

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

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

Case # 04-40416-NCD
Case # 04-40462-NCD
Case # 04-40418-NCD
Cases 04-41924 through 04-41988-NCD

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS'
MOTION TO PAY DUE DILIGENCE FEES

COMES NOW the United States Trustee through his undersigned attorney, Michael R. Fadlovich, and does hereby object to the Motion by the above named Debtors for authority to pay up to \$500,000.00 in due diligence fees to potential lenders or potential buyers (Motion). In support of his objection, the United States Trustee states as follows:

1. A hearing has been scheduled in this matter on October 27, 2004, at 10:30 a.m. before the Honorable Nancy C. Dreher, U.S. Bankruptcy Judge, Courtroom No. 7 West, U.S. Bankruptcy Court, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

2. This objection arises under 11 U.S.C. § 363; FED. R. BANKR. P. 2002(c)(1), and Local Rule 2002-1. The United States Trustee has standing to object pursuant to 11 U.S.C. § 307 and 28 U.S.C. § 586(a)(3).

3. The above captioned cases were commenced under Chapter 11 on January 29, 2004, and April 12, 2004. The cases are now pending before this court.

4. The debtors seek authority to pay due diligence fees of up to \$500,000.00 to two types of entities. First, potential lenders for recapitalization related expenses and second to potential buyers for

their “due diligence” expenses. The Debtors’ motion indicates that an amount up to \$500,000.00 can be paid at the debtors’ discretion with disclosure only to the Official Creditors’ Committee and Todd Garamella.

OBJECTIONS

5. The U.S. Trustee objects to the Motion because there are no assurances that the sums paid will bear any relationship to the due diligence undertaken, either by potential lenders or potential buyers. Without full advanced disclosure of the identity of the recipient, the extent of due diligence undertaken and the amount paid in due diligence fees, the court should not approve the motion.

6. The U.S. Trustee further objects because there is no guarantee that if such fees are paid that the lender or buyer will actually come through and either make the loan or buy the assets. There may be more cost effective ways for the debtors to obtain a loan or buyer. For example, a “stalking horse” arrangement could be established with a potential buyer. Likewise, a potential lender should only be paid due diligence fees upon entering a letter of intent which fully discloses both loan terms and circumstances under which it will not be required to loan. Without assurances that the money will be well spent, the Debtors should not be given authority to make the payments.

7. The Debtors’ Motion states that “The Debtors have not yet received a demand for payment of a due diligence fee, but Debtors anticipate receiving such requests”. (Motion, p.4, ¶12). Either the Debtors have been asked to pay such a fee or they have not. Before the motion is granted, the Debtors should make a factual record supporting the need for the payment of such fees, including a description of any discussions with potential lenders or buyers.

8. The Motion provides that before the Debtors make payment of fees to lenders or buyers,

they will disclose that proposed payment to the Unsecured Creditors' Committee and Todd Garamella.

The Debtors should also be required to make advanced disclosure to other parties as well, including the U.S. Trustee, DVI, the CMS, etc. Any order approving payments should require advanced disclosure to all parties in interest.

9. Before the Motion is approved, it should be clear that payment of due diligence fees to prospective lenders or buyers will not go to insiders.

WHEREFORE, the United States Trustee objects to the motion by the Debtors for authority to pay up to \$500,000.00 in "due diligence" fees to prospective lenders or buyers. The U.S. Trustee requests that the Bankruptcy Court deny the motion until such time as the issues set forth above are resolved. The U.S. Trustee requests such further relief as may be just and equitable.

Dated: October 19, 2004

HABBO G. FOKKENA
United States Trustee
Region 12

s/Michael R. Fadlovich

Michael R. Fadlovich, Atty # 158410
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VERIFICATION

I, Michael R. Fadlovich, an attorney for the United States Trustee, do hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: October 19, 2004

s/Michael R. Fadlovich

Michael R. Fadlovich

CERTIFICATE OF SERVICE

In Re:)	
)	
Intrepid USA Inc)	Bankruptcy No. 04-40416
and Jointly Administered Cases)	04-40462
)	04-40418
)	Case Nos.04-41924-04-41988
Debtor(s).)	
)	Chapter 11 Case

I, Terri L. Frazer, declare under penalty of perjury that on October 20, 2004, I served a copy of the following United States Trustee's Objection to Debtors' Motion to Pay Due Diligence Fees by facsimile, and by mail, postage prepaid, to each person named below:

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Dated: 10-20-04

By: 
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

Intrepid, U.S.A., Inc.,
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Cases 04-41924 through 04-41988-NCD

ORDER

In Minneapolis, Minnesota, the _____ day of _____, 2004.

The Motion by the Debtors for authority to pay due diligence fees to prospective lenders or buyers came for hearing before the undersigned United States Bankruptcy Court. Michael R.

Fadlovich appeared for the United States Trustee. Other appearances were as noted in the record.

Based on the pleadings, the arguments of counsel, all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

That the Debtors' motion for authority to pay due diligence fees is denied.

The Honorable Nancy C. Dreher
United States Bankruptcy Court