

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

---

**NOTICE OF HEARING AND MOTION AUTHORIZING DEBTORS TO PAY DUE  
DILIGENCE FEES TO POTENTIAL LENDERS FOR RECAPITALIZATION  
OR BUYERS FOR SALE**

---

TO: The parties in interest as identified in Local Rule 9013-3.

1. Intrepid U.S.A., Inc., and its affiliated entities referenced above (the “Debtors”) move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on this motion on October 27, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 S. Fourth St., Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than October 22, 2004 which is three days before the time set for the hearing (excluding Saturdays, Sundays, and Holidays), or served and filed by mail not later than October 18, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and Holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Local

Rule 1070-1. This proceeding is a core proceeding. The petitions commencing these Chapter 11 cases were filed on January 29, 2004 and April 12, 2004. These cases are now pending.

5. This motion arises under 11 U.S.C. § 363(b)(1) and Bankruptcy Rule 6004 and is filed pursuant to Bankruptcy Rules 9013 and 9014 and Local Rules 6004-1 and 9013.

6. Debtors request an order of the Court authorizing them to pay, in their discretion, due diligence fees to a maximum total of \$500,000 to potential lenders for a recapitalization or potential buyers for a sale of Debtors' assets. Granting the Debtors the authority to pay due diligence fees is in the best interest of the estates and their creditors. No buyer or lender is likely willing to undertake a transaction of the size and scope contemplated by Debtors without engaging in significant due diligence. Giving Debtors authority to spend funds for due diligence expenses also gives Debtors the necessary flexibility needed to negotiate such fees. Moreover, anticipating and having authority to pay such fees is in the best interests of the estates because it enables the Debtors to timely conclude a recapitalization or sale that will maximize the value of the estates and the returns to their creditors and equity security holders.

### **BACKGROUND**

7. The Debtors continue to operate their business as a debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Court has ordered, for procedural purposes only, joint administration of the Chapter 11 cases.

8. The Intrepid home health care business began in July of 1994, and since that time, it has been based and headquartered in Edina, Minnesota. As of the filing date, the Intrepid umbrella of companies operated in 31 states, out of approximately 196 offices, with approximately 13,000 health care professionals which provided medically-necessary home health care services and therapies to approximately 125,000 patients annually, nearly all of whom are

home-bound, incapacitated in some way, handicapped, elderly or otherwise physically disadvantaged to the extent that they have to rely on Intrepid for their health care in their homes. Intrepid also has a division of its business that provides staffing of nurses and health care practitioners in hospitals and extended care facilities. The majority of its revenues are derived from its home health care business operations.

#### **FACTS RELEVANT TO REQUESTED RELIEF**

9. The Debtors have analyzed a number of external transactions in exploring how to maximize the value of the estates. The Debtors have narrowed their focus to a recapitalization plan or sale of assets. Debtors, with the aid of their advisors, Jefferies & Company, Inc. and XRoads Solutions Group, LLC have assembled significant materials useful to a potential buyer and/or a recapitalization lender. Debtors anticipate proposals for a sale or recapitalization to be received in the month of October. Debtors will clarify, negotiate and evaluate these proposals to focus Debtors' efforts upon the more likely participants, limiting the due diligence payments to serious participants. Debtors intend to select either a sale or recapitalization transaction and prepare and file a plan and disclosure statement to implement such transaction within their exclusivity periods for filing a plan and disclosure statement.

10. Debtors believe it is customary in a recapitalization loan transaction for the potential lender or in a sale for the potential buyer to demand a due diligence fee. Here, such a fee is appropriate because of, among other things, the size and complexity of the cases, the size and scope of the transaction, and the size and scope of Debtors' businesses. Thus, in order to attract the interest of serious buyers or recapitalization lenders and to facilitate the timely conclusion of a transaction on the best terms available, Debtors need authority in advance to pay due diligence fees to potential lenders or potential buyers.

11. Moreover, Debtors believe time is of the essence, and in the best interests in particular of unsecured creditors and equity interests. Pursuant to that certain stipulation by and between Debtors, Todd Garamella and DVI and its affiliates, the Debtors have the right to pay off DVI on a discounted basis from the total claimed by DVI. At least in connection with a sale, the amount payable to DVI increases by \$1.0 million per month for each month after September 2004. Therefore, the quicker Debtors conclude a transaction, the greater the potential savings in the amount payable to DVI.

12. The Debtors have not yet received a demand for payment of a due diligence fee, but Debtors anticipate receiving such requests. Given Debtors' timetable, obtaining approval to pay reasonable due diligence fees will not slow or delay the process while Debtors seek approval after a demand and thus keep the cases proceeding on a timely basis, which is in the best interest of the estates and their creditors.

13. To ensure that the Debtors continue to appropriately exercise their business judgment in the payment of the due diligence fees, Debtors propose that prior to any such payment, Debtors will disclose to the Official Committee of Unsecured Creditors ("Creditor's Committee") and Todd Garamella the amount and timing of payment of any due diligence fee to a potential lender or potential buyer. Should the Creditors' Committee or Garamella object to the payment of such a fee, the matter will be scheduled for hearing before the fee is paid.

#### **RELIEF REQUESTED**

14. Debtors seek Court authority to pay the fee under 11 U.S.C. § 363(b)(1). The payment of such a fee is not in the ordinary course of Debtors' businesses. However, pursuant to section 363(b)(1), the Court may authorize use of estate property outside the ordinary course. Debtors have determined in their business judgment that having the authority to pay such due

diligence fees is in the best interest of their estates. Such authority to pay due diligence fees will enable the Debtors to conclude a recapitalization or sale and facilitates the Debtors' ability to obtain the best terms in the event of a recapitalization and the highest and best offer in the event of a sale, which, in turn, will enable the Debtors to maximize the value of the estates and the returns to creditors and equity holders.

15. Pursuant to Local Rule 9013-2(d), the facts set forth in this Motion have been verified and the Motion is accompanied by a Memorandum, Proposed Order, and proof of service.

16. Pursuant to Local Rule 9013-2(c), Debtors give notice that they may, if necessary, call Dennis I. Simon, CEO, or Gregory Von Arx, CFO of the Debtors to testify at the hearing on this Motion. Their businesses addresses are Intrepid U.S.A., Inc., 6600 France Avenue South, Suite 510, Edina, Minnesota 55425.

WHEREFORE, Debtors move the Court for an order authorizing Debtors to pay to potential lenders for a recapitalization or potential buyers for a sale due diligence fees in the total amount of \$500,000 and for such further relief as the Court deems just and equitable.

Dated: October 7, 2004

/s/ Ryan T. Murphy  
Clinton E. Cutler (#158094)  
Ryan T. Murphy (#311972)  
**FREDRIKSON & BYRON, P.A.**  
4000 Pillsbury Center  
200 South Sixth St.  
Minneapolis, MN 55402  
Telephone 612-492-7000

**ATTORNEYS FOR DEBTORS**

**VERIFICATION**

I, Gregory Von Arx, am the Chief Financial Officer of each of the Debtors in the above-captioned cases. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: October 7, 2004

  
\_\_\_\_\_  
Gregory Von Arx

#30186861

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

---

**MEMORANDUM IN SUPPORT OF MOTION AUTHORIZING DEBTORS  
TO PAY DUE DILIGENCE FEES TO POTENTIAL LENDERS FOR  
RECAPITALIZATION OR BUYERS FOR SALE**

---

Debtors submit this memorandum in support of their motion under section 363(b)(1) for an order authorizing Debtors to pay due diligence fees to potential lenders for a recapitalization or potential buyers for a sale. Authorizing the Debtors now to pay future demands for due diligence fees by potential lenders or buyers in the total amount of \$500,000 will enable Debtors to maintain their schedule for a transaction to exit Chapter 11. Therefore, the authority to pay up to \$500,000 in due diligence fees is in the best interest of the estates and Debtors respectfully request that the Court enter an order granting the relief requested in the Motion.

**BACKGROUND**

The facts are drawn from and verified in the Motion. All capitalized terms are defined therein.

**ANALYSIS**

**THIS COURT SHOULD AUTHORIZE THE DEBTORS TO PAY DUE  
DILIGENCE FEES UNDER SECTION 363(b)(1)**

Bankruptcy Code section 363(b)(1) provides that the debtor-in-possession “after notice and a hearing, may use, sell or lease, other than the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve of the use of property outside of the ordinary course

of business, the Court need only determine that the debtor's decision is supported by some articulated business justification. Four B v. Foodbarn Stores, Inc. (In re Foodbarn Stores, Inc.), 107 F.3d 558, 567 (8th Cir. 1997); Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, the Courts give deference to the debtor's decision making. In re Schipper, 933 F.2d at 515.

Here, the Debtors' request for authority to pay due diligence fees in the total amount of \$500,000 to potential lenders for recapitalization or potential buyers for sale is supported by articulated business reasons. It is customary in a recapitalization for the potential lender and in a sale for the potential buyer to demand a due diligence fee. Here, such a fee is appropriate because of, among other things, the size and complexity of the cases, the size and scope of the transaction, and the size and scope of Debtors' businesses. Moreover, granting authority in advance of anticipated requests for payment of due diligence fees allows Debtors to maintain their timetable to file a plan and disclosure statement within their exclusive periods. Thus, to facilitate the timely conclusion of external transactions and ensure that the Debtors obtain the best terms in the event of a recapitalization and the highest and best offer in the event of a sale the Debtors need authority to pay due diligence fees to potential lenders and potential buyers.

The Debtors have not yet received a demand for payment of a due diligence fee, but Debtors anticipate receiving such requests. Obtaining approval to pay reasonable due diligence fees totaling \$500,000 now will enable the Debtors to keep the cases proceeding on a timely basis, which is in the best interest of the estates and their creditors.

To ensure that the Debtors continue to appropriately exercise their business judgment in paying the due diligence fees, Debtors propose providing the Official Committee of Unsecured Creditors ("Creditor's Committee") and Debtors' equity owner Todd Garamella, prior notice of

any due diligence fee request Debtors agree to pay prior to such payment. In the event of an objection to the payment of such fee, Debtors will not pay such a fee but will instead schedule a hearing to have the Court resolve the objection.

**CONCLUSION**

Because authorizing the Debtors to pay due diligence fees to potential lenders or buyers is in the best interest of the estates and their creditors, Debtors respectfully request that the Court enter an order granting the relief requested in the Motion.

Dated: October 7, 2004

/s/ Ryan T. Murphy  
Clinton E. Cutler (#158094)  
Ryan T. Murphy (#311972)  
FREDRIKSON & BYRON, P.A.  
4000 Pillsbury Center  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 492-7000  
(612) 492-7077 (Facsimile)

ATTORNEYS FOR DEBTORS

#3018747\1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

---

**CERTIFICATE OF SERVICE**

---

Ryan T. Murphy, under penalty of perjury, states that on October 7, 2004 he caused to be served the following:

1. Notice Of Hearing And Motion Authorizing Debtors To Pay Due Diligence Fees To Potential Lenders For Recapitalization Or Buyers For Sale;
2. Memorandum In Support Of Motion Authorizing Debtors To Pay Due Diligence Fees To Potential Lenders For Recapitalization Or Buyers For Sale;
3. Order Authorizing Debtors To Pay Due Diligence Fees; and
4. Certificate of Service

by sending true and correct copies via U.S. Mail as noted on the attached Service List.

Dated: October 7, 2004

/s/Ryan T. Murphy

Ryan T. Murphy

Dennis Simon  
Intrepid U.S.A., Inc.  
6600 France Avenue South  
Suite 510  
Edina MN 55425

Michael Massad/Steven Holmes  
Hunton & Williams  
30<sup>th</sup> floor, Energy Plaza  
1601 Bryan St  
Dallas TX 75201

Robert B. Raschke Esq  
U.S. Trustee's Office  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Roylene A. Champeaux  
D. Gerald Wilhelm  
Assistant US Attorney  
600 US Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

MN Department of Revenue  
Collection Enforcement  
551 Bankruptcy Section  
P.O. Box 64447  
St. Paul, MN 55164

Internal Revenue Service  
Special Procedures Branch  
Stop 5700  
316 North Robert Street  
St. Paul, MN 55101

Blaine Holliday  
IRS Office of Chief Counsel  
650 Galtier Plaza  
380 Jackson Street  
St. Paul, MN 55101

Securities & Exchange Comm.  
Bankruptcy Section  
175 W Jackson Blvd.  
Suite 900  
Chicago IL 60604

DVI Financial Services, Inc.  
c/o Clark T. Whitmore  
Maslon Edelman et al.  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

DVI Business Credit Corp.  
Richard M. Beck, Esq.  
Klehr, Harrison, Harvey et al.  
260 South Broad Street  
Philadelphia PA 19102-3163

Todd J. Garamella  
c/o John McDonald  
Robins, Kaplan  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

Attorneys for Creditors Committee

Jeffrey K. Garfinkle  
Buchalter Nemer et al.  
18400 Von Karman Ave, Suite 800  
Irvine CA 92612

George Singer  
Lindquist & Venum, P.L.L.P.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2205

Requests for Notice

IRS/Special Procedures Branch  
c/o Barbara Zoccola  
200 Jefferson Ave, Suite 811  
Memphis TN 38103

Wendy S. Tien, Esq.  
US Dpt. of Justice, Civil Dvn  
P.O. 875, Ben Franklin Station  
Washington, DC 20004-0875

Keith E. Dobbins  
US Dpt. of Justice, Civil Division  
601 D Street, NW, Room 6613  
Washington, DC 20004-0875

Greg Bongiovanni  
Office of the General Counsel  
Dept. of Health & Human Svs  
Suite 5M60 AFC  
61 Forsyth St., SW  
Atlanta, GA 30303-8909

Bankruptcy Administration  
IOS Capital, LLC  
1738 Bass Road  
PO Box 13708  
Macon GA 31208-3708

U.S. Bank N.A.  
c/o Michael R. Stewart  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

Lang-Nelson Associates  
c/o William I. Kampf  
220 South Sixth Street, #1800  
Minneapolis, MN 55402

Additional names for Intrepid II list

Keybank N.A.  
127 Public Square  
Cleveland OH 44114

Garamella Family Ltd. Ptnsp  
236 Oakwood Road  
Interlachen Park  
Hopkins MN 55343

David J. Fischer  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive  
Suite 3000  
Chicago, IL 60606-1229

Bank One  
c/o Sandra Lander  
400 Murray Street  
Alexandria LA 71301

Mpls Comm Dev Agency  
105 – 5<sup>th</sup> Ave S  
Minneapolis MN 55401

Affordable Housing Project  
c/o Fed Home Loan Bank  
907 Walnut St  
Des Moines IA 50309

MHFA  
ATTN: William Kuretsky  
400 Sibley St, Suite 300  
St Paul MN 55101

Neil Herskowitz  
Riverside Contracting LLC  
PO Box 626  
Planetarium Station  
New York, NY 10024-0540

CapitalSource Finance LLC  
c/o Steven Kluz, Sr., Esq.  
Rider Bennett, LLP  
333 South Seventh Street,  
Minneapolis, MN 55402

CapitalSource Finance LLC  
c/o Kenneth J. Ottaviano, Esq.  
Katten Muchin Zavis Rosenman  
525 West Monroe Street, #1600  
Chicago, IL 60661

Healthcare Business Credit Corp.  
c/o Steven Meyer, David Galle  
Oppenheimer Wolff & Donnelly  
3300 Plaza VII  
45 South Seventh Street  
Minneapolis, MN 55402

Healthcare Business Credit Corp.  
c/o Michelle A. Mendez  
Greenberg Traurig LLP  
600 Three Galleria Tower  
13155 Noel Road  
Dallas, TX 75240

CenturyTel, Inc.  
c/o Rex D. Rainach  
3622 Government Street  
Baton Rouge, LA 70806-5720

Gary L. Hacker, Esq.  
Whitten & Young, P.C.  
Bank of America Tower, Suite 1402  
500 Chestnut Street  
Abilene, TX 79602

Service List: Intrepid II (Doc. No. 2964710)

Neil Medical Group  
c/o Nikole B. Mariencheck, Esq.  
Smith, Anderson, et al.  
P.O. Box 2611  
2500 Wachovia Capitol Ctr (27601)  
Raleigh, NC 27602-2611

State of Maryland, Dpt of Labor,  
Licensing and Regulation  
Off. Of Unemp. Ins. Contrib. Div.  
Litigation and Prosecution Unit  
1100 North Eutaw Street, Room 401  
Baltimore, MD 21201

New Options Founders  
c/o Adam M. Spence  
105 W. Chesapeake Ave, Suite 400  
Towson, MD 21204

Oracle Corporation  
c/o Alan Horowitz  
Buchalter, Nemer, Fields & Younger  
18400 Von Karman Ave, Suite 800  
Irvine, CA 92612

Bizrocket.com, Inc.  
c/o Jeremy D. Friedman  
Downs & Associates  
255 University Drive  
Coral Gables, FL 33134

Healthcare Assoc. of Walterboro  
c/o H. Flynn Griffin, III  
Anderson & Associates, P.A.  
PO Box 76  
Columbia SC 29202

*The Hays Group*  
c/o Steven Scott, Esq.  
Scott Law Firm, PLC  
Suite 400  
3300 Edinborough Way  
Edina, MN 55435

Nueces County  
c/o Diane W. Sanders  
Linebarger Goggan Blair & Sampson  
1949 South IH 35 (78741)  
PO Box 17428  
Austin, TX 78760-7428

Bexar County  
c/o David G. Aelvoet  
Linebarger Goggan Blair & Sampson  
Travis Building, 711 Navarro, Ste 300  
San Antonio, TX 78205

G-Fore Associates LLC  
c/o Bradford A. Steiner  
Jason S. Kelley  
Steiner Norris PLLC Bradford  
2320 Second Ave., Suite 2000  
Seattle, WA 98121

Les Nelson Investments  
c/o Mark E. Fosse  
Dunlap & Seeger, P.A.  
206 South Broadway, Suite 505  
PO Box 549  
Rochester, MN 55903

Aberfeldy II Limited Partnership  
c/o J. David Leamon  
Munsch Hardt Kopf & Harr  
4000 Fountain Place  
1445 Ross Avenue  
Dallas, Texas 75202-2790

IBM Corporation  
Attn: Beverly H. Shideler  
Two Lincoln Centre  
Oakbrook Terrace, IL 60181

Richard D. Anderson, Esq.  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

*Woodmen Office Land Associates*  
Huntington C. Brown  
US Bank Tower  
950 Seventeenth Street, Suite 1700  
Denver, CO 80202

TN Dept. Labor and Workforce  
Development—Unemployment Ins.  
c/o Marie Antoinette Joiner  
TN Atty General's Office, Bky Div.  
PO Box 20207  
Nashville, TN 37202-0207

*Atty for MO Dept. of Revenue*  
MO Dept. of Revenue, Bky Unit  
ATTN: Steven Ginther  
PO Box 475  
Jefferson City MO 65105-0475

Alberfeldy II Limited Partnership  
c/o David E. Runck, Esq.  
Oppenheimer Wolff & Donnelly  
Plaza VII, Suite 3300  
45 South Seventh Street  
Minneapolis, MN 55402

Maureen M. Cafferkey  
Office of the Solicitor  
US Dept. of Labor  
1240 East Ninth Street, Room 881  
Cleveland, Ohio 44199

*Atty for Poturalski, Hawley et al*  
Larry Ricke, Esq.  
Leonard Street & Deinard  
150 S. 5<sup>th</sup> Street, Suite 2300  
Minneapolis MN 55402

*Atty for GA Dept. of Comm. Health*  
*Oscar Fears, III*  
40 Capitol Square SW  
Atlanta GA 30334

Susan D. Profant, CFCA, CLA,  
c/o Ken Burton Jr., Manatee County Tax  
Collector  
PO Box 25300  
Bradenton, FL 34206-5300

*State of WA, Tax Agencies*  
c/o Catherine F. Ries  
Assistant Atty General of WA  
900 Fourth Ave, Suite 2000  
Seattle WA 98164-1012

*Atty for Texas Comptroller etc.*  
Kay D. Brock and Jay W. Hurst  
Office of Texas Attorney General  
Bankruptcy & Collections Div.  
PO Box 12548  
Austin TX 78711-2548

*Atty for Secretary of Labor*  
Phyllis B. Dolinko & Eileen Hurley  
Counsel for ERISA, Office of the Solicitor  
US Department of Labor  
230 S Dearborn, Suite 844  
Chicago IL 60604

*Atty for McKesson Information Solutions*  
Frank W. DeBorde  
Morris Manning & Martin  
1600 Atlanta Financial Center  
3343 Peachtree Road NE  
Atlanta GA 30326

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

---

**ORDER AUTHORIZING DEBTORS TO PAY DUE DILIGENCE FEES**

---

Intrepid U.S.A., Inc.'s and its affiliated entities' ("Debtors") motion seeking authority to pay due diligence fees to potential lenders for recapitalization or potential buyers for sale came before the undersigned United States Bankruptcy Judge on \_\_\_\_\_, 2004. Appearances, if any, are noted on the record.

Based upon the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised in the premises, and the Court's Findings of Facts and Conclusions of Law, if any, having been stated orally and recorded in an open court before the close of evidence:

**IT IS HEREBY ORDERED:**

1. The Debtors' Motion is granted.
2. Pursuant to 11 U.S.C. § 363(b)(1), Debtors are hereby authorized, in their discretion, to pay due diligence fees in the maximum total amount of \$500,000 to potential lenders for a recapitalization or potential buyers for a sale.
3. Debtors will disclose to the Official Committee of Unsecured Creditors ("Creditor's Committee") and Todd Garamella the amount and timing of payment of any due

diligence fee to a potential lender or buyer. Should the Creditor's Committee or Todd Garamella object to the payment of such a fee, the Debtors shall set the matter on for hearing.

Date: \_\_\_\_\_, 2004

---

The Honorable Nancy C. Dreher  
United States Bankruptcy Judge

#3018754\1