



AMERICAN
BANKRUPTCY
INSTITUTE

2018 Mid-Atlantic Bankruptcy Workshop

Interactive Panel: Breaking Down the DIP Budget

Kimberly A. Brown, Moderator

Landis Rath & Cobb LLP; Wilmington, Del.

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Emerald Capital Advisors Corp.; New York

Hon. Stacey L. Meisel

U.S. Bankruptcy Court (D. N.J.); Newark

Richard Newman

Alvarez & Marsal; Chicago



Interactive Panel: Breaking Down the DIP Budget



Welcome & Introduction of Panelists

Moderator



Kimberly A. Brown
Landis Rath & Cobb, LLP
Wilmington, Delaware

Panelists



The Honorable Stacey L. Meisel
The United States Bankruptcy Court for the District of New Jersey
Newark, New Jersey



Rosa Evergreen
Arnold & Porter
Washington, D.C.



John Madden
Emerald Capital Advisors
New York, New York



Richard Newman
Alvarez & Marsal
Chicago, Illinois

1.

The Debtor's Ability to Borrow Money and/or Use Cash Collateral



COURT AUTHORIZATION TO BORROW MONEY AND/OR USE CASH COLLATERAL

- ✓ To obtain credit or use cash collateral, debtor must seek authority from the Bankruptcy Court via a motion, which must be accompanied by a proposed order and, if seeking approval of financing, a copy of the proposed credit agreement.
See Fed. R. Bankr. P. 4001 and 9014.
- ✓ The motion must contain a summary of all material provisions of the proposed credit agreement and/or use of cash collateral as spelled out in Bankruptcy Rule 4001, including but not limited to:
 - The purposes of the use of the borrowed cash or cash collateral;
 - Any liens, cash payments, or other adequate protection proposed to be provided; and
 - Any proposed waivers or modifications of code provisions or applicable rules relating to the automatic stay.
- ✓ Several jurisdictions have adopted corresponding Local Rules. *See, e.g., Del. Bankr. L.R. 4001-2; S.D.N.Y. Bankr. L.R. 4001-2; and D.N.J. Bankr. L.R. 4001-3.*



DELAWARE LOCAL RULE 4001-2

Motions. Except as provided in the Local Rules, all cash collateral and financing requests under Sections 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 4014 ("Financing Motions").

Provisions to be Highlighted. All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains certain specified provisions, (b) identify the location of any such provision in the proposed order and (c) justify the inclusion of such provision.

Non-Exhaustive List of Provisions to be Highlighted:

- Grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors;
- Bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor;
- Seek to waive, without notice, whatever rights the estate may have under Section 506(c);
- Grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under Sections 544, 545, 547, 548 and 549;
- Deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in Section. § 552(b);
- Provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out;
- Prime secured lien without the consent of that lienor; and
- Seek to affect the Court's power to consider the equities of the case under Section 552(b)(1).



DELAWARE LOCAL RULE 4001-2 (CONT.)

- ✓ All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under Sections 363 and 364).
- ✓ Interim Relief. When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief pending review by interested parties of the proposed financing arrangements. Such interim relief shall be only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court shall not approve interim financing orders that include any of the provisions previously identified in Local Rule 4001-2(a)(i)(A)-(F).
- ✓ Final Orders. A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001 and Local Rule 2002-1(b). Ordinarily, the final hearing shall be held at least seven (7) days following the organizational meeting of the creditors' committee contemplated by Section 1102.



NEW YORK LOCAL RULE 4001-2

Contents of Motions. Select provisions are added to the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B). These provisions should be prominently highlighted and easily identified in the motion; failure to do so may result in such provisions being denied by the Court.

Non-Exhaustive List of Provisions:

- The amount of cash collateral the party seeks to use or the amount of credit the party seeks to obtain;
- Material conditions to closing and borrowing, including budget provisions;
- Pricing and economic terms, including letter of credit fees, commitment fees and any other fees;
- Any effect on existing liens of the granting of collateral or adequate protection and any priority or superpriority provisions;
- Any carve-outs from liens or superpriority provisions;
- Any cross-collateralization provision or other provision that elevates prepetition debt;
- Any rollover provision;
- Provisions that would limit the Court's power or discretion in a material way, or would interfere with the exercise of the fiduciary duties or rights and powers, of the trustee, debtor, or a committee;
- Termination or default provisions;
- Any prepayment penalty or similar provision; and
- Provisions that require the debtor to pay an agent's or lender's expenses and attorney's fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee or, upon objection by either of the foregoing parties, the Court.



NEW YORK LOCAL RULE 4001-2 (CONT.)

Other Requirements Imposed by New York's Local Rules:

Disclosure of Efforts to Obtain Financing and Good Faith. A motion seeking authority to obtain credit must describe the efforts to obtain financing, the basis on which the debtor determined that the proposed financing is on the best terms available, and material facts bearing on whether the extension of credit is being extended in good faith.

Amount of Any Interim Relief. A motion that seeks emergency or interim relief before a final hearing under Bankruptcy Rule 4001(b)(2) or (c)(2) must describe the amount and purpose of funds sought to be used or borrowed on an emergency or interim basis and must set forth facts to support a finding that immediate or irreparable harm will be caused to the estate if immediate relief is not granted before the final hearing.

Adequacy of the Budget. If the debtor will be subject to a budget under a proposed cash collateral or financing order or agreement, the motion must include a statement by the debtor as to whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

Notice. Notice of a preliminary or final hearing must be given to the persons required by Bankruptcy Rules 4001(b)(3) and 4001(c)(3), as the case may be, the United States Trustee, and any other persons whose interests may be directly affected.

Presence at Hearing. Along with the debtor and any party objecting to the motion, unless the court directs otherwise, counsel for each proposed lender or its agent must be present at the hearing.



NEW JERSEY LOCAL RULE 4001-3

Contents of Motion for Use of Cash Collateral

- Include detailed 4 week cash flow budget for interim relief and detailed 12 week budget for final relief; and
- Summarize the following provisions, if applicable, and identify the location of each in any relevant document and the proposed order:
 - the amount of cash collateral sought to be used;
 - the adequate protection to be provided for the use of cash collateral; and
 - any of the provisions in subdivision (c) of the Local Rule (examples: termination and default provisions, elevation of prepetition debt, limitation or waiver of rights under Bankruptcy Code section 506(c), etc.)

Contents of Motion to Obtain Credit

- Include the following items:
 - a description of the efforts to obtain credit;
 - the facts demonstrating that the movant has obtained the best available terms for the proposed credit;
 - a detailed budget supporting the proposed credit; and
 - the facts demonstrating that the extension of credit is made in good faith.
- Summarize select provisions (as identified in the Federal Rules and Local Rules) and identify the location of each in any relevant document and in the proposed order (examples: the amount of credit sought, material conditions to closing, pricing and economic terms and fees, any rollup provisions, etc.).



BANKRUPTCY CODE SECTIONS 363 & 364

The Bankruptcy Code also sets forth certain permissions and limitations on obtaining credit and utilizing cash collateral. See 11 U.S.C. §§ 363 and 364.

Borrowing Under Bankruptcy Code Section 364

- ✓ This provisions provides in relevant part:
 - (a) may obtain unsecured credit in the ordinary course as an administrative expense;
 - (b) may obtain unsecured credit outside of ordinary course (with court approval) as an administrative expense;
 - (c) may obtain credit (with court approval) – where unsecured credit is not available – with priority over administrative expenses, secured by a lien on unencumbered property, or secured by a junior lien; and
 - (d)(1) may obtain credit secured by a senior or equal lien on property of the estate **that is subject to a lien only if** (A) the trustee is unable to obtain such credit otherwise and (B) there is adequate protection of the interest of the holder of the lien on property of the estate on which such senior or equal lien is proposed to be granted.
- ✓ A debtor's decision to enter into a postpetition lending facility under Section 364 is governed by the business judgment standard. See, e.g., *Trans World Airlines, Inc. v. Travelers Int'l AG* (*In re Trans World Airlines, Inc.*), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (noting that financing decisions under section 364 must reflect a debtor's business judgment).
- ✓ To determine whether the business judgment standard is met, a court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 234 (Bankr. D. Del. 2006).



BANKRUPTCY CODE SECTIONS 363 & 364 (CONT.)

Using Cash Collateral Under Bankruptcy Code Section 363

- ✓ A debtor's use of property of the estate, including cash collateral, is governed by Section 363, which provides, in pertinent part, as follows:
 - "If the business of the debtor is authorized to be operated under section ... 1108 ... of [the Bankruptcy Code] and unless the court orders otherwise, the [debtor] may ... use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).
- ✓ A debtor may use cash collateral (a) with the consent of the secured party or (b) without the consent of the secured party if the court, after notice and a hearing, authorizes the debtor to use cash collateral in accordance with the provisions of section 363. See 11 U.S.C. § 363(c)(2).
- ✓ Section 363 further provides that a debtor must "provide adequate protection" of the secured party's interest in the property against any diminution in value of such interest resulting from the debtor's use of the property. See 11 U.S.C. § 363(e).
- ✓ Notably, the Bankruptcy Code does not define "adequate protection." Instead, section 361 provides a non-exhaustive list of examples, including cash payments, additional or replacement liens and other relief that will "result in the realization by such [secured party] of the indubitable equivalent of such entity's interest in such property." See 11 U.S.C. § 361; see also *Resolution Tr. Corp. v. Swedeland Dev. Grp., Inc.* (*In re Swedeland Dev. Grp., Inc.*), 16 F.3d 552, 564 (3d Cir. 1994) ("The Code does not expressly define adequate protection, but section 361 states that it may be provided by (1) periodic cash payments; (2) additional or replacement liens; or (3) other relief resulting in the 'indubitable equivalent' of the secured creditor's interest in such property.").



SOME KEY TERMS & CONSIDERATIONS

- ✓ Term Sheet/Summary of Material terms: Sets forth key terms and typically attached to motion and/or in chart in the motion. Sample example in appendix.
- ✓ No Credit on More Favorable Terms: Debtor must satisfy section 364 in order to be able to borrow.
 - The debtor needs to be prepared to put on specific evidence that the borrowing is necessary and that it looked for financing on better terms but was unable to obtain it.
 - What constitutes sufficient "shopping around" for financing is determined on a case-by-case basis.
- ✓ "Priming Lien" under Section 364(d): This is the highest level of protection available to a DIP lender; it allows the DIP lender to obtain a lien senior in priority to prepetition lenders.
- ✓ Carve-Outs: A carve-out from the lender's lien and claims for the payment of professionals' fees.
- ✓ Debtor Stipulations: Provision where the debtor stipulates and waives certain rights, such as the right to contest the validity and perfection of the lenders' liens.
 - Typically these provisions are subject to the creditors' committee "challenge provisions." And if the committee does not bring a challenge within the specified time period (or obtain an extension of the time period), the debtor's admissions become findings and are no longer subject to challenge.



KEY TERMS & CONSIDERATIONS (CONT.)

- ✓ Budget for the DIP Facility. Most DIP orders have language providing that the DIP Budget is an integral part of the order. Some orders also provide that the DIP Budget can be modified without further order of the Court.
- ✓ Reporting Requirements. Most DIP orders have a provision about reporting.
 - When formulating reporting requirements, the lenders need to think about what information and format will best serve their monitoring purposes.
 - The debtor needs to think about whether it will be able to comply with what it is agreeing to, and how burdensome it will be.
 - Consolidated reporting sufficient? Reporting on an entity by entity basis? What can debtor actually produce?
- ✓ Budget Variances. As part of the lending arrangement, debtors typically are required to prepare and deliver to lenders variance and reconciliation reports. The amount of the "permitted variance" varies by case.
- ✓ Section 506(c) Surcharge. Under Section 506(c), a trustee or debtor "may recover from property securing an allowed claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim..."

2.

Background on
the DIP Budget



THE DIP BUDGET

- ✓ The DIP Budget is one of the first items a financial advisor prepares in a restructuring.
 - It is not a GAAP cash flow forecast, *e.g.*, income statement, balance sheet or statement of cash flows.
 - The forecast is based upon cash receipts and disbursements, not accruals.
- ✓ The DIP Budget helps Bankruptcy Advisors understand:
 - Financing needs for the Bankruptcy Case
 - Operational structure (core vs. non-core divisions, domestic vs. international operations, etc.)
 - Primary assets and collateral
 - Potential Cost Reductions



KEY ISSUES ON THE DIP BUDGET BY NON-DEBTOR CONSTITUENTS

DIP & First Lien Lenders

- ✓ Opportunity to earn fees and interest
- ✓ Potential to increase collateral position (if already a secured lender)
 - (examples: obtain new liens on percentage pledge of foreign stock and other unencumbered assets)
- ✓ Control case
 - (examples: by setting milestones tied to DIP Credit Agreement and/or utilizing budget termination default clauses.
- ✓ Weekly collateral reports
 - (Note: Revolving DIP Loans usually require a weekly borrowing base forecast)

Second Lien Lenders

- ✓ Loan to Own
 - (Note: DIP Budget can serve as the basis for sizing exit financing facility)



KEY ISSUES ON THE DIP BUDGET BY CONSTITUENTS (CONT.)

Official Committees

- ✓ Ensure sufficient professional fees
- ✓ Committee can track budget to actuals to determine how much excess cash might be available at case end to fund a plan and potentially fund a trust
- ✓ DIP Budgets forecast the "liquidity runway"
 - Sale process can be extended if budget forecasts enough liquidity or if Committee can identify "cushion" in the budget that might not materialize
 - Committee can use the DIP Budget to determine if it has a large enough "War Chest" to pursue litigation
 - Committee must review intercompany receipts and disbursements to ensure value is not flowing from the estate to non-debtor entities
 - Track whether the debtor is administratively insolvent.
(Note: this is extremely important for trade constituents to determine whether to continue to extend terms)

3.

Constructing
the DIP Budget



TIPS FOR SUCCESSFUL BUDGET CONSTRUCTION



- ✓ Build the DIP Budget conservatively
(the Company is heading into bankruptcy not launching an IPO)
- ✓ The goal is to UNDER promise and OVER deliver
- ✓ Do not take the Company's information at face value.

- The Company's books and records may be inadequate.
- It is the Budget Constructor's job to prove out all numbers. Check against historical trends for accuracy.
- Remain independent – do not drink the “kool-aid”.



INFORMATION NEEDED TO CONSTRUCT THE DIP BUDGET

- ✓ First Steps in gathering information
 - Talk with key management, including mid-level managers, who know the Company inside and out.
 - Review historical financials to understand where cash went and to gauge whether the business is seasonal.
 - Review Company's historical and current cash flow forecasts compared to actuals noting reasons for any “busts”.
- ✓ Analyze the Company's Receipts
 - Identify major sources of cash and separate into primary categories (i) by division, (ii) by type, (iii) by country, and (iv) by subsidiary.
 - Two approaches to forecast how much cash Company can receive:
 1. Accounts Receivable Aging (discount balances)
 2. Collections as a percentage of salesCompare results of AR aging method vs. collections as a percentage of sales.



INFORMATION NEEDED TO CONSTRUCT DIP BUDGET (CONT.)

- ✓ Analyze Cost of Goods Sold ("Cogs")
 - Identify major payments (examples: raw materials, critical vendors, contractual obligations, and special arrangements).
 - Obtain Accounts Payable run and compare against historical payments.
 - Work with HR or payroll clerk to understand timing of various benefits and other payroll related obligations.
 - Obtain forecast for rent, equipment leases and taxes.
 - Forecast professional fees for all to be paid as part of the bankruptcy case including those retained by the debtor, secured lenders, indenture trustees, and committee.
 - Account for all expected debt payments including principal, interest and fee payments on revolvers, term loans and bonds.
 - Forecast bankruptcy case related payments including UST Fees, first day relief, KEIP/KERPs, and adequate protection payments.



Example Budget Forecast: Identify the Issues

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Cash Receipts	\$ 67,688	\$ 65,595	\$ 69,356	\$ 69,934	\$ 70,071	\$ 68,648	\$ 71,469	\$ 67,655	\$ 63,967	\$ 62,290	\$ 57,424	\$ 53,188	\$ 56,880	\$ 844,164
Cash Disbursements														
Operating Disbursements	(64,069)	(65,884)	(70,737)	(81,033)	(75,613)	(60,445)	(59,053)	(63,508)	(78,381)	(67,482)	(62,423)	(65,977)	(65,453)	(880,059)
Payroll	-	-	(14,818)	-	-	-	(14,700)	-	-	-	(14,581)	-	-	(44,099)
Critical Vendor Payments	(600)	(600)	(600)	(600)	(600)	(600)	-	-	-	-	-	-	-	(3,600)
Foreign Vendor Payments	(283)	(283)	(283)	(283)	(283)	(283)	-	-	-	-	-	-	-	(1,700)
Utility Provider Payments	-	(900)	-	-	-	-	-	-	-	-	-	-	-	(900)
Intercompany Disbursements	-	-	-	(5,000)	-	-	-	(5,000)	-	-	-	(5,000)	-	(15,000)
Employee Bonuses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financing Disbursements	(4,019)	(336)	(313)	(311)	(1,071)	(314)	(305)	(287)	(274)	(2,606)	(264)	(260)	(262)	(10,622)
Professional Fees	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(13,000)
Total Cash Disbursements	(69,972)	(69,003)	(87,752)	(88,228)	(78,567)	(62,642)	(75,058)	(69,795)	(79,655)	(71,088)	(78,268)	(72,237)	(66,715)	(968,980)
Net Cash Flow Before Revolver	(2,284)	(3,408)	(18,396)	(18,294)	(8,497)	6,006	(3,589)	(2,140)	(15,688)	(8,799)	(20,844)	(19,049)	(9,835)	(124,815)
Prepetition Term Loan Paydown	(100,000)	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)
DIP Borrowing	100,000	120,000	-	-	-	-	-	-	-	-	-	-	-	220,000
Net Cash Flow	\$ (2,284)	\$ 116,592	\$ (18,396)	\$ (18,294)	\$ (8,497)	\$ 6,006	\$ (3,589)	\$ (2,140)	\$ (15,688)	\$ (8,799)	\$ (20,844)	\$ (19,049)	\$ (9,835)	\$ (4,815)
Beginning Book Available Cash	\$ 6,500	\$ 4,216	\$ 120,808	\$ 102,412	\$ 84,118	\$ 75,622	\$ 81,628	\$ 78,039	\$ 75,899	\$ 60,211	\$ 51,412	\$ 30,568	\$ 11,520	\$ 6,500
Net Cash Flow	(2,284)	116,592	(18,396)	(18,294)	(8,497)	6,006	(3,589)	(2,140)	(15,688)	(8,799)	(20,844)	(19,049)	(9,835)	(4,815)
Ending Book Available Cash	\$ 4,216	\$ 120,808	\$ 102,412	\$ 84,118	\$ 75,622	\$ 81,628	\$ 78,039	\$ 75,899	\$ 60,211	\$ 51,412	\$ 30,568	\$ 11,520	\$ 1,685	\$ 1,685

2018 MID-ATLANTIC BANKRUPTCY WORKSHOP

"BAD" ASSUMPTIONS IDENTIFIED

Collections: significantly higher than prior year's activity

	Prior Yr Same Qtr	"Good" Budget	"Bad" Budget
Collections	\$ 752,115	\$ 683,741	\$ 844,164
YoY Change		-9.1%	22.2%

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Cash Receipts	\$ 67,688	\$ 65,595	\$ 68,356	\$ 69,934	\$ 70,071	\$ 68,648	\$ 71,469	\$ 67,655	\$ 63,967	\$ 62,290	\$ 57,424	\$ 53,188	\$ 56,880	\$ 844,164
Cash Disbursements														
Operating Disbursements	(64,069)	(65,884)	(70,737)	(81,033)	(75,613)	(60,445)	(59,053)	(63,508)	(78,381)	(67,482)	(62,423)	(65,577)	(65,453)	(880,059)
Payroll	-	-	(14,818)	-	-	-	(14,700)	-	-	-	(14,581)	-	-	(44,099)
Critical Vendor Payments	(600)	(600)	(600)	(600)	(600)	(600)	-	-	-	-	-	-	-	(3,600)
Foreign Vendor Payments	(283)	(283)	(283)	(283)	(283)	(283)	-	-	-	-	-	-	-	(1,700)
Utility Provider Payments	-	(900)	-	-	-	-	-	-	-	-	-	-	-	(900)
Intercompany Disbursements	-	-	(5,000)	-	-	-	(5,000)	-	-	-	(5,000)	-	-	(15,000)
Employee Bonuses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financing Disbursements	(4,019)	(336)	(313)	(311)	(1,071)	(314)	(305)	(287)	(274)	(2,606)	(264)	(260)	(262)	(10,622)
Professional Fees	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(13,000)
Total Cash Disbursements	(69,972)	(69,033)	(87,752)	(88,220)	(78,567)	(62,642)	(75,058)	(69,795)	(79,655)	(73,088)	(78,268)	(72,237)	(66,715)	(968,980)
Net Cash Flow Before Revolver	(2,284)	(3,408)	(18,396)	(18,294)	(8,497)	6,006	(3,589)	(2,140)	(15,688)	(8,799)	(20,844)	(19,048)	(9,835)	(124,815)
Prepetition Term Loan Paydown	(100,000)	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)
DIP Borrowing	100,000	120,000	-	-	-	-	-	-	-	-	-	-	-	220,000
Net Cash Flow	\$ (2,284)	\$ 116,592	\$ (18,396)	\$ (18,294)	\$ (8,497)	\$ 6,006	\$ (3,589)	\$ (2,140)	\$ (15,688)	\$ (8,799)	\$ (20,844)	\$ (19,048)	\$ (9,835)	\$ (4,815)
Beginning Book Available Cash	\$ 6,500	\$ 4,216	\$ 120,808	\$ 102,412	\$ 84,118	\$ 75,622	\$ 81,628	\$ 78,039	\$ 75,899	\$ 60,211	\$ 51,412	\$ 30,568	\$ 11,520	\$ 6,500
Net Cash Flow	(2,284)	116,592	(18,396)	(18,294)	(8,497)	6,006	(3,589)	(2,140)	(15,688)	(8,799)	(20,844)	(19,048)	(9,835)	(4,815)
Ending Book Available Cash	\$ 4,216	\$ 120,808	\$ 102,412	\$ 84,118	\$ 75,622	\$ 81,628	\$ 78,039	\$ 75,899	\$ 60,211	\$ 51,412	\$ 30,568	\$ 11,520	\$ 6,500	\$ 1,685

Automatic Stay: no relief in payment levels from filing

Interim First Day Relief: does not tie to motions

Intercompany activity: interco. payments shown but no interco. receipts

Bonuses: one-time payment missing from forecast

Professional Fees: accrued weekly instead of showing actual cash outflow

Ending Cash: forecast ends with minimal remaining cash, despite upcoming large disbursements

CORRECTED DIP FORECAST

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Cash Receipts	\$ 47,285	\$ 53,766	\$ 56,849	\$ 57,323	\$ 57,435	\$ 56,269	\$ 58,581	\$ 55,455	\$ 52,432	\$ 51,057	\$ 47,069	\$ 43,597	\$ 46,623	\$ 683,741
Cash Disbursements														
Operating Disbursements	(34,069)	(35,884)	(59,947)	(68,672)	(64,079)	(51,224)	(50,045)	(53,820)	(66,425)	(57,188)	(52,901)	(55,913)	(55,469)	(705,636)
Payroll	-	-	(14,818)	-	-	-	(14,700)	-	-	-	(14,581)	-	-	(44,099)
Critical Vendor Payments	(500)	(500)	(500)	(500)	(500)	(500)	-	-	-	-	-	-	-	(3,000)
Foreign Vendor Payments	(333)	(333)	(333)	(333)	(333)	(333)	-	-	-	-	-	-	-	(2,000)
Utility Provider Payments	-	(1,000)	-	-	-	-	-	-	-	-	-	-	-	(1,000)
Intercompany Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Employee Bonuses	-	-	-	-	-	-	-	(10,000)	-	-	-	-	-	(10,000)
Financing Disbursements	(4,019)	(336)	(313)	(311)	(1,071)	(314)	(305)	(287)	(274)	(2,606)	(264)	(260)	(262)	(10,622)
Professional Fees	(3,000)	-	-	(1,250)	-	-	-	-	-	-	(6,130)	-	-	(10,380)
Total Cash Disbursements	(41,922)	(38,053)	(75,911)	(71,067)	(65,983)	(52,372)	(65,050)	(64,107)	(66,699)	(59,794)	(73,876)	(56,173)	(55,731)	(786,737)
Net Cash Flow Before Revolver	5,363	15,713	(19,062)	(13,744)	(8,548)	3,897	(6,469)	(8,652)	(14,267)	(8,737)	(26,807)	(12,576)	(9,108)	(102,996)
Prepetition Term Loan Paydown	(100,000)	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)
DIP Borrowing	100,000	120,000	-	-	-	-	-	-	-	-	-	-	-	220,000
Net Cash Flow	\$ 5,363	\$ 15,713	\$ (19,062)	\$ (13,744)	\$ 111,452	\$ 3,897	\$ (6,469)	\$ (8,652)	\$ (14,267)	\$ (8,737)	\$ (26,807)	\$ (12,576)	\$ (9,108)	\$ 17,004
Beginning Book Available Cash	\$ 17,500	\$ 22,863	\$ 38,577	\$ 19,514	\$ 5,771	\$ 117,223	\$ 121,120	\$ 114,651	\$ 105,999	\$ 91,732	\$ 82,995	\$ 56,188	\$ 43,612	\$ 17,500
Net Cash Flow	5,363	15,713	(19,062)	(13,744)	111,452	3,897	(6,469)	(8,652)	(14,267)	(8,737)	(26,807)	(12,576)	(9,108)	17,004
Ending Book Available Cash	\$ 22,863	\$ 38,577	\$ 19,514	\$ 5,771	\$ 117,223	\$ 121,120	\$ 114,651	\$ 105,999	\$ 91,732	\$ 82,995	\$ 56,188	\$ 43,612	\$ 34,504	\$ 34,504



ADDITIONAL DIP BUDGET CONSIDERATIONS



DIP Budget Pitfalls

- Communication Issues – Sometimes the Company, its Employees and the Company's bankruptcy professionals are not on the same page.
- Seasonality Issues.
- Overly Aggressive Sales forecasts.
- Intercompany Transactions.
- Inability to Achieve Cost Reductions.
- Timing Issues – Sales vs. Collections.
- Inadvertent miss of major expense items.



Avoiding DIP Budget Pitfalls

- Keep Communication Lines Open.
- Consider whether the proposed approach would have worked historically.
- Analyze whether the total receipts and disbursements seem unusual compared to historical trends.
- Ask yourself whether the pieces of information tell a different story.
- Confirm all numbers tie cell to cell, schedule to schedule, summary to summary, and to the motions for relief.
- Question whether anything seems too rosy.
- Consider major risks.



Questions & Comments



Appendix

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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
)	
NINE WEST HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 18-10947 (SCC)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING,
(B) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (C) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(D) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED
PARTIES, (E) MODIFYING THE AUTOMATIC STAY, (F) SCHEDULING A FINAL
HEARING, AND (G) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Nine West Holdings, Inc. (7645); Jasper Parent LLC (4157); Nine West Management Service LLC (4508); Kasper Group LLC (7906); Kasper U.S. Blocker LLC (2390); Nine West Apparel Holdings LLC (3348); Nine West Development LLC (2089); Nine West Distribution LLC (3029); Nine West Jeanswear Holding LLC (7263); One Jeanswear Group Inc. (0179); and US KIC Top Hat LLC (3076). The location of the Debtors' service address is: 1411 Broadway, New York, New York 10018.

will have the financing and runway necessary to reorganize around their healthy jeanswear, apparel, jewelry, and Anne Klein businesses.

11. For these reasons, and for the reasons set forth below, in the Kurtz Declaration, and in the First Day Declaration, the Debtors firmly believe that incurrence of the DIP Facilities will maximize value for the Debtors' stakeholders and represents an exercise of the Debtors' sound business judgment. Accordingly, the Debtors respectfully request that the Court approve the entry of the Interim Order and the Final Order.

Concise Statements Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2⁶

I. Concise Statement Regarding the ABL/FILO DIP Facility.

12. The below chart contains a summary of the material terms of the proposed ABL/FILO DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code/Local Rule	Summary of Material Terms⁷
Borrowers Bankruptcy Rule 4001(c)(1)(B)	Nine West Holdings, Inc., Kasper Group LLC, and One Jeanswear Group, Inc. <i>See</i> DIP ABL Agreement, Intro.
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Each Debtor other than the Borrowers. <i>See</i> DIP ABL Agreement, Schedule 1.2; Interim Order, Intro.
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	A syndicate of banks, financial institutions, and other entities arranged by Wells Fargo Bank, N.A. <i>See</i> DIP ABL Agreement, Intro.

⁶ This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, shall control.

⁷ Capitalized terms used but not otherwise defined in this chart shall have the meanings ascribed to them in the DIP ABL Agreement or Interim Order, as applicable.

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁷
Reporting Information Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The DIP Facilities include standard and customary conditions that require the Borrowers to provide periodic reports to the ABL DIP Lenders and their respective professionals regarding the Approved Budget, the status of these chapter 11 cases, and certain other matters. The failure of the Borrowers to comply with such reporting obligations will cause an Event of Default that may permit the DIP Agents to exercise remedies against the Borrowers, including terminating the DIP Facilities.</p> <p><i>See DIP ABL Agreement §§ 7.1, 7.2.</i></p>
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	<p>Prepetition Secured Parties</p> <p><i>See Interim Order ¶ I.</i></p>
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The earliest of (a) the Scheduled Termination Date, (b) the effective date of a Plan of Reorganization, (c) the date of termination of all of the Revolving Credit Commitments pursuant to Section 2.5, (d) the date on which the Obligations become due and payable pursuant to Section 10.3, (e) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code (it being understood that the Sale does not constitute a sale of all or substantially all of the Debtors' assets), (f) the date of conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the ABL/FILO DIP Agent, (g) the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered into and become effective prior thereto, and (h) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the ABL/FILO DIP Agent.</p> <p><i>See DIP ABL Agreement § 1.1.</i></p>
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	<p><u>Prepetition ABL/FILO Adequate Protection Claim.</u> The Prepetition ABL/FILO Secured Parties are entitled pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition ABL/FILO Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition ABL/FILO Liens by the DIP Liens pursuant to the DIP Documents and the Interim Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "<u>Prepetition ABL/FILO Adequate Protection Claim</u>"); <i>provided</i> that the avoidance of any Prepetition ABL/FILO Secured Party's interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition ABL/FILO Secured Party's interests in Prepetition Collateral.</p> <p><u>Prepetition ABL/FILO Adequate Protection Liens.</u> Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL/FILO Secured Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL/FILO Agent (for itself and for the benefit of the Prepetition ABL/FILO Secured Parties) is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition ABL/FILO Adequate Protection Claim, a continuing, binding, enforceable, valid, perfected, replacement security interest in and lien (the "<u>Prepetition ABL Adequate Protection Liens</u>") (subject</p>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁷
	<p>to the limitations set forth above) upon the Collateral (it being understood that, subject to and effective upon entry of the Final Order, the Adequate Protection Liens (as defined herein) shall attach to Avoidance Proceeds on an equal and ratable basis), subject subordinate only to (i) in the case the Prepetition ABL/FILO Priority Collateral, the ABL/FILO DIP Liens (and any liens to which the ABL/FILO DIP Liens are junior), (ii) in the case of the Prepetition Secured Term Loan Priority Collateral, Term DIP Liens (and any liens to which the Term DIP Liens are junior), and the Prepetition Secured Term Loan Adequate Protection Liens, and (iii) the Carve Out.</p> <p><u>Prepetition ABL/FILO Section 507(b) Claim.</u> The Prepetition ABL/FILO Secured Parties are hereby granted an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL/FILO Adequate Protection Claim with, except as set forth in the Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “<u>Prepetition ABL/FILO 507(b) Claim</u>”), which Prepetition ABL/FILO 507(b) Claim shall be payable from and have recourse to all prepetition and postpetition property of the DIP Loan Parties and all proceeds thereof (excluding Avoidance Actions but including, without limitation, subject to upon entry of the Final Order, the Avoidance Proceeds). The Prepetition ABL/FILO 507(b) Claim shall be subject and subordinate only to the Carve Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be <i>pari passu</i> with the Prepetition Secured Term Loan 507(b) Claim (as defined below). Except to the extent expressly set forth in the Interim Order or the DIP Agreements, the Prepetition ABL/FILO Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition ABL/FILO 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or <i>pari passu</i> with the DIP Superpriority Claims have indefeasibly been paid in cash in full and all Commitments (as defined in the DIP Agreements) have been terminated.</p> <p><u>Prepetition ABL/FILO Adequate Protection Payments.</u> Subject to the Carve Out as set forth in the Interim Order, as further adequate protection, the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL/FILO Secured Parties in the form of payment in cash of solely to the extent that any Prepetition ABL/FILO Debt remains outstanding after entry of the Interim Order, interest (at the default rate) and principal due under the Prepetition ABL/FILO Documents, subject to the rights preserved in the Interim Order (the “<u>Prepetition ABL/FILO Adequate Protection Payments</u>”).</p> <p><u>Prepetition ABL/FILO Agent’s Fees and Expenses.</u> Subject to the Carve Out as set forth in the Interim Order, as further adequate protection, the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL/FILO Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) immediately upon entry of the Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of Morgan, Lewis & Bockius LLP and Greenberg Traurig, LLP, and other financial advisors, auditors, third-party consultants, and other vendors as provided in the Prepetition ABL/FILO Credit Agreement) incurred by the Prepetition ABL/FILO Agent arising prior to the Petition Date, and (ii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of Morgan, Lewis & Bockius LLP and Greenberg Traurig, LLP, and other financial advisors, auditors, third-party consultants, and other vendors as provided in the Prepetition ABL/FILO Credit Agreement) incurred by the</p>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁷
	<p>Prepetition ABL/FILO Agent arising subsequent to the Petition Date (collectively, the “<u>ABL/FILO Adequate Protection Fees and Expenses</u>”)</p> <p><u>Prepetition ABL/FILO Indemnity Reserve.</u> Upon entry of Interim Order, the Debtors are further authorized to pay to the Prepetition ABL/FILO Agent, for the benefit of the Prepetition ABL/FILO Secured Parties, \$500,000 into a non-interest bearing account maintained at Wells Fargo (the “<u>Prepetition ABL Indemnity Reserve</u>”) to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition ABL/FILO Documents (the “<u>Prepetition ABL Indemnity Obligations</u>”). The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) incurred by the Prepetition ABL/FILO Agent and the Prepetition ABL/FILO Lenders in connection with or responding to any Challenge Proceeding (as defined in the Interim Order) against the Prepetition ABL/FILO Agent or Prepetition ABL/FILO Lenders related to the Prepetition ABL/FILO Documents, the Prepetition ABL/FILO Debt, or the Prepetition ABL/FILO Liens granted to the Prepetition ABL/FILO Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. The Prepetition ABL Indemnity Obligations shall be secured by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral (subject in all respects to the Prepetition ABL/TL ICA). The Prepetition ABL/FILO Agent may apply amounts in the Prepetition ABL Indemnity Reserve against the Prepetition ABL Indemnity Obligations as and when they arise, without further notice to or consent from the Debtors, a Creditors’ Committee (if appointed), or any other parties in interest and without further order of this Court. Until the expiration of the Challenge Period (as defined in the Interim Order) without the commencement of a Challenge Proceeding, the Prepetition ABL/FILO Agent (for itself and on behalf of the Prepetition ABL/FILO Secured Parties) shall retain and maintain the Prepetition ABL/FILO Liens granted to the Prepetition ABL/FILO Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve; provided that (i) any such indemnification claims shall be subject to the terms of the Prepetition ABL/FILO Documents (including with respect to application of proceeds), (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are reserved in accordance with the Interim Order, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition ABL Indemnity Reserve shall be subject to the DIP ABL Liens and the Adequate Protection Liens, subject to the priority set forth in the Interim Order. The Prepetition ABL Indemnity Reserve shall be released and the funds applied in accordance with the Interim Order upon the earlier to occur of (a) receipt by the Prepetition ABL/FILO Agent and the Prepetition ABL Lenders of releases and discharges of claims and liabilities in form and substance satisfactory to the Prepetition ABL/FILO Agent and each of the Prepetition ABL Lenders in their sole discretion and (b) the ABL/FILO Satisfaction Date. Until then, subject to the terms and conditions contained in Interim Order (including, without limitation, the DIP Liens (as defined in the Interim Order) granted hereunder and the Carve Out (as defined in the Interim Order)), the Prepetition ABL/FILO Liens shall (a) continue to secure the unpaid portion of any Prepetition ABL/FILO Debt (including, without limitation, any Prepetition ABL/FILO Debt subsequently reinstated after the repayment thereof because such payment (or any portion thereof) is required to be returned or repaid to the DIP Loan Parties or the ABL/FILO DIP Lenders and the liens securing the Prepetition ABL/FILO Debt shall not have been avoided) and (b) be junior and subordinate in all respects to the Carve Out and the ABL/FILO DIP Liens.</p>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁷
	<p><u>Prepetition Secured Term Loan Parties Adequate Protection Claim.</u> The Prepetition Secured Term Loan Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Term Loan Parties' interests in the Prepetition Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition Secured Term Liens by the DIP Liens pursuant to the DIP Documents and the Interim Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, (the "<u>Prepetition Secured Term Loan Parties Adequate Protection Claim</u>") and together with the Prepetition ABL/FILO Adequate Protection Claim, the "<u>Adequate Protection Claims</u>"; <i>provided</i>, that the avoidance of any Prepetition Secured Term Loan Party's interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Secured Term Loan Party's interests in Prepetition Collateral.</p> <p><u>Prepetition Secured Term Loan Adequate Protection Liens.</u> Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Secured Term Loan Agent (for itself and for the benefit of the Prepetition Secured Term Loan Lenders) is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Secured Term Loan Parties Adequate Protection Claim, a continuing, binding, enforceable, valid, perfected replacement security interest in and lien (the "<u>Prepetition Secured Term Loan Adequate Protection Liens</u>" and together with the Prepetition ABL/FILO Adequate Protection Liens, the "<u>Adequate Protection Liens</u>") (subject to the limitations set forth above) upon the Collateral (it being understood that, subject to and effective upon entry of the Final Order, Adequate Protection Liens shall attach to Avoidance Proceeds on an equal and ratable basis) subject and subordinate only to (i) in the case of the Prepetition ABL/FILO Priority Collateral, the DIP Liens and any liens to which the DIP Liens are junior, the Prepetition ABL/FILO Adequate Protection Liens, (ii) in the case of the Prepetition Secured Term Loan Priority Collateral, the Term DIP Liens and any liens to which the Term DIP Liens are junior, and (iii) the Carve Out.</p> <p><u>Prepetition Secured Term Loan Parties Section 507(b) Claim.</u> The Prepetition Secured Term Loan Parties are hereby granted, subject to the Carve Out, an allowed superpriority claim as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims (the "<u>Prepetition Secured Term Loan 507(b) Claim</u>") and, together with the Prepetition ABL/FILO 507(b) Claim, the "<u>507(b) Claims</u>"). The Prepetition Secured Term Loan 507(b) Claim shall be payable from and have recourse to all prepetition and postpetition property of the DIP Loan Parties and all proceeds thereof (excluding Avoidance Actions but including, upon entry of the Final Order, the Avoidance Proceeds). The Prepetition Secured Term Loan 507(b) Claim shall be subject and subordinate to only the Carve Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be <i>pari passu</i> with the Prepetition ABL/FILO 507(b) Claim. Except to the extent expressly set forth in Interim Order or the DIP Agreements, the Prepetition Secured Term Loan Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Secured Term Loan 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority</p>

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	<p>superior to or <i>pari passu</i> with the DIP Superpriority Claims have indefeasibly been paid in cash and the Commitments have been terminated.</p> <p><u>Prepetition Secured Term Loan Parties Fees and Expenses.</u> The Prepetition Secured Term Loan Agent shall receive from the DIP Loan Parties, for the benefit of the Prepetition Secured Term Loan Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses payable to the Prepetition Secured Term Loan Parties under the Prepetition Secured Term Loan Documents, including reasonable and documented prepetition and postpetition fees and expenses payable to Davis Polk & Wardwell LLP, Ducera Partners LLC, King & Spalding LLP, Guggenheim Securities, LLC, and such other advisors as may be reasonably consented to by the Debtors, which payments shall be made in the manner provided for in the Interim Order (together with the ABL/FILO Adequate Protection Fees and Expenses, the “<u>Adequate Protection Fees and Expenses</u>”).</p> <p><u>Adequate Protection Payments.</u> (i) The Prepetition Secured Term Loan Agent, on behalf of the Prepetition Secured Term Loan Lenders, shall receive from the Prepetition Secured Term Borrower monthly adequate protection cash payments (the “<u>Adequate Protection Payments</u>”) payable on the first business day of each month equal to the interest at the non-default rate that would otherwise be owed to the Prepetition Secured Term Loan Lenders under the Prepetition Secured Term Loan Credit Agreement during such monthly period (and without giving effect to any right of the Debtors to convert such loans from one Type (as defined in the Prepetition Secured Term Loan Credit Agreement) to another Type) (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Prepetition Secured Term Loan Credit Agreement). Each Adequate Protection Payment shall be without prejudice, and with a full reservation of rights, as to whether such payment should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments under the Prepetition Secured Term Loan Credit Agreement (whether as principal, interest or otherwise). The Prepetition Secured Term Loan Agent and the Prepetition Secured Term Loan Lenders reserve all rights to assert claims for payment of additional interest calculated at any applicable rate, whether as adequate protection or otherwise; and</p> <p>(ii) The Prepetition Secured Term Loan Agent, on behalf of the Prepetition Secured Term Loan Lenders, shall receive from the Prepetition Secured Term Borrower cash payments in an amount equal to the amount of the net cash proceeds received by the Debtors of the sale of any Prepetition Secured Term Loan Priority Collateral (including, for the avoidance of doubt, net cash proceeds from the 363 Sale (as such term is defined in the Term DIP Credit Agreement)), payable immediately upon receipt of such proceeds.</p> <p>See Interim Order ¶¶ 15–16.</p>
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	<p>Upon the occurrence and continuation of an Event of Default (each, a <u>DIP Termination Event</u>) and after five (5) business days from written notice of an Event of Default is delivered, the applicable DIP Secured Parties shall be entitled to exercise their rights and remedies, subject to the Prepetition ABL/TL ICA and in accordance with the respective DIP Documents and the Interim Order, to satisfy the relevant DIP Obligations, DIP Superpriority Claims, and DIP Liens, subject to the Carve Out.</p> <p>See Interim Order ¶ 10(e).</p>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁷
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(f)	<p>The Interim Order provides a “Carve Out” of certain statutory fees, allowed professional fees of the Debtors, and any official committee of unsecured creditors appointed under section 1102 of the Bankruptcy Code (the “<u>Creditor’s Committee</u>”) appointed in the chapter 11 cases pursuant to section 1103 of the Bankruptcy Code, including a Post-Carve Out Trigger Notice Cap, all as detailed in the Interim Order.</p> <p><i>See Interim Order ¶ 40.</i></p>
506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-2(a)(i)(C)	<p>Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Term DIP Agent (acting at the direction of the Required Lenders (as defined in the Term DIP Credit Agreement)) and the ABL/FILO DIP Agent, the Prepetition ABL/FILO Agent (prior to the ABL/FILO Satisfaction Date), or the Prepetition Secured Term Loan Agent, as the case may be, that holds a lien on the relevant asset, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition ABL/FILO Agent or the Prepetition Secured Term Loan Agent, and nothing contained in Interim Order shall be deemed to be a consent by the DIP Agents, the DIP Lenders or the Prepetition Secured Parties to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.</p> <p><i>See Interim Order ¶ 11.</i></p>
Section 552(b) Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(h)	<p>Subject only to and effective upon entry of the Final Order, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.</p> <p><i>See Interim Order ¶ 10(f).</i></p>
Commitments Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The ABL/FILO DIP Facility commitments total \$247,523,512.50 in the aggregate, consisting of (a) the Revolving Credit Commitment of \$225,000,000.00, and (b) the FILO Commitment of \$22,523,512.50.</p> <p><i>See DIP ABL Agreement § 1.1; Interim Order ¶ 2(a).</i></p>
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>Loans will bear interest, at the option of the Borrower, at one of the following rates:</p> <ul style="list-style-type: none"> • if a Revolving Loan is a Base Rate Loan, the Base Rate plus 2.50%; • if a Revolving Loan that is a Eurodollar Rate Loan, the Eurodollar Rate plus 3.50%; or • if the FILO Loan, the greater of (A) the Eurodollar Rate and (B) 1.0%, plus 9.30%. <p><u>Default Rate:</u> (a) with respect to the outstanding principal amount of any Loan (other than the FILO Loan), an interest rate equal to the sum of (i) the interest rate otherwise applicable to such Loan plus (ii) the Applicable Margin applicable to Base Rate Loans, plus, (iii) 2.00% per annum, (b) with respect to any Letter of Credit Fees, 2.00% per annum in excess of the Letter of Credit Fees otherwise payable, and (c) with respect to the outstanding principal amount of the FILO Loan, an interest rate equal to the FILO Loan Interest Rate plus two percent (2.00%) per annum, in each case, to the fullest extent permitted by applicable Laws.</p>

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	<i>See DIP ABL Agreement §§ 1.1, 2.10</i>
Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001- 2(a)(ii)	<p>Achieve each of the following milestones, in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the Administrative Agent and the FILO Agent in all respects.</p> <ul style="list-style-type: none"> • On the Petition Date, the Debtors shall file a motion seeking to reject all leases relating to all of the Debtors' retail Stores. • Within two (2) days of the Petition Date, the Debtors shall file a motion seeking approval of the Facility. • On or before four (4) Business Days after the Petition Date, the Interim Order shall have been entered by the Court. • Within ten (10) days of the Petition Date, the Debtors shall have filed a motion requesting, and within forty-five (45) days after the Petition Date shall have obtained, an order of the Court extending the lease assumption/rejection period for the Material Properties, such that the lease assumption/rejection period for the Material Properties shall be 210 days. • On or before forty-five (45) days after the Petition Date, the Final Order authorizing and approving the Agreement and the Facility on a final basis shall have been entered by the Court. • On or before fourteen (14) days after the Petition Date, the Debtors shall have filed a Chapter 11 plan of reorganization and a disclosure statement relating to such plan of reorganization, which plan shall be consistent with the Restructuring Support Agreement, such plan shall provide for indefeasible payment in full in cash of the Obligations, the Pre-Petition Obligations, and the Administrative Agent and the FILO Agent shall be reasonably satisfied that such plan will become effective on or prior to the Outside Date (defined below) (any such Chapter 11 plan satisfying the foregoing, an "<u>Acceptable Plan</u>"). • On or before seventy (75) days after the Petition Date, the Debtors shall have obtained an order from the Court approving the disclosure statement and voting and solicitation procedures for an Acceptable Plan; provided that, so long as the Extension Condition continues to be satisfied, the date set forth in this clause shall be ninety-eight (98) days after the Petition Date. • On or before the date that is forty (40) days prior to the Outside Date, the Debtors shall have submitted to the Court a supplement to the Acceptable Plan providing for a committed financing acceptable to the Administrative Agent and the FILO Agent and which shall provide, among other things, for indefeasible payment in full in cash of the Obligations, the Pre-Petition Obligations, the obligations under the Pre-Petition Term Loan Facility and the obligations under the Term DIP Facility, in each case, on or prior to the Outside Date. • On or before one hundred and five (105) days after the Petition Date, the Debtors shall have obtained an order from the Court confirming an Acceptable Plan; <i>provided</i> that, so long as the Extension Condition continues to be satisfied, the date

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	<p>set forth in this clause shall be one hundred thirty-five (135) days after the Petition Date.</p> <ul style="list-style-type: none"> On or before one hundred and fifteen (115) days after the Petition Date, the effective date of the Acceptable Plan shall have occurred in accordance with its terms, and the Debtors shall have emerged from Chapter 11; provided that, so long as the Extension Condition continues to be satisfied, the date set forth in this clause shall be one hundred fifty (150) days after the Petition Date (the date applicable under this clause referred to as the “<u>Outside Date</u>”). On the Petition Date, the Debtors shall file (x) a motion to approve a sale of substantially all of the Debtors’ assets relating to the wholesale footwear division of the Company (the “<u>Sale</u>”) pursuant to Section 363 of the Bankruptcy Code (the “<u>Sale Motion</u>”), and (y) a stalking horse bid from a bidder reasonably acceptable to the Administrative Agent and the FILO Agent with respect to the Sale. The terms of such Sale Motion and related bidding procedures shall be in form and substance reasonably acceptable to the Administrative Agent and the FILO Agent. On or before forty-five (45) days after the Petition Date, the Court shall have entered an order approving the bidding procedures for the Sale. On or before June 21, 2018, an auction among all qualified bidders shall be conducted with the highest or otherwise best bid or combination of bids being selected, in consultation with the Administrative Agent and the FILO Agent, and the terms and conditions of the Sale, including with respect to ongoing license arrangements, shall be reasonably acceptable to the Administrative Agent and the FILO Agent. On or before June 29, 2018, the Court shall have entered an order approving the Sale. On or before July 13, 2018, the Debtors shall have consummated the Sale. <p><i>See DIP ABL Agreement, Sch. 8.17.</i></p>
Challenge Period Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	<p>The Challenge Period is the later of (x) 75 days after entry of the Interim Order, and (y) 60 days after the appointment of the Creditor’s Committee.</p> <p><i>See Interim Order ¶ 25(a).</i></p>
Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-2(a)(ii)	<p>Subject to the terms and conditions contained in the Interim Order and the DIP Loan Documents, the Loan Parties and their Subsidiaries shall, in each case only in compliance with the Approved Budget and each Loan Document, use the proceeds of the ABL/FILO DIP Facility:</p> <ul style="list-style-type: none"> to refinance the Prepetition ABL/FILO Debt; for working capital; for general corporate purposes; to pay obligations arising from or related to the Carve Out; and to pay interest, fees, and expenses in accordance with the Interim Order; <p><i>See DIP ABL Agreement § 8.9; Interim Order ¶ 2(a).</i></p>

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<p>Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)</p> <p>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)</p>	<p><u>Debtors' Stipulations.</u> After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders' and Prepetition Secured Term Loan Lenders' claims and liens.</p> <p>See Interim Order ¶ F.</p>
<p>Repayment Features Local Rule 4001-2(a)(i)(E)</p>	<p><u>Refinancing.</u> Refinancing of all Prepetition ABL/FILO Debt.</p> <p><u>Scheduled Payments.</u> The Borrowers shall repay the aggregate unpaid principal amount of the Revolving Loans on the Termination Date. The Borrowers shall repay the aggregate unpaid principal amount of the FILO Loan outstanding along with accrued and unpaid interest and all other Obligations outstanding with respect to the FILO Loan on the Termination Date.</p> <p><u>Commitment Reduction.</u> The Borrowers may, upon three (3) Business Days' notice to the Administrative Agent, terminate in whole or in part ratably the unused portions of the Revolving Credit Commitments of the Revolving Credit Lenders, <i>provided</i> that each partial reduction shall be in an aggregate amount no less than \$1,000,000 or an integral multiple of \$500,000 in excess thereof. In addition (i) on the third (3rd) Business Day following the consummation of the Sale, the Revolving Credit Commitments shall automatically reduce, without premium or penalty other than any amount required to be paid by the Borrowers pursuant to Section 3.5, to an amount equal to \$185.0 million, and (ii) on or before the ninetieth (90th) day following the consummation of the Sale, the Revolving credit Commitments shall automatically reduce, without premium or penalty other than any amount required to be paid by the Borrowers pursuant to Section 3.5, to an amount equal to \$150.0 million.</p> <p><u>Optional Prepayments.</u> The Borrowers may at any time prepay the outstanding principal amount of the Revolving Loans in whole or in part at any time. The Borrowers may, upon notice, prepay the FILO Loan in whole or in part if at the time of such prepayment, no Revolving Loans are outstanding and all outstanding Letters of Credit have been Cash Collateralized.</p> <p><u>Mandatory Prepayments.</u> If for any reason the sum of Revolving Credit Outstandings, plus the aggregate outstanding amount of Pre-Petition Credit Extensions (other than the Pre-Petition FILO Loan) (if the refinancing of the Prepetition ABL Obligations (as defined herein) is not authorized by the Interim Order) at any time exceed the Revolving Maximum Credit, then mandatory prepayment of Pre-Petition Loans (other than Pre-Petition FILO Loan) and the Revolving Loans in an amount equal to such excess, and if any such excess remains after repayment in full of the aggregate outstanding Pre-Petition Loans (if the refinancing of the Prepetition ABL Obligations is not authorized by the Interim Order) and Revolving Loans, the Borrowers shall Cash Collateralize the Letter of Credit Obligations in the manner set forth in <i>Section 10.5</i> in an amount equal to 105%</p>

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	<p>of such excess (or, with respect to Letters of Credit denominated in a currency other than Dollars, 115% of such excess).</p> <p><i>See DIP ABL Agreement §§ 2.5, 2.6–2.9; Interim Order ¶ 5.</i></p>
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p><u>Unused Commitment Fee:</u> The Borrowers agree to pay in Same Day Funds in Dollars to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee (the “<u>Unused Commitment Fee</u>”) on the average daily amount by which the Revolving Credit Commitment of such Revolving Credit Lender exceeds such Revolving Credit Lender’s Ratable Portion of the sum of (i) the aggregate outstanding principal amount of Revolving Loans and (ii) the outstanding amount of the aggregate Letter of Credit Undrawn Amounts from the Closing Date through the Termination Date at 0.50% per annum, payable in arrears (x) on the first day of each calendar month, commencing on the first such day following the Closing Date and (y) on the Termination Date.</p> <p><u>Letter of Credit Fees:</u> The Borrowers shall pay (a) the Administrative Agent, (x) for the account of each Issuer of Letter of Credit, a fee equal to 0.125% per annum of the average daily maximum undrawn Stated Amount of such Letter of Credit, and (y) for the ratable benefit of the Revolving Credit Lenders, with respect to each letter of Credit, a fee accruing at 3.50% per annum, and (b) the Issuer of any Letter of Credit, customary commissions, fees, and charges with respect to the issuance, amendment, renewal, cancellation or transfer of each letter of Credit and each drawing made thereunder.</p> <p>Other fees specified in Fee Letter.</p> <p><i>See DIP ABL Agreement § 2.12.</i></p>
Budget Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The Approved Budget is attached as <u>Schedule 1</u> to the Interim Order. The Approved Budget is provided for informational purposes only and the provision of the Budget does not imply a budget compliance covenant.</p> <p><i>See DIP ABL Agreement §§ 5.25, 7.2; Interim Order ¶ 17.</i></p>
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>A weekly report provided by the Borrowers to the Administrative Agent (i) showing, in each case, by line item the Actual Cash Receipts, the Actual Disbursement Amount, the Actual Net Operating Cash Flow Amount, the Actual Net Cash Flow Amount, and the Actual Prepetition Relief Amount, Excess Availability and total available liquidity for the last day of the Prior Week and the Cumulative Four-Week Period (or, solely in the case of the Actual Prepetition Relief Amount, for the Cumulative Period), noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrowers. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Administrative Agent and the FILO Agent in their reasonable discretion.</p> <p><i>See DIP ABL Agreement § 1.1.</i></p>
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(ii)	<p><u>ABL/FILO DIP Liens.</u> As security for the ABL/FILO DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the ABL/FILO DIP Agent, for its own benefit and the benefit of the ABL/FILO DIP Lenders, are granted pursuant to the Interim Order, as of the Commencement Date, continuing, valid, binding, enforceable, non-</p>

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	<p>avoidable, and automatically and properly perfected security interests in and liens, in and upon all ABL/FILO DIP Collateral, subject only to the Carve Out:</p> <ul style="list-style-type: none"> • <u>Liens On Unencumbered Property.</u> Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority senior security interest in and lien upon all prepetition and postpetition property of the ABL/FILO DIP Loan Parties of the same nature, scope and type as the Prepetition ABL/FILO Priority Collateral, and (B) junior security interest in and lien upon all prepetition and postpetition property of the ABL/FILO DIP Loan Parties of the same nature, scope and type as the Prepetition Secured Term Loan Priority Collateral, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien, in each case other than: (i) the Excluded Assets (as defined in the DIP Documents), but including the proceeds of Excluded Assets that do not otherwise constitute Excluded Assets; and (ii) the Avoidance Actions, but subject to the Carve Out and effective only upon entry of the Final Order, Avoidance Proceeds; • <u>Liens Priming Certain Prepetition Secured Parties' Liens.</u> Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all prepetition and postpetition property of the ABL/FILO DIP Loan Parties of the same nature, scope and type as the Prepetition ABL/FILO Priority Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which shall prime the Prepetition ABL/FILO Liens and the Prepetition Secured Term Liens (the "<u>ABL/FILO DIP Priming Liens</u>"). Notwithstanding anything in the Interim Order to the contrary, the ABL/FILO DIP Priming Liens shall be (i) subject and junior to the Carve Out in all respects, (ii) junior to the Prepetition ABL/FILO Permitted Prior Liens, (iii) senior in all respects to the Prepetition ABL/FILO Liens, and (iv) senior to the Prepetition ABL/FILO Adequate Protection Liens. The Prepetition ABL/FILO Liens and the Prepetition Secured Term Liens shall be primed by and made subject and subordinate to the Carve Out and the ABL/FILO DIP Priming Liens on ABL Priority Collateral, but the ABL/FILO DIP Priming Liens shall not prime the Prepetition ABL/FILO Permitted Prior Liens; and • <u>Liens Junior to Certain Other Liens.</u> Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to the Carve Out, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all prepetition and postpetition property of the ABL/FILO DIP Loan Parties of the same nature, scope and type as the Prepetition Secured Term Loan Priority Collateral. <p>See Interim Order ¶ 8(a).</p>
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(D)	<p>Subject to entry of the Final Order, all proceeds of any property recovered as a result of transfers or obligations avoided or actions maintained or taken Chapter 5 of the Bankruptcy Code.</p> <p>See Interim Order ¶ 8.</p>
Events of Default Bankruptcy Rule 4001(c)(1)(B)	<p>Usual and customary for financings of this type.</p> <p>See DIP ABL Agreement § 10.1.</p>

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Local Rule 4001-2(a)(ii)	
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Loan Documents and Interim Order contain indemnification provisions ordinary and customary for debtor-in-possession financings of this type by the Borrower and each Guarantor (jointly and severally) in favor of the Administrative Agent, the FILO Agent, each DIP Lender and each of their respective affiliates and the respective officers, directors, employees, agents, advisors, attorneys and representatives of each of them, subject to customary carveouts. <i>See</i> DIP ABL Agreement § 12.4; Interim Order ¶ 24.
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<u>Conditions Precedent to Closing Date.</u> The DIP Loan Documents includes conditions to closing that are customary and appropriate for similar debtor-in-possession financings of this type. <u>Conditions Precedent to Each Revolving Loan and Letter of Credit.</u> The DIP Loan Documents includes conditions to all credit extensions that are customary and appropriate for similar debtor-in-possession financings of this type. <i>See</i> DIP ABL Agreement §§ 4.1, 4.2.

II. Concise Statement Regarding the Term DIP Facility.⁸

13. The below chart contains a summary of the material terms of the proposed Term DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code/Local Rule	Summary of Material Terms ⁹
Borrower Bankruptcy Rule 4001(c)(1)(B)	Nine West Holdings, Inc. <i>See</i> DIP Term Loan Agreement Preamble; Interim Order Preamble.
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Each Debtor aside from the Borrower <i>See</i> DIP Term Loan Agreement, Sch. I.
DIP Financing Lenders Bankruptcy Rule 4001(c)(1)(B)	Cortland Capital Market Services, LLC, as DIP Term Agent, and the lenders party to the Term DIP Agreement from time to time. <i>See</i> DIP Term Loan Agreement Preamble; Interim Order Preamble.

⁸ This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, shall control.

⁹ Capitalized terms used but not otherwise defined in this chart shall have the meanings ascribed to them in the DIP Term Loan Agreement or Interim Order, as applicable.

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Reporting Information Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Same as ABL/FILO DIP Facility.
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	Same as ABL/FILO DIP Facility.
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Local 4001-2(a)(ii)	The earliest of (a) the Scheduled Termination Date, (b) the effective date of any Chapter 11 plan for the reorganization of the Borrower or any other Debtor, (c) the date on which the Obligations become due and payable pursuant to Section 8.02, (d) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code (it being understood that the Sale does not constitute a sale of all or substantially all of the Debtors' assets), (e) the date of conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Administrative Agent at the direction of Required Lenders, (f) the first Business Day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered into and become effective prior thereto, and (g) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the Administrative Agent at the direction of Required Lenders. <i>See DIP Term Loan Agreement § 1.01.</i>
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	Same as ABL/FILO DIP Facility.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Same as ABL/FILO DIP Facility.
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(f)	Same as ABL/FILO DIP Facility.
506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-2(a)(i)(C)	Same as ABL/FILO DIP Facility.
Section 552(b) Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(h)	Same as ABL/FILO DIP Facility.

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Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<u>Commitment.</u> The Initial Commitment and the Delayed Draw Commitment collectively, in the aggregate principal amount of \$50,000,000. <u>Initial Commitment.</u> \$25,000,000 in the aggregate. <u>Delayed Draw Commitment:</u> \$25,000,000 in the aggregate. <i>See DIP Term Loan Agreement § 1.01.</i>
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<u>Interest.</u> Each Loan will bear interest at 10% per annum. <u>Default Interest.</u> The Borrower shall pay interest on past due amounts at a rate of 12% per annum. <i>See DIP Term Loan Agreement §§ 1.01, 2.06.</i>
Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Achieve each of the following milestones: <ul style="list-style-type: none"> • No later than 14 calendar days after the Petition Date the Debtors shall have filed a prearranged Acceptable Plan. • No later than 14 calendar days after the Petition Date the Debtors shall have filed an Acceptable Disclosure Statement and a motion seeking approval of an Acceptable Disclosure Statement. • The Bankruptcy Court's shall have entered the Final Order on or before 45 calendar days following the Petition Date. • No later than 70 calendar days after the Petition Date, the Debtors shall have received at least one irrevocable and legally binding commitment, in form and substance reasonably satisfactory (or satisfactory solely with respect to any condition, contingency, or other provision in such commitment that poses a material risk to the parties being able to close or fund the New First Lien Term Loan Facility pursuant to such commitment, other than a condition, contingency, or other provision relating to the closing of the Sale) to the Required Lenders, to enter into the New First Lien Term Loan Facility. • The hearing on the Acceptable Disclosure Statement shall have been heard by the Bankruptcy Court on or before 95 calendar days following the Petition Date. • The Bankruptcy Court's entry of an Acceptable Disclosure Statement Order on or before 98 calendar days following the Petition Date. • The hearing on confirmation of an Acceptable Plan shall have been heard by the Bankruptcy Court on or before 130 calendar days following the Petition Date. • The Bankruptcy Court's shall have entered an Acceptable Confirmation Order on or before 135 calendar days following the Petition Date • The effective date of an Acceptable Plan shall have occurred not later than 150 calendar days following the Petition Date. <i>See DIP Term Loan Agreement § 6.16</i>

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Challenge Period Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	Same as ABL/FILO DIP Facility.
Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-2(a)(ii)	Subject to the terms and conditions contained in the Interim Order and the DIP Loan Documents, the Loan Parties and their Subsidiaries shall, in each case only in compliance with the Approved Budget and each Loan Document, use the proceeds of the Term DIP Facility for the payment of: (i) prepetition amounts as authorized by the Court; (ii) in accordance with the terms of the Term DIP Facility and the Orders (a) working capital and other general corporate needs, (b) Chapter 11 expense, including Taxes, allowed professional fees, costs and expenses for advisors, consultants, counsel, and other professionals retained by the Borrower, or (c) fees and expenses related to the Term DIP Facility; and (iii) amounts outstanding pursuant to the ABL DIP Credit Agreement. <i>See DIP Term Loan Agreement § 7.10; Interim Order ¶ 2(a).</i>
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)	Same as ABL/FILO DIP Facility.
Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)	Same as ABL/FILO DIP Facility.
Repayment Features Local Rule 4001-2(a)(i)(E)	<u>Repayment.</u> The Borrower shall repay the aggregate principal amount of all Loans outstanding, together with accrued and unpaid interest on the principal amount, on the DIP Termination Date. <u>Optional Prepayments.</u> The Borrower may upon 3 business days' written notice to the Administrative Agent voluntary prepay Loans in whole or in part without premium or penalty; <i>provided</i> that any partial prepayment of Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof, if less, the entire principal amount thereof then outstanding. <u>Mandatory Prepayments.</u> If Holdings, the Borrower or any of its Subsidiaries disposes of property or assets not otherwise permitted by the DIP Term Loan Agreement, or a Casualty Event occurs and results in the realization or receipt by Holdings, subject to certain exceptions in the DIP Term Loan Agreement, the Borrower of such Subsidiary of Net Cash Proceeds, the Borrower shall prepay on or prior to two (2) Business Days after the date of realization or receipt of such Net Cash Proceeds, an aggregate principal amount of the Loans equal to 100% of all Net Cash Proceeds realized or received. <i>See DIP Term Loan Agreement §§ 2.03, 2.05.</i>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁹
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001- 2(a)(ii)	<p>The Borrower shall pay to the Administrative Agent such fees in the amounts and at the times specified as may be agreed to in writing from time to time by Holdings or any of its Subsidiaries and the Administrative Agent (including, without limitation, all amounts owing under the Administrative Agent Fee Letter).</p> <p>The Borrower shall pay to the Administrative Agent on the Closing Date for the account of each Lender according to its Pro Rata Share an upfront fee in an amount equal to 7.75% of the aggregate Commitments on the Closing Date.</p> <p>The Borrower shall pay to the Administrative Agent on the earlier of (i) the DIP Termination Date and (ii) the repayment in full of the Loans for the account of each Lender according to its Pro Rata Share of the Loans outstanding on such date an exit fee in an amount equal to 2.50% of the aggregate Commitments on the Closing Date.</p> <p><i>See DIP Term Loan Agreement § 2.07.</i></p>
Budget Bankruptcy Rule 4001 (c)(1)(B) Local Rule 4001- 2(a)(ii)	<p><u>Approved Budget.</u> The initial Approved Budget shall depict, on a weekly and line item basis for the first thirteen (13) week period from the Closing Date, (1) (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees and expenses of the Loan Parties' professionals and advisors budgeted on a monthly basis), asset sales and any other fees and expenses relating to the Loan Documents, (iii) net cash flow, (iv) projected Borrowing Base, FILO Borrowing Base and Excess Availability (each as defined in the ABL DIP Credit Agreement as in effect on the date hereof), and (v) the Term DIP Facility availability and total available liquidity, and (2) the other items set forth therein and such other information requested by the Administrative Agent, and such initial Approved Budget shall be approved by, and in form and substance reasonably satisfactory to, the Administrative Agent (it being acknowledged and agreed that the initial Approved Budget attached as Schedule II o the DIP Term Loan Agreement is approved by and satisfactory to the Administrative Agent). The Approved Budget shall be updated, modified or supplemented by the Borrower from time to time and upon the reasonable request of the Administrative Agent, but in any event not the Approved Budget shall be updated by the Borrower less than one time in each four (4) consecutive week period, and each such updated, modified or supplemented budget shall be deemed an Approved Budget unless the Administrative Agent, acting at the direction of the Required Lenders in their reasonable discretion, objects by written notice delivered to the Borrower on or within five (5) Business Days after the receipt of such updated, modified or supplemented budget; provided, however, that in the event the Administrative Agent objects, the current Approved Budget shall remain the Approved Budget until and the Administrative Agent and the Loan Parties agree as to an updated, modified or supplemented budget. Each Approved Budget delivered to the Administrative Agent shall be accompanied by such supporting documentation as reasonably requested by the Administrative Agent. Each Approved Budget shall be prepared in good faith based upon assumptions which the Loan Parties believe to be reasonable.</p> <p><i>See DIP Term Loan Agreement § 6.14(a).</i></p>

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Bankruptcy Code/Local Rule	Summary of Material Terms ⁹
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p><u>Variance Report.</u> The Borrower shall provide a weekly report to the Administrative Agent (i) showing, in each case, by line item the Actual Cash Receipts, the Actual Disbursement Amount, the Actual Net Operating Cash Flow Amount, the Actual Net Cash Flow Amount, and the Actual Prepetition Relief Amount, Excess Availability and total available liquidity for the last day of the Prior Week and the Cumulative Four-Week Period (or, solely in the case of the Actual Prepetition Relief Amount, for the Cumulative Period), noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrower. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Required Lenders in their reasonable discretion.</p> <p>See DIP Term Loan Agreement § 1.01.</p>
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(ii)	<p>Same as ABL/FILO DIP Facility.</p>
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(D)	<p>Same as ABL/FILO DIP Facility.</p>
Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p><u>Events of Default.</u> Usual and customary for financings of this type, including failure to obtain entry of the Interim Order.</p> <p>See DIP Term Loan Agreement § 8.01.</p>
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	<p><u>Right to Indemnity.</u> The Loan Documents and Interim Order contain indemnification provisions ordinary and customary for debtor-in-possession financings of this type by the Borrower and each Guarantor in favor of the Administrative Agent, each DIP Lender and each of their respective affiliates and the respective officers, directors, employees, agents, advisors, attorneys and representatives of each of them, subject to customary carve outs.</p> <p>See DIP Term Loan Agreement § 9.07; Interim Order ¶ 24.</p>
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p><u>Conditions Precedent to Closing Date.</u></p> <p>The DIP Loan Documents includes conditions to closing that are customary and appropriate for similar debtor-in-possession financings of this type, including entry of the Interim Order.</p> <p><u>Conditions Precedent to Delayed Draw Date.</u></p> <p>The DIP Loan Documents includes conditions to all credit extensions that are customary and appropriate for similar debtor-in-possession financings of this type, including entry of the Final Order.</p> <p>See DIP Term Loan Agreement §§ 4.01–4.02.</p>