KLAUDER: We do. Tentatively scheduled for next
14 Friday. That's not set in stone, but - -

15 THE COURT: Okay. The 20th. All right. And from
16 the Debtor, in terms of a ballpark, what were you looking
17 for?

18 MR. SUSSBERG: Well, we are looking to file a series
19 of second day motions. And we'd file those early next week.
20 So we'd like to have sufficient notice for that within the
21 boundaries of the cash collateral timing, and utilities
22 timing. So we'd like a hearing, I guess I'd say 25 days out.
23 As close to possible as that. That would be the week of
24 March 9th.

25 THE COURT: Bear with me for a moment. Nancy I'm

1 thinking of the 12th. 12th at, March 12th at 10 o'clock.

2 MR. SUSSBERG: Thank you, Your Honor. At 12 o'clock
3 you said?

4 THE COURT: 10 o'clock.

5 MR. SUSSBERG: 10 o'clock. Thank you, Your Honor.

6 THE COURT: Unless for travel reasons, you'd like to
7 start at 11. I'd be willing to start then if it would be
8 more convenient.

9 MR. SUSSBERG: No. 10 is fine.

10 UNIDENTIFIED SPEAKER: 10 o'clock is fine with us,
11 Your Honor.

12 MR. SUSSBERG: Early risers.

13 THE COURT: All right.

14 MR. SUSSBERG: Your Honor, with respect to the
15 orders that you have approved today, we'll go back and make
16 certain modifications. What's the best procedure to get
17 those orders to you? Because I will note that a few of them,
18 especially the wage related motion, cash collateral, and cash
19 management, need to be entered. And we would be very
20 appreciative if Your Honor could enter those this afternoon.

21 THE COURT: Well, is, what orders can you give me
22 now?

23 MR. SUSSBERG: I think we can give you almost
24 everything, but for the cash collateral order. Unless we can
25 write - -

1 MR. KLAUDER: I think we already worked that out.

2 MR. SUSSBERG: Can we write it in?

3 MR. KLAUDER: Yeah.

4 MR. SUSSBERG: Your Honor, we can give you every
5 order.

6 THE COURT: I'll tell you what. Let me take just a
7 five minute break, and then we'll address the orders.

8 MR. SUSSBERG: Thank you, Your Honor.

9 THE COURT: All right. Just five minutes.

10 (Whereupon at 12:57 p.m. a recess was taken in the
11 hearing in this matter.)

12 (Whereupon at 1:08 p.m. the hearing in this matter
13 reconvened and the following proceedings were had:)

14 THE CLERK: All rise. Be seated, please.

15 THE COURT: Okay.

16 MR. SUSSBERG: Your Honor, thank you for the couple
17 of minutes to get our ducks in a row. I have for Your Honor
18 each of the orders that you approved today. There was only
19 one change that we've handwritten in to the cash collateral
20 order in addition to filling in the dates. And we've
21 trickled in dates in a few of the other orders. If I may
22 approach?

23 THE COURT: Yes. Thank you.

24 MR. SUSSBERG: With that Your Honor, I believe we
25 are concluded for the day, and we will see you on March 12th,

1 at 10 a.m.

2 THE COURT: Don't be so anxious to run out. Let me,
3 let me get through these first. Are the black lines included
4 with the clean orders here?

5 MR. SUSSBERG: They are not. I'll pass those up.

6 THE COURT: Okay. Okay. The only handwritten
7 change to the cash collateral order was on, are the changes
8 on page 13?

9 MR. SUSSBERG: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. SUSSBERG: And the objection deadline is - -
12 March 5th. For any of the relief that's been entered on an
13 interim basis. And Your Honor, if I may approach with the
14 black lines?

15 THE COURT: You may. Thank you.

16 MR. SUSSBERG: Your Honor?

17 THE COURT: Yes.

18 MR. SUSSBERG: May I ask a quick question regarding
19 the wage motion?

20 THE COURT: Yes.

21 MR. SUSSBERG: It's my understanding that we need to
22 fund our payroll administrator by 3 p.m. Eastern. So it
23 would be very much appreciated if the orders that have been
24 signed could hit the docket in advance.

25 THE COURT: Let's put it this way, no one's gone

1 unpaid because of a delay of docketing here. And I don't
2 think this will be the first one either.

3 MR. SUSSBERG: Thank you, Your Honor.

4 THE COURT: All right. So the only order I'm
5 awaiting at this point is the revised order on the seal
6 motion.

7 MR. SUSSBERG: That's correct, Your Honor. We'll
8 work with the Trustee's Office on a form of order that's
9 acceptable to both parties.

10 THE COURT: All right. Thank you. All of the other
11 orders have been signed. They'll be docketed promptly.

12 MR. SUSSBERG: Thank you, Your Honor.

13 THE COURT: Anything further?

14 (The remainder of the page is intentionally left blank.)

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1 MR. SUSSBERG: Thank you for being available.

2 THE COURT: You're welcome. That concludes this
3 hearing. Court will stand in recess.

4 MR. SUSSBERG: Thank you, Your Honor.

5 (Whereupon at 1:15 p.m. the hearing in this matter was
6 concluded for this date.)

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18 I, Jennifer Ryan Enslin, approved transcriber for
19 the United States Courts, certify that the foregoing is a
20 correct transcript from the electronic sound recording of the
21 proceedings in the above entitled matter.

22

23 /s/Jennifer Ryan Enslin
24 Jennifer Ryan Enslin
25 43 Bay Boulevard
Newark, DE 19702
(302) 836-1905

February 24, 2009

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Muzak Holdings LLC
3318 Lakemont Blvd.
Fort Mill, SC 29708

Chapter: 11

EIN: 04-3433730
Musi-Cal, Audio Environments
Osborn Sound & Communications of GA
ACN Holdings, LLC
American Music/American Music Network
On Hold Communications

Case No.: 09-10422-KJC

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION


A transcript of the proceeding held on 02/12/2009 was filed on 02/25/2009 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 03/18/2009 .

If a request for redaction is filed, the redacted transcript is due 03/30/2009 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 05/26/2009 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (name, address/contact information) or you may view the document at the clerk's office public terminal.



Clerk of Court

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