

447 B.R. 475
United States Bankruptcy Court,
E.D. Virginia,
Richmond Division.

In re CIRCUIT CITY STORES, INC., et al., Debtors.

No. 08–35653. | Feb. 12, 2009.

Synopsis

Background: Chapter 11 debtors' lessors under their unexpired commercial leases sought immediate payment of rent accruing under leases, and debtors objected that bankruptcy statute requiring trustee to “timely perform” all obligations “arising from and after the order for relief” under any unexpired nonresidential lease of debtor did not entitle them to such treatment.

Holdings: The Bankruptcy Court, [Kevin R. Huennekens](#), J., held that:

[1] court had to apply accrual method to determine when obligation to pay rent under debtors' unexpired nonresidential leases arose, and

[2] term “timely,” as used in bankruptcy statute, did not entitle lessors to immediate payment of rent.

So ordered.

West Headnotes (4)

[1] **Bankruptcy**

🔑 [Debtor's Contracts and Leases](#)

To determine when obligation to pay rent under Chapter 11 debtors' unexpired nonresidential leases arose, for purpose of bankruptcy statute requiring trustee to “timely perform” all obligations “arising from and after the order for relief” under any unexpired nonresidential lease of debtors, bankruptcy court had to apply accrual method, under which obligation to pay rent continuously arose on daily basis for each day that debtor possessed premises pursuant to

lease, rather than billing method. [11 U.S.C.A. § 365\(d\)\(3\)](#).

[2] **Bankruptcy**

🔑 [Use and occupancy claims; administrative rent](#)

Bankruptcy

🔑 [Debtor's Contracts and Leases](#)

Bankruptcy statute requiring trustee to “timely perform” all obligations “arising from and after the order for relief” under any unexpired nonresidential lease of debtor gave lessors an administrative expense claim for stub rent accruing after order for relief, without necessity of having to show that debtors' continued possession of premises was a benefit to the estate. [11 U.S.C.A. § 365\(d\)\(3\)](#).

[3] **Bankruptcy**

🔑 [Administrative expenses in general](#)

Bankruptcy

🔑 [Debtor's Contracts and Leases](#)

Term “timely,” as used in bankruptcy statute requiring trustee to timely perform all obligations arising from and after order for relief under any unexpired nonresidential lease of debtor, required payment of stub rent at time specified in lease if time for performance under lease had not expired, and if time for performance under lease has passed, then time for timely performance of obligation to pay stub rent was the same as for all other administrative expense claims, upon confirmation of plan. [11 U.S.C.A. § 365\(d\)\(3\)](#).

[4] **Bankruptcy**

🔑 [Administrative expenses in general](#)

Bankruptcy

🔑 [Use and occupancy claims; administrative rent](#)

Bankruptcy

🔑 [Superpriority; extension of credit or failure of adequate protection](#)

Bankruptcy

🔑 [Debtor's Contracts and Leases](#)

While bankruptcy statute requiring trustee to “timely perform” all obligations “arising from and after the order for relief” under any unexpired nonresidential lease of debtor gave lessors an administrative expense claim for stub rent accruing after order for relief, it did not give them a superpriority claim for such rent and did not require immediate payment thereof. 11 U.S.C.A. § 365(d)(3).

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[David J. Ervin](#), Kelley, Drye & Warren, LLP, Washington, DC, for Bassar-Kaufman, Developers Diversified Realty Corp., General Growth Properties, Inc., Jones Lang LaSalle Americas, Inc., Philips Intern., Weingarten Realty Investors and Its Affiliates, FW CA-BREA Marketplace, LLC, Regency Centers, L.P. and RCCA Santa Barbara, LLC, S.J. Collins Enterprises, Goodman Enterprises, DeHart Holdings and Weeks Properties CG Holdings, Ashkenazy Management Corp., Regency Centers, L.P., The MacNaughton Group, The Woodmont Co., WEC 99A-2LLC, Benderson Dev. Co., LLC, Continental Properties Co., Inc., Alfred H. Siegel.

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Associates Ltd. Partnership, Systemax, Inc., The Cafaro Northwest Partnership, dba South Hill Mall, Vertis, Inc., M and M Berman Enterprises.

[Dean Farmer](#), Hodges, Doughty & Carson, Knoxville, TN, for Knoxville Utilities Bd.

[John T. Farnum](#), Greenberg Traurig LLP, McLean, VA, for Bell Microproducts, Inc.

[Thomas J. Farrell](#), Levy & Droney, P.C., Wethersfield, CT, for Salamander Designs.

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[Thomas Paul Finn](#), Wagner & Finn, Altoona, PA, for Carole Kaylor.

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[James L. Forde](#), Rappaport, Glass, Greene & Levine, New York, NY, [Linda P. O'Gorman](#), Eastchester, NY, for Clementine Tinsley.

[Gina M. Fornario](#), Nixon Peabody LLP, San Francisco, CA, for California Self-Insurers' Security Fund.

[Jeremy S. Friedberg](#), Leitess Leitess Friedberg + Fedder PC, Owings Mills, MD, for Toshiba America Information Systems, Inc., Toshiba America Consumer Products, L.L.C., Washington Green TIC.

[Ellen A. Friedman](#), Friedman Dumas & Springwater LLP, San Francisco, CA, for Hewlett Packard Co.

[J. Bennett Friedman](#), Hamburg, Karic, Edwards & Martin, LLP, Los Angeles, CA, for Amargosa Palmdale Investments, LLC, Bella Terra Associates, LLC, The West Campus Square Co., LLC.

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Victoria D. Garry, Ohio Attorney General's Office, Cincinnati, OH, for Ohio Bureau of Workers' Compensation, Ohio Dept. of Commerce, Ohio Dept. of Taxation.

[Rand L. Gelber](#), Vienna, VA, for Maricopa County Treasurer.

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[Karen L. Gilman](#), Wolff & Samson PC, West Orange, NJ, for Toys R Us—Delaware, Inc.

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[William A. Gray](#), Sands Anderson PC, Richmond, VA, for Monument Consulting, LLC, Ray Mucci's Inc., E&A Northeast Ltd. Partnership, Interstate Augusta Properties

LLC, NPP Dev. LLC, Route 146 Millbury LLC, Mansfield SEQ 287 and Debbie, Ltd., McAlister Square Partners, Ltd., Vornado Gun Hill Road, LLC, Alexander's Rego Park Center, Inc., Amherst VF LLC, East Brunswick VF LLC, North Plainfield VF LLC, Towson VF LLC, VNO Mundy Street, LLC, VNO TRU Dale Mabry, LLC, Wayne VF LLC, BPP-OH LLC, BPP-VA LLC, Marlton VF LLC, Colorado Structures, Inc. dba CSI Const. Co., Cardinal Court, LLC, Colonial Heights Holdings, LLC, DEV Ltd. Partnership, T. J. Maxx of CA, LLC, Chatham County, GA Tax Com'r, East Brunswick VF, LLC, Hillson Elec. Inc., John Rohrer Contracting Co., Inc., Lang Const., Inc., A.D.D. Holdings, L.P., Lee County Tax Collector, Leroy E. Belk, Jr., BBP-Muncy LLC, BPP Conn LLC f/k/a WEC 95 Manchester Ltd. Partnership, BPP-NY LLC, BPP-Redding LLC, BPP-SC LLC, BPP-WB LLC, Baker Natick Promenade LLC, BevCon I, LLC, CSI Const. Co., DeSoto County, Mississippi, Denon Electronics, Encinitas PFA, LLC, Lee County, Mississippi Tax Collector, McCorkendale Const., Mid-American Insulation, Inc., Midwest Block & Brick, Inc., North Bergen Tonnelle Plaza, LLC, PrattCenter, LLC, Premier Contracting, Inc., Snell Acoustics, Inc., Star Universal, LLC, The Stop & Shop Supermarket Co. LLC, UTC I, LLC, Valley Corners Shopping Center, LLC, Vornado Caguas LP, Vornado Finance, LLC, Vornado Realty Trust, Christopher Borglin, Cynthia Olloway, Hilton Ellis Epps, Sr., Kelly Breitenbecher, Paul Schaapman, Phyllis M Pearson, Rebecca Hylton DeCamps, Reverend Dwayne Funches, Boston Acoustics, Inc., Chatham County Tax Com'r, Sensomatic Electronic Corp., OmniMount Systems, Inc., Metra Electronics Corp., Tamrac, Inc., RBS Business Capital, Richard Grande.

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[Elizabeth L. Gunn](#), DurretteCrump PLC, Richmond, VA, for Hewlett Packard Co., Mikael Salovaara, Elizabeth R. Warren, CC-Investors Trust 95-00001, Joshua M. Loveall.

[Peter Gurfein](#), Landau Gottfried & Berger, Los Angeles, CA, for CIM/Birch St., Inc.

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[Gilbert L. Hamberg](#), Yardley, PA, for Brownsville Public Utilities Bd.

[Aaron L. Hammer](#), Freeborn & Peters LLP, Chicago, IL, for Nat. Product Care Co., Service Saver, Inc., ServicePlan of Florida, Inc., ServicePlan, Inc. and all its Affiliates, TWG Innovative Solutions, Inc., Virginia Surety Co., Inc.

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[Michael E. Hastings](#), LeClairRyan, P.C., Roanoke, VA, for Eastern Security Corp.

[Frank J. Haupe](#), DelBello Donnellan [Weingarten Wise](#), White Plains, NY, for LC White Plains Retail LLC.

[Jonathan L. Hauser](#), Troutman Sanders LLP, Virginia Beach, VA, for ThomsonWest.

[David Emmett Hawkins](#), Vinson & Elkins, LLP, Washington, DC, for Archon Group, L.P.

[Melissa S. Hayward](#), Locke Lord Bissell & Liddell, LLP, Dallas, TX, for Home Depot USA, Inc., Parago, Inc.

[Gayle Nell Heck](#), Bialson, Bergan & Schwab, Palo Alto, CA, for Nextag, Inc.

[David R. Heil](#), Winter Park, FL, for Michael Lay, Barbara Lay.

[Larry D. Henin](#), Edwards Angell Palmer et al., New York, NY, for Onkyo USA Corp.

[Neil E. Herman](#), Morgan, Lewis & Bockius, LLP, New York, NY, for Kimco Realty Corp., Mall Properties and U.S. 41 & I-285 Co.

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[John F. Higgins](#), Porter Hedges, L.L.P., Houston, TX, for The Parkes Companies, Inc. d/b/a Parkes Const.

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*[487 Lawrence J. Hilton](#), Hewitt & O'Neil LLP, Irvine, CA, for Targus, Inc.

[Shannon E. Hoff](#), Poyner Spruill, LLP, Charlotte, NC, for Compass Group U.S.A. Inc.

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[George Hofmann](#), Parsons Kinghorn Harris, Salt Lake City, UT, for Akamai Technologies, Inc.

[James B. Holden](#), Assistant Atty. General, Denver, CO, for Colorado Dept. of Rev.

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[David D. Hopper](#), Cook, Heyward, Lee, Hopper & Feehan, P.C., Glen Allen, VA, for Rio Associates Ltd. Partnership.

[Joseph Michael Horrox](#), Horrox & Glugover, P.A., Daytona Beach, FL, for Angela Ross.

[Nancy Hotchkiss](#), Trainor Robertson, Sacramento, CA, for Donahue Schriber Realty Group, L.P., Greenback Associates, The Marvin L. Oates Trust.

[Brian D. Huben](#), Katten Muchin Rosenman LLP, Los Angeles, CA, for Cousins Properties Inc., Portland Inv. Co. of America, Prudential Ins. Co. of America, RREEF Management Co., The Macerich Co., Watt Management Co., Foursquare Properties, Inc., KNP.

[Lisa Taylor Hudson](#), Sands Anderson Marks & Miller, Richmond, VA, for PrattCenter, LLC, UTC I, LLC, Valley Corners Shopping Center, LLC, Reverend Dwayne Funches, Mansfield SEQ 287 and Debbie, Ltd., McAlister Square Partners, Ltd., Monument Consulting, LLC, Cynthia Olloway, Individually and as Special Administrator of the Estate of Cedric Coy Langston, Jr., a Deceased Minor, Alexander's Rego Park Center, Inc., Amherst VF LLC, CSI Const. Co., East Brunswick VF LLC, Green Acres Mall, LLC, North Plainfield VF LLC, Towson VF LLC, VNO Mundy Street, LLC, VNO TRU Dale Mabry, LLC, Vornado Gun Hill Road, LLC, Wayne VF LLC, BPP Conn LLC f/k/a WEC 95 Manchester Ltd. Partnership, BPP-NY LLC, BPP-OH LLC, BPP-Redding LLC, BPP-SC LLC, BPP-VA LLC, Baker Natick Promenade LLC, BevCon I, LLC, Marlton VF LLC, North Bergen Tonnelle Plaza, LLC, Star Universal, LLC, Vornado Caguas LP, Vornado Finance, LLC, Cardinal Court, LLC, T. J. Maxx of CA, LLC, BBP-Muncy LLC, BPP-WB LLC, Chatham County Tax Com'r, Colonial Heights Holdings, LLC, DEV Ltd. Partnership, E&A Northeast Ltd. Partnership, Encinitas PFA, LLC, Interstate Augusta Properties LLC, NPP Dev. LLC, Ray Mucci's Inc., Route 146 Millbury LLC, The Stop & Shop Supermarket Co. LLC, Vornado Realty Trust, Christopher Borglin, Hilton Ellis Epps, Sr., Kelly Breitenbecher, Paul Schaapman, Phyllis M. Pearson, Rebecca Hylton DeCamps, A.D.D. Holdings, L.P., Chatham County, GA Tax Com'r, Hillson Elec. Inc., John Rohrer Contracting Co., Inc., Lang Const., Inc.

[F. Marion Hughes](#), Smith Moore Leatherwood, LLP, Greenville, SC, for CAP Brunswick, LLC.

[Jessica Regan Hughes](#), Seyfarth Shaw LLP, Washington, DC, for Arboretum of South Barrington, LLC, Eatontown Commons Shopping Center, AmCap Arborland LLC, AmCap NorthPoint LLC.

[Peter C. Hughes](#), Dilworth Paxson LLP, Philadelphia, PA, for 553 Retail, LLC.

[Martha E. Hulley](#), LeClair Ryan, Alexandria, VA, for Benenson Capital Co., Brandywine Grande C, L.P., CC Kingsport 98, LLC, CK Richmond Business Services #2, LLC, Cardinal Capital Partners, Developers *488 Realty,

Inc., Fayetteville Developers, LLC, The Balogh Companies, Westfield, LLC.

[Yolanda M. Humphrey](#), Houston, TX, Fort Bend Independent School Dist., The Woodlands Metro Center MUD.

[Harold Hunter, Jr.](#), Merritt, Flebotte, Wislon, Webb & Caruso, Durham, NC, for Tomesha Washington.

[Richard Iain Hutson](#), Weinstock, Friedman & Friedman, P.A., Baltimore, MD, for U.S. Signs, Inc., Caribbean Display & Const., Inc., Export Dev. Canada (EDC), Sharp Electronics Corp., Jack Hernandez, Jonathan Card, Joseph Skaf, Robert Gentry, Journal Sentinel, Inc.

[John F. Isbell](#), King & Spalding, LLP, Atlanta, GA, for Mitsubishi Digital Electronics America, Inc.

[Alexander Xavier Jackins](#), Seyfarth Shaw LLP, Washington, DC, Arboretum of South Barrington, LLC, Engineered Structures, Inc., AmCap Arborland LLC, AmCap NorthPoint LLC, Eatontown Commons Shopping Center.

[Thomas Neal Jamerson](#), Carrell Blanton Garrett & Van Horn PLC, Richmond, VA, for Galleria Plaza, Ltd., Parker Central Plaza Ltd.

[W. Glenn Jensen](#), Roetzel & Andress, Orlando, FL, for Fifth Third Bank.

Eleeza Johnson, The Law Office Of Vic Feazell, PC, Waco, TX, for Cynthia D. Bucher.

[Kenneth C. Johnson](#), Bricker & Eckler LLP, Columbus, OH, for Expesite, LLC.

[Russell R. Johnson, III](#), Manakin-Sabot, VA, [Samuel S. Oh](#), Lim. Ruger & Kim, LLP, Los Angeles, CA, for Chalek Co. LLC, Averatec/Trigem USA.

[Christopher A. Jones](#), Whiteford Taylor & Preston, LLP, Falls Church, VA, for Annapolis Plaza LLC, Weidler Settlement Class, Moncayo Settlement Class, Twentieth Century Fox Home Entertainment LLC, TeleDynamics LLP.

[Nathan Jones](#), U.S. Debt Recovery, Incline Village, NV, for U.S. Debt Recovery LLC, U.S. Debt Recovery III, LP, U.S. Debt Recovery, LLC, U.S. Debt Recovery V, LP, U.S. Debt Recovery IV, LLC, U.S. Debt Recovery VIII, L.P.

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[Douglas D. Kappler](#), Robinson, Diamant & Wolkowitz, APC, Los Angeles, CA, for Watercress Associates, LP, LLP dba Pearlridge Center.

[Lawrence Allen Katz](#), Venable LLP, Vienna, VA, [Frank T. Pepler](#), Pepler Mastromonaco LLP, San Francisco, CA, for Morgan Hill Retail Venture, LP.

[Adam K. Keith](#), Honigman Miller Schwartz and Cohn LLP, Detroit, MI, for The Marketplace of Rochester Hills Parcel B, LLC.

[Regina Stango Kelbon](#), Blank Rome LLP, Philadelphia, PA, for Cellco Partnership d/b/a Verizon Wireless, Cosmo-Eastgate, Ltd., Northcliff Residual Parcel 4 LLC, Triangle Equities Junction LLC, Cypress Equities, Wal-Mart Stores, Inc., Carlyle-Cypress Tuscaloosa, LLC, Plantation Point Development, LLC, Troutman Sanders LLP.

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Kornblau & Kornblau, Brooklyn, NY, for Clementine Tinsley.

[Charles Gideon Korrell](#), Dewey & LeBoeuf LLP, Washington, DC, for Hoprock Limonite, LLC.

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Enterprises, DeHart Holdings and Weeks Properties CG Holdings, The Woodmont Co., WEC 99A-2LLC, Weingarten Realty Investors and Its Affiliates, Ashkenazy Management Corp., Jones Lang LaSalle Americas, Inc., AAC Management Corp., Philips Intern. Holding Corp.

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[Thomas Ryan Lynch](#), Bradley Arant Boult Cummings LLP, Washington, DC, for Mibarev Development I, LLC.

[Andrew Edward Macfarlane](#), Merrifield, VA, for Sherwood America, Inc.

[Robert W. Mallard](#), Dorsey & Whitney, Wilmington, DE, for Entergy Mississippi, Inc., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Texas, Inc.

[Michael W. Malter](#), Binder & Malter, Santa Clara, CA, for Envision Peripherals, Inc.

[Robert M. Marino](#), Redmon Peyton & Braswell, LLP, Alexandria, VA, for Ryan, Inc. f/k/a Ryan & Co., Inc.

[Joel T. Marker](#), McKay, Burton & Thurman, Salt Lake City, UT, for Ammon Properties, LC, Parker Bullseye, LLC.

[Jeremy W. Martin](#), Richmond, VA, for McCandlish Holton, PC, Escambia County Tax Collector, Travis County Texas.

Richard M. Maseles, Missouri Dept. of Revenue, Jefferson City, MO, for Missouri Dept. of Rev.

[Gary E. Mason](#), Mason LLP, Washington, DC, for Marlon Mondragon.

[Bruce H. Matson](#), LeClair Ryan, A Professional Corp., Richmond, VA, for Bank of America, N.A., as Agent.

[Richard C. Maxwell](#), Woods Rogers PLC, Roanoke, VA, for Park Nat. Bank, Wells Fargo Bank Northwest, Nat. Association.

Bradford L Maynes, Brighton, MI, for City of Brighton.

[David McCall](#), Gay McCall Isaacks May Gordon & Roberts, Plano, TX, for City of Garland Tax Assessor/Collector, Collin County Tax Assessor/Collector, Frisco ISD Tax Assessor/Collector, Garland ISD Tax Assessor/Collector.

[Kevin R. McCarthy](#), McCarthy & White, PLLC, McLean, VA, for Florida Power & Light Co., Baltimore Gas and Elec. Co., Carriage Crossing Market Place LLC.

[Michael Keith McCrory](#), Barnes & Thornburg LLP, Indianapolis, IN, for Klipsch, LLC.

[Neil E. McCullagh](#), Spotts Fain PC, Richmond, VA, for Dentici Family Ltd. Partnership, Panattoni Dev. Co., Inc. as Agent for Charles L. Kessinger, *492 Jacque L. Kessinger and FRE Northglenn Retail, LLC, Panattoni Dev. Co., Inc. as Agent for EPC Denton Gateway, LLC, VVI Texas Holdings, LLC, TI PI Texas, LLC, Dudley Mitchell Properties TX, LLC, Shelby Properties TX, LLC, and Pintar Investment Properties TX, LLC, Chino South Retail PG, LLC, Cormark, Inc., Raymond & Main Retail, LLC c/o William A. Wood Panattoni Const., Inc., Marblegate Asset Management, PNY Technologies, Inc., Dawn W. VonBechmann, Newspaper Agency Co., Inc. d/b/a MediaOne of Utah, Richard T. Miller, United States Debt Recovery, LLC, Casio, Inc.

[Mark C. McCullough](#), Skaar & McCullough, Minneapolis, MN, for Susan M. Johnson.

[Carl P. McDonald](#), Goddard & Gamble, Maryville, TN, for Blount County Trustee.

[David R. McFarlin](#), Wolff, Hill, McFarlin & Herron, PA, Orlando, FL, for Alexander H. Bobinski, as Trustee under Trust No. 1001.

[Annemarie G. McGavin](#), Buchanan Ingersoll & Rooney, P.C., Washington, DC, for Dick's Sporting Goods, Inc., Golf Galaxy, Inc., General Instrument Corp. d/b/a Home & Networks Mobility Business of Motorola Inc., Motorola Inc.

[Frank F. McGinn](#), Bartlett Hackett Feinberg P.C., Boston, MA, for Iron Mountain Info. Management, Inc.

[Michael F. McGrath](#), Ravich Meyer Kirkman McGrath, Minneapolis, MN, for Tamarack Village Shopping Center Ltd. Partnership.

Robert P. McIntosh, U.S. Attorney's Office, Richmond, VA, for U.S.

[John D. McIntyre](#), Wilson & McIntyre, PLLC, Norfolk, VA, for Carnegie Management and Dev. Corp., Mallview Plaza Co., Ltd., The Marketplace of Rochester Hills Parcel B, LLC, Ritz Motel Co., Janaf Shops, LLC.

[John G. McJunkin](#), McKenna Long & Aldridge LLP, Washington, DC, for Bethesda Softworks, LLC, Marc Realty, 120 Orchard LLC, 427 Orchard LLC, FT Orchard LLC, SimpleTech by Hitachi Global Storage Technologies.

[Joshua D. McKarcher](#), Covington & Burling LLP, Washington, DC, for THQ, Inc., Apex Digital, Inc.

[Jennifer McLain McLemore](#), Christian & Barton, LLP, Richmond, VA, for EklecCo NewCo, LLC, Landover (Landover Crossing), LLC, CC-Investors 95-00006, Chung Hee Kim (Ridgehaven Plaza Shopping Center), Cohab Realty, LLC, Fishers Station Development Co., Gateway Center Properties III, LLC and SMR Gateway III, LLC as tenants in common, Generation One and Two, LP, Inland American Retail Management LLC, Inland Commercial Property Management, Inc., Inland Southwest Management LLC, Inland American Retail Management LLC, Inland US Management LLC, Inland Pacific Property Services LLC, Inland Continental Property Management Corp., and Inland Commc, Inland US Management LLC, Intern. Speedway Square, Ltd., KRG Market Street Village, LP, Kimco Realty Corp., Kite Coral Springs, LLC, Luckoff Land Co., LLC, Premier Retail Interiors, Inc., Roth Tanglewood, LLC, Tanglewood Park, LLC, The Leben Family Ltd. Partnership, Union Square Retail Trust, Whitestone Dev. Partners, L.P., 1030 W. North Ave. Bldg. LLC, M.I.A. Brookhaven, LLC, Carousel Center Co., L.P., Fingerlakes Crossing, LLC, Sangertown Square, L.L.C., Amargosa Palmdale Investments, LLC, Bella Terra Associates, LLC, Charlotte (Archdale) UY, LLC, Inland Southwest Management LLC, The West Campus Square Co., LLC, Bizport, Ltd., Cameron Bayonne, LLC, Computer *493 Resource Team, Inc., Crossroads Shopping Center, Digital Innovations, LLC, Drexel Delaware Ltd. Partnership, Hamilton Crossing, Inland Commercial Property Management, Inc., Inland Continental Property Management Corp., Inland Pacific Property Services LLC, James H. Wimmer, Jr., Jeff Leopold, Lexmark Intern., Inc., Manufacturers & Traders Trust Co., as Trustee, Media General, Inc., Merge Computer Group, Inc., Myrtle Beach Farms, N.P. Huntsville Ltd. Liability Co., Rolling Acres Plaza Shopping Center, Starpoint Property Management, LLC, Swanblossom Investments, LP, Thoroughbred Village Tennessee, GP, Warner Home Video, Watercress Associates, LP, LLP dba Pearlridge Center, GC Acquisition Corp., PL Mesa Pavilions LLC, Shops at Kildeer, LLC, U.S. 41 & I 285 Co., De Rito Partners, RD Bloomfield Associates Ltd. Partnership, Tanglewood Park, LLC; Roth Tanglewood,

LLC and Luckoff Land Co., LLC as tenants in common, Tourboullin Co., Acadia Realty Ltd. Partnership, Brighton Commercial, L.L.C., Catellus Operating Ltd. Partnership, Cedar Dev. Ltd., a Florida Ltd. Partnership, Columbia Equities Ltd. Partnership, La Habra Imperial, LLC, New River Properties, LLC, Rancon Realty Fund IV, Sparkleberry Two Notch, LLC, UnCommon, Ltd., a Florida Ltd. Partnership, Catellus Operating Ltd. Partnership, CHK, LLC, GRI-EQY (Sparkleberry Square) LLC, P/A Acadia Pelham Manor, LLC, T & T Enterprises, Crossroads Associates, Ltd., Morse-Sembler Villages Partnership #4, Westgate Village, LP, Mount Berry Square, LLC, Washington Commons Associates, Crossgates Commons NewCo, LLC, De Rito Partners Development, Inc., Manufactures and Traders Trust Co., as Trustee, Digital Innovations, LLC on Behalf of VonWin Capital Management, LP, Cousins Properties Inc., Foursquare Properties Inc., KNP, Portland Inv. Co. of America, Prudential Ins. Co. of America, RREEF Management Co., The Macerich Co., Watt Management Co., Hodgson Russ LLP, Manufacturers and Traders Trust Co., as Trustee, Manufacturers and Traders Trust Co., as Trustee, IMCC Sunland, L.L.C., Charlotte Observer, Columbia State, Fresno Bee, Idaho Statesman, Kansas City Star, Lexington Herald-Leader, McClatchy Co., Miami Herald, Myrtle Beach Sun News, Sacramento Bee, San Luis Obispo Tribune, Tacoma News, Inc., Wichita Eagle, 412 South Broadway Realty LLC, Alexander H Bobinski, as Trustee under Trust No. 1001, Thoroughbred Village, Bel Air Square LLC, CC Acquisition, L.P., CC Properties LLC, Capital Centre LLC, IN Retail Fund Algonquin Commons, L.L.C., Inland American Oklahoma City Penn, L.L.C., Inland American Chesapeake Crossroads, L.L.C., Inland Southwest Darien, L.L.C., Inland Traverse City, L.L.C., Inland Western Austin Southpark Meadows II Ltd. Partnership, Inland Western Avondale McDowell, L.L.C., Inland Western Cedar Hill Pleasant Run Ltd. Partnership, Inland Western College Station Gateway Ltd. Partnership, Inland Western Columbus Clifty, L.L.C., Inland Western Houma Magnolia, L.L.C., Inland Western Lake Worth Towne Crossing Ltd. Partnership, Inland Western Lewisville Lakepointe Ltd. Partnership, Inland Western Oswego Gerry Centennial, L.L.C., Inland Western Phillipsburg Greenwich L.L.C., Inland Western Richmond Maryland, L.L.C., Inland Western San Antonio HQ Ltd. Partnership, Inland Western San Antonio HW Ltd. Partnership, Inland Western Southlake Corners Ltd. Partnership, Inland Western Sugar Land Colony Ltd. Partnership, Inland Western Temecula Commons, L.L.C., Inland Western West Mifflin Century III, L.P., Lake Worth Towne Crossing Ltd. Partnership, MB Fabyan

Randall Plaza Batavia, L.L.C., MB Keene Monadnock, L.L.C., Memorial *494 Square 1021, L.L.C., [Robyn N. Davis](#), Galleria Alpha Plaza, Ltd., Parker Central Plaza, Ltd.

[Michelle McMahon](#), Bryan Cave LLP, New York, NY, for Georgia Pension Associates Realty Corp., Gould Investors, L.P., OLP 6609 Grand, LLC, OLP CCAntioch, LLC, OLP CCFairview Heights, LLC, OLP CCFerguson, LLC, OLP CCFlorence, LLC, OLP CCSt.Louis, LLC, Prince George's Station Retail, LLC.

[Janet M. Meiburger](#), The Meiburger Law Firm, P.C., McLean, VA, for Ricmac Equities Corp., Tribune Co.

[Philip James Meitl](#), Bryan Cave LLP, Washington, DC, for Berkadia Commercial Mortgage LLC, Capmark Finance, Inc.

[Stephen A. Metz](#), Shulman, Rogers, Gandal, Pordy & Ecker, PA, Potomac, MD, for Saul Holdings Ltd. Partnership.

[C. Christopher Meyer](#), Squire Sanders & Dempsey LLP, Cleveland, OH, for Photoco, Inc., Wells Fargo Business Credit, Inc.

[Jeffrey Meyers](#), [David L. Pollack](#), Ballard Spahr Andrews & Ingersoll, Philadelphia, PA, [Constantinos G. Panagopoulos](#), Ballard Spahr, LLP, Washington, DC, for Centro Properties Group, Federal Realty Inv. Trust.

[Kalina Boyanova Miller](#), Wiley Rein LLP, McLean, VA, for First Ind. Realty Trust, Inc., Greater Orlando Aviation Auth.

Kenneth Miller, Moldo Davidson Fraioli et al., Los Angeles, CA, for KB Columbus 1-CC, LLC.

[Nicholas M. Miller](#), DLA Piper LLP, Chicago, IL, for Manufacturers and Traders Trust Co., as Trustee under (I) the Collateral Trust Indenture from Bond Lease Corp. VI, dated Feb. 1, 1993 and (II) the Collateral Trust Indenture from Secured.

[Paul H. Millewich](#), Steven H. Mevorah & Assoc., Bloomingdale, IL, for Emilio Gervasio, Guiseppina Gervasio.

[Stephan William Milo](#), Wharton, Aldhizer & Weaver, PLC, Harrisonburg, VA, for General Elec. Company's Consumer & Ind. Div., THF Chesterfield Two Development, L.L.C., THF Clarksburg Dev. One, Ltd. Liability Co., THF Harrisonburg Crossing, L.L.C., THF ONC Dev., L.L.C., THF St. Clairsville Dev., L.P., BISSELL Homecare, Inc., Z-Line Designs, Inc., THF Harrisonburg Crossing, L.L.C.

[Robert Kenneth Minkoff](#), Jefferies Leveraged Credit Products, LLC, Stamford, CT, for Jefferies Leveraged Credit Products, LLC.

[Malcolm M. Mitchell, Jr.](#), Vorys, Sater, Seymour and Pease LLP, Alexandria, VA, for Accent Energy California LLC, Polaris Circuit City, LLC, AOL LLC, Advertising.com Inc., Advance Real Estate Management, LLC.

[Byron Z. Moldo](#), Ervin Cohen & Jessup LLP, Beverly Hills, CA, for Centre at 38th Street TIC, LLC, Descanso TIC, LLC, RMRG Portfolio TIC, LLC, The City Portfolio TIC, LLC.

[Joseph T. Moldovan](#), Morrison Cohen LLP, New York, NY, for Empire HealthChoice Assur., Inc. d/b/a Empire Blue Cross Blue Shield.

[Denise S. Mondell](#), Office of The Atty. Gen., Hartford, CT, for State of Conn., Departments of Labor and Rev. Services, State of Conn. Dept. of Rev. Services.

[Deborah L. Moore](#), City Hall, Dept. of Law, Meriden, CT, for City of Meriden, Conn.

[Mindy A. Mora](#), Bilzin Sumberg Baena Price & Axelrod LLP, Miami, FL, for Wells Fargo Bank, N.A.

[Clive N. Morgan](#), Jacksonville, FL, for Deborah Jaynes, Richard Jaynes.

*495 [John C. Morgan, Jr.](#), [John Carter Morgan, Jr.](#), PLLC, Warrenton, VA, for VonWin Capital Management, LP.

[Valerie P. Morrison](#), Wiley Rein LLP, McLean, VA, for Lexar Media, Inc., Infogain Corp., Daly City Partners I, L.P., Daly City Partners I, L.P., Envision Peripherals, Inc.

[Christopher B. Mosley](#), City of Fort Worth, Fort Worth, TX, for City of Fort Worth.

[Michael D. Mueller](#), Christian & Barton, L.L.P., Richmond, VA, for Gateway Center Properties III, LLC and SMR Gateway III, LLC as tenants in common, Union Square Retail Trust, Whitestone Dev. Partners, L.P., Warner Home Video, Catellus Operating Ltd. Partnership, Acadia Realty Ltd. Partnership, P/A Acadia Pelham Manor, LLC, RD Bloomfield Associates Ltd. Partnership, James H. Wimmer, Jr., Jeffrey R. Leopold, Savitri Cohen, CC-Investors 95-00006, CHK, LLC, Inland American Retail Management LLC, Inland Commercial Property Management, Inc., Inland Continental Property Management Corp., Inland Pacific Property Services LLC, Inland Southwest Management LLC,

Inland US Management LLC, Kimco Realty Corp., La Habra Imperial, LLC, Rancon Realty Fund IV, Concar Enterprises, Inc., Bagby & Russell Elec. Co., Inc., Sennheisser Elect. Corp., SEA Properties I, LLC, Market Heights, Ltd., Teachers Ins. and Annuity Association of America, Team Retail Westbank, Ltd., Lawrence W. Fay, [Robyn N. Davis](#), Giant Eagle, Inc., Bruce H. Besanko.

[Michael R. Murphy](#), Paducah, KY, for McCracken County Clerk.

[Mona M. Murphy](#), Akerman Senterfitt LLP, Vienna, VA, for Samsung Electronics America, Inc., Bush Industries, Inc., Thomas, Inc., Thomson, Inc., ON Corp. USA, Inc. and ON Corp., Imperial Sales Corp. d/b/a Imperial Sales Co.

[Stephen G. Murphy](#), Massachusetts Dept. of Rev., Boston, MA, for Mass. Dept. of Rev.

[Robert Ryland Musick](#), Thompson McMullan, Richmond, VA, for Intern. Business Machines Corp., IGate Global Solutions, Ltd.

[Mary Elisabeth Naumann](#), Jackson Kelly PLLC, Lexington, KY, for Prosite Business Solutions, LLC.

[James D. Newell](#), Buchanan Ingersoll & Rooney, Pittsburgh, PA, for Dick's Sporting Goods, Inc.

[Kevin M. Newman](#), Menter, Rudin & Trivelpiece, P.C., Syracuse, NY, for Cameron Bayonne, LLC, Carousel Center Co., L.P., Charlotte (Archdale) UY, LLC, EklecCo NewCo, LLC, Fingerlakes Crossing, LLC, Landover (Landover Crossing), LLC, Sangertown Square, L.L.C., Mount Berry Square, LLC, NBT Bank, N.A.

[Steven H. Newman](#), Katsky Korins LLP, New York, NY, for 502-12 86th Street LLC.

[Alan Michael Noskow](#), Patton Boggs LLP, McLean, VA, for Navarre Corp., CC Plaza Joint Venture, LLP, Cokem Intern., Inc.

[Darlene M. Nowak](#), Marcus & Shapira LLP, Pittsburgh, PA, for Giant Eagle, Inc.

[John O'Boyle](#), Stern Lavinthal Frankenberg & Norgaard, Englewood, NJ, for Edward A. Alberque.

[Edmond Patrick O'Brien](#), Stempel Bennett Claman & Hochberg, P.C., New York, NY, for Green 521 5th Ave., LLC.

[Sean P. O'Brien](#), Phoenix, AZ, for City of Avondale, AZ.

[Linda P. O'Gorman](#), Eastchester, NY, for Clementine Tinsley.

*496 [Michael John O'Grady](#), Frost Brown Todd LLC, Cincinnati, OH, for Convergys Customer Management Group Inc.

[Mary E. Olden](#), McDonough Holland & Allen PC, Sacramento, CA, for Colorado Structures, Inc. dba CSI Const. Co.

[Jeffrey G. Olsen](#), Fennell & Olsen, Folsom, CA, for ALCAL/ Arcade Contracting, Inc., Pacific Supply.

[Laura Otenti](#), Posternak Blankstein & Lund LLP, Boston, MA, for Salem Rockingham LLC.

[Rodney F. Page](#), Bryan Cave LLP, Washington, DC, for Bank of America, N.A., Wells Fargo Bank, N.A., Berkadia Commercial Mortgage LLC.

Ronald Allen Page, Jr., Ronald Page, PLC, Glen Allen, VA, for Miner Fleet Management Group, Ltd., Cormark, Inc., Ronald A. Page, Jr.

[Craig M. Palik](#), McNamee, Hosea, Jernigan, Kim, & et al., Greenbelt, MD, for Congressional North Associates Ltd. Partnership, Bond Circuit IV Delaware Business Trust, CC Hamburg NY Partners, LLC.

[Karla Lynn Palmer](#), McDermott, Will & Emery, Washington, DC, for TFL Enterprises.

R. Chase Palmer, Palmer Law Firm, Inc., Marshall, TX, for Dennis Morgan.

[Constantinos G. Panagopoulos](#), Ballard Spahr, LLP, Washington, DC, for Centro Properties Group, Federal Realty Inv. Trust.

[James A. Pardo, Jr.](#), King & Spalding, Atlanta, GA, for Mitsubishi Digital Electronics America, Inc., Mitsubishi Elec. & Electronics USA, Inc.

[Ernie Zachary Park](#), Bewley, Lassleben & Miller, LLP, Whittier, CA, for The Irvine Co.

[Min Park](#), Connolly Bove Lodge & Hutz LLP, Washington, DC, for Inland Southwest Management LLC, Inland American Retail Management LLC, Inland US Management LLC, Inland Pacific Property Services LLC, Inland

Continental Property Management Corp., and Inland Commc.

[Paul J. Pascuzzi](#), Felderstein Fitzgerald et al., Sacramento, CA, for The McClatchy Co., Belleville News-Democrat, Bellingham Herald, Biloxi Sun Herald, Bradenton Herald, Centre Daily Times (State College), Charlotte Observer, Columbia State, Columbus Ledger-Enquirer, Fort Worth Star-Telegram, Fresno Bee, Idaho Statesman, Island Packet, Kansas City Star, Lexington Herald-Leader, Macon Telegraph, McClatchy Co., Merced Sun Star, Miami Herald, Modesto Bee, Myrtle Beach Sun News, Olympian, Raleigh News & Observer, Sacramento Bee, San Luis Obispo Tribune, Tacoma News, Inc., Tri-City Herald, Wichita Eagle.

[H. Brent Patrick](#), Smith Cashion & Orr, PLC, Nashville, TN, for The Parkes Companies Inc.

[Thomas C. Pavlik](#), Cleveland, OH, for Dish It Up, Inc.

[Peter M. Pearl](#), Sands Anderson, Roanoke, VA, for Colonial Heights Holdings, LLC, PrattCenter, LLC, Valley Corners Shopping Center, LLC.

[Frank T. Pepler](#), Pepler Mastromonaco LLP, San Francisco, CA, for Morgan Hill Retail Venture, LP.

[Christopher L. Perkins](#), LeClair Ryan, Richmond, VA, for CK Richmond Business Services #2, LLC, Cardinal Capital Partners, The Balogh Companies, Benenson Capital Co., CC Kingsport 98, LLC, The Balogh Companies, The Daniel Group, Westfield, LLC, LeClair Ryan, A Professional Corp., Developers Realty, Inc., Fayetteville Developers, LLC, FM Facility *497 Maintenance, f/k/a IPT, LLC, Rossmoor Shops, LLC, Brandywine Grande C, L.P., Circuit Investors #2, Ltd., 680 S. Lemon Ave. Co., Schimenti Const. Co. LLC, Nina Winston Creative Realty Management, LLC, Eastern Security Corp., Cisco-Linksys, LLC, Plantronics, Inc., Seagate Technology, LLC, CC—Virginia Beach, LLC, Steven Ivester, Longacre Opportunity Fund, LP, Olympus Corp., Olympus Corp. of the Americas, Take Two Interactive Software, Inc.

[Rhett E. Petcher](#), Seyfarth Shaw LLP, Washington, DC, for Engineered Structures, Inc., 36 Monmouth Plaza LLC.

[Loc Pfeiffer](#), Kutak Rock L.L.P., Richmond, VA, for Schottenstein Property Group, Inc.

[Kristen H. Philhower](#), Glendale, CA, for Irene Franco.

[Deborah J. Piazza](#), Hodgson Russ LLP, Buffalo, NY, for Manufacturers & Traders Trust Co., as Trustee.

[Kimberly A. Pierro](#), Kutak Rock LLP, Richmond, VA, for Shopping.com, Inc., CBL & Associates Management, Inc., Cole CC Kennesaw GA, LLC, Cole CC Taunton MA, LLC, Magna Trust Co., Trustee, Cole CC Aurora CO, LLC, Cole CC Groveland FL, LLC, Cole CC Mesquite TX, LLC, Schottenstein Property Group, Inc., The Landing at Arbor Place II, LLC, Sharpe Partners, LLC, Hickory Ridge Pavilion LLC, Jubilee-Springdale, LLC, The Shoppes of Beaver Creek Ltd.

[David M. Poitras](#), Jeffer, Mangels, Butler & Marmaro LLP, Los Angeles, CA, for THQ, Inc.

[David L. Pollack](#), Ballard Spahr Andrews & Ingersoll LLP, Philadelphia, PA, for Centro Properties Group, Federal Realty Inv. Trust.

[Lionel J. Postic](#), Law Firm Of Lionel J. Postic, PC, Kennesaw, GA, for Sun Belt General Contractors, Inc.

[Bertram L. Potemken](#), Baltimore, MD, for Estate of Joseph Y. Einbinder.

[Courtney E. Pozmantier](#), Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles, CA, for Paramount Home Entertainment.

[Gail B. Price](#), Bronwen Price Attys. at Law, San Marino, CA, for 13630 Victory Boulevard, LLC.

[William Daniel Prince, IV](#), ThompsonMcMullan, PC, Richmond, VA, for Advance Publications, Inc.

[Raymond Pring, Jr.](#), Gross, Pring & Associates, P.C., Manassas, VA, for Laura L. Scannell.

[Julie Ann Quagliano](#), Seeger Faughnan Mendicino, P.C., Washington, DC, for AT&T, AT&T Corp., AT&T Capital Services, Inc.

[Albert F. Quintrall](#), Quintrall & Associates, LLP, San Diego, CA, for Wayne-Dalton Corp.

[Stuart J. Radloff](#), Town & Country, MO, for Heritage Plaza, LLC.

Vivienne Rakowsky, State of NV, Office of the Atty. General, Las Vegas, NV, for Nevada Dept. of Taxation.

[William H. Ramsey](#), Wisconsin Dept. of Justice, Madison, WI, for State of Wisconsin—Office of the State Treasurer.

[Jennifer L. Rando](#), Hodgson Russ LLP, Buffalo, NY, for Manufacturers and Traders Trust Co., as Trustee under (I) the Collateral Trust Indenture from Bond Lease Corp. VI, dated Feb. 1, 1993 and (II) the Collateral Trust Indenture from Secured.

Andrew Rapp, Bloch, P.S., Inc., Seattle, WA, for Terranomics Crossroads Associates.

*498 [Victoria A. Reardon](#), State of Michigan, Dept. of Attorney Gen., Detroit, MI, for State of Michigan, Dept. of Treasury.

[Michael Reed](#), McCreary, Veselka, Bragg & Allen, Round Rock, TX, for Williamson County et al., City of Midland et al., City of Waco et al., Tax Appraisal District of Bell County et al.

[Frank F. Rennie, IV](#), Richmond, VA, for James M. Stacia.

[Thomas W. Repczynski](#), Offit Kurman, Bethesda, MD, for Tutwiler Properties, Ltd., Graphic Communications, Inc., Loren Stocker, John P. Raleigh.

[Thomas David Rethage](#), U.S. Equal Employment Oppor. Com'n, Philadelphia District Office, Philadelphia, PA, for EEOC'S.

[David G. Reynolds](#), Glass & Reynolds, Corrales, NM, for Homero Alonso Mata.

[Kenneth R. Rhoad](#), Gebhardt & Smith LLP, Baltimore, MD, for ActionLink, LLC.

[Matthew Righetti](#), Righetti Glugoski, P.C., San Francisco, CA, for Jack Hernandez, Jonthan Card, Robert Gentry, Joseph Skaf, Jack Hernandez, Jonathan Card.

[Edward Rimland](#), Rimland & Associates, Brooklyn, NY, for Khanam Fatima Akhter.

[Fred B. Ringel](#), Robinson Brog Leinwand Greene, et al., New York, NY, for F&M Properties, Inc.

[Henry Buswell Roberts, Jr.](#), Blacksburg, VA, for Sykes Enterprises Inc. f/k/a ICT Group, Inc., Suemar.

[Philip M. Roberts](#), Berkeley & Degaetani, Richmond, VA, for CDB Falcon Sunland Plaza, LP, Hillsborough County, FL.

[Terri A. Roberts](#), Pima County Attorney's Office, Tucson, AZ, for Pima County.

Wendy Michele Roenker, City of Chesapeake, Virginia, Chesapeake, VA, for Treasurer City of Chesapeake.

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[Julie H. Rome-Banks](#), Binder & Malter, LLP, Santa Clara, CA, for Envision Peripherals, Inc., Daly City Partners I, L.P., Daly City Partners I, L.P.

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[Jeremy Brian Root](#), Blankingship & Keith, P.C., Fairfax, VA, for ACCO Brands Corp.

Kenneth B. Roseman, Kenneth B. Roseman & Assoc., P.C., for Petrovich.

[Adam L. Rosen](#), Silverman Acampora LLP, Jericho, NY, for The Ins. Co. of the State of Penn., The Nat. Union Fire Ins. Co. of Pittsburgh, PA, Nat. Union Fire Ins. Co. of Pittsburgh, PA.

[George Rosenberg](#), Arapahoe County Attorney, Littleton, CO, for Arapahoe County Treasurer.

[Edward L. Rothberg](#), Hoover Slovacek, LLP, Houston, TX, for Circuit Sports, L.P.

[Paul Rubin](#), Herrick, Feinstein LLP, New York, NY, for Canon U.S.A., Inc.

[David R. Ruby](#), Thompson McMullan, P.C., Richmond, VA, for Holyoke Crossing Ltd. Partnership II, SanDisk Corp.

[David R. Ruby](#), McSweeney Crump Childress & Temple, P.C., Richmond, VA, for SanDisk Corp.

[Michael F. Ruggio](#), Roetzel & Andress, LPA, Washington, DC, for MD-GSI Associates.

[Davor Rukavina](#), Munsch Hardt Kopt & Harr, P.C., Dallas, TX, for Texas Instruments Inc.

[Eric Christopher Rusnak](#), K&L Gates LLP, Washington, DC, for Microsoft Corp.

***499** [Jeremy W. Ryan](#), Saul Ewing LLP, Wilmington, DE, for FR E2 Property Holding, L.P., First Indus. Realty Trust, Inc.

[William H Ryan, Jr.](#), Office of the Atty. Gen., Pittsburgh, PA, for PA Dept. of Rev. Commonwealth of Penn.

[Denyse Sabagh](#), Duane Morris LLP, Washington, DC, for Audiovox Corp., Principal Life Ins. Co., Sima Products Corp., Korea Export Ins. Corp.

[Travis Aaron Sabalewski](#), Reed Smith LLP, Richmond, VA, for IKON Office Solutions, Inc.

[Jeffrey D. Saferstein](#), Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, for Ricardo Benjamin Salinas Pliego.

[Michael J. Sage](#), O'Melveny & Myers LLP, New York, NY, for Pan Am Equities.

[Rebecca L. Saitta](#), Wiley Rein LLP, McLean, VA, for Bond C.C. I Delaware Business Trust.

[Paul S. Samson](#), Riemer & Braunstein, LLP, Boston, MA, for Bank of America, N.A., as Agent.

[Diane W. Sanders](#), Austin, TX, for Cameron County, City of McAllen, City of Round Rock, McAllen ISD, McLennan County, Nueces County, South Texas College, South Texas ISD.

[Carl O. Sandin](#), Perdue, Brandon, Fielder, Collins, Mott, Houston, TX, for Baybrook MUD 1.

[Troy Savenko](#), Gregory Kaplan, PLC, Richmond, VA, for PlumChoice, Inc., AmREIT, a Texas Real Estate Inv. Trust, Liquid Asset Partners, LLC, Ada Alicea, on behalf of herself and all others similarly situated, Slam Brands, Inc., Safeco Ins. Co. of America, Archos, Inc.

Jeffrey Scharf, Taxing Auth. Consulting Services, PC, Richmond, VA, for Commonwealth of VA, Dept. of Taxation, County of Spokane, City of Fredericksburg, VA.

[Nancy R. Schlichting](#), Lenhart Obenshain, Charlottesville, VA, for Antor Media Corp.

[Ann E. Schmitt](#), Culbert & Schmitt, PLLC, Leesburg, VA, for Plaza Las Palmas, LLC, The Parkes Companies Inc., Ann E. Schmitt.

[Eric Lopez Schnabel](#), Dorsey & Whitney, Wilmington, DE, for Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, Inc.

[Paul Michael Schrader](#), Fullerton & Knowles PC, Clifton, VA, for ANG Newspapers, Alameda Newspaper Group, Inc., Alameda Newspapers, Inc., Bay Area News Group East Bay, LLC, BayAreaNews Group, BayAreaNewsGroup, Contra Costa Times, Inc., Contra Costs Times, MediaNews Group, Inc., San Jose Mercury-News, Inc.

[Thomas L. Schulman](#), Santa Ana, CA, for Tec-Com Services, Inc.

[Thomas Schultz](#), Farmington Hills, MI, for City of Novi, MI.

[William H. Schwarzschild, III](#), Williams Mullen, Richmond, VA, for Vonage Marketing Inc., Dollar Tree Stores, Inc., DIRECTV, Inc., LumiSource, Inc., ION Audio, LLC, SouthPeak Interactive, LLC, Miami-Dade County Tax Collector, State Board of Equalization, MRV Wanamaker, LC.

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Opinion

MEMORANDUM OPINION

[KEVIN R. HUENNEKENS](#), Bankruptcy Judge.

The debtors, Circuit City Stores, Inc., *et al.*, (the “Debtors,” or “Circuit City”) filed these bankruptcy cases under Chapter 11 of the Bankruptcy Code on November 10, 2008 (the “Petition Date”).¹ The Debtors' bankruptcy cases were consolidated for joint administration pursuant to [Rule 1015\(b\) of the Federal Rules of Bankruptcy Procedure](#). No trustee or examiner has been appointed as of the date of this Memorandum Opinion, and Circuit City continues to manage and operate its business as a debtor in possession in accordance with [11 U.S.C. §§ 1107](#) and [1108](#). An Official Committee of Unsecured Creditors was appointed by the

United States Trustee on November 12, 2008, pursuant to [11 U.S.C. § 1102\(a\)](#).

Circuit City is a specialty retailer of consumer electronics. Circuit City operates electronics stores nationwide that sell, among other things, televisions, home theater systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics. As of the Petition Date, Circuit City employed approximately 39,600 employees and was operating approximately 712 retail stores and 9 outlet stores throughout the United States and Puerto Rico.

In connection with the operation of its stores, the Debtors are parties to numerous unexpired leases of nonresidential real property (the “Leases”). Pursuant to the terms of most of the Debtors' Leases, the rental obligations for the month of November 2008 became due and payable on November 1, 2008. Circuit City refers to Leases of this type as “advance payment leases” because the Debtors must pay rent in advance on the first day of the month for each monthly period in which they occupy the premises (the “Advance Leases”). The Debtors are also parties to a number of Leases whereunder the rental obligation for the month of November 2008 became due and payable at the end of the month (the “Arrears Leases”). As of the Petition Date, November 10, 2008, the Debtors had not paid any rent for the month of November under either type of Lease.

Most, if not all, of the lessors under the Debtors' Leases (the “Lessors”) filed formal or informal motions or objections (the “Motions”),² seeking to compel immediate ***505** payment of the postpetition rent due from the Debtors for the period from November 10, 2008, through November 30, 2008 pursuant to [§ 365\(d\)\(3\) of the Bankruptcy Code](#). The parties refer to this portion of the rent due for occupancy between the Petition Date and the end of the month in which the petition was filed as “stub rent” (the “Stub Rent”).³ In the alternative, the Motions seek the Court to defer payment of the Stub Rent only until the date that is sixty days following the Petition Date. The Debtors filed omnibus objections to the Motions on December 3, 2008, and December 18, 2008 (the “Objections”) [Docket Nos. 641 and 1100, respectively].

The Court reviewed the Motions and the Objections, and heard the testimony of one of the Debtor's financial advisors, Stephen Coulombe of FTI Consulting Inc., at the hearing on the Motions on December 22, 2008 (the “Hearing”).

At the conclusion of the Hearing the Court ruled:

1. [Section 365\(d\)\(3\)](#) applies to requests for payment of rent due under the Debtors' Leases.
2. The “accrual method” applies to determine when the obligation to pay rent under a Lease arises for purposes of differentiating prepetition obligations from postpetition obligations.
3. The “accrual method” does not operate to change the time for performance pursuant to the Lease terms.
4. The Stub Rent due for postpetition occupancy under the Debtors' Leases are administrative claims under [§§ 503\(b\)](#) and [507\(a\)\(2\)](#) of the [Bankruptcy Code](#).
5. “Timely” under [§ 365\(d\)\(3\)](#) shall be determined by the terms of the Lease.
6. Administrative claims for Stub Rent are not entitled to superpriority through immediate payment, but shall instead be paid upon the effective date of the plan with other administrative claims, absent further order of the Court.

The Court's ruling was without prejudice to any Lessor's right to ask for relief for cause, and the Court reserved the Debtors' right to object to claims for payment of attorneys' fees associated with the Leases. The Court's ruling did not operate to extend the time for performance of any obligation governed by [§ 365\(d\)\(3\)](#). The Court entered its order denying the Motions on January 26, 2009 (the “Stub Rent Order”).

This Memorandum Opinion supplements the bases for the Court's ruling as announced from the bench at the conclusion of the Hearing denying the Motions and [*506](#) supplements the Court's findings of fact and conclusions of law pursuant to [Rule 7052 of the Federal Rules of Bankruptcy Procedure](#) set forth in its Stub Rent Order. The Court has jurisdiction over the Motions pursuant to [28 U.S.C. §§ 157](#) and [1334](#), and these matters are core proceedings pursuant to [28 U.S.C. § 157\(b\)\(2\)\(A\)](#), (B), and (O). Venue of these cases and the Motions in this district is proper under [28 U.S.C. §§ 1408](#) and [1409](#).

In relevant part, [§ 365\(d\)\(3\) of the Bankruptcy Code](#) provides:

The trustee shall *timely* perform all the *obligations* of the debtor [except certain obligations not applicable in this case] *arising from and after the*

order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding [section 503\(b\)\(1\)](#) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period.

[11 U.S.C. § 365\(d\)\(3\)](#) (emphasis added). A debtor in possession has the rights, powers and duties of a bankruptcy trustee. [11 U.S.C. § 1107\(a\)](#). As the Debtors in this case continue to manage and operate their business as debtors in possession in accordance with [11 U.S.C. §§ 1107](#) and [1108](#), they must timely perform the obligations that arise from and after the order for relief under their Leases pursuant to [§ 365\(d\)\(3\)](#), until any such Lease is assumed or rejected. Absent from [§ 365\(d\)\(3\)](#) is any definition of the term “timely.”

Before [§ 365\(d\)\(3\)](#) was enacted in its current form in 1984, a lessor's only avenue to collect rent and other postpetition charges from a debtor in possession was by meeting the test for administrative expense status set forth in [11 U.S.C. § 503\(b\)\(1\)\(A\)](#). *Santa Ana Best Plaza, Ltd. v. Best Prods. Co. (In re Best Prods. Co.)*, 206 B.R. 404, 405, 405 n.1 (Bankr.E.D.Va.1997). Even after “maneuver[ing] through a rather cumbersome application process,” lessors were only entitled to recover “the ‘reasonable value’ of the debtor's ‘actual use’ of the premises and remained subject to the bankruptcy court's discretion to delay payment until after a plan had been confirmed.” *Id.* at 405 (citations and footnotes omitted) (noting the language of [§ 503\(b\)\(1\)\(A\)](#) that operated to reduce the lessors' claim to less than full contract value by only allowing as an administrative expense the reasonable value of the debtor's actual use of the premises after the petition was filed).

To mitigate some of the “unjustified costs on landlords throughout the country, Congress enacted [11 U.S.C. § 365\(d\)\(3\)](#) as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984.” *Id.* at 406. While this “subsection improved a landlord's ability to recover post-petition rents and charges,” there is a remaining question about “whether a debtor-in-possession leasing nonresidential real property must pay in full all bills received from the landlord during the post-petition, pre-rejection period, regardless of whether some of those charges accrued pre-petition.” *Id.* That question

begs another—when do charges *accrue*? And another—if the charges *accrue* postpetition, when must those charges be paid in order to satisfy the requirement that they be paid *timely*? “[D]eciphering § 365(d)(3) has been akin to navigating a freshly sown battlefield—like hidden mines, each clause has triggered considerable debate as to its intent and meaning.” *Id.* (C.J. Tice) (quoting Joshua Fruchter, *To Bind or Not to Bind—Bankruptcy Code § 365(d)(3): *507 Statutory Minefield*, 68 Am. Bankr.L.J. 437, 438 (1994)).

“The Bankruptcy Code does not define when debtor’s obligations ‘arise’ in order to determine when the obligation must be treated as a post-petition claim entitled to administrative expense priority.” *In re Trak Auto Corp.*, 277 B.R. 655, 662 (Bankr.E.D.Va.2002), *rev’d on other grounds*, 367 F.3d 237 (4th Cir.2004). Resolution of that issue depends on whether this Court applies the “billing method” or the “accrual method,” which are short form terms to describe two separate lines of cases that have developed to determine when an obligation “arises” under the Bankruptcy Code. *See In re Trak Auto Corp.*, 277 B.R. 655, 662 (Bankr.E.D.Va.2002), *rev’d on other grounds*, 367 F.3d 237 (4th Cir.2004) (noting that a minority of courts have adopted the “billing method” while the majority of courts have adopted the “accrual method”).

Under the billing method, the obligation to pay arises at the time that payment is due under the terms of the lease contract. When the petition date falls in the middle of a month, the obligation to pay rent will be treated entirely as a prepetition obligation if the Lease is an Advance Lease, and the obligation to pay rent will be treated entirely as a postpetition obligation if the Lease is an Arrears Lease. Alternatively, under the accrual method, the obligation to pay rent is deemed to accrue on a daily basis following the Petition Date. The Petition Date separates the prepetition obligations (general unsecured claims for the portion of the month prior to the petition date) from postpetition obligations (administrative expense claims for the portion of the month after the petition date). *See In re Trak Auto Corp.*, 277 B.R. 655, 662 (Bankr.E.D.Va.2002), *rev’d on other grounds*, 367 F.3d 237 (4th Cir.2004). If the Court were to apply the billing method in this case, then the obligation to pay November rent would be deemed to have arisen when the lease required the rent to be paid. This would be November 1 if the lease were an Advance Lease. The obligation to pay November rent (including Stub Rent) would be a prepetition claim because the Petition Date was November 10, 2008. On the other hand, if the Lease were an Arrears Lease, then the obligation to pay

November rent (including Stub Rent) would be a postpetition claim entitling the Lessor to administrative expense priority under 11 U.S.C. § 507.

[1] For the Leases with respect to which a Lessor has filed a Motion, the Debtors have agreed on the record that the accrual method will apply in these cases with respect to both Advance Leases and Arrears Leases and that such Lessors have timely raised their rights under § 365(d)(3) of the Bankruptcy Code and thus have not waived any rights that § 365(d)(3) affords to them.⁴ Even without the parties’ agreement that the accrual method applies to this situation, the controlling law in this jurisdiction compels that result, and the Court will apply this methodology even for Leases with respect to which a Lessor did not file a Motion. In *In re Trak Auto Corp.*, 277 B.R. 655, 663 n.2 (Bankr.E.D.Va.2002), *rev’d on other *508 grounds*, 367 F.3d 237 (4th Cir.2004), Judge Adams noted that the United States Court of Appeals for the Fourth Circuit has not directly addressed the issue of whether the accrual method or the billing method applies in these circumstances, although that court apparently applied the billing method in an unpublished opinion. *See Rose’s Stores, Inc. v. Saul Subsidiary I, L.P. (In re Rose’s Stores, Inc.)*, 155 F.3d 560, No. 97–2654, 1998 WL 393984 (4th Cir. July 10, 1998) (affirming the district court’s determination that the rent payments at issue came due postpetition pursuant to the leases and thus were obligations arising postpetition despite the fact that the rent payments were for prepetition occupancy of the premises).

Unpublished opinions are not binding on this Court pursuant to Rule 32.1 of the Local Rules of the United States Court of Appeals for the Fourth Circuit, and thus the Court concludes that the accrual method applies in this jurisdiction. *In re Trak Auto Corp.*, 277 B.R. 655, 663 (Bankr.E.D.Va.2002), *rev’d on other grounds*, 367 F.3d 237 (4th Cir.2004) (stating that Chief Judge Tice’s opinion in *Santa Ana Best Plaza, Ltd. v. Best Prods. Co. (In re Best Prods. Co.)*, 206 B.R. 404 (Bankr.E.D.Va.1997), establishes the methodology to apply the accrual method). The “intent behind the enactment of § 365(d)(3) was to prevent landlords from becoming involuntary creditors of the debtor’s estate,” and “[a]dopting a method where debtor’s liability would turn solely on when bills are issued has the potential to create a windfall for a landlord who decides to manipulate when it bills the debtor.” *Id.* at 662, 663. Avoiding both of these inequitable results, the accrual method means that “[a]nything accruing after the entry [of] the order for relief is a post-petition charge that may

be elevated to administrative priority under § 507(a).” *Id.* at 664.

[2] Moreover, the lessor need not show that the “debtor’s continued possession of its space is a benefit to the estate” in order to receive administrative expense priority under § 507(a)(2). See *id.* at 665 (noting that the plain language of § 365(d)(3) states that it applies “notwithstanding section 503(b)(1)”; see also *In re Va. Packaging Supply Co.*, 122 B.R. 491, 494 (Bankr.E.D.Va.1990) (“The court interprets the [phrase ‘notwithstanding section 503(b)(1)’] as requiring timely payment of rent provided under the lease without regard to the ‘actual, necessary costs’ requirement or the necessity for notice and hearing under § 503(b)(1).”).

In a case interpreting § 365(d)(10),⁵ the United States Court of Appeals for the Fourth Circuit noted that “[w]hile it is clear that § 365(d)(10) and § 365(d)(3) impose on a [debtor in possession] the duty to perform all lease obligations in a timely manner, these sections do not specify a lessor’s remedy should the [debtor in possession] fail to perform.” *CIT Commc’ns Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.)*, 406 F.3d 229, 235 (4th Cir.2005). The Fourth Circuit *509 concluded that “a lessor is entitled to recover all payments due under the lease (including rent, taxes, interest, late fees, and attorney’s fees) as an administrative expense,” but the lessor “must still assert its administrative expense claim under § 503(b); it simply does not assert the claim under the specific provision of § 503(b)(1)(A). This conclusion ... avoids creating ambiguities and conflicts with respect to other provisions in the Code.” *Id.* at 236 (emphasis in original). Specifically, the court explained that “when a lessor seeks an administrative expense for ‘all of the obligations’ due under a lease, the ‘notwithstanding § 503(b)(1)’ proviso ... relieves the lessor from proceeding under § 503(b)(1)(A), which would limit the recovery to an amount representing only the actual and necessary use by the estate.” *Id.* at 237 (emphasis in original). Thus, the accrual method assures payment of all obligations due under a lease for postpetition occupancy on a timely basis as an administrative expense and removes the incentive to manipulate billing cycles.

[3] Under the accrual method the Lessors’ claims for Stub Rent are entitled to administrative expense priority. The issue before the Court is when do these claims for Stub Rent have to be paid in order to comply with § 365(d)(3). See *In re Trak Auto Corp.*, 277 B.R. 655, 668 (Bankr.E.D.Va.2002), *rev’d*

on other grounds, 367 F.3d 237 (4th Cir.2004) (“This issue has caused great debate among the courts....”).

Section 365(d)(3) of the Bankruptcy Code requires the Debtors to *timely* perform all their obligations under their Leases. *Timely* could mean immediately, as argued by certain Lessors in this case. *Timely* could mean whatever period for timely performance is provided by the lease terms, as the Debtors’ argue. *Timely* could mean that payment of these administrative claims should be made with all other administrative claims—upon the effective date of the plan. See 11 U.S.C. § 1129(a)(9). *Timely* is not a defined term in the Bankruptcy Code. This Court has addressed this problem previously. See *In re Trak Auto Corp.*, 277 B.R. 655, 668 (Bankr.E.D.Va.2002), *rev’d on other grounds*, 367 F.3d 237 (4th Cir.2004); *In re Va. Packaging Supply Co.*, 122 B.R. 491, 494–95 (Bankr.E.D.Va.1990); *Santa Ana Best Plaza, Ltd. v. Best Prods. Co. (In re Best Prods. Co.)*, 206 B.R. 404 (Bankr.E.D.Va.1997); see also *CIT Commc’ns Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.)*, 406 F.3d 229 (4th Cir.2005) (“While an administrative expense under § 503(b) must be paid in cash on the effective date of the plan in a chapter 11 proceeding, ... bankruptcy courts have wide latitude in deciding whether to order payment prior to these deadlines.”).

The Debtors argue that in adopting the accrual method for the payment of Stub Rent, the Court should limit the application of the methodology to elevating the Stub Rent portion of a Lessor’s claim to administrative expense status. Adoption of the accrual method, they argue, should not dictate the time for payment of that administrative claim or alter the time of performance of an obligation under the Leases. This argument rests on the assumption that the accrual method merely creates the legal fiction that the Petition Date determines the date from which the administrative expense claim for the payment of rent arises. The adoption of a legal fiction fixing the status of the claim as an administrative one should not otherwise alter or create an independent contractual obligation for immediate payment.

The Debtors point out that the Lessors could have taken action prepetition under applicable non-bankruptcy law to enforce *510 the nonpayment of their November rent. The unpaid Stub Rent for Advance Leases is approximately \$20 to \$25 million. The budget under the Debtors’ debtor in possession financing facility, as approved by this Court by order entered December 23, 2008 (the “DIP Facility”) [Docket No. 1262], did not contemplate payment of the Stub Rent for Advance

Leases. The Debtors presented evidence that they were accordingly not authorized to make immediate payment of the Stub Rent for Advance Leases and that such payment would result in financial hardship for the Debtors and endanger their continued operations and successful restructuring.

Certain of the Lessors advanced the argument that application of the accrual method requires a finding that payment of Stub Rent under Advance Leases is an obligation subject to immediate performance under § 365(d)(3), or in no event later than the date that is sixty days after the Petition Date. Under this theory, the Lessors argued that application of the accrual method is not simply a legal fiction. Rather, it creates a new date upon which the obligation to pay rent arises under the Lease. That new date is the Petition Date. This argument rests on the assumption that the accrual method, in addition to setting the date that an administrative claim arises as of the Petition Date, also changes the lease term relating to the time for performance in order to start the clock running on the Petition Date for timely performance. Certain other Lessors advanced a slightly different argument for immediate payment—*In re Trak Auto* applies only when a Lessor sleeps on his rights and does not ask for immediate payment, and in this case all the Lessors quickly moved for immediate payment, rendering *In re Trak Auto* inapplicable. See *In re Trak Auto Corp.*, 277 B.R. 655, 669 (Bankr.E.D.Va.2002), *rev'd on other grounds*, 367 F.3d 237 (4th Cir.2004) (noting that “a landlord is not permitted to sit on its rights and rely on an alleged super-priority status for its administrative rent claim”). Additionally, the Lessors argue that ordering the immediate payment of Stub Rent is consistent with the notion that rent for the month of November is not only due on November 1. Rather, it is an obligation to pay rent that continues on November 2, November 3, and so on until the obligation is performed, even if performed after the period provided for timely performance under the lease terms. The only reason not to order immediate payment of the Stub Rent claims, the Lessors argue, is the risk of administrative insolvency. See *In re Va. Packaging Supply Co.*, 122 B.R. 491, 495 (Bankr.E.D.Va.1990) (“Some courts have ordered payment subject to recapture if there are not sufficient funds to pay all administrative claims.”). The Lessors argue that not ordering immediate payment punishes the Lessors for the Debtors' failure to provide for payment of Stub Rent under the DIP Facility.

The Court concludes that the Lessors hold a claim for Stub Rent that is entitled to administrative expense priority under § 507(a)(2) of the Bankruptcy Code. The obligation to “timely”

perform that is referenced in § 365(d)(3) refers to the time for performance under the lease terms. The accrual method changes the status of the obligation of the Debtor to pay Stub Rent into an administrative claim, but it does not change the temporal element of the lease term regarding payment—the time for performance of the payment obligation.

Under the accrual method, rent claims for periods of prepetition occupancy are general unsecured claims, while the payment of Stub Rent claims for periods of postpetition occupancy are administrative claims. The Debtors' Obligation to pay *511 Stub Rent claims must be performed “timely” pursuant to § 365(d)(3). If the time for performance under the Lease has not expired (e.g. if the Lease is an Arrears Lease and the Petition Date is before the due date under the Lease), then the time for timely performance of the obligation to pay Stub Rent under the Lease is the date provided for in the Lease. If the time for performance under the lease has already passed (e.g. if the Lease is an Advance Lease and the Petition Date is after the due date under the Lease) then the time for timely performance of the obligation to pay Stub Rent is the same as for all other administrative expense claims upon confirmation of the plan pursuant to 11 U.S.C. § 1129(a)(9)(A). Section 365(d)(3) does not provide a separate remedy to effect payment. If a debtor fails to perform its obligations under § 365(d)(3), all a Lessor has is an administrative expense claim under § 365(d)(3), not a claim entitled to superpriority. *In re Va. Packaging Supply Co.*, 122 B.R. 491, 495 (Bankr.E.D.Va.1990) (“This court holds that administrative expenses arising from § 365(d)(3) obligations retain the same priority as assigned to all administrative expenses by § 507(a).”). This conclusion in no way extends the time for performance of any obligation that arises within sixty days after the Petition Date; it merely means that the Court's remedy for non-compliance with the duty under § 365(d)(3) to timely pay obligations arising from and after the order for relief is to order the Debtors to timely perform, and if they fail to do so, to grant relief from stay or court-ordered lease rejection.

[4] Notwithstanding the assertion by certain Lessors with Advance Leases that § 365(d)(3) prohibits this Court from extending the time for payment of the Stub Rent under Advance Leases past the date that is sixty days after the Petition Date, the Court determined that under the facts and circumstances presented here, including the resulting dire financial circumstances described in testimony by one of the Debtors' financial advisors, the Court has discretion under the Bankruptcy Code and the decision in *In re Trak Auto*

Corp., 277 B.R. 655, 668 (Bankr.E.D.Va.2002), *rev'd on other grounds*, 367 F.3d 237 (4th Cir.2004), to decline to order immediate payment of the Stub Rent. If the Court were to order otherwise, it would be elevating the Lessors' administrative claim to superpriority status. Such status is neither required nor permitted under the Bankruptcy Code. See *In re Va. Packaging Supply Co.*, 122 B.R. 491, 494–95 (Bankr.E.D.Va.1990). Therefore, this Court will adhere to the determinations made in *In re Trak Auto Corp.*, and *In re Virginia Packaging Supply Co., Inc.*, that the Debtors should not be ordered to pay the Stub Rent immediately. Stub Rent is not entitled to superpriority but only to administrative priority pursuant to § 507(a) of the Bankruptcy Code. This result is in the best interests of the Debtors and their estates, creditors, equity security holders, and all other interested parties, and it will not impair the rights of any of the Debtors' Lessors.

Accordingly, the Motions filed with respect to Stub Rent for Advance Leases seeking either immediate payment or payment within sixty days of the Petition Date are denied. The Stub Rent claims under Advance Leases are hereby accorded administrative priority expense treatment under §§ 503(b) and 507(a)(2) of the Bankruptcy Code, and such Stub Rent claims shall be payable upon the effective date of any plan of reorganization in these cases, or at such other time as the Court may order upon further motion. The Stub Rent claims under Arrears Leases are hereby accorded administrative priority expense treatment under §§ 503(b) and *512 507(a)(2) of the Bankruptcy Code, and such Stub Rent claims shall be timely paid pursuant to the terms of the lease.

Footnotes

- 1 The Debtors are Circuit City Stores, Inc., Circuit City Stores West Coast, Inc., InterTAN, Inc., Ventoux International, Inc., Circuit City Purchasing Co., LLC, CC Aviation, LLC, CC Distribution Co. of Virginia, Inc., Circuit City Properties, LLC, Kinzer Technology, LLC, Abbott Advertising Agency, Inc., Patapsco Designs, Inc., Sky Venture Corp., Prahs, Inc.(n/a), XSStuff, LLC, Mayland MN, LLC, Courchevel, LLC, Orbyx Electronics, LLC, and Circuit City Stores PR, LLC.
- 2 As used herein, the term “Motions” does not include pleadings filed by Lessors with respect to leases governed by this Court's previous Order Granting Motion of Debtors for Entry of Order Pursuant to Bankruptcy Code Sections 105, 363 and 365 (I) Assuming Agency Agreement Among Debtors, Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC and (II) Authorizing the Debtors to Continue Agency Agreement Sales Pursuant to Store Closing Agreement Sales Pursuant to Store Closing Agreement, entered on November 10, 2008 [Docket No. 82].
- 3 Section 365(d)(3) applies to all leases going forward, i.e., the Debtors' obligations to pay December rent must be timely performed pursuant to the terms of the lease in order to fulfill the requirements of § 365(d)(3). The issues presented by the Motions relate solely to Stub Rent for November 10–30. As used herein, Stub Rent includes all amounts owing under the Leases, including, but not limited to, common area maintenance charges, real property taxes, and such other charges as may be asserted under the Leases for the period from November 10 to November 30, 2009. To the extent the Motions sought relief other than payment of Stub Rent, such relief is not addressed by this Memorandum Opinion and the Stub Rent Order.
- 4 These matters were initially scheduled to be heard on December 5, 2008, which was the first omnibus hearing day in the Debtors' case. At that hearing, the Debtors and the Lessors agreed to adjourn these matters to the next omnibus hearing on December 22, 2008. Debtors' counsel stipulated that for purposes of analysis under *In re Trak Auto Corp.*, the delay would not prejudice the Lessors' rights. See *In re Trak Auto Corp.*, 277 B.R. 655, 669 (Bankr.E.D.Va.2002), *rev'd on other grounds*, 367 F.3d 237 (4th Cir.2004) (stating that a “landlord is not permitted to sit on its rights and rely on an alleged super-priority status for its administrative rent claim”).
- 5 The United States Court of Appeals for the Fourth Circuit provided this guidance. “Section 365(d)(10) is modeled on a very similar provision of the Code, § 365(d)(3), which requires that a trustee timely perform all obligations under a lease of nonresidential real property after an order for relief is entered. Notably, “[b]oth sections impose a duty of timely performance on debtor[s] ... and both expressly specify that this duty exists ‘notwithstanding section 503(b)(1)’ of the Code.” As a result, in construing § 365(d)(10), courts often look to decisions construing § 365(d)(3).” *CIT Commc'ns Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.)*, 406 F.3d 229, 234 (4th Cir.2005) (internal citations omitted) (quoting *In re E. Agri-Sys., Inc.*, 258 B.R. 352, 354 (Bankr.E.D.N.C.2000)).