

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

IN RE:	:	CHAPTER 11
	:	
INTREPID USA, INC., and Jointly	:	CASE NO. 04-40416 (NCD)
Administered Cases,	:	04-40462 (NCD)
	:	04-40418 (NCD)
	:	04-41924 -- 04-41988 (NCD)
Debtors.	:	

**LIMITED OBJECTION OF DVI FINANCIAL SERVICES INC.,
DVI BUSINESS CREDIT CORP., DVI RECEIVABLES XIX, LLC, AND
DVI BUSINESS CREDIT RECEIVABLES CORP. III TO THE
DEBTOR’S MOTION FOR AUTHORITY TO PAY DUE DILIGENCE FEES TO
POTENTIAL LENDERS FOR RECAPITALIZATION OR BUYERS FOR SALE**

DVI Business Credit Corporation, DVI Financial Services Inc., DVI Business Credit Receivables Corp. III and DVI Receivables XIX, LLC (collectively “DVI”), through their undersigned counsel, respectfully submit this limited objection to the Debtors’ motion for authority to pay due diligence fees to potential lenders for recapitalization or buyers for sale (the “Motion”).

1. While DVI supports the Debtors’ efforts to conclude a sale or recapitalization that will result in a prompt exit from chapter 11, the relief requested in the Debtors’ Motion should be limited to the repayment of actual “due diligence” expenses in consideration of a commitment by a recapitalization lender or asset purchaser. In addition, the Debtors have excluded DVI from prior approval for the payment of the requested fee, even though they have given the Committee and the Debtors’ equity holder, Todd Garamella, the right to notice and the opportunity to object to the payment of the requested fee. Even though DVI’s interests in these cases are larger than both the Committee’s and Garamella’s interests and even though it is DVI’s cash collateral that

is used to pay these fees, the Debtors have excluded DVI from the approval process that they are proposing with respect to payment of the “due diligence fees”. For these reasons, the relief requested in the Motion should be tailored to insure that DVI receives prior notice of the payment of any approved out-of-pocket expenses and that the payments should only be authorized in exchange for a commitment by an asset purchaser or a recapitalization lender.

2. Through a series of pre-petition secured loans, DVI extended credit to the Debtors prior to the filing of these cases in excess of \$62 million. DVI’s security interests in substantially all of the Debtors’ assets were perfected prior to the filing of these chapter 11 proceedings.

3. On March 28, 2004, DVI, the Debtors, Garamella and the Committee entered into a stipulation that provides a framework for resolution of DVI’s claims and these chapter 11 cases. Under the stipulation, which was approved by both this Court and the United States Bankruptcy Court for the District of Delaware, DVI has agreed to accept a discounted payoff from the total amount of the Debtors’ actual obligations. However, in order to induce the Debtors to promptly exit chapter 11, the parties agreed that the settlement amount to be paid to DVI from the proceeds of an asset sale would increase \$1 million per month beginning October 1, 2004, to a maximum amount of \$53 million. As a result, as stated in the Debtors’ Motion, DVI, the Debtors, the Committee and Garamella have a strong incentive to pay the agreed settlement amount as quickly as possible.

4. While, by all accounts, the Debtors’ financial condition has improved since entering chapter 11, the Debtors have recited a number of issues that they contend need to be resolved before a plan of reorganization proposing either an asset sale or recapitalization of the Debtors’ businesses could be filed. As a result of these contentions, the Court granted the

Debtors' request for an extension of exclusivity through December 8, 2004. At the Court hearing the exclusivity motion, the Debtors' counsel explained that the Debtors intended to make a final decision between a recapitalization or a sale in either late September or early October.

5. The Debtors have advised DVI that they have received some expression of interest for both a recapitalization and an asset purchase, but that no decision has been made about the structure of the transaction. It now appears that a final decision as to the structure of the transaction will not be made until some time in November.

6. In the Motion, the Debtors request the authority to pay up to \$500,000 in "due diligence fees". Although not entirely clear from the Debtors' Motion, it appears that the Debtors are requesting blanket authority to simply pay the due diligence fees without any consideration in return from the proposed asset purchaser or recapitalization lender.

7. While DVI recognizes that any potential asset purchaser or recapitalization lender might request payment of expenses in order to proceed with due diligence, the payment of such expenses should be conditioned upon the issuance of a commitment from the asset purchaser or recapitalization lender. While such a commitment would include ordinary contingencies, the requirement for a commitment before the fees are paid would provide some assurance of a reasonable timetable to conclude these cases.

8. To allow the Debtors to pay the fee without anything in return will only serve to further delay the conclusion of these cases. Requiring the commitment in advance of payment of the expenses would provide some assurance to the Debtors that the potential buyer or lender is a bona fide participant in the transaction and that the terms of the proposed transaction are acceptable.

9. In addition to the foregoing, it is customary in sale transactions conducted under section 363 of the Bankruptcy Code to provide for expense reimbursement to a “stalking horse” bidder in the form of bidding protections in the sale as opposed to advance payment of “due diligence fees”. Thus, at a minimum, the Debtors should explore bidding protections to the prevailing stalking horse bidder in lieu of the out-of-pocket expense reimbursement they are requesting.

10. In addition to the foregoing, in their proposed order, the Debtors have indicated that they intend to provide only the Committee and Garamella with prior notice of any due diligence fee request. The Debtors’ deliberate exclusion of DVI from this notice is consistent with the Debtors’ continuing attempt to exclude DVI from the sale process. As noted above, DVI has the most substantial economic interest of any party in these cases. There is no justification for excluding DVI from the notice and objection procedure that the Debtors have proposed. Thus, in addition to requiring that the fees be paid in exchange for the issuance of a commitment, the Court should also direct that the Debtors provide prior notice of the payment of any such fees to DVI, in addition to the Committee and Garamella, and that any of these parties be given the opportunity to object to the payment of the fee prior to the time the fee is actually paid.

11. For these reasons, DVI requests that the Motion be granted, but that this limited objection be sustained so that the Debtors will be permitted to pay the fee upon the issuance of a commitment by an asset purchaser or recapitalization lender and that DVI be provided with advance notice and an opportunity to object, along with the Committee and Garamella.

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Date: October 18, 2004

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UNSWORN CERTIFICATE OF SERVICE

Susan Sjordahl, of the City of Minneapolis, County of Hennepin, in the State of Minnesota says that she is a secretary in the office of Maslon Edelman Borman & Brand, LLP, located at 3300 Wells Fargo Center, Minneapolis, Minnesota, and that on August 23, 2004, she made service of the following documents:

- 1 Limited Objection of DVI Financial Services Inc., DVI Business Credit Corp., DVI Receivables XIX, LLC, and DVI Business Credit Receivables Corp. III to the Debtor's Motion for Authority to Pay Due Diligence Fees to Potential Lenders for Recapitalization or Buyers for Sale; and
2. Certificate of Service.

upon the persons listed on the attached service list by transmitting the same via facsimile on October 18, 2004, at Minneapolis, Minnesota and addressed to said persons as indicated on the attached service list.

/e/ Susan Sjordahl
Susan Sjordahl

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