

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 09-10422-KJC  
. .  
MUZAK HOLDINGS, LLC, . 824 North Market Street  
et al., . Wilmington, DE 19801  
. .  
Debtors. . March 12, 2009  
. . . . . 10:03 a.m.

TRANSCRIPT OF SECOND DAY MOTIONS  
BEFORE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

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1 THE CLERK: Please rise.

2 THE COURT: Good morning, all.

3 UNIDENTIFIED ATTORNEYS: Good morning, Your Honor.

4 MR. SASSOWER: Good morning, Your Honor, Edward  
5 Sassower of Kirkland & Ellis, counsel to the debtors. And I'm  
6 joined here in the courtroom today by my colleague Joshua  
7 Sussberg, as well as the company's general counsel, Mike Zendan  
8 and the company's CFO, Dodd Haynes. Your Honor, I'd like to  
9 start with just a brief status report, then we can get into the  
10 agenda.

11 THE COURT: Very well.

12 MR. SASSOWER: We've had a relatively smooth  
13 transition into Chapter 11. The Committee was appointed on  
14 February 20th and the Committee has -- is seeking to retain  
15 Akin Gump as their counsel and joined here in the courtroom  
16 today by James Savin and David Dunn of Akin Gump.

17 UNIDENTIFIED ATTORNEY: Good morning, Your Honor.

18 MR. SASSOWER: And the Committee is also seeking to  
19 retain FTI as the Committee's financial advisor and Steve Simms  
20 will be heading up that engagement. K&E met with Akin Gump on  
21 February 23rd, shortly after the Committee retained Akin. And,  
22 more recently, the company Kirkland and Moelis had an over  
23 five-hour presentation to the entire Committee and all of its  
24 professionals on March 10th. And we've also been cooperating  
25 with the Committee to make sure they get a lot of due diligence

1 on all the different things that they're interested in hearing  
2 about at the company. So I think the debtors and the Committee  
3 have gotten off to a great start and looking forward to that  
4 continuing over the course of the case.

5           Also, pleased to advise the Court that we have worked  
6 through all of the U.S. Trustee's and all of the Committee's  
7 issues and objections to all the second day pleadings including  
8 the sale motion. The -- and, in a moment, I'm going to cede  
9 the podium to Mr. Sussberg who will walk you through all of the  
10 changes to the proposed orders.

11           The only outstanding objection is a limited objection  
12 from Silver Point to the cash collateral order. As you'll see  
13 in a moment, we have substantially improved the cash collateral  
14 order. And while the milestones remain, including the  
15 milestone to file a plan disclosure statement by May 5th, the  
16 plan no longer needs to be in form and substance satisfactory  
17 to the bank group. And, in addition, the Committee now has the  
18 option to extend the milestones by 35 days. And Silver Point,  
19 as the largest unsecured creditor, would also like to have the  
20 option to unilaterally extend the milestones by an additional  
21 35 days. We, the debtors, are happy for Silver Point to have  
22 that option, but not at the expense of our obtaining the use  
23 of -- consensual use of cash collateral.

24           Lastly, negotiations with our major constituents have  
25 slowed in the last few weeks while the Committee has gotten up

1 to speed. But the company is committed to working with all of  
2 its stakeholders to quickly come up with a deal. As everyone's  
3 aware, the current economic times are troubling for all  
4 companies and this company is no exception. And the fact that  
5 this company is in Chapter 11 is compounding the difficulties  
6 that this company is facing, so it is critical that we come to  
7 a deal quickly and try to get this company out of bankruptcy as  
8 soon as possible. As we discussed in the first day, this is  
9 effectively a balance sheet restructuring, and so we're hopeful  
10 that we're going to be able to come to terms with all of our  
11 constituents in the coming months and put a, hopefully,  
12 consensual plan on file by the May 5th milestone.

13           With that, I'd like to cede the podium to Mr.  
14 Sussberg who will take you through the proposed changes to the  
15 various proposed orders.

16           THE COURT: All right.

17           MR. SASSOWER: Thank you, Your Honor.

18           MR. SUSSBERG: Good morning, Your Honor. For the  
19 record, Joshua Sussberg from Kirkland & Ellis on behalf of the  
20 debtors. We can move right through the agenda in the order  
21 that it's been presented.

22           THE COURT: All right.

23           MR. SUSSBERG: And if Your Honor doesn't mind, I can  
24 hand up proposed copies of the orders which include blacklines,  
25 as well, so we can walk through the changes.

1 THE COURT: That's fine.

2 MR. SUSSBERG: Thank you.

3 THE COURT: Thank you.

4 MR. SUSSBERG: The agenda for today begins at Item  
5 Number 3. And, as Mr. Sassower mentioned, this is the cash  
6 collateral order. The interim order was entered on February  
7 12th at Docket Entry 31. And, as Mr. Sassower noted, this is  
8 99.9 percent consensual today with the exception of Silver  
9 Point's limited objection with respect to the Committee  
10 extension right which we can discuss. I don't think anyone in  
11 the courtroom would contest the debtor's use of cash collateral  
12 on an ongoing basis, and I'm hopeful that everyone will stand  
13 up and commit to that.

14 Immediately after the Committee's constitution and  
15 selection of counsel, we were on the phone with the Committee  
16 and with the lenders working through a multitude of issues.  
17 And, as Mr. Sassower noted, again, we worked through those  
18 issues. And I will walk you through the key substantive  
19 changes if you'd like at this point.

20 THE COURT: Certainly.

21 MR. SUSSBERG: On Page 2 of the blackline, just to  
22 note in Footnote 2, we resolved an objection which was not  
23 formal from Wachovia Bank to simply note that LC's in an  
24 account with Wachovia are, in fact, permitted encumbrances.  
25 We're included language to make that point clear. On Page 10

1 of the blackline, in Footnote 3, in addition to working through  
2 various comments to the cash collateral order, we've also  
3 reached a consensual budget that will carry us through the  
4 entire specified period which is August 15th, and that budget  
5 has been signed off on by the pre-petition lenders, as well as  
6 the Committee. So we should be safe on the budget through the  
7 entire duration of the case.

8           On Page 11, Paragraph 3B, we've added some language  
9 with respect to certain operational payments that will be made  
10 during the course of the case. This also references, and the  
11 overall bucket of which is 3.6 million, includes certain  
12 critical vendor payments, a portion of which was authorized on  
13 an interim basis, and the rest we will be discussing shortly  
14 when we more through the agenda. And, in addition, in that  
15 paragraph, as we alluded to on the first day of these cases,  
16 we've included a reference to a deposit that we'd left with  
17 American Express to insure that our credit card program can  
18 continue.

19           On Page 13, Paragraph 5A of the blackline, we've made  
20 clear that the adequate protection liens are granted solely to  
21 the extent of a diminution in value, and that's with respect to  
22 the interest of the agent and the pre-petition lenders in the  
23 pre-petition collateral. It's not amorphous and broader than  
24 that. On Page 16, Paragraph 8, the indemnity account, we've  
25 had several conversations regarding the account and its status

1 with the Committee and with the lenders. As you'll note in the  
2 paragraph, we've clarified the timing with respect to  
3 termination for that account and basically included a  
4 reservation of rights for all parties with respect to the  
5 amount that's set aside in that account.

6           On Page 19, in Paragraph E -- 11E, excuse me -- this  
7 is a new obligation of the debtors. And Mr. Sassower mentioned  
8 that we were successful in negotiating and removing the form  
9 and substance language with respect to the plan disclosure  
10 statement being fit to the lenders. And in return for  
11 excluding that language, we've included the proviso in  
12 Paragraph 11E which says that the debtors will use commercially  
13 reasonable efforts to go out into the market and refinance the  
14 existing secured indebtedness. And we will keep the lenders  
15 apprised of those efforts.

16           But it's important to note that the end of that  
17 paragraph is qualified entirely by a proviso that says  
18 notwithstanding our efforts to go out to the market and use  
19 commercially reasonable efforts to refinance the debt, nothing  
20 obligates the debtors to refinance that debt, and nothing  
21 obligates the lenders to take anything but cash. So we've  
22 adjourned that, so to speak, for another day.

23           THE COURT: And I'll be curious to see what that  
24 markets consists, if it's something other than a closet. I  
25 wish you the best, however.

1 MR. SUSSBERG: Thank you, Your Honor. I was  
2 speechless. On Page 20, Paragraph 13, and Page 21, Paragraph  
3 15E, we've simply added some threshold amounts to small sales  
4 of assets and reclamation of goods. The Committee was helpful  
5 in gaining those thresholds and we think that will be helpful  
6 in the long term. On Page 22, Paragraph 15I, we have removed  
7 the reference in that paragraph to the fact that the grace  
8 period would not apply to all the reporting requirements so  
9 that the debtors will be provided with a grace period in the  
10 event that we miss a reporting requirement in Paragraph 11.

11 Page 23, as we've talked about, are the milestones.  
12 And, as you'll see, we've removed the form and substance  
13 qualifier. And in Paragraph 16, this is the Committee  
14 extension right which Silver Point has filed the limited  
15 objection to and would like a joinder to that extension right.  
16 And, as mentioned, it's a 35-day extension that can be  
17 exercised anywhere along the way in advance of one of the  
18 milestones and it will automatically extend the applicable  
19 milestones by 35 days. One point to note is that the debtors  
20 would be required to provide an extended budget for the period  
21 from August 13th, I believe it's through September 19th for  
22 that 35-day period in the event that the Committee does, in  
23 fact, exercise its rights. And I will certainly let Silver  
24 Point and the lenders comment on the objection that was filed.

25 Page 24, Paragraph 17, this was a highly negotiated

1 provision over the course of the last couple of weeks. This  
2 relates to rights and remedies upon an event of default. We've  
3 revised this paragraph to remove the automatic termination of  
4 the stay and place the burden on the lenders to come into court  
5 and seek relief from the automatic stay to begin the  
6 foreclosure process, as opposed to putting the burden on the  
7 debtors to come in and seek an injunction against the lenders  
8 from doing so. And we very much appreciate the changes in the  
9 order on this point.

10           Page 25, Paragraph 18, the carve out amounts and the  
11 fee schedule that's attached to the order as Exhibit 2 have  
12 been modified to increase amounts for the Committee advisors.  
13 Akin Gump was increased to 600 K per month, FTI, I believe, is  
14 at 100 K -- 125 per month, and local co-counsel for the  
15 Committee set 50,000 per month. Page 29, Paragraph 19 of the  
16 order, I note Your Honor commented on this the last time around  
17 and was certain that the Committee would have something to say  
18 and they definitely did. The Committee will now have \$150,000  
19 to investigate the liens and claims of the pre-petition lenders  
20 and a challenge period has been extended from 60 to 105 days.

21           And, finally, on Page 29 and 30, Paragraph 20, I  
22 would just note that the Committee has been carved out from the  
23 debtor's representations regarding the status of the lender's  
24 liens and claims and it provides that during the challenge  
25 period, the 105 days, the Committee solely needs to seek

1 standing from Your Honor to pursue those claims, not actually  
2 file a complaint. With that, I believe those are all the  
3 significant changes in the cash collateral order. Happy to  
4 answer any questions Your Honor may have.

5 THE COURT: I do not at the moment. I guess what I'd  
6 first like to do is, apart from issues in connection with the  
7 limited objection, ask whether anyone else cares to be heard  
8 with respect to any of the other provisions or changes to the  
9 order.

10 MR. SAVIN: Good morning, Your Honor, Jim Savin of  
11 Akin, Gump, Strauss, Hauer & Feld, proposed counsel to the  
12 Official Committee of Unsecured Creditors. I would just like  
13 to say the Committee fully supports the cash collateral order.  
14 It was the process of extensive negotiations, but very  
15 constructive negotiations, and the Committee very much  
16 appreciates the lenders, as well as the debtors', willingness  
17 to compromise, engage in productive discussions and reach what  
18 we believe is a reasonable resolution. And we support entry of  
19 this order.

20 THE COURT: Thank you. Anyone else? All right.  
21 Let's get to the Silver Point objection.

22 MS. SPIGEL: Good morning, Your Honor, Robin Spigel,  
23 Willkie, Farr & Gallagher, LLP, counsel for Silver Point  
24 Capital, LP. As debtors' counsel has noted, the -- Silver  
25 Point is looking for the same rights the Committee have been

1 granted by the pre-petition lenders, subject to Your Honor's  
2 approval, to extend the milestones with respect to filing the  
3 plan disclosure statement and having that plan confirmed, et  
4 cetera, an additional 35 days that Silver Point should have as  
5 the largest creditor in these cases, the same right as the  
6 Committee.

7 THE COURT: Tell me why. I mean, if the reason to  
8 give an unsecured creditor, basically, the right to dictate at  
9 least on the short term basis the direction of the case,  
10 something usually when it rests in the hands of a single  
11 individual is the judge. What would justify that here?

12 MS. SPIGEL: Well --

13 THE COURT: I'm not sure it would ever be justified,  
14 but what would be unique about these circumstances which would  
15 cause me to say you're right?

16 MS. SPIGEL: Well, first of all, Silver Point, as the  
17 largest creditor in these cases, you know, they're -- they will  
18 need to vote in favor of any plan for it to be confirmed. As a  
19 result, it believes that it should have, depending on the  
20 circumstances and strictly -- I imagine circumstances where the  
21 Committee and Silver Point's interests are likely to be  
22 aligned. So perhaps this won't arise and that the Committee  
23 would extend these dates. But given Silver Point's role in  
24 these cases, if the banks are willing to give the Committee  
25 this extension, depending on the circumstances that arise at

1 the time, it could be feasible that Silver Point should be --  
2 may want to extend the deadlines in order to further a deal or  
3 whatever it is because they, obviously, have a stake in making  
4 these cases successful.

5 THE COURT: Well, that leads me then to my next  
6 question. And that is, assuming that at some point your  
7 position diverges from that of the Committee, is there anything  
8 in this order that says you couldn't seek such permission from  
9 the Court?

10 MS. SPIGEL: The way I read the order, there's  
11 nothing that would stop us from seeking it, although I would  
12 imagine that the parties in interest would say that we would be  
13 estopped from doing so because we weren't -- we didn't get the  
14 objection -- we didn't get the 35-day extension at this point.

15 THE COURT: Yes, that argument doesn't really hit me  
16 very hard right now. And it just seems to me that while your  
17 client thinks it may have a very good reason to have this  
18 right, it strikes me that, at least under these circumstances,  
19 there isn't really much of a reason, especially when you have a  
20 voice on the Committee which I assume would be an important  
21 voice, that tells me you should have it. Now, as I indicated,  
22 on the other hand, I don't see anything in this order which  
23 would prevent you from making whatever request you think is  
24 appropriate should the Committee fail, in your view, to act  
25 appropriately.

1 MS. SPIGEL: I would just like to note that Silver  
2 Point is not on the Creditor's Committee.

3 THE COURT: Forgive me. My error.

4 MS. SPIGEL: Okay. One additional point that wasn't  
5 in our limited objection. We just wanted to note for Your  
6 Honor that the budget provides for Akin Gump's fees at \$600,000  
7 a month which we believe is a generous amount. Given the  
8 circumstances of these cases, we don't anticipate that there  
9 would be substantial litigation and trade should -- it's  
10 anticipated that trade will be paid in full. So we understand  
11 that it's subject to a -- that that's the cap finish, that  
12 their fees are subject to reasonableness. We just -- we don't  
13 foresee any circumstances at this point that would cause fees  
14 to rise to that level.

15 THE COURT: Well, I'll say two things to that. One,  
16 given all the love that's been expressed among the  
17 professionals here today, I hope that you're right. And,  
18 secondly, to the extent that you or anyone else takes issue  
19 with what's been incurred, you always have remedies for that.

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

21 THE COURT: All right. Thank you.

22 MR. RYAN: Your Honor, Jeremy Ryan on behalf of the  
23 Ad Hoc Committee of 10 Percent Senior Note Holders. We had  
24 read Silver Point's objection. We thought it was a good idea  
25 and we're going to join in. We understand Your Honor's ruling,

1 but we would like to make clear that -- we would also like --

2 THE COURT: I haven't ruled yet. But I think you  
3 know where I'm headed.

4 MR. RYAN: In anticipation of it. But we -- with  
5 your caveat that there's no restriction on parties to the move  
6 to extend the 35 days, we'd like to be included in that or at  
7 least make the record clear that we have that right, also --

8 THE COURT: Understood.

9 MR. RYAN: -- Silver Point. Thank you.

10 MR. GALLO: Your Honor, Andrew Gallo from Bingham  
11 McCutchen for the lenders. I don't want to snatch victory from  
12 -- or snatch defeat from the jaws of victory. I just will  
13 point out that the -- I mean, I think as we walked through the  
14 redline of the order, there were significant concessions and  
15 there was a very productive negotiation. We agreed to give the  
16 Committee this right because they're, obviously, new to the  
17 case and they don't know what's going on. Silver Point's been  
18 around this company for a very long while. The only instance  
19 where Silver Point might want to invoke a right would be if the  
20 Committee opposed it. And I'm not sure how that would be  
21 appropriate. And so we felt comfortable giving it to the  
22 Committee because they're, obviously, a fiduciary of the  
23 unsecured creditors. I don't think it's appropriate for an  
24 individual creditor.

25 To your point, if Silver Point wanted to come back

1 and argue that, you know, that the plan should be extended, the  
2 way that we fix the remedies in the order, if there's a default  
3 under the order because certain deadlines aren't met, it  
4 just -- that just terminates consensual use. But we would have  
5 to come in and seek stay relief if we thought that was  
6 appropriate and the debtors and anyone else would be able to  
7 show that they could use cash collateral over our objection if  
8 they could prove that we're adequately protected. So I think  
9 all parties' rights are protected to go forward and to ask Your  
10 Honor for whatever relief they believe is necessary going  
11 forward under the order.

12 THE COURT: Yes, and I -- and in making my comments,  
13 I don't make any judgment now about whether I would or would  
14 not grant such relief. It all depends on the circumstances  
15 which, as you know, typically tend to be fluid in most Chapter  
16 11 situations and particularly in the current economic  
17 environment in which we now find ourselves. And these days,  
18 it's especially not good to look too far ahead.

19 MR. GALLO: I agree with you, Your Honor.

20 THE COURT: All right.

21 MR. GALLO: Thank you.

22 MR. SUSSBERG: Just for the record, Your Honor, we  
23 would agree with Silver Point's interpretation that there's  
24 nothing restrictive in the order from seeking later to extend  
25 those milestone deadlines. I'd assume the Committee would

1 agree to that, as well. But --

2 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

3 THE COURT: All right. Anyone else care to be heard  
4 in connection with this motion? All right. Then I will now,  
5 for the reasons I've articulated, formally overrule the limited  
6 objection to the motion and I'm prepared to grant the relief  
7 that's been requested. I do agree with the parties as has been  
8 expressed that the final order has been much improved. It's,  
9 obviously, it's been heavily negotiated and I'm prepared to  
10 grant the relief. And I do have a clean copy here. No further  
11 changes to be made?

12 MR. SUSSBERG: No, Your Honor.

13 THE COURT: All right. That order has been signed.

14 MR. SUSSBERG: Thank you. Your Honor, Item Number 4  
15 on the agenda is the final order seeking relief with respect to  
16 critical vendors. On February 12th, an order was entered  
17 authorizing interim payments to various critical vendors of up  
18 to \$850,000. We are seeking final authority today to pay  
19 critical vendors up to \$1.7 million.

20 As mentioned at the first day hearing, those critical  
21 vendors include certain sole source vendors, licensors of  
22 music, and various lien claimants. We've been in a process  
23 where we've negotiated with various parties. We've only signed  
24 up a few critical vendor trade agreements at this point, but we  
25 have several that are in the works and that we're continuing to

1 negotiate. I will note that with respect to the proposed  
2 order, we've made certain changes at the request of both the  
3 Committee and the pre-petition lenders. And these,  
4 essentially, have added to consent rights with respect to any  
5 critical vendor agreement that we enter into. And if there's  
6 any deviation from the procedures that have been laid out in  
7 the motion, we will certainly provide notice and an opportunity  
8 for the Committee and the lenders to be heard. That change is  
9 in Paragraph 2 of the blackline.

10 Paragraph 4 of the blackline, as I mentioned,  
11 requires the debtors to provide agreements to the Committee and  
12 the lenders, as well as notice of any termination of a critical  
13 trade agreement. Paragraph 7 of the blackline adds a provision  
14 for notice prior to any payment of lien claims. And I will  
15 note that process is certainly underway. We've notified the  
16 Committee, the U.S. Trustee, and the pre-petition lenders of  
17 various instances where we need to pay pre-petition lien claims  
18 and avoid perfection of those liens or satisfy perfected liens.

19 Paragraph 8 is an addition, as well, where it's an  
20 obligation to maintain a monthly summary of payments made to  
21 critical vendors and we'll provide that to the parties in  
22 interest. And Paragraph 9 and 10 are clarifications that  
23 nothing constitutes an assumption of a contract with a critical  
24 vendor and all rights are reserved with respect to claim  
25 amounts.

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

4 MR. SUSSBERG: Thank you, Your Honor. Item Number 5  
5 on the agenda is the seal motion. As Mr. Sassower mentioned,  
6 we were able to resolve our outstanding issues with respect to  
7 the relief that was requested both on the first day and as part  
8 of the motion. As Your Honor may recall, part of that relief  
9 had been adjourned to today. And for better or for worse, I  
10 now know Mr. Klauder's phone number by heart. We've spent many  
11 hours working through this and we do have a resolution and  
12 we're prepared to present an order.

13 If Your Honor may recall, we were seeking to redact  
14 certain customer information from our creditor matrix, as well  
15 as customer and employee information from the schedules and  
16 statements and certificates of service that reference this  
17 information. After reviewing our list of customers that were  
18 creditors in the case, and that was the unredacted list that  
19 was provided to the Court back on February 11th, and in light  
20 of our review and the relief that the Court afforded with  
21 respect to our customer programs which allowed us to honor  
22 rebates and pre-payments and the like, we have determined over  
23 the course of the last several weeks that none of the customers  
24 listed on the unredacted matrix that was provided under seal  
25 are creditors currently of the company. So, the matrix that

1 was filed on February 11th at Docket Entry 23 is, in fact, a  
2 full and complete creditor matrix and satisfies the debtors'  
3 obligations under the local rules and the bankruptcy code.

4           With respect to the schedules and statements, we've  
5 agreed with the Trustee on certain relief with respect to the  
6 redaction of information in the schedules and statements. And  
7 the order reflects that relief, including customer information  
8 and contractual customer information being redacted from  
9 Schedule G. And, in addition, in the event that we seek to  
10 serve customers at any point in this case, whether it's for bar  
11 date purposes, a disclosure statement hearing or confirmation,  
12 the Trustee has agreed with us, as well as the Creditors'  
13 Committee, I believe, that we are permitted to file a  
14 certificate of service to simply reference all confidential  
15 customers and note that the 4,000 or so customers that were  
16 included on the previous unredacted matrix were, in fact,  
17 served, but not have to present the identities for competitors  
18 to latch onto.

19           With that, Your Honor, that really sums up the  
20 proposed order that we intend to submit today to Your Honor for  
21 consideration.

22           THE COURT: All right. Let me ask a question I asked  
23 at the first hearing and that was -- and I can't presently  
24 think of a situation in which this would happen. But what if  
25 some other party files a motion that arguably requires the

1 customers to be notified? Is there a provision in the order  
2 for how that's to be accomplished, or would the -- would Epic  
3 simply do the same thing it would do if the debtor were filing  
4 the motion?

5 MR. SUSSBERG: You know, interestingly enough, we had  
6 originally gone back and forth on a proposed stipulation. And  
7 the proposed stipulation had a provision that addressed Your  
8 Honor's concerns. And I know without looking at it that I  
9 don't believe it was picked up in this order that you're  
10 presented because I think the circumstances had changed. But  
11 what we had proposed and as I think we had discussed at the  
12 first day hearing was that in the event a third party intended  
13 to serve all customers for whatever reason it was, we would  
14 make Epic available to them as an agent of the Court at that  
15 party's cost and expense.

16 THE COURT: Okay. And how would a third party know  
17 to do that?

18 MR. SUSSBERG: We could note it in the proposed  
19 order, if you'd like, Your Honor. We can modify that.

20 THE COURT: I think that would be appropriate. Okay.  
21 Let me ask if anyone else would care to be heard in connection  
22 with this motion.

23 MR. SUSSBERG: Okay.

24 MR. KLAUDER: Good morning, Your Honor, David Klauder  
25 for United States Trustee. For better or worse, I agree with

1 everything Mr. Sussberg just said.

2 THE COURT: Oh, no. Did it hurt that much, Mr.  
3 Klauder?

4 MR. KLAUDER: No, we had very productive discussions  
5 on this and it was going to be certainly an interesting  
6 discussion in front of Your Honor. But we're glad to get to  
7 that resolution and I'm fine with the proposed change in the  
8 order that Your Honor suggested. Thank you.

9 THE COURT: Okay. And I guess I'll just say if we're  
10 breaking new ground here, it's only like a little shovel full  
11 maybe, as opposed to something major. And I only mention that  
12 because as I'm sure the U.S. Trustee feels, I'm not interested  
13 in opening flood gates on this type of issue. So I'll just say  
14 for the record, I am willing to grant this relief, but it is  
15 only under these specific and at least so far unique  
16 circumstances. Okay.

17 MR. KLAUDER: We appreciate that comment, Your Honor.  
18 Thank you.

19 THE COURT: Okay. So if you submit everybody's order  
20 under certification --

21 MR. SUSSBERG: Yeah, we'll make that change, Your  
22 Honor.

23 THE COURT: -- I will act upon it.

24 UNIDENTIFIED ATTORNEY: Thank you.

25 MR. SUSSBERG: I believe the next item on the agenda

1 is the application of Klehr Harrison and I will cede the podium  
2 to Mr. Pacitti.

3 THE COURT: Very well.

4 MR. SUSSBERG: Thank you.

5 MR. PACITTI: Good morning, Your Honor, Domenic  
6 Pacitti of Klehr, Harrison, Harvey, Branzburg & Ellers. This  
7 is our application for retention as co-counsel. We had the  
8 opportunity to go through the application with Mr. Klauder.  
9 We've received no objections. We did not file certifications  
10 of no objections on our retention applications. We just  
11 typically don't do that in case Your Honor has questions and so  
12 we've received no comment or questions and I'm available to  
13 answer any questions that Your Honor may have.

14 THE COURT: Okay. I do have one question and it  
15 relates both to the declaration attached to your firm's  
16 application and that of Kirkland & Ellis and that is,  
17 consistent with what I normally like to see, I like to see an  
18 unequivocal statement by the applicant that in cases in which  
19 the applicant has to be disinterested that they actually say  
20 that. And I could not find an unqualified statement in either  
21 declaration for Klehr or for Kirkland. If I've missed it, you  
22 are free to point it out to me. I mean, there were lots of  
23 disclosures and in Kirkland's application, especially,  
24 statements that said, well, this doesn't make us not  
25 disinterested, but like a party in an APA, I like the warranty.

1 Makes me feel better.

2 MR. PACITTI: Your Honor, you may be right. I think  
3 that the -- I guess the declaration talks about a declaration  
4 that there are no connections other than as specified on the  
5 schedule. If Your Honor requires a revision to the declaration  
6 to include an unequivocal statement of disinterestedness --

7 THE COURT: I do.

8 MR. PACITTI: -- we can certainly submit a revised  
9 declaration to that effect.

10 THE COURT: All right. Thank you. And when you do  
11 that, I will -- I had no other questions or issues with the  
12 application.

13 MR. PACITTI: Great.

14 THE COURT: I'll act promptly on it.

15 MR. PACITTI: Great. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. SASSOWER: Edward Sassower, Kirkland & Ellis, on  
18 behalf of the debtors. Your Honor, I should have remembered  
19 that preference from prior cases, so I'm happy to submit a  
20 revised declaration, as well.

21 One other issue with respect to our retention  
22 application. As disclosed on Paragraphs 29, 40 of my  
23 declaration, one of my partners, John Kuehn, made an investment  
24 in one of the ABRV funds that holds some of the discount notes  
25 or the holding company notes. Mr. Kuehn entered into a letter

1 agreement with ABRY whereby he relinquished any right to  
2 receive any proceeds on behalf of any distribution that those  
3 hold notes should receive. Mr. Klauder and the Office of the  
4 United States Trustee felt more comfortable if Mr. Kuehn would  
5 relinquish his investment in that fund altogether and --

6 THE COURT: How was that done exactly?

7 MR. SASSOWER: Well, and so we discussed, you know, a  
8 bunch of variations with Mr. Klauder because there's not really  
9 an open market to sell very small LP interest in private equity  
10 funds. And so we've arranged for ABRY to purchase the LP  
11 interest from Mr. Kuehn and that satisfies -- my understanding  
12 that satisfies Mr. Klauder and the Office of the United States  
13 Trustee. That transaction has yet to occur, but it's my  
14 understanding that's going to occur in the very near future,  
15 hopefully next week.

16 THE COURT: Okay.

17 MR. SASSOWER: That's -- we've received no objections  
18 to our retention application and that was the only issue raised  
19 by the Office of the United States Trustee.

20 THE COURT: Okay. And upon submission of a revised  
21 declaration, I'm content to act on the application. The only  
22 other comment I have is the declaration indicates that you  
23 charge between 10 and 15 cents for photocopying per page. The  
24 local rule provides for a 10-cent limit. I just wanted to  
25 confirm that for purposes of this case the charge would be 10

1 cents a page.

2 MR. SASSOWER: I'm happy to confirm that, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. SASSOWER: Okay. Thank you.

5 THE COURT: Yes.

6 MR. SUSSBERG: Your Honor, Item Number 8 on the  
7 agenda is really a motion that was filed out of an abundance of  
8 caution in light of the seal issue that we talked about before,  
9 so it's a motion to extend our deadline to file schedules and  
10 statements. We are nearly complete with the schedules and  
11 statements and, in fact, intend to file those schedules and  
12 statements at some point next week. So, truly, out of an  
13 abundance of caution, but what we've done is requested a 32-day  
14 extension. And the reason for 32 days was because 30 landed on  
15 a Saturday. So we kicked it out until Monday, but we don't  
16 intend to use the period of time and simply had this filed  
17 because today was the deadline under the bankruptcy code and  
18 local rules and we seek to just have this period of time in  
19 which we can get something filed next week.

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

23 MR. SUSSBERG: Thank you, Your Honor. Your Honor,  
24 Item Number 9 on the agenda is our motion to employ certain  
25 ordinary course professionals. This was a motion that was

1 filed on or about the first day of these cases, seeks  
2 authorization to employ certain professionals and service  
3 providers that the company uses in the ordinary course of  
4 business without the need for these professionals to file  
5 formal applications for retention or fee applications in the  
6 process. These folks provide a variety of services non-related  
7 to the Chapter 11 cases and they've become integrally important  
8 to the company's operations.

9           We've listed those ordinary course professionals on  
10 an exhibit to the motion and the procedures provide for ways in  
11 which we can detract or add to that list of ordinary course  
12 professionals. We've made various changes at the request of  
13 the Committee and the U.S. Trustee to highlight some specific  
14 changes. We've modified the deadlines by which a declaration  
15 of disinterestedness must be submitted by a professional before  
16 an invoice can be paid. That declaration of disinterestedness  
17 is attached as Exhibit 3 to the motion. Notice parties have 20  
18 days to object to any such declaration.

19           As I've mentioned, we have the right to modify the  
20 list and we'll provide all notice parties as defined in the  
21 procedures with 15 days notice of those modifications. Once  
22 the retention is approved, the procedures provide for payment  
23 of 100 percent of amounts incurred, but we have changed the  
24 originally proposed cap which was a \$50,000 cap per month which  
25 rolled on a three-month basis, and we've lowered the cap to

1 \$40,000 with the caveat that four professionals Moore & Van  
2 Allen, Weil Gotshal, Kilpatrick Stockton, and consultant Fern  
3 Templeton have been excepted from the \$40,000 and they'll be  
4 subject to a \$50,000 cap.

5 I also will note that with respect to fees paid in  
6 the aggregate to individual ordinary course professionals, we  
7 have a cap of \$320,000 for those professionals that are in the  
8 \$40,000 cap and \$400,000 for those in the \$50,000 range, as  
9 well as an overall case limit of fees to be paid to ordinary  
10 course professionals of 1.5 million, with the reservation of  
11 rights, obviously, for the debtors to come into court and seek  
12 relief from that overall cap. And, of course, any payments in  
13 excess of the cap will be subject to Court approval.

14 Finally, I would note that beginning with the month  
15 of March, on March 31st and in three-month increments  
16 thereafter, we will provide a report indicating all of the  
17 amounts that have been paid to ordinary course professionals.  
18 I think Your Honor would find that these procedures are in line  
19 with prior cases of the same size and magnitude and I believe  
20 we've addressed all outstanding questions and concerns.

21 THE COURT: Yes, the only one I had was concerning  
22 the caps. I didn't see any reference to a cap in the original  
23 motion and was quite concerned about that and maybe I missed  
24 it. But, I just wanted to ask the question that if I read it  
25 correctly and there were no caps proposed originally, you

1 didn't expect me to sign an order in which there were none?  
2 I'm assuming you signed the motion expecting there would be  
3 negotiations about what the numbers should be.

4 MR. SUSSBERG: Yes, Your Honor.

5 THE COURT: That's the right answer.

6 UNIDENTIFIED ATTORNEY: Leading.

7 THE COURT: Very. Does anyone else care to be heard  
8 in connection with this motion? All right. I have no  
9 questions.

10 MR. SUSSBERG: Thank you, Your Honor. Agenda Item  
11 Number 10 is the interim compensation procedures for  
12 professionals retained in the case. These are orderly, regular  
13 procedures that we provide for the allowance and payment of  
14 compensation, reimbursement of expenses in connection with the  
15 filing of fee applications under 330 and 331. These procedures  
16 have been used in other cases of the same size and are  
17 regularly presented to Courts in this district and others.

18 I will note with respect to our provisions, in  
19 particular, and also the motion itself, we've also sought  
20 allowance and reimbursement of expenses incurred by members of  
21 the Committee and we're seeking relief from the service of fee  
22 applications pursuant to Bankruptcy Rule 2002. We'll serve a  
23 notice of the monthly applications that are filed with the  
24 Court and serve all interim fee applications on all parties  
25 that do file a notice in the case, just to keep down on the

1 service costs.

2           On or after the 20th day of the month, professionals  
3 seeking comp for the month prior will submit a bill. All  
4 parties in interest and notice parties under the procedures  
5 will have 20 days to object. To the extent there are no  
6 objections, parties are permitted to file a certificate of no  
7 objection and payments of 80 percent of compensation and 100  
8 percent of expenses can be paid at that time. To the extent  
9 there is an objection, as is commonly provided, we've set forth  
10 procedures by which professionals can come to Your Honor to  
11 dispute the amount in objection and be paid the incremental  
12 amount that's not in question in the interim.

13           We've also provided in the procedures for the filing  
14 of interim fee applications quarterly, depending on Your  
15 Honor's schedule and timing. And, as I've said, these are very  
16 straight forward procedures. We've received certain comments  
17 from parties that we've incorporated. And if Your Honor has  
18 any questions, I'm happy to answer those.

19           THE COURT: Yes, but I'll ask it in a moment. First  
20 let me ask whether anyone else cares to be heard in connection  
21 with this motion. I hear no response. Did I discuss with this  
22 group on -- at the first day's -- did I ask for recommendations  
23 for a fee auditor?

24           MR. SUSSBERG: You did not, Your Honor.

25           THE COURT: Okay. I'm now asking for the parties

1 either individually or collectively to recommend two or three  
2 names for the Court to appoint as fee auditor in this case just  
3 sometime within the next couple weeks --

4 MR. SUSSBERG: Okay.

5 THE COURT: -- would be appreciated.

6 MR. SUSSBERG: Very well, Your Honor.

7 THE COURT: Okay.

8 MR. SUSSBERG: We will coordinate with the parties.

9 THE COURT: All right. And I'll just say something  
10 that I've said on a number of occasions. There seems to be a  
11 very limited group of persons who the parties anyway have ended  
12 up recommending. And while I've used one more often than not,  
13 it's only because the universe is so limited, but I'm always  
14 looking for new entrants into that field just to keep -- and I  
15 mean this only in the conceptual sense -- to keep everyone  
16 honest. You know, I like to see competition. And that's not  
17 to say I've been unhappy with any services any fee auditor has  
18 provided to this Court. But, obviously, it should be someone  
19 who's capable of handling the volume that will be generated in  
20 this case. But I thank you for doing that.

21 MR. SUSSBERG: Sure.

22 THE COURT: Okay.

23 MR. SUSSBERG: Your Honor, Item Number 11 on the  
24 agenda is the Moelis & Company retention application. The  
25 company is seeking to retain Moelis as its financial advisor

1 and investment banker. I will note that we had a limited  
2 objection from the United States Trustee and we've also worked  
3 through a multitude of comments from both the Committee and  
4 Silver Point and I believe that we have resolved everything.  
5 And while the order that Your Honor has before him addresses  
6 most all of those objections and the resolution of those  
7 objections, there are a few changes that we'll need to make  
8 after the hearing today and submit a revised order based on  
9 conversations we've had this morning.

10           But I will note for the record that Moelis & Company  
11 has a long past with Muzak. They've been involved with Muzak  
12 for over a year. They're originally engaged in connection with  
13 Muzak's merger and sale efforts back in 2007. So when those  
14 sale efforts no longer became fruitful and the endeavor shifted  
15 to a stand alone restructuring, it really only made sense to go  
16 with Moelis who had the background understanding and knowledge  
17 about the company and its capital structure. And we've been  
18 working hand in hand with Moelis for the last several months  
19 and we are very hopeful that we will soon effectuate a  
20 consensual resolution of the capital structure with Moelis'  
21 help and move these cases along.

22           I will note as far as Moelis' fee structure is  
23 concerned there is a monthly fee of 175,000 per month. One  
24 half of that monthly fee will be credited after the fourth  
25 month of the engagement, which is April 2009, and all monthly

1 fees in respective months following the ninth month of the  
2 engagement, which is September 2009, will be credited against  
3 the restructuring fee which is a fee of \$4 million. And, as  
4 we've noted in the proposed order, that fee will be paid solely  
5 in connection with a confirmed Chapter 11 plan.

6 In addition, the engagement letter provides for a  
7 capital transaction fee to be paid at a time in which a capital  
8 transaction is entered into. So, at that point in time, Moelis  
9 and the company will engage in discussions concerning the  
10 parameters of that arrangement. And in the order we've noted  
11 that that arrangement which is entered into by Moelis and the  
12 company is subject to express approval by the Court on notice  
13 to all parties in interest. Just to briefly highlight some of  
14 the changes for Your Honor, if you'd like.

15 THE COURT: Go ahead.

16 MR. SUSSBERG: Moelis & Company has agreed to credit  
17 a pro rata portion of its monthly fee in the event that there's  
18 an emergence or termination mid-month. The restructuring fee,  
19 as I mentioned, is only payable in connection with a confirmed  
20 plan. The capital transaction fee, as I mentioned, will be  
21 subject to express approval of the Court. There was a  
22 Paragraph 5 in the engagement letter which had to do with an  
23 extension for a sale transaction which was a follow-on tail for  
24 12 months following a restructuring transaction or capital  
25 transaction. Moelis has agreed to remove that paragraph in its

1 entirety. Any tail fees payable to Moelis in connection with  
2 the termination shall be presented to the Court and subject to  
3 the Court's approval. And so long as a plan is confirmed, that  
4 tail fee will be extinguished at that time.

5           Finally, Moelis agreed to a cap of its fees of \$6  
6 million with respect to the capital transaction monthlies and  
7 restructuring fee and that's reflected in the order. I would  
8 also note, not with respect to the compensation arrangements,  
9 but with respect to indemnification, that we've included  
10 various paragraphs at the request of the U.S. Trustee which are  
11 common in these forms of orders.

12           And, finally, the Trustee had raised a concern  
13 regarding its review of Moelis' fees and whether or not it  
14 would be subject to 328(a) or 330. We agreed earlier this  
15 morning to arrange for the provision of certain language in the  
16 order that will exempt other provisions that we had previously  
17 submitted and provide for a review by the trustee in its  
18 capacity in the 330 review and other parties will be subject to  
19 the 328 review standard.

20           I think the same language has been presented to this  
21 Court in Tribune and in the Aleris Chapter 11 case. And I know  
22 that the Aleris Chapter 11 case was yesterday, so the language  
23 is still being formulated, and we will work through that.  
24 There was a concern about the market comps of the fees being  
25 paid and a reference in the order that the fees to be paid

1 were, in fact, market based.

2 I would just note for the record that in connection  
3 with the resolution of issues that both the Committee and  
4 Silver Point had with respect to the proposed order, I believe  
5 both groups have confirmed that the fees to be paid are, in  
6 fact, market. And to the extent there is a concern down the  
7 road at the time a fee application is presented, I'm sure  
8 Moelis would be prepared to present testimony on that issue.

9 THE COURT: All right. Thank you. Does anyone else  
10 care to be heard in connection with this application? I hear  
11 no response. I'll await submission of an order under  
12 certification.

13 MR. SUSSBERG: Thank you, Your Honor. Your Honor,  
14 the last item on the agenda is Item Number 12 and that's  
15 presentation of a final order on our utilities. It's listed as  
16 contested, but we've, in fact, resolved all issues that were  
17 proposed with respect to the order. I appreciate the efforts  
18 of my colleague Ms. Shafe who has handled various utilities  
19 over the course of the last several weeks and negotiated a  
20 resolution with each of those utilities.

21 I will note for Your Honor that we had proposed to  
22 provide a deposit of \$40,000 and change and that represented  
23 one-half of our aggregate monthly spend and utility costs. We  
24 funded yesterday our utility deposit account and the amount  
25 that was funded into that account was \$47,000 and that's

1 reflective of the negotiations that we've entered into with  
2 various utility providers. The order has been changed slightly  
3 to include notice provisions with respect to the Creditors'  
4 Committee and in connection with all of our resolutions over  
5 the course of the last several weeks, we've confirmed with the  
6 Creditors' Committee and they have given us our blessing with  
7 respect to those resolutions. And I believe we've resolved all  
8 issues and we have not heard of anything else from another  
9 utility other than what was filed.

10 THE COURT: All right. Thank you. Does anyone else  
11 care to be heard in connection with this motion? And I hear no  
12 response. I don't have any questions.

13 MR. SUSSBERG: Thank you, Your Honor. That, Your  
14 Honor, completes the agenda for today. We will be back before  
15 Your Honor. I believe it's on April 15th.

16 UNIDENTIFIED ATTORNEY: Correct.

17 MR. SUSSBERG: There are a few things that are on the  
18 agenda already for April 15th and we assume that there will be  
19 a few more matters. And I would like to note for the record  
20 that this afternoon we will have our initial debtor interview  
21 followed by a 341 meeting. And, as I mentioned before, we  
22 intend to file our schedules and statements next week and  
23 continue to engage in discussions with our constituents to move  
24 this along.

25 THE COURT: Very well. Thank you, very much. That

1 concludes this hearing. Court will stand adjourned.

2 MR. SUSSBERG: Thank you.

3 \* \* \* \* \*

4 C E R T I F I C A T I O N

5 I, KELLI R. PHILBURN, court approved transcriber,  
6 certify that the foregoing is a correct transcript from the  
7 official electronic sound recording of the proceedings in the  
8 above-entitled matter, and to the best of my ability.

9

10 /s/ Kelli R. Philburn

DATE: MARCH 30, 2009

11 KELLI R. PHILBURN

12 J&J COURT TRANSCRIBERS, INC.

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**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***

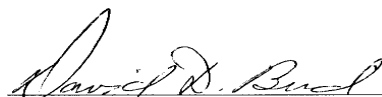
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Clerk of Court

Date: 4/3/09

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## Recipients of Notice of Electronic Filing:

ust	United States Trustee	USTPREGION03.WL.ECF@USDOJ.GOV
aty	Domenic E. Pacitti	dpacitti@klehr.com

TOTAL: 2

## Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Muzak Holdings LLC	3318 Lakemont Blvd.	Fort Mill, SC 29708		
aty	Michael W. Yurkewicz	Klehr Harrison Harvey Branzburg &Eilers	919 Market St.	Wilmington, DE	
	19801				
aty	Michael W. Yurkewicz	Klehr Harrison Harvey Branzburg &Eilers	919 Market St., Suite		
	1000	Wilmington, DE 19801			

TOTAL: 3