

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**In re: ISR GROUP, INCORPORATED,
Debtor.**

**Case No. 14-11077-JLC
Chapter 11**

UNITED STATES TRUSTEE’S OBJECTION TO MOTION FOR INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105, 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE, (1) APPROVING POSTPETITION FINANCING, (2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (4) GRANTING ADEQUATE PROTECTION, (5) MODIFYING AUTOMATIC STAY, AND (6) SCHEDULING A FINAL HEARING

Samuel K. Crocker, the United States Trustee for Region 8 (“United States Trustee”), objects to the Motion for Interim and Final Orders, Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Proving Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay, and (6) Scheduling a Final Hearing (“Motion”) filed by ISR Group, Incorporated (“Debtor”). The hearing on the Motion is scheduled for May 8, 2014 at 10:30 a.m. In support of this Objection, the United States Trustee states:

1. The ruling on the Motion will likely have a direct bearing on means of the payment of claims of non-priority unsecured creditors. That is so because, if the Motion is granted, the Debtor appears to have but one option: it must conduct a sale under Section 363 of the Bankruptcy Code; and conduct such sale on a very short time-frame.

2. As a consequence of the Court’s ruling on the Motion, the Estate should be left with more than one option to pay non-priority unsecured creditors. While an optimal outcome would

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Case No. 14-11077
Page 2 of 6

be a resumption of business operations (whether by the Debtor or some other party), the Estate should have a meaningful opportunity to pursue a liquidation of its assets through a reasonable marketing process if that would result in a more certain likelihood and/or amount that non-priority unsecured creditors would be paid.

3. The Motion is filed in a context in which virtually nothing is known (except to the Debtor) about the Debtor's assets or liabilities. Schedules and Statements have not been filed. It is difficult to assess the business judgment that the Debtor wishes to exercise without knowing the value of the Debtor's assets or the extent and nature of the Debtors liabilities.

4. The Motion makes reference to the "Lender" which acquired the indebtedness owed to PNC Bank National Association ("PNC"); but the Motion itself does not identify the name of the Lender. From the exhibit(s) filed with the Motion, it is assumed that TCFI IG LLC is the Lender. The Debtor should clarify the record on this point.

5. The Motion references and attaches a draft order that the Debtor recommends be entered (the "Proposed Order"). The Proposed Order is 35 pages long. It is inequitable for creditors and interested parties to be bound by such an order, containing broad and sweeping provisions, on just three days notice - - even on an interim basis. The Debtor and Lender should be required to identify, and the Court should entertain consideration of, only those terms that are essential.

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Case No. 14-11077
Page 3 of 6

6. The Proposed Order refers to documents that the United States Trustee has never seen. The United States Trustee and any committee appointed (one has not been appointed) should have an opportunity to review those documents before the Estate is bound to the terms therein.

7. The Proposed Order would award superpriority administrative expenses. It would appear that the Proposed Order would not provide that such would exceed the priority of fees accrued under 28 U.S.C. § 1930 (a)(6). Out of an abundance of caution, though, the United States Trustee objects to the extent that the granting of the Motion would result in that outcome.

8. The Motion makes insufficient reference to, and the Debtor should be obliged to make a record of, the transition from old management to new management that occurred in the days leading up to the bankruptcy filing. Any agreements made by any creditor, equity holder, or interested party in connection therewith should be disclosed.

9. The Motion is supported by a Declaration. The Court should rely only upon the personal knowledge of the declarant. To the extent that the declarant does not have personal knowledge of events occurring prior to his taking up his office, the Court should not accept testimony based upon mere information and belief. This is of particular importance under 11 U.S.C. § 364 (c)(3) concerning whether “the trustee is unable to obtain . . . credit otherwise.”

10. The declarant sought to be relied upon appears to be a restructuring professional. However, the Debtor has not applied to employ the professional. If the Debtor advocates that the Court rely upon the testimony of a restructuring professional, appropriate relief should be sought

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Case No. 14-11077
Page 4 of 6

under 11 U.S.C. § 327 (a) and/or § 363 (b)(1) (with provisions such as those in the *Jay Alix* protocol) as a predicate to the presentation of evidence through that person's testimony.

11. The Proposed Order contains specific provisions that would improvident for the Court to grant. The United States Trustee reserves the right to further object after an adequate period of review; however, those provisions known to be objectionable include:

- Under §§ 1.4, 1.5, and 1.6, authorizing payment of pre-petition obligations, because such would occur outside a plan process.
- Under § 1.7, requiring entry of a bidding procedures order and/or sales order in as little as 60 days after the case is filed.
- The priming of any lien to the extent any impacted lienholder does not have adequate notice of the hearing in this matter.
- Under §2.3.2, the exclusion of any professional fee payment from the carve-out provisions.
- The limitations and consequences, imposed in § 4, re challenging of the extent, validity, or priority of a secured creditor's asserted liens.
- The evisceration of protections under 11 U.S.C. § 506 (c), provided in § 4.3.
- The releases required under § 4.5.
- The evisceration of relief available under Fed.R.Bankr.P. 9023 or 9024 per § 5.1.
- The binding effects of the Proposed Order, whether upon a subsequent Chapter 11 trustee or Chapter 7 trustee, per § 5.7.4.
- What would functionally appear to be a declaratory judgment by the Court concerning the absence of liability, as provided in § 5.9.

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Case No. 14-11077
Page 5 of 6

12. An order concerning the Motion should not:

- Constitute an adjudication as to the validity, extent, or priority of liens.
- Be construed as improving the value of any entity's security interest in property of the Debtor on the date of the bankruptcy filing.

13. Any post-petition liens granted should only be granted to the extent of the post-petition use of cash collateral and/or post-petition funding actually paid to or on behalf of the Debtor.

14. The Motion refers to a budget (¶ 14), however, no budget was attached to the Motion. The Motion should not be considered unless a written budget is placed into evidence.

WHEREFORE, the United States Trustee prays that the Court:

1. Deny the Motion.
2. Grant the United States Trustee a hearing on this Objection.
3. Grant the United States Trustee such additional, general relief to which the United States Trustee may be entitled.

Respectfully submitted,

SAMUEL K. CROCKER
UNITED STATES TRUSTEE FOR REGION 8

By: /s/ Sean M. Haynes, Trial Attorney (#014881)
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Case No. 14-11077
Page 6 of 6

CERTIFICATE OF SERVICE

I, Sean M. Haynes, hereby certify this 7th day of May, 2014, service of a true and exact copy of the foregoing by electronic means and/or via United States Postal Service, first class postage prepaid, to the following persons in accordance with Guideline 18B of the Amended Guidelines for Electronic Filing.

/s/ Sean M. Haynes

Debtor
Debtor's Attorney
United States Trustee
Robert C. Goodrich