UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Case No. 09-02140 (HB) (Joint Administration)

ORDER ON DEBTOR'S MOTION FOR ORDER ESTABLISHING PROCEDURES FOR PAYMENT OF CLAIMS PURSUANT TO 11 U.S.C. 503(b)(9)

The relief set forth on the following pages, for a total of 15 pages including this page, is hereby **ORDERED**.

FILED BY THE COURT
06/19/2009

US Bankruptcy Court Judge
District of South Carolina

Entered: 06/19/2009

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	§	**Case No. 09-02140 (HB)**
	§	
BI-LO, LLC *et al*.,	§	**Chapter 11**
	§	
Debtors.[1]	§	**(Joint Administration)**
	§	

ORDER ON DEBTORS' MOTION FOR ORDER ESTABLISHING PROCEDURES FOR PAYMENT OF CLAIMS PURSUANT TO 11 U.S.C. § 503(b)(9)

This matter comes before the Court upon the motion ("Motion") of BI-LO, LLC and certain of its affiliates ("Debtors" or "BI-LO"), the above-captioned debtors in possession, for Entry of an Order Establishing Procedures for Payment of Claims Pursuant to 11 U.S.C. § 503(b)(9), filed on May 22, 2009 (Docket # 659) in Case No. 09-02140 (HB) (the "Chapter 11 Cases"). The Motion seeks approval for the Debtors to offer a program that provides for the expedited payment of certain administrative expense claims and the release of certain avoidance actions to eligible vendors that agree to provide normalized trade credit and promotional programs to the Debtors.

In response to the Motion, Koninklijke Ahold N.V. ("Ahold") filed three pleadings in limited opposition (the "Preliminary Objection" on May 26, 2009, the "Supplemental Objection" on June 2, 2009 and the "Notice of Filing of Orders Approving 503(b)(9) Claims Procedures in Other Chapter 11 Cases in Support of Koninklijke Ahold N.V.'s Objections to the Motion of

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[1] The Debtors and the last four digits of their respective tax identification numbers are: BI-LO, LLC (0130); BI-LO Holding, LLC (5011); BG Cards, LLC (4159); ARP Ballentine LLC (6936); ARP James Island LLC (9163); ARP Moonville LLC (0930); ARP Chickamauga LLC (9515); ARP Morganton LLC (4010); ARP Hartsville LLC (7906); and ARP Winston Salem LLC (2540).

Debtors for Entry of an Order Establishing Procedures for Payment of Claims Pursuant to 11 U.S.C. § 503(b)(9)" on June 2, 2009, (Docket #s 670, 725 and 727) which are collectively referred to as the "Ahold Objection"). National Music Rack, Inc. ("NMR") filed a limited objection on June 1, 2009 ((Docket # 704) "NMR's Limited Objection," and together with the Ahold Objection, the "Objections").[2]

The hearing on Debtors' Motion (the "Hearing") came before the Court on June 3, 2009. Testifying in support of the Debtors' Motion was Michael Feder, the Debtors' Chief Restructuring Officer. The Official Committee of Unsecured Creditors appointed in the Debtors' cases (the "Committee") did not file pleadings in connection with the Debtors' Motion, but appeared at the Hearing in support of the Motion.

Based upon the Motion, the Objections thereto, the admitted Exhibits, the testimony at the Hearing and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.[3]

FINDINGS OF FACT

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Local Civil Rule 83.IX.01, D.S.C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On March 23, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Cases.

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[2] Coca-Cola Bottling Company Consolidated and Piedmont Bottling Company Consolidated filed an Objection to the Motion on May 31, 2009, and subsequently withdrew its Objection on June 3, 2009.

[3] To the extent that any Findings of Fact constitute Conclusions of Law, they are adopted as such; and to the extent that any Conclusions of Law constitute Findings of Fact, they are so adopted.

3. The Debtors are operating their business and managing their properties as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. On March 30, 2009, the Office of the United States Trustee for the District of South Carolina appointed the Committee. No request of the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

4. BI-LO operates as a regional retail supermarket chain under the "BI-LO" and "Super BI-LO" banners. As of the Petition Date, BI-LO was one of the largest food retailers in the Southeast United States, operating more than 200 stores in South Carolina, North Carolina, Georgia and Tennessee, with the majority of stores located in South Carolina. BI-LO's corporate headquarters are located in Greenville, South Carolina and it employs more than 15,000 employees.

5. In the ordinary course of business, the Debtors purchase, among other things, food and beverages and other groceries (the "Goods") as inventory for resale from various direct store delivery vendors (the "Vendors") to stock and operate their stores. The Vendors provide approximately 30% of the Debtors' Goods, with the remainder being supplied through C&S Wholesale Grocers, Inc. ("C&S"). Within the twenty (20) days prior to the Petition Date, the Debtors received approximately $22.2 million of Goods from Vendors for which they have not yet paid.

6. The Debtors' Motion seeks the entry of an order authorizing the programmatic treatment of the administrative expense claims described in Section 503(b)(9) of the Bankruptcy Code (a "503(b)(9) Claim")[4] of certain Vendors. To be eligible for this proposed program, a

[4] Section 503(b)(9) of the Bankruptcy Code provides:

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) if this title, including — (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under [title 11] in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9).

Vendor must not be party to an executory contract with the Debtors. Under the procedures proposed by the Debtors in the form order filed with the Motion (as amended in a supplemental filing (Docket # 733), the "Program" or "Procedures"), a Vendor that agrees to provide and does provide post-petition trade terms and promotional support programs[5] to the Debtors, in each case consistent with their pre-Petition Date practice and subject to certain terms and conditions, until the earlier of the effective date of a plan of reorganization for the Debtors or March 23, 2010, will receive two principal benefits: The Debtors will pay, in three monthly installments, that Vendor's agreed 503(b)(9) Claim; and the Debtors will be deemed to have waived claims under Section 547 of the Bankruptcy Code against the Vendor (the "Preference Waiver") upon the earlier of the confirmation of a plan of reorganization for the Debtors, conversion or dismissal of the Debtors' cases, cessation of operations or March 23, 2010.

7. Ahold and NMR object to the Debtors' proposed program. Ahold concedes that a uniform program for paying 503(b)(9) Claims in connection with receiving normalized trade credit and promotional programs makes good business sense — in fact, Ahold supports the Debtors program in that respect. Ahold objects only to the inclusion of the Preference Waiver, on the grounds that the Debtors have not offered the requisite analysis to support the inclusion of the waiver in the Program. NMR echoes Ahold's objection to the Preference Waivers, but it also challenges the entire program outlined in the Procedures to the extent it excludes creditors that are party to executory contracts like NMR from participating. NMR has filed a separate Motion for Allowance and Immediate Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)(9) which is scheduled for hearing before this Court on a future date.

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[5] A promotional support program is a program under which the Debtors and a Vendor share in the cost of special promotions, such as advertising or circulars, featuring a Vendor's product.

8. Michael Feder, the Debtors' Chief Restructuring Officer, testified that the Debtors have already experienced contraction of credit terms since the Petition Date and that the proposed Program will aid the Debtors in returning to normalized trade terms. He also testified about the details of the Program and how it was negotiated. Details from his testimony follow:

> Q: Now, once BI-LO filed for bankruptcy, did some of those vendors start changing their trade terms?
> A: Yes, they did. We got trade contraction from a number of the more important vendors, trade payment term contraction immediately as we filed bankruptcy. And even with the approval of the debtor in possession financing that we had, the trade terms, particularly the payment terms, have not improved.
> Q: Give us an example of a change of a trade term.
> A: One of our vendors was -- had a payment terms of net 30 days, and they've gone to pay in advance. Other vendors have gone from net 30 days to seven, you know, 14 days to pay in advance, et cetera. So, in general, the -- a large number of our bigger and more important direct delivery vendors, [DSD]vendors contracted their terms.

Transcript of Hearing, June 3, 2009 ("*Transcript*") pp. 85:14-86:2 (Feder-Direct)

> Q: And did some [of the vendors] also start requiring some deposits after filing?
> A: Yes, in addition to reducing the trade terms, a number of the vendors also asked for post petition deposits prior to delivering, you know, the goods in lieu of, for example, COD, we would provide a deposit so that they could have comfort that that shipment for that week would be paid for, shipments would be paid for, and then we would replenish the deposit the following week.

Transcript. at 86:19-87:2 (Feder-Direct).

> Q: Now, without a 503(b)(9) program, could vendors keep changing the terms to even less favorable terms?
> A: Oh, sure. And depending on how the case goes, I mean I'm sure that's a very real possibility.

Id. at 86:19-87:6 (Feder-Direct).

> Q: And there was some mention earlier today about some promotion programs, that some of the vendors started pulling some of the promotion programs?
> A: Yes, in the -- all of promotional programs that we – that are run at the company, and in particular promoting various products in the advertising circulars that the company distributes, we tend to get support from the vendors with respect to those promotions. So, when we advertise Coca Cola or Pepsi Cola, for example, in one of our fliers, the -- there is -- tends to be some consideration provided by Coke or Pepsi, respectively, for offering to sell that at a discount.
> Q: And a financial benefit to BI-LO then?
> A: Absolutely, yes.

Q: Okay. And then --
A: Significant financial benefit.

Id. at. 86:3-18 (Feder-Direct).

Q: Okay. And about how many vendors potentially have these 503(b)(9) claims?
A: We were doing the math in the deposition yesterday, it's about 300.
Q: If there's not a 503(b)(9) program in place, how will these claims likely be handled?
A: Well, the claims would be adjudicated on an individual basis, as we've seen. We've seen some motions filed by Cardinal with respect to their 503(b)(9). We've seen a motion by National Music Rack with respect to its 503(b)(9) claim. So, I would anticipate that all of the other vendors, or each of the other vendors would begin to assert their claims and seek adjudication in the court.
Q: So, it would become a one-by-one --
A: One-by-one.
Q: -- piecemeal type fashion.
A: Yeah. Yeah.
Q: And based on your experience, if the claims are handled in that fashion, one-by-one in a piecemeal fashion, will that cause substantial amount of time, and expense, and delay?
A: It certainly will clog up the Court docket, yes, definitely, and result in some additional stress with each of the vendors as they come forward separately to do that.
Q: Essentially you'd be handling these motions one at a time?
A: Absolutely.
Q: Okay. In your business judgment, do you believe it's in the best interest of BI-LO to provide a uniform process for handling these claims?
A: Yes, I do.
Q: And so that's one of the benefits of the program?
A: Absolutely.

Id at 88:3 - 89:2 (Feder-Direct)

Q: Okay. In addition to providing a uniform process to this, does the program provide other benefits to BI-LO?
A: Well, it certainly does. It allows us to lock in trade terms, certainly payment terms that were enforce 60 days prior to the bankruptcy filing. So, for the people who sign onto the program, and we will go back to more reasonable trade terms, payment terms that were enforce 60 days prior to the filing. I think equally important, if not more important, is that the promotional benefits to the company and its ability to compete in the marketplace and continue with the sales trends that we have will really be enhanced by the trade terms that we are asking these vendors to agree to in consideration for the payment of the 503(b)(9) claim.
Q: So, will the program allow BI-LO to return to the customary terms with the vendors?
A: Yes.
Q: Okay. Will it also prevent the vendors from making their trade terms even worst[6]?

[6] These excerpts were taken from an expedited transcript and some words appear to be incorrectly transcribed and were not corrected here. However, the substance of the testimony is evident.

A: Well, certainly that's an option. I'm not sure you can get much worst than COD. But to the extent that you did, certainly those people that have given us terms, they certainly could make them -- shorten the terms if they chose to.
Q: And the program would also give BI-LO back its normal promotional terms?
A: Yes.
Q: Okay.
A: And, again, that's very meaningful to the company.

Id. at 89:9:3-90:10 (Feder-Direct).

Q: Okay. And then compare that and summarize the benefits for me quickly. Do you believe that this program will help BI-LO avoid piecemeal litigation?
A: Yes, absolutely.
Q: And do you believe the program will establish a uniform procedure?
A: Yes.
Q: And do you believe the program will provide stability to BI-LO's relationship with its vendors?
A: Yes, I do.
Q: And will the program help BI-LO reestablish the normal and customary terms of its vendors?
A: Yes.
Q: And that includes the promotional programs?
A: Very important promotional programs, yes.
Q: And based on your analysis, the program will actually improve liquidity?
A: It will improve liquidity.
Q: Okay. Does BI-LO believe that these claims qualify as administrative claims under 503(b)(9)?
A: Yes, we do.
Q: And does BI-LO believe these claims will likely be paid in full in the event of a confirmed plan?
A: Yes, we do.
Q: Okay. So, do you -- and does BI-LO believe that the program affects mostly the timing of the payments as opposed to the amount of the payment?
A: That is correct.
Q: In its sound business judgment, does BI-LO believe that pursuing this program is essential to the continuous operations objection BI-LO?
A: Yes, I do.
Q: Does BI-LO believe that these vendors are necessary for the -- for a successful reorganization?
A: Yes, definitely.
Q: BI-LO cannot replace many of these vendors, right?
A: Well, it's hard to imagine a replacement for Coke, and Pepsi, and Frito Lay. I mean they're some very important vendors. Obviously there may be some that you could replace, but some of these vendors, in particular the large ones, would be very hard to replace.
Q: Like the Cokes, and Pepsis, and Kellogg's of the world?
A: Yeah.

Q: Do you believe BI-LO is exercising sound business judgment in pursuing the program?
A: Yes, I do.
Q: Do you believe BI-LO is exercising sound business judgment in making the payments in three monthly installments?
A: Yes, I do.
Q: And do you believe this proposed program is prejudicing other unsecured creditors?
A: No, I don't.
Q: Do you believe it will cause major disruptions to BI-LO in this bankruptcy process if BI-LO is out there trying to seek replacement vendors during this process?
A: I think it would be very, very difficult to do that while we're in Chapter 11.
Q: And do you believe BI-LO needs this program in order to reestablish, and then maintain, these normal business terms?
A: Yes.
Q: And you were personally involved in the negotiations of the terms of this program, right?
A: Yes, I was.
Q: Okay. And did you, and did BI-LO, conduct these negotiations in good faith?
A: Yes.

Id. at 97:7-99:22 (Feder-Direct).

Q: Okay. And there's a provision in here that waives certain preference claims, right?
A: That's correct.
Q: Okay. Tell us first why that waiver is part of the program.
A: Well, the waiver is part of the program for a number of reasons. I think, first, the -- as we contemplated the benefits of the program, it -- we -- and having given that waiver to C&S, the Committee made it relatively clear to us that it was a critical part of the motion or the program that we would put forth.
Q: So, this type of waiver was first given to C&S --
A: Which we --
Q: -- which we --
A: Yeah.
Q: -- discussed last week.
A: That's right.
Q**:** Okay. And do you believe it's also an enticement or an incentive for vendors to join the program?
A: Oh, it certainly is.
Q: Okay. And do you believe that the waiver is necessary to establish this program and to move forward with this program?
A: I believe that more vendors will participate in the 503(b)(9) program with the waiver than might participate without it.
Q: And while you were negotiating the terms, was it your understanding that this was an essential part of the 503(b)(9) program?
A: It certainly was from the outset, yes.

Id. at 94:11-95:14 (Feder-Direct).

> Q: Mr. Feder, there were lots of questions asked of you about any individual vendors ever come to you and ask you for a preference waiver, is that correct?
> A: Yes, there were.
> Q: Okay. How many Chapter 11s have you been involved in before?
> A: More than 10.
> Q: Okay. You're familiar with the role of a Creditors' Committee?
> A: I am.
> Q: You're familiar with the fact that they're a statutory fiduciary on behalf of general unsecured creditors?
> A: Yes, I am.
> Q: Did the Creditors' Committee come to you immediately upon its formation and tell you that preference waivers were required in connection with this program?
> A: Yes, they did.
> Q: Okay. Did they say that on behalf of all debtor unsecured creditors?
> A: I had to assume so.
> Q: Okay. Did you have to hear it from individual creditors?
> A: I didn't need to hear it from individual creditors. In fact, every creditor that I've ever talked to never has a preference, so --
> Q: But you heard from the beginning of this case on behalf of the statutory fiduciary that this was a absolutely critical element to the program?
> A: Yes, I did.
> Q: Okay.
> A: You were as excited about it then as you are now.

Id. at 170:1-171:5 (Feder-Recross/Rice)

> Q: And did you analyze the potential preferences as to these trade vendors that are at issue?
> A: We had substantial dialogue about the benefits of what a preference was with the company, talked to the management team and the various elements of what constituted a preference. In our discussion, we -- and based on the experience that I had from February through the date of the filing[7], we were paying all of our vendors in the normal course. The company didn't have the kinds of liquidity -- short-term liquidity issues that you might find with other bankrupt companies that I've seen in other bankrupt companies where they were, you know, short paying vendors or stretching, et cetera. The company was really paying in a very, very important attempt to pay the vendors -- the trade vendors on time. And so the amount of those potential preferences as we looked back at them, although we didn't do the math, the amount of that was going to be fairly nominal. I think more importantly, as we discussed, what happens and how a preference works with the management team who hasn't gone through a bankruptcy like this before, became relatively clear that they weren't, in their reorganized BI-LO, they weren't going to go after, they weren't going to sue these important vendors like Coke, and Pepsi, and Frito Lay that weren't part of the C&S deal, or any preferences if there were any because they needed them to be successful in the sort of future reorganized BI-LO.

[7] The filing date for the cases was March 23, 2009.

Q: So, the company, up til the filing of the bankruptcy, was paying these trade vendors in the normal course?
A: That's right.
Q: Putting aside C&S?
A: Putting aside -- well, we were paying C&S, as well, in the normal course up until immediately prior to the filing.
Q: And it's your belief, through talking with management, that it's unlikely that a reorganized BI-LO would go out suing its vendors?
A: That's correct.
Q: And so did the company -- based on that, did the company believe it was giving up much by providing this waiver?
A: The company did not believe that the preferences were material in amount, but we didn't do an analysis around it. And then we didn't look at the many benefits from pursuing them, so we think giving up was a reasonable enhancement to the program.

Id. at 95:15-97:6 (Feder-Direct).

DISCUSSION AND CONCLUSIONS OF LAW

The Debtors' Motion seeks authority, among other things, to establish and implement procedures to pay certain 503(b)(9) Claims in exchange for an agreement to provide Minimum Trade Terms to the Debtors. The Motion also seeks authority to waive potential preference claims arising under section 547 of the Bankruptcy Code against those Vendors (the "Preference Waivers"). As the moving party, the Debtors bear the burden of proof. See, e.g., In re Fiddler, No. 04-4213, 2007 WL 4510308 at *2 (Bankr. N.D.W. Va. Dec. 18, 2007); Hovis v Gold Mountain Elec. Power Co. (In re Marine Energy Sys. Corp.), C/A 97-01929-JW, Adv. Pro. No. 98-80211-WB, slip op. (Bankr. D.S.C. July 15, 2008).

Section 503(b)(9) is a relatively recent addition to the Bankruptcy Code, enacted in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Section 503(b)(9) provides:

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title, in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9). As such, section 503(b)(9) provides an administrative expense priority claim to the suppliers of goods to the debtor in the amount of the value of those goods provided in the ordinary course of the debtor's business within 20 days of the commencement of bankruptcy. Section 503(b)(9) does not address the timing of payment of claims allowed under that section. Pursuant to 1129(a)(9)(A) of the Bankruptcy Code, however, the holder of an administrative claim is paid on the effective date of the plan. Accordingly, holders of administrative expense claims are not entitled to immediate payment. In re Grant Broad. of Phila., Inc., 71 B.R. 891, 899 (Bankr. E.D. Pa. 1987) ("We believe that there is no authority whatsoever for the principle that administrative claims should generally be paid immediately."); Lisanti v. Lubetkin (In re Lisanti Foods, Inc.), 329 B.R. 491, 502 (D.N.J. 2005) ("Unless the holder of a particular claim agrees otherwise, 11 U.S.C. § 1129(a)(9)(A) requires that the holder of an administrative claim receive payment on the effective date of the plan.").

Subsequent to the enactment of 503(b)(9), bankruptcy courts have recognized the benefits of addressing such claims through an organized program rather than through individual claim determination and payment. These courts have approved immediate or expedited payment of 503(b)(9) claims in exchange for a creditor's agreement to continue business with the debtor under ordinary or pre-petition trade terms. See, e.g., In re Smurfit-Stone Container Corporation, Case No. 09-10235 (Bankr. D. Del. 2009); In re Steve and Barry's Manhattan LLC, Case No. 08-12579 (Bankr. S.D.N.Y. 2008); In re Hercules Chemical Company, Inc., Case No. 08-25553 (Bankr. W.D. Pa. 2008); In re Brown & Cole Stores, LLC, Case No. 06-13950 (Bankr. W.D. Wash. 2006); In re Circuit City Stores, Inc., Case No. 08-35653 (Bankr. E.D. Va. 2008); In re PT Holdings Company, Inc., Case No. 07-10340 (Bankr. W.D. Wash. 2007); In re Dana Corporation, Case No. 06-10354 (Bankr. S.D.N.Y. 2006); In re Quebecor World (USA), Inc.,

Case No. 08-10152 (Bankr. S.D.N.Y. 2008).

Despite NMR's Objection,[8] the Court finds that the Debtors have demonstrated that the proposal to establish some program to pay these select 503(b)(9) Claims prior to confirmation in exchange for normalized trade terms is appropriate, proposal of such a program is an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors, their estates and creditors. However, the Court agrees with Ahold and NMR that the Debtors have not met their burden of proving that the specific Program proposed herein meets these standards if it includes a Preference Waiver upon the earlier of the confirmation of a plan of reorganization for the Debtors, conversion or dismissal of the Debtors' cases, cessation of operations or March 23, 2010.

Debtors argue, with the support of the Creditors' Committee, that such a waiver is justified under section 105(a)[9] because it would further the purpose behind 503(b)(9). In his testimony, Mr. Feder stated his belief that the Preference Waivers will attract more trade creditors to participate in the program. Mr. Feder also stated that payments to the Vendors during the preference period would likely qualify as having been made in the "ordinary course of business" of the Debtors, providing a defense to a preference action under section 547(b) of the Bankruptcy Code. Mr. Feder testified that the Debtors, if there is a successful reorganization, do not intend to pursue Preference Claims against the 503(b)(9) Vendors. For these reasons the Debtors' management concluded that the Preference Waivers did not require the estate to give up much of value and would likely make the program more successful. The Preference Waivers were referred to as an "enhancement" to the remainder of the 503(b)(9) Program.

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[8] NMR has requested similar relief and immediate payment of its claim via separate motion pending before the court. Approval of the Program for these creditors does not preclude entry of future orders in favor of excluded creditors such as NMR.

[9] 11 U.S.C. §105(a) provides "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Upon cross-examination, however, Mr. Feder admitted that the Debtors had not actually analyzed the amount, scope and effect of the proposed Preference Waivers. Mr. Feder clearly testified that the Debtors had not conducted even a brief review of at least the largest payments made to these Vendors within the preference period and compared the likelihood and benefits of any preference recovery to the benefit the estate would receive from that Vendors' normalized trade terms. Further, the decision to offer the Preference Waivers as an enhancement appears to be based in part on the assumption that the Debtors are unlikely to bring suit against the 503(b)(9) Vendors to recover preferences anyway, because the Vendors are important to the Debtors' continued business operations, reorganization and confirmation of a plan. However, this assumption is only appropriate if the Debtors continue operations and successfully emerge from this case, a fact that remains to be seen.

While there is no doubt in the court's mind that a Preference Waiver may be attractive to Vendors and that Mr. Feder and the Debtors' management find this to be a useful tool in conducting the Debtors' business, there simply is not enough evidence in this record to weigh the value of this concession against the benefit to the estate or to justify approval of this provision under any authority presented. Therefore, the Court cannot find that inclusion of a general Preference Waiver is in the best interest of this estate. The Court lacks sufficient evidence, and authority, to approve this term on this record over the vigorous objection of creditors.[10] As the proposed Program includes this Preference Waiver as an integral part thereof, the court therefore cannot grant the requested relief. However, should the Debtors wish to proceed with the Program by simply redacting the portions thereof that involve Preference Waivers this may be

[10] The preference waiver in this case for C & S was approved after disclosure of the essential details of the potential preference including the amount, a summary of the defenses that would be asserted by the alleged defendant, and a specific analysis of the benefits the Debtors and the estate would receive in exchange for a quantifiable waiver. Such an analysis is impossible for the Program proposed herein on the record before the Court.

accomplished by appropriate amendment of the documents and submission of an *ex parte* ***Order Approving Amended 503(b)(9) Program*** in compliance with this Order.

IT IS THEREFORE ORDERED, THAT:

1. The Debtors' Motion Entry of an Order Establishing Procedures for Payment of Claims Pursuant to 11 U.S.C. § 503(b)(9) as currently proposed is **DENIED**;

2. Should the Debtors wish to proceed with a Program for Payment of Claims Pursuant to 11 U.S.C. § 503(b)(9) that eliminates any portions thereof that involve Preference Waivers this may be accomplished by appropriate amendment of the original Program documents and submission of an *ex parte* ***Order Approving Amended 11 U.S.C. § 503(b)(9) Program*** in compliance with this Order.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Case No. 09-02140 (HB) (Joint Administration)

ORDER GRANTING DEBTORS' MOTION FOR AN AMENDED ORDER ESTABLISHING PROCEDURES FOR PAYMENT OF CLAIMS PURSUANT TO 11 U.S.C. § 503(b)(9)

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby **ORDERED**.

FILED BY THE COURT
07/06/2009

US Bankruptcy Court Judge
District of South Carolina

Entered: 07/06/2009

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	§	**Case No. 09-02140 (HB)**
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BI-LO, LLC *et al*.,	§	**Chapter 11**
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Debtors.[1]	§	**(Joint Administration)**
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ORDER GRANTING DEBTORS' MOTION FOR AN AMENDED ORDER ESTABLISHING PROCEDURES FOR PAYMENT OF CLAIMS PURSUANT TO 11 U.S.C. § 503(b)(9)

Upon the Motion of BI-LO, LLC and its affiliates ("BI-LO" or the "Debtors"), the above-captioned debtors in possession, seeking that the Court either (a) modify the Order on Debtors' Motion for Order Establishing Procedures for Payment of Claims Pursuant to 11 U.S.C. § 503(b)(9) (the "503(b)(9) Order") (Docket No. 816) to give the Debtors (or other parties) an opportunity to seek a new evidentiary hearing before the 503(b)(9) order becomes final; or (b) set aside the findings of fact and conclusions of law and the judgment rendered thereon and set a new hearing date on the 503(b)(9) Motion at which time the Debtors (and other parties) will be permitted to provide additional evidence; and it appearing that the Committee of Unsecured Creditors filed a joinder to this Motion (Docket No. 902); and it appearing that the relief requested herein is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing

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[1] The Debtors and the last four digits of their respective tax identification numbers are: BI-LO, LLC (0130); BI-LO Holding, LLC (5011); BG Cards, LLC (4159); ARP Ballentine LLC (6936); ARP James Island LLC (9163); ARP Moonville LLC (0930); ARP Chickamauga LLC (9515); ARP Morganton LLC (4010); ARP Hartsville LLC (7906); and ARP Winston Salem LLC (2540).

that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); and it appearing that the venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion was appropriate under the circumstances and that no other or further notice with respect to the Motion need be given; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED:

That the Motion is GRANTED.

The 503(b)(9) Order is hereby amended to add the following paragraph: "This Order shall be deemed final 30 days from the date of entry[2] without further action or order unless the Debtors (or any other party) file a motion for a new evidentiary hearing or a new 503(b)(9) motion within such 30 days."

AND IT IS SO ORDERED

[2] Calculated from the date of the entry of the original order.