

1 IN THE UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF VIRGINIA (ALEXANDRIA)

3 In Re:) Case No. 24-10453
4 ENVIVA, INC., ET AL.,) Alexandria, Virginia
5 Debtors.) April 11, 2024
6 -----) 2:00 p.m.
7)

8 TRANSCRIPT OF HEARING ON

9 (5) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
10 AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,
11 OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE

12 EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF

13 (7) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
14 AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION TAXES AND FEES

15 AND (II) GRANTING RELATED RELIEF

16 (8) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
17 APPROVING DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR

18 FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY COMPANIES
19 FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (III)

20 APPROVING DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL
21 ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF;

22 OBJECTION #162; JAVIER CUEBAS, ESQ. IN SUPPORT OF OBJECTION OF
23 CERTAIN UTILITY COMPANIES DECLARATION #206; SHERRY R WARD IN

24 SUPPORT OF OBJECTION OF CERTAIN UTILITY COMPANIES DECLARATION
25 #214; GEORGIA POWER COMPANY, TECO PEOPLES GAS SYSTEM, INC.,

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION ENERGY
VIRGINIA WITHDRAWAL OF OBJECTION #260

(9) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE DEBTORS TO CONTINUE THEIR INSURANCE POLICIES

AND SURETY BOND PROGRAM AND TO PAY OR OTHERWISE SATISFY ANY
INSURANCE OBLIGATIONS AND SURETY BOND OBLIGATIONS AND (II)

GRANTING RELATED RELIEF

(10) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE DEBTORS TO (A) PAY CRITICAL VENDORS, FOREIGN

VENDORS, LIEN CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR
PREPETITION PAYMENT ARRANGEMENTS; (II) CONFIRMING

ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS; AND
(III) GRANTING RELATED RELIEF

(13) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE DEBTORS TO (A) MAINTAIN THE CASH MANAGEMENT

SYSTEM, (B) CONTINUE USING EXISTING BUSINESS FORMS, AND (C)
CONTINUE INTERCOMPANY TRANSFERS; (II) PROVIDING ADMINISTRATIVE

EXPENSE PRIORITY STATUS FOR POST-PETITION INTERCOMPANY CLAIMS,
AND (III) GRANTING RELATED RELIEF

1 (14) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
2 ESTABLISHING NOTIFICATION PROCEDURES; (II) APPROVING
3 RESTRICTIONS ON CERTAIN TRANSFERS OF COMMON STOCK OF THE
4 DEBTORS' ESTATES AND CLAIMING A WORTHLESS EQUITY DEDUCTION; AND
5 (III) GRANTING RELATED RELIEF; ATMOS ENERGY CORPORATION
6 RESPONSE AND LIMITED OBJECTION #227; ATMOS ENERGY CORPORATION
7 WITHDRAWAL OF RESPONSE AND LIMITED OBJECTION #274

8 (24) FINAL HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
9 AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING
10 AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
11 SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING
12 ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV)
13 MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF;
14 NMTC PARTICIPANTS LIMITED OBJECTION #258

15 (180) DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) ESTABLISHING
16 BAR DATES AND PROCEDURES, (II) APPROVING THE FORM AND MANNER OF
17 NOTICE THEREOF, AND (111) GRANTING RELATED RELIEF

18 (184) DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
19 THE RETENTION AND EMPLOYMENT OF LAZARD FRERES & CO. LLC AS
20 INVESTMENT BANKER FOR THE DEBTORS AND DEBTORS IN POSSESSION
21 EFFECTIVE AS OF THE PETITION DATE

22 (185) DEBTORS' APPLICATION TO EMPLOY AND RETAIN ALVAREZ &
23 MARSAL NORTH AMERICA LLC AS FINANCIAL ADVISORS TO DEBTORS AND
24 DEBTORS IN POSSESSION PURSUANT TO SECTION 237(A) AND 328 OF THE
25 BANKRUPTCY CODE EFFECTIVE AS OF THE PETITION DATE

(186) DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE RETENTION AND EMPLOYMENT OF PWC US TAX LLP AS TAX
COMPLIANCE, TAX RESTRUCTURING, AND TAX CONSULTING SERVICES
PROVIDER TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

(187) DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO EMPLOY AND RETAIN KUTAK ROCK LLP AS CO-COUNSEL
EFFECTIVE AS OF THE PETITION DATE

(189) DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTORS TO RETAIN AND COMPENSATE PROFESSIONALS UTILIZED IN THE
ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF

(190) DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) ESTABLISHING
PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR RETAINED PROFESSIONALS AND (II) GRANTING RELATED
RELIEF

BEFORE THE HONORABLE KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Also Present:

5 Glenn Nunziata
6 Enviva Inc.

7 Mark Rajcevich
8 Alvarez & Marsal

9 Christian Tempke
10 Lazard Freres & Co.

11 Jason Paral
12 Enviva Inc.

13 Sam Alberts
14 Dentons

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23 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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1 THE COURT OFFICER: All rise. United States
2 Bankruptcy Court for the Eastern District of Virginia is now in
3 session, Your Honorable Keith L. Phillips is now presiding.

4 THE COURT: Everyone may be seated. Thank you. Well,
5 I guess you're surprised to see me here. You thought you'd
6 gotten away from me, didn't you?

7 MR. MEYER: Your Honor, David Meyer, Vinson & Elkins,
8 proposed counsel to debtor. It's great to see you again, Your
9 Honor.

10 THE COURT: Good afternoon.

11 MR. MEYER: Your Honor, again for the record David
12 Meyer of Vinson & Elkins, it's good to be here, great to be
13 here in Alexandria in person. Thank you again for stepping in
14 today.

15 THE COURT: Happy to do it. And I do have the amended
16 agenda, so I'm ready to go through that whenever you'd like.

17 MR. MEYER: Fantastic. That's great, Your Honor.
18 Before we jump into that, a couple opening remarks and a couple
19 introductions for you, for important folks that are here from
20 the company in court today. First, Your Honor, Mr. Glenn
21 Nunziata, who's Enviva's interim CEO and chief financial
22 officer.

23 THE COURT: Good afternoon.

24 MR. MEYER: Mr. Jason Paral, executive vice president,
25 general counsel, and secretary. Mr. Mark Rajcevich, a managing

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1 director at Alvarez & Marsal, our proposed financial advisor.

2 Your Honor, as background, Mr. Nunziata and Mr.
3 Rajcevich submitted declarations as part of our first day
4 relief. Those were at Dockets Number 27 and 28. We intend to
5 rely on those declarations that were admitted into evidence at
6 our first day hearing. Both Mr. Nunziata and Mr. Rajcevich are
7 available today for cross-examination on our relief requested.

8 A couple additional opening remarks, Your Honor.
9 First, I'd like to thank the U.S. Trustee's Office, Mr. Herron,
10 for all the hard work on all of our pleadings that have been
11 filed today. We've been working constructively with the U.S.
12 Trustee's Office throughout.

13 And also a brief introduction and also a thank you to
14 Mr. Scott Alberino and his team for making proposed counsel to
15 the creditors' committee. They've been recently appointed,
16 along with their advisors. I'll tell you a little bit about
17 that this afternoon, but they've been working constructively
18 with us. I think based on the efforts of the company and all
19 of the key stakeholders, we have an efficient agenda for you
20 today.

21 THE COURT: Great.

22 MR. MEYER: A number of CNOs have been entered prior
23 to the hearing today, and we'll work through that as part of
24 the amended agenda that you've seen.

25 We have a short update presentation, Your Honor, that

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1 we'd love to share that gives you a feel for what we've been
2 doing since our first day hearing as well as some of the key
3 conversations and restructuring initiatives. Addie Wyatt has
4 it up on her screen if we can get permission for her screen to
5 be shared with the Court.

6 THE COURT: All right. I think that's in the works.

7 MR. MEYER: Great. So Addie, if you'll go to the next
8 slide, please.

9 Your Honor, again a status update as to the things
10 that the company has been up to since the petition date.
11 Operationally, I would purport to Your Honor that customer
12 receipts and operating disbursements have proven favorable
13 compared to what's in the budget and against forecasts.

14 A big part of our initiative in this case, Your Honor,
15 is what we call the raise the bridge efforts. We spent a
16 pretty significant amount of time discussing this with Judge
17 Kenney in our first day hearing. And this is a process through
18 which the company is working to renegotiate amendments to its
19 customer contracts. Just by way of background, that's why
20 notwithstanding the wiring that we have in the restructuring
21 support agreement, this is really a six plus month
22 restructuring because we need to do an operational
23 restructuring of the contracts.

24 By way of example, under significant negotiations, we
25 have representatives in Japan right now negotiating with key

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1 customers. Mr. Nunziata would have been in Japan, but for
2 today's hearing. He wanted to make sure he was present in
3 court today as well.

4 But these conversations and negotiations have gone on
5 since prior to the petition date. They'll extend through the
6 balance of this restructuring. It involves in-person meetings
7 in Europe and in Asia. It's again, one of the most important,
8 if not the most important, initiatives that we're looking to
9 achieve in this Chapter 11 case.

10 We also provided a bunch of background at the first
11 day hearing and as part of our pleadings about the construction
12 of a production facility in Epes, Alabama. Now that's a key
13 part of the company's business plan, and construction is
14 continuing during the court of this Chapter 11 case. It's a
15 big part of the budget and CAPEX associated with that as well.
16 And we have been able to keep that construction moving in part
17 based on the first day relief we requested. That's a key part
18 of our critical vendor orders as well as the company's
19 communication and vendor management strategies.

20 And lastly, as you'd expect of a company of this scale
21 and size, they have been doing a great job. The company and
22 management have been doing a really good job managing its
23 vendor base as well as customers and employees to avoid any
24 disruption to the business.

25 Your Honor, you may have noticed this on the docket,

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1 as I mentioned the creditors' committee was formed and has
2 engaged advisors. There are three members of the creditors'
3 committee. Those consist of RWE, Drax, and Ryder. Wilmington
4 Savings Fund Society is the indentured trustee for the 2026
5 unsecured notes, filed a motion seeking to reconstitute the
6 creditors' committee.

7 Each of the debtors and the Wilmington Trust, in its
8 capacity as the indentured trustee, for what we refer to as our
9 Epes and bond muni bonds has submitted a motion to -- a
10 statement in support. And on that motion, Your Honor, I should
11 note Wilmington Trust submitted it in its capacity as the Epes
12 indentured trustee. Those are two tranches of debt that are
13 involved in the construction of those two projects.

14 The motion, it was scheduled originally for today,
15 Your Honor. That was adjourned already before today's hearing
16 to May 9th.

17 In the interim, the committee has selected Akin Gump,
18 AlixPartners, and Ducera as its advisors. And notwithstanding
19 the fact, Your Honor, that -- I'll say this motion to
20 reconstitute is out there. We have been working tirelessly as
21 an advisor team and with the management team to get the
22 committee's advisors up to speed.

23 To date, we have provided over 150 documents, totaling
24 over 3,500 pages as part of the committee's diligence. Their
25 diligence remains ongoing. I would like to tell you, and I

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1 believe it's true, that there's a good cadence of transparency
2 and support to get the committee up to speed quickly.

3 And the motion to reconstitute will be heard when its
4 heard on May 9th. And in the interim, we'll also look to set
5 up an initial meeting with the committee members as opposed to
6 just their advisors here in the near term.

7 Next slide, please.

8 Your Honor, part of the interim DIP approval, approved
9 the time line for syndicating the 100 million dollar portion of
10 the DIP facility that was allocated by the company's eligible
11 shareholders. The timelines noted here on the slide, March
12 28th was the deadline by which eligible shareholders must have
13 submitted subscription forms to the information agent. And
14 April 5th was the deadline by which eligible shareholders and
15 their eligible designees must fund.

16 The syndication opportunity was oversubscribed. And
17 in accordance with the syndication procedures, interested
18 shareholder lenders were given the opportunity to fund a pro-
19 rata share of the amounts that they indicated they would fund
20 as part of the process. And by way of background, on April
21 8th, all required funding has been completed.

22 One thing we'll look to talk with Your Honor about
23 today is the scheduling for a final DIP hearing. There has
24 been -- we've been trying to work through that. We'd like to
25 talk about that as part of next steps today.

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1 THE COURT: I thought Judge Kenney had already set a
2 date for that?

3 MR. MEYER: It was originally set for today, April
4 11th. Because of conversations with the committee that I would
5 characterize as routine as the committee gets up to speed, the
6 committee requested additional time. We were happy to give
7 that to them. The ad hoc members were happy to give that to
8 them. We do not yet have a date for a final DIP hearing.

9 THE COURT: And you can confer with his staff to get
10 that date, I assume? I don't know that I have his calendar
11 with me today, but I do know that it was something he wanted to
12 hear. So whatever date is convenient to him and to you, I
13 certainly wouldn't have any objection to that.

14 MR. MEYER: Okay. Perhaps we'll confer with the
15 parties during this hearing, Your Honor. Obviously, we're
16 looking to make sure we have certainty for all of the
17 stakeholders. There have been some scheduling challenges as
18 part of this team just gearing up.

19 THE COURT: And we may be able to find out what its
20 dates are.

21 MR. MEYER: But let's work through that during the
22 course of the hearing today for sure, Your Honor, because we
23 want to make sure we leave here or shortly thereafter with a
24 hearing to consider the DIP on the final phases.

25 THE COURT: Yeah, I think there was a milestone that

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1 had a particular date to get final approval --

2 MR. MEYER: There is. You're correct, Your Honor.
3 That, as you might expect in a restructuring support agreement
4 that looks like this, there's a milestone in both the DIP and
5 the restructuring support agreement for the final DIP hearing
6 to occur and the DIP to be approved. It's my full expectation
7 based on the cooperation with the parties that we'll get
8 flexibility on that milestone. That's certainly been the
9 representation from the ad hoc group, but understandably
10 everyone -- including the company, just from a liquidity
11 perspective, wants certainty as to when that hearing's going to
12 be so we make sure we get the relief that is required.

13 THE COURT: Right.

14 MR. MEYER: So Your Honor, some near-term filings that
15 are coming down the path here, and these are all consistent
16 with what we described in our first day hearing. First there's
17 two 9019 motions that will be filed here in the near term. The
18 original milestone from filing the green bond holder motion,
19 9019 motion, was today. I expect that will be kicked out --
20 it's already been kicked out a couple of days here.

21 But what you'll see in the near term -- what the Court
22 will see in the near term is two 9019 motions filed as it
23 relates to the Epes bond, green bond trustees reflecting
24 settlements that were embodied in the restructuring support
25 agreement and part of what was disclosed at the first day

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1 hearing as well as, as I mentioned, the raise the bridge
2 effort. The corollary to that, of course, is as we're
3 negotiating with customers it may be that contract projection
4 motions become necessary. There's a milestone in the
5 restructuring support agreement, I would expect we'll see some
6 additional contract projection motions filed here in the near
7 term.

8 We're on track to prepare our schedules and
9 statements, which should be filed on April 26th and the Section
10 341 meeting has been moved to and adjourned to a future date.

11 So what do we have for Your Honor today? As I
12 mentioned, we have an efficient agenda based on the efforts
13 with both the U.S. Trustee's Office, as well as the committee.
14 We're seeking further interim approval on both our wages motion
15 and our critical vendor order, which we'll have second interim
16 orders for those. The final hearing to become.

17 We're seeking final approval of certain first day
18 motions, those being taxes, utilities, insurance, and a well
19 motion. Each of those were approved on an interim basis at our
20 first day hearing. We're coming back for customary final
21 relief today, and we'll take those up during the course of the
22 agenda.

23 We're also seeking to have what I would call certain
24 customary second day pleadings heard today, that's the bar date
25 motion that was filed, It was a milestone to file the bar date

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1 motion as part of our restructuring support agreement.

2 Retention applications for A&M and Kutak Rock, as well as
3 ordinary course professional interim compensation procedures
4 motions, all of which will look quite familiar to Your Honor.

5 Looking ahead, we've previewed here what our May 9th
6 omnibus hearing looks like. This is already on the calendar.
7 It was set in accordance with Judge Kenney's case management
8 order. And some of them I would say we'll have heard at that
9 hearing will be the retention of application of my firm, Vinson
10 & Elkins, Lazard's retention application as the company's
11 proposed investment banker, and application to retain PwC. I
12 mentioned WISPA's motion to reconstitute the creditors'
13 committee at the outset of my comments about the committee
14 formation.

15 There's one motion that's out there already to reject
16 the customer contract, which is the Sumotomo Kieta (ph.)
17 contract. And there's an application to retain and employ
18 Baker Botts as special counsel. I mentioned previously, the
19 9019 motions that will be coming down the path as it relates to
20 the bond and Epes trustees. I would expect those as well as
21 any additional customer contract motions to be set for the May
22 9th hearing as well. So we're looking at a -- looking ahead to
23 what May 9th may look like in due course.

24 THE COURT: All right. Well thank you for the
25 preview.

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1 MR. MEYER: And one item I would add there, Your
2 Honor, on our retention application for Vinson & Elkins. We've
3 been working -- I think I agree with the U.S. Trustee who filed
4 an objection yesterday. We've been working constructively and
5 cooperatively with them. We will continue to respond to the
6 U.S. Trustee's information requests as you would expect we
7 would. We take our disclosures and our retention applications,
8 obviously, very seriously as a law firm.

9 So we will continue to work with the U.S. Trustee's
10 Office. We have had a good chain of communication with them on
11 that front and expect that, while there's a briefing schedule
12 set, we'll abide by that briefing schedule. We'll see if we
13 can resolve the U.S. Trustee's' issues. I'm confident we'll be
14 able to, but I'd be remiss if I didn't note -- highlight those
15 points for Your Honor when thinking about what the May 9th date
16 looks like.

17 THE COURT: That's good. I'm pleased to hear that.

18 MR. MEYER: And so Your Honor, here's a Chapter 11
19 case calendar of what we see coming down the path. This
20 mirrors the schedule that is part of our restructuring support
21 agreement, save for the April 16th milestone for entry of final
22 DIP approval, which I noted previously. But it gives you a
23 feel for where we are and what we're looking to achieve in this
24 case.

25 We've talked about what we're looking to do by the

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1 April 26th date, namely file our schedules and statements.
2 We'll have our May 9th omnibus hearing. And when I think about
3 what the calendar here looks like, that June 10th date of
4 providing an initial draft of the revised long-term business
5 plan, that's going to be the crux of what this restructuring
6 starts to look like because of the fact that we'll have better
7 feel for how the raise the bridge process has gone, how the
8 contract amendment process has gone, how that rolls into a
9 business plan, and then how we can -- while we have a very
10 solid framework as part of our restructuring support agreement,
11 now we can build in what that looks like in the context of a
12 Chapter 11 plan and disclosure statement that we would file on
13 the docket.

14 And if we were to turn to the next slide, you see some
15 of the same milestones about what we think planned
16 confirmation, disclosure statement, backstop approval motion
17 for a rights offer, and how this all starts to look with target
18 confirmation in the -- call it the third quarter of this
19 calendar year. And we have ample flexibility under our DIP
20 facility with a scheduled maturity date of middle of December.

21 So Your Honor, that's what the company has been doing
22 since the first day hearing. I would say there's been a lot of
23 work and will continue to be a lot of work, both on the
24 operational side as well as the restructuring side. That's the
25 end of my opening presentation unless you have any questions

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1 for me.

2 THE COURT: I don't have any questions, but it seems
3 like you're on track.

4 MR. MEYER: Thank you, Your Honor.

5 THE COURT: It's a good development.

6 MR. MEYER: Thank you, Your Honor. Before we turn to
7 the agenda, Mr. Alberino asked if he can make a couple of
8 comments. It's the first time the committee's been here in the
9 courtroom. And so I would turn the podium to Mr. Alberino,
10 then I'll come back and then we can get into our first day
11 agenda.

12 THE COURT: All right. Very good. Thank you.

13 MR. MEYER: Thank you, Your Honor.

14 MR. ALBERINO: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MR. ALBERINO: Scott Alberino from Akin Gump,
17 appearing as proposed counsel to the official committee of
18 unsecured creditors. I guess I was surprised this afternoon.
19 I was expecting a different audience. It's good to see you
20 again.

21 Your Honor, I know it's traditional for the committee
22 at their first appearance to provide a little bit of an
23 overview and an introduction of what the committee's been up to
24 and share with the Court and other stakeholders or anyone who
25 is following this hearing some of our thoughts on the case and

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18

1 some of the issues that we think will be prevalent as the case
2 is proceeding here in Chapter 11.

3 To start with, as Mr. Meyer said, the committee is up
4 and running. We have a full complement of advisors, I'm here
5 with Mr. Larry Katz from Hirschler, local counsel to the
6 committee as well. We have three committee members, all of
7 whom are very familiar with the debtor and the wood pellet
8 industry and each of whom have hired experienced restructuring
9 advisors to work alongside them.

10 There's been a lot of motion practice on the committee
11 early in these cases, which is somewhat unusual in my
12 experience. But I would like to reassure the Court that the
13 committee is very much up for the task at hand in these cases
14 and understands the importance of their commitment to serve and
15 the seriousness of their fiduciary obligations to all unsecured
16 creditors.

17 Your Honor, we've hit the ground running. We've been
18 working through all the initial case issues, including the DIP,
19 finalizing first day relief, and dealing with retention issues.
20 The company's advisors, V&E, Lazard, and Alvarez have been
21 working very well with us. And as Mr. Meyer alluded to, the
22 diligence spigot is open and flowing, and we hope that
23 everyone's cooperation continues. We have a lot of catching up
24 to do. It's a complex business. There's a lot of history, a
25 lot of commercial diligence we need to do, but we're grateful

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1 that the company advisors are meeting us where we need to be on
2 diligence.

3 While we deal with the typical triage at the beginning
4 of each case, we are focused on the bigger picture and longer
5 term issues that are brewing. When we look at the big picture
6 in this case, we are aligned with the company on its key
7 objectives: rationalizing their operating costs, deleveraging
8 the balance sheet, and emerging as a properly capitalized
9 pellet producer and distributor. But it should not be lost on
10 the Court, and it has not been lost on the committee, that
11 unsecured creditors were not part of the RSA negotiations and
12 neither the debtors nor the RSA parties have made any
13 commitment to general unsecured creditors under any future
14 plan.

15 Sitting here today, unsecured creditors remain at risk
16 of receiving nothing under the RSA plan. In fact, it's our
17 belief that the RSA and the DIP create a case architecture
18 designed to minimize value leakage to unsecured creditors who
19 are not part of the ad hoc group.

20 It should also not be lost on the Court that the
21 company entered Chapter 11 at its weakest moment, facing
22 operational headwinds and needing capital to complete the Epes
23 production facility and continue maintenance on its production
24 facilities. On top of that in the months leading up to the
25 Chapter 11 filing, the debtor and several directors and

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1 officers have been named as defendants in at least three
2 securities fraud suits and one shareholder derivative suit.

3 The story around the company heading into Chapter 11
4 has not been a good one. It's been a troubled story. The good
5 news, however, is that we believe Enviva is going to emerge in
6 this proceeding stronger and more valuable. There's a reason
7 so many experienced distrust investors flock to the secured
8 debt and the bonds in this case.

9 There is value to be seized here, and there is an
10 opportunity for outsized returns, multiples on invested
11 capital. Our job as the committee is to make sure that as we
12 move through this case and rationalize the business plan and
13 figure out what this company looks like coming out of
14 bankruptcy as opposed to what it looked like coming in, that
15 we're there to make sure that the company is truly pursuing a
16 value maximizing process for all creditors in this case, not
17 just creditors that provided the DIP.

18 Now, there are a few other issues that I wanted to run
19 through, and I may save them for Judge Kenney, but I will end
20 kind of with one point, Your Honor, which is, from our
21 perspective, our focus in this case is to ensure that unsecured
22 creditors have a full and fair opportunity in accordance with
23 the Bankruptcy Code to maximize recoveries.

24 I'm going to come back to that repeatedly throughout
25 this case, whether we're talking about status updates, whether

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21

1 we're negotiating the plan, whether we're fighting over the
2 DIP. Fairness is paramount here. There's a lot of work that
3 needs to be done to position the debtors, the UCC, and the ad
4 hoc groups for future plan negotiations. There's much to be
5 done in the way of legal and commercial diligence, including
6 reviewing and validating intercompany claims, investigating
7 pre-petition claims and causes of action, rationalizing
8 operating costs, and ultimately formulating views on the
9 enterprise value and debt capacity for the reorganized company.

10 If we believe the procedural or substantive rights of
11 unsecured creditors are being disadvantaged, you're going to
12 hear from the committee. If we think the process being run by
13 debtors lacks fairness and transparency, it will be back in
14 front of the Court in this case. We hope, however, that you're
15 not going to hear from us that often because normally what we
16 like to do --

17 THE COURT: I probably won't.

18 MR. ALBERINO: I know that.

19 THE COURT: It'll probably be Judge Kenney.

20 MR. ALBERINO: Judge Kenney, if you're listening, I
21 hope you read the transcript.

22 Your Honor, our goal is to work with the debtors and
23 the other stakeholder groups behind the scenes as much as
24 possible as we work through our issues in these cases. There
25 are a lot of very experienced, very sophisticated advisors

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1 across the aisle here that we have worked with on many
2 occasions.

3 We're going to roll up our sleeves. We have a lot of
4 hard work to do and some really hard negotiations that have to
5 happen here. But the goal here is to only show up in court if
6 there's something that we truly believe we need the Court's
7 assistance on. But hopefully we're going to continue doing
8 what we've done to date, which is work with the debtors, work
9 with the stakeholders, clear out issues, focus on what's
10 important, and leave the stuff we can't resolve for the Court.

11 THE COURT: Very good.

12 MR. ALBERINO: Thank you, Your Honor.

13 THE COURT: I'm glad to see that there's a level of
14 cooperation between the parties already.

15 MR. SCHIFF: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. SCHIFF: David Schiff of Davis Polk & Wardwell for
18 the ad hoc group. I'm joined by Mr. Hayes from the
19 McGuireWoods firm.

20 Your Honor, I just want to address the Court very
21 briefly in response to a couple of the comments that Mr.
22 Alberino made.

23 Your Honor, first of all, I think many -- probably the
24 vast majority of the objectives that Mr. Alberino identified,
25 the ad hoc group very much shares. I believe the debtors share

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23

1 as well. We're certainly grateful for the opportunity to
2 engage with Mr. Alberino and Mr. Katz and their colleagues, and
3 we have sought that.

4 I did just want to comment -- and the restructuring
5 support agreement obviously is not on the agenda for today.
6 But Mr. Alberino raised it, both from a process standpoint and
7 a substantive standpoint.

8 As a process matter, I did just want to clarify to the
9 Court, unsecured creditors were very much represented in that
10 negotiation. The ad hoc group, just to clarify, are holders in
11 aggregate of approximately a billion dollars of unsecured
12 claims, financial claims, but unsecured claims, bond claims
13 against the debtors.

14 And just as to the substance of the restructuring
15 support agreement -- and I think this is important to say
16 because it goes to what my clients have been negotiating for
17 and what we and the debtors sort of reached agreement on as a
18 path forward for the company. It does provide, just to
19 clarify, the vast majority of the equity in the reorganized
20 debtors subject to the completion of the raise the bridge
21 process and determining of value for the company but for that
22 to go to unsecured creditors and to be divided among unsecured
23 creditors.

24 And so I did just want to clarify, I think the
25 intention of that agreement is to reflect a sort of fulcrum

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1 within the unsecured claims.

2 And I also just would like to add sort of in the
3 spirit of collaboration among the parties, and hopefully
4 consensually engagement to the greatest degree possible among
5 the parties, I think because we see unsecured creditors as the
6 future owners of the business also place a very high value on
7 efficiency and on cooperation wherever possible to ideally
8 avoid litigation, avoid drawing out case costs, avoid extending
9 the runway of the cases beyond what's needed to give parties a
10 fair opportunity and fair hearing.

11 And so I think, just to add to the consideration that
12 Mr. Alberino raised, I think it is to the benefit of unsecured
13 creditors as a class and to the benefit of the debtors and all
14 of their stakeholders that we, the advocates here and advisors,
15 strive for efficiencies where possible, and that certainly will
16 be our objective in working with Mr. Alberino and his
17 colleagues and their client and working with the debtors going
18 forward in the case.

19 THE COURT: All right. Well, very good. Well, I
20 certainly would hope that you can do that.

21 MR. SCHIFF: Thank you, Your Honor.

22 THE COURT: Does anyone else wish to be heard
23 preliminarily?

24 All right. Mr. Meyer, do you want to work through the
25 agenda now, or is --

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1 MR. MEYER: I think we're ready to go, Your Honor.
2 I'd just note that I think you hear a lot of alignment as to
3 where this case ultimately needs to head. And then back to my
4 opening comments at the first day hearing and even today, we
5 can only negotiate what ultimate recoveries look like among
6 unsecured creditors after we have a feel for what the raise the
7 bridge process looks like, which is going to determine business
8 plan, valuation, and the allocation of value through the
9 restructure.

10 And so our sleeves are rolled up. We're working. And
11 we'll continue to work with the stakeholders. You're spot on
12 as it relates to good collaboration with the parties. And I
13 would echo Mr. Alberino's comments, that we will look to work
14 issues away, but we'll come back to the Court, of course, and
15 we know where to find you all when we need your help.

16 THE COURT: Well, that's why we're here.

17 MR. MEYER: Exactly.

18 Your Honor, with that, I would propose to turn the
19 agenda over to my colleague, Mr. Spears, who will lead us out
20 on the pleadings I outlined as part of the opening.

21 THE COURT: All right. Very good. Thank you.

22 MR. SPEARS: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MR. SPEARS: For the record, Trevor Spears of Vinson &
25 Elkins, proposed co-counsel to the debtors.

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1 This afternoon, Your Honor, I'm going to start with a
2 bit of housekeeping. The debtors this afternoon filed a
3 witness and exhibit list at docket number 295 and their chart
4 attached at Exhibit A. There are Exhibits 1 through 19. Those
5 are the exhibits that the debtors will be relying on today, and
6 we would ask that the Court enter the evidence.

7 THE COURT: All right. Well, I was presented with a
8 debtors' witness and exhibit list for matters scheduled for the
9 hearing today. All right. And these are the exhibits?

10 MR. SPEARS: Yes, Your Honor.

11 THE COURT: All right. And you've also identified
12 certain witnesses. Do you intend to have those witnesses
13 testify?

14 MR. SPEARS: No, Your Honor. They're available for
15 questioning, but they will only -- their declarations only
16 serve as evidence for today's relief.

17 THE COURT: All right. So they filed declarations.
18 Are they part of the exhibits?

19 MR. SPEARS: Yes, Your Honor, they are.

20 THE COURT: All right. And I have, it looks like,
21 nineteen exhibits that have been submitted. You are asking
22 that they be admitted for purposes of today's hearing --

23 MR. SPEARS: Yes.

24 THE COURT: -- all nineteen?

25 Does anyone object to the admission of these exhibits

Colloquy

27

1 for today's hearing, or does anyone wish to have an opportunity
2 to review the exhibits?

3 All right. Very well. There being no objection, I
4 will admit into evidence the exhibits identified as, it appears
5 to be 1 through 19.

6 (Various documents were hereby received into evidence as
7 Debtors' Exhibits 1-19, as of this date)

8 MR. SPEARS: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. SPEARS: With that, Your Honor, a couple of other
11 items of housekeeping that, as mentioned in Mr. Meyer's first
12 day of presentation, that the debtors have worked tirelessly
13 with the U.S. Trustee, the committee, and the DIP lenders, and
14 other parties in interest in order to get CNOs on file. They
15 have filed certificates of no objection for the first day
16 hearings at dockets 280 through 286 and docket number 292. I'm
17 happy to walk Your Honor through those on an individual basis,
18 starting with the taxes motion. It's item number 2 on the
19 agenda.

20 THE COURT: All right. Well, the first thing I have
21 on the agenda is the wages motion, but you want to start with
22 the tax motion?

23 MR. SPEARS: Yes, Your Honor, if that's all right with
24 you.

25 THE COURT: Well, that's all right with me. All

Colloquy

1 right. Taxes motion. The agenda, I see where you've docketed
2 certificate of no objection.

3 MR. SPEARS: Yes, Your Honor. As mentioned, we've
4 worked with the committee, the U.S. Trustee and the DIP
5 lenders. There will be increased reporting that will go to the
6 ad hoc group and to the committee and clarifications on the
7 payment of nondebtor taxes not occurring and a cap on priority,
8 non-priority claims paid under the motion, Your Honor. And so
9 with that, unless there are any questions?

10 THE COURT: Well, these will all be reflected in the
11 final order?

12 MR. SPEARS: Yes, Your Honor. They're reflected in
13 the final order at the CNO filed at docket number 280.

14 THE COURT: All right. And you said you've been
15 working with the U.S. Trustee?

16 MR. SPEARS: Yes, Your Honor.

17 THE COURT: Is the U.S. Trustee present? Oh, Mr.
18 Herron? Thank you.

19 MR. HERRON: And good afternoon, Your Honor. It's
20 good to see you again. I believe the last time I saw you was
21 Eversource (ph.), if my memory serves me correct.

22 That is correct, we did have an opportunity to review
23 the redline version that was filed. It does incorporate the
24 comments that the U.S. Trustee did raise with the debtors,
25 including carving out the payment of nondebtor entity taxes.

Colloquy

1 Based upon those revisions, the U.S. Trustee has no opposition
2 to the motion on a final basis, Your Honor.

3 THE COURT: All right. Do you wish to endorse that
4 order, or is that something you're satisfied with the redline
5 that's been --

6 MR. HERRON: Now that I've seen the revised order,
7 Your Honor, I'm satisfied with order as is.

8 THE COURT: All right.

9 MR. HERRON: Thank you.

10 THE COURT: All right. Very good. Does anyone else
11 with to be heard in connection with the taxes motion?

12 All right. Well, with the U.S. Trustee's consent, I
13 will grant that motion and entered the order that has been
14 redlined and most recently submitted.

15 MR. SPEARS: Thank you, Your Honor.

16 THE COURT: All right. What's next?

17 MR. SPEARS: Next, Your Honor, is the NOL motion.
18 That is item number 5 on the agenda.

19 THE COURT: All right.

20 MR. SPEARS: There was a CNO filed at docket number
21 281. Your Honor --

22 THE COURT: It says 280, but --

23 MR. SPEARS: Apologies.

24 THE COURT: But it has been filed?

25 MR. SPEARS: Yes, Your Honor --

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1 THE COURT: All right.

2 MR. SPEARS: -- 281. And that redline reflects
3 comments from both the committee and first day comments from
4 the U.S. Trustee's Office. And the only comments were to add
5 consultation rights to the committee here.

6 THE COURT: All right. Very good. Does anyone wish
7 to be heard in connection with NOL motion? Mr. Herron?

8 MR. HERRON: Your Honor, again, we've had an
9 opportunity to review the redline motion -- redline order,
10 rather, and we don't have any objection to the order being
11 granted on a final basis.

12 THE COURT: All right. Well, then I will grant that
13 motion and enter that order. But first let me ask, does anyone
14 else wish to be heard?

15 All right. I will enter that order, grant the motion,
16 and enter the order that's been redlined, and I'm not looking
17 for any endorsements.

18 MR. SPEARS: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. SPEARS: The next item up is agenda item number 4.
21 That is the insurance motion filed at docket number 9. There
22 was a CNO filed at docket number 282. This is a motion just to
23 continue the debtors' insurance programs and surety bond
24 programs. We've worked with the U.S. Trustee, the committee,
25 and the DIP lenders and would like to go forward with the

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1 docket -- with the order entered -- or the order proposed at
2 CNO 282.

3 THE COURT: Does anyone wish to be heard in connection
4 with the insurance motion?

5 MR. HERRON: Again, Your Honor, I did have an
6 opportunity to review the redline version that was filed at
7 282. No objection based upon the revisions, Your Honor.

8 THE COURT: All right. Thank you. Anyone else?

9 Very well. Then the insurance motion is granted. And
10 again, I will look for the redlined order and enter that order.

11 MR. SPEARS: Thank you, Your Honor.

12 The next item will be the utilities motion, which is
13 agenda item number 3. There was a certificate of no objection
14 filed at 283. Your Honor, there were two objections to this
15 motion that were filed at docket number 162 and docket number
16 227. There were notices of withdrawal filed at 260 and 274 to
17 those objections. We've worked with the U.S. Trustee, the
18 committee, and the DIP lenders on this motion and would ask
19 that the proposed form of order filed at docket number 283 be
20 entered.

21 THE COURT: Does anyone wish to be heard in connection
22 with the utilities motion?

23 MR. HERRON: Your Honor, I did have an opportunity to
24 review the redline version at 283. It does incorporate the
25 comments we did request, and therefore, we have no opposition

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1 to this being entered on a final basis.

2 THE COURT: All right. Thank you. Does anyone else
3 wish to be heard in connection with the utilities motion? All
4 right. Again the redline order that's been submitted on docket
5 number 283, I will grant the motion and enter that order.

6 MR. SPEARS: Thank you, Your Honor.

7 The next item up will be agenda item number 11, the
8 retention application for Kutak Rock. There was a certificate
9 of no objection filed at 284 last night. The debtors and Kutak
10 Rock have worked with U.S. Trustee, the committee, and DIP
11 lenders and understand that there are no objections to their
12 retention.

13 THE COURT: All right. Very good. Who wishes to be
14 heard in connection with Kutak Rock application?

15 MR. HERRON: Good afternoon, again, Your Honor. I did
16 have an opportunity to review the filed supplemental
17 declaration. It does address the concerns we did raise with
18 Kutak. There was a revised order filed at 284 that does
19 incorporate comments from the U.S. Trustee.

20 However, I did request previously that an endorsement
21 line from the U.S. Trustee be included on the retention
22 application, as is customary. And so while I have no
23 opposition to the entry of the order, again, I would ask that
24 the order be -- include, rather, an endorsement from the U.S.
25 Trustee prior to its admission.

Colloquy

1 THE COURT: Well, I typically require that on
2 employment applications. So is that put in the order?

3 MR. SPEARS: It will be, if it's not already.

4 THE COURT: All right. Very good. Then I will look
5 for that order with the U.S. Trustee's endorsement, the order
6 that has been docketed at 284, and will approve the application
7 and enter that order.

8 MR. SPEARS: Thank you, Your Honor.

9 The next item that we will be taking up is agenda item
10 number 9, the interim compensation motion. Last night, there
11 was a certificate of no objection filed at docket number 285
12 with a proposed form of final order. However after that order
13 went on file, there was language that needed to be corrected.
14 We've worked with the committee and the DIP lenders today. And
15 for the record, we will be removing footnote 4 on page 6, and
16 that's because everyone is in agreement that it is covered by
17 paragraph 7 in the order.

18 THE COURT: All right. Very well. Does anyone wish
19 to be heard in connection with the interim compensation motion?

20 MR. HERRON: Your Honor, subject to final review, I
21 suppose, because I haven't seen that revised order removing
22 footnote 4, the last order that I have that's a redline is at
23 287. But the proposed order did incorporate requested language
24 that we did request. And therefore, we have no objection to
25 the entry of an order on a final basis, subject to my review of

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1 whatever order has been finalized between --

2 THE COURT: You want to be added a signature line on
3 that order?

4 MR. HERRON: Please, Your Honor.

5 THE COURT: All right. Very well. Then I will ask
6 that the U.S. Trustee's endorsement be included on the interim
7 compensation motion. You indicated 287 was the docket where
8 the --

9 MR. HERRON: I apologize, Your Honor. That was my
10 error.

11 THE COURT: Okay. So 285 is the order that --

12 MR. HERRON: Correct.

13 THE COURT: -- was previously submitted, and that's
14 going to be revised to remove footnote 4. And with the U.S.
15 Trustee's endorsement on that order, I will grant the motion
16 and enter the order.

17 MR. SPEARS: Thank you, Your Honor.

18 The next item up will be the retention application for
19 Alvarez & Marsal. That is item number 10 on the agenda. And
20 there was a certificate of no objection filed at docket number
21 286 last night.

22 Your Honor, we've worked with the U.S. Trustee and
23 other parties in interest on comments to the order. There was
24 clarifying language requested from the UST regarding limited
25 indemnification, as is customary, and we would propose entry of

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1 the order at docket number 286.

2 THE COURT: Does anyone wish to be heard in connection
3 with the application for employment for Alvarez & Marsal?

4 MR. HERRON: Yes. Again, Your Honor, I did have an
5 opportunity to review the supplemental declaration. It did
6 address some issues that we did raise with Alvarez. The
7 amended order did include additional language the U.S. Trustee
8 was looking for. However, the form of order that is docketed
9 at 286 does not include an endorsement line from the U.S.
10 Trustee. So we would ask that the order that is submitted to
11 chambers include an endorsement line from the U.S. Trustee but
12 would otherwise have no objection, Your Honor.

13 THE COURT: All right. Well, I agree. You'll add the
14 signature line for the U.S. Trustee --

15 MS. SPEARS: Yes, Your Honor, we will.

16 THE COURT: -- and submit an order with the Trustee's
17 endorsement? And on that basis, I will approve the application
18 for Alvarez & Marcel.

19 MR. SPEARS: Thank you, Your Honor.

20 The last item from me, Your Honor, will be item number
21 8 on the agenda, the debtors' ordinary course professionals
22 motion filed at docket number 189.

23 There was an amended certificate of no objection filed
24 this morning at docket number 292. However, after that amended
25 certificate of no objection went on file, there was one comment

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1 from the U.S. Trustee. In paragraph 2(d), we had agreed to
2 increases and caps will be limited to monthly caps. We have
3 made that change. We've shown the change to Mr. Herron and
4 believe it reflects all comments from parties in interest, and
5 we would ask that the Court enter the proposed order with that
6 clarification.

7 THE COURT: All right. There's a revised order that
8 was docketed at 293. Is that the one you're referring to?
9 There were two certificates of no objection reflected on the
10 agenda, one at 291 and one at 293, both of which included a
11 revised proposed order.

12 MR. SPEARS: I believe it should be --

13 THE COURT: I would assume it's the most recent one?

14 MS. SPEARS: Yes, Your Honor.

15 THE COURT: All right. Which --

16 MR. SPEARS: It's the most recent one on the docket.

17 THE COURT: No?

18 MR. HERRON: Docket entry number 293 is an order
19 establishing the bar dates, an amended one on that.

20 THE COURT: Oh, I'm sorry. I'm looking at the
21 wrong -- okay.

22 MR. HERRON: But the --

23 THE COURT: I am sorry. That's 292?

24 MR. HERRON: That is correct, Your Honor.

25 THE COURT: All right.

Colloquy

1 MR. HERRON: That needs further revision, as discussed
2 by counsel here.

3 THE COURT: All right.

4 MR. HERRON: But subject to my review, and I would ask
5 that it also include an endorsement line from the U.S. Trustee
6 so I can make sure that that agreed upon language is included,
7 the U.S. Trustee would have no objection to the entry of this
8 order.

9 THE COURT: Okay. So it is 292. My mistake. I'm
10 sorry for that, but I do see that that's reflected. And I will
11 grant the OCP motion and look for the order that has been
12 docketed at 292 with any changes that are approved by the U.S.
13 Trustee that will be reflected in the U.S. Trustee's
14 endorsement.

15 MR. HERRON: Thank you, Your Honor.

16 MR. SPEARS: Thank you, Your Honor. With that, I pass
17 the podium to my colleague, Mr. Pyeatt.

18 THE COURT: All right. Well, there were some other
19 matters on the agenda that he's going to address?

20 MR. SPEARS: He will be taking up the other matters,
21 Your Honor.

22 THE COURT: All right. Very good. All right. Thank
23 you. I'm not sure how you all divided this up but as long as
24 cover all of them.

25 MR. PYEATT: There's a process to it.

Colloquy

1 Good afternoon, Your Honor.

2 THE COURT: Afternoon.

3 MR. PYEATT: Matt Pyeatt with Vinson & Elkins,
4 proposed co-counsel to the debtors.

5 The next place I'd like to take you, if it's all right
6 with you, is the debtors' bar date motion. This is --

7 THE COURT: Yeah, the one that I was reading? Okay.

8 MR. PYEATT: -- agenda item number 7.

9 THE COURT: Number 7.

10 MR. PYEATT: Your Honor, this motion was filed at
11 docket number 180. The debtors are seeking entry of an order
12 to establish a claims bar date and related procedures for the
13 filing of proofs of claim. We did take comments from the
14 committee, the United States Trustee, our DIP lenders, and
15 other funded debt holders, and --

16 THE COURT: I guess that's why you had two revised
17 orders.

18 MR. PYEATT: That's exactly right, Your Honor. So we
19 did file under a certificate of no objection at docket number
20 293, a revised proposed order.

21 Your Honor, at a high level, the proposed general bar
22 date under the bar date order is June 14th. This is a week
23 after the original bar date that had been proposed in the
24 motion. That was a comment that we worked out with the United
25 States Trustee.

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1 The proposed bar date is ninety-four days after the
2 petition date, forty-nine days after the schedules and
3 statements will be filed. There's also a governmental bar date
4 of September the 9th. It is 181 days after the petition date,
5 which complies with Bankruptcy Code Section 502(b)(9). There
6 are also bar dates for amended schedules and rejection of
7 damages. These are going to be the later of either the general
8 or the governmental bar date as applicable or thirty days from
9 notice of amended schedules or rejection of contract.

10 With that, Your Honor, I would ask you to enter the
11 bar date order filed at docket number 293.

12 THE COURT: All right. Does anyone wish to be heard
13 in connection with the bar date motion?

14 MR. HERRON: Good afternoon, again, Your Honor. I did
15 have an opportunity to review 293. It does incorporate all of
16 the requested changes that the U.S. Trustee had raised with the
17 debtors. And so therefore, the U.S. Trustee has no objection
18 to the entry of 293, Your Honor.

19 THE COURT: All right. Very well. I will grant the
20 bar date motion and look for the order that's been docketed at
21 293.

22 MR. PYEATT: Thank you, Your Honor.

23 Your Honor, the next place I'd like to go is agenda
24 item number 6.

25 THE COURT: The vendors' motion.

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1 MR. PYEATT: This is the debtors' critical vendor
2 motion filed at docket number 10. We did, just prior to the
3 hearing, file a revised proposed order at docket number 296.

4 Your Honor, this motion, we're actually seeking a
5 second interim order. We have worked with the committee to
6 incorporate comments to that order. But in light of the
7 various components that are covered under the motion, the
8 committee had requested additional time to just review to make
9 sure that they fully diligence and understand the debtors'
10 operations and the nature of the relief being sought in the
11 motion.

12 And so to accommodate that request, we are just
13 seeking a second interim order on the motion. This would
14 permit the debtors to continue to pay vendors between now and
15 the next scheduled hearing date, so this would be before --

16 THE COURT: Is that the May 9th date?

17 MR. PYEATT: It would be before the May 9th date. It
18 would be at the date that the DIP hearing is set for, is what
19 we'd be asking for.

20 THE COURT: All right.

21 MR. PYEATT: And Your Honor, in the second interim
22 order, we have increased the amounts sought to be paid from the
23 initial interim order. We sized the relief to enable the
24 company to make payments to avoid disruption to the business
25 until the next hearing date.

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1 The committee and the DIP lenders have both reviewed
2 the sizing of the requests, and they are signed off as I
3 understand it. And so we would just ask Your Honor to enter
4 the order on critical vendor -- the second interim order on
5 critical vendor, docket number 296.

6 THE COURT: Does anyone wish to be heard in connection
7 with the vendors' motion?

8 MR. HERRON: Good afternoon, Your Honor. I have not
9 had an opportunity to review whatever has been filed at 296.
10 And while I generally don't oppose the continuation of critical
11 vendors on a second interim basis, I would like to have an
12 opportunity to review the order and include an endorsement just
13 in case there's a provision in there that upsets the U.S.
14 Trustee.

15 THE COURT: All right. Very well. All right.

16 MR. ALBERINO: Your Honor, Scott Alberino from Akin
17 Gump on behalf of the committee.

18 On critical vendor, just to confirm what was said on
19 the record, we've been working on an extension of expanded
20 interim payment authority under the CV order. I know
21 AlixPartners and Alvarez have been working on that. So the
22 committee has no objection with respect to the increased
23 authority to perform under the critical vendor order.

24 THE COURT: All right. You've already reviewed this
25 order --

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1 MR. ALBERINO: Yes.

2 THE COURT: -- and you're satisfied with it?

3 MR. ALBERINO: Yes, Your Honor.

4 THE COURT: All right. Do you wish to have an
5 endorsement line?

6 MR. ALBERINO: No.

7 THE COURT: All right. Very good. Well, then I will
8 grant the vendors motion, subject to obtaining the U.S.
9 Trustee's endorsement on the most recent draft order that I
10 believe is docketed at 296?

11 MR. PYEATT: Thank you, Your Honor. And I think
12 before we submit the proposed final order, we will need -- we
13 will need to include the next hearing date in that order.

14 THE COURT: Well, we'll see if we can pick a date --

15 MR. PYEATT: Um-hum.

16 THE COURT: -- today.

17 MR. PYEATT: Okay. Thank you, Your Honor.

18 THE COURT: All right.

19 MR. PYEATT: So next, Your Honor, is actually agenda
20 item number 1. This is the wages motion filed at docket number
21 5.

22 Your Honor, the interim order on wages was entered at
23 docket number 88. We're actually seeking approval of a second
24 interim order on wages today. And as some background, in that
25 motion, the debtors had requested authority to continue certain

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1 incentive and bonus programs that they maintain in the ordinary
2 course of business for the workforce.

3 Since the interim hearing, debtors have had several
4 discussions with the United States Trustee and have been
5 responding to certain diligence requests that the U.S. Trustee
6 had regarding those programs. And so in the context of those
7 discussions, the U.S. Trustee had identified nine or so
8 positions within the debtors' workforce that the U.S. Trustee
9 wanted to conduct additional diligence on just with respect to
10 their participation in those programs.

11 And so the resolution that we reached with the U.S.
12 Trustee is that the debtors would seek approval of these
13 programs for their workforce in the second interim order,
14 except with respect to the nine personnel that are specifically
15 at issue with the U.S. Trustee. And so between now and the
16 next hearing date, the debtors will work with the U.S. Trustee
17 to respond to their additional diligence requests, and I
18 understand the U.S. Trustee will reserve rights with respect to
19 that issue.

20 We have not filed the second interim order on the
21 docket yet. We need to make some changes there and run those
22 by the United States Trustee as well. I guess I should note,
23 we have included comments in the second interim order from the
24 DIP lenders and the committee.

25 So with that, we would request approval of the wages

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1 motion on a second interim basis.

2 THE COURT: Does anyone wish to be heard in connection
3 with the wages motion?

4 MR. HERRON: Good afternoon, again, Your Honor. I
5 want to thank Mr. Pyeatt for working with me extensively on
6 this matter.

7 Mr. Pyeatt is correct that we have come to an
8 arrangement with the allowing the wages motions to be granted
9 on a second interim basis and continuing our discussions with
10 particularly nine individuals that we've identified that we
11 have current issues with.

12 We are still working on the language of the order. So
13 based on an order that is acceptable to the U.S. Trustee, an
14 order will be submitted to the Court, we hope, in due course.
15 But we don't have any opposition to the wages being continued
16 on a second interim basis, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. ANTYPAS: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. ANTYPAS: Alex Antypas of Akin Gump, proposed
21 counsel to the committee.

22 With respect to the long-term incentive plan, the
23 committee has evaluated this plan as a proxy for a key employee
24 retention plan, with the understanding that the debtors do not
25 intend to propose a separate key employee retention plan at

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1 this time. To the extent the debtors do propose a KERP during
2 these cases that will provide additional payments or other
3 economics to the same individuals covered under the long-term
4 incentive plan, the committee will need to carefully scrutinize
5 such a program and reserves all related rights to do so.

6 THE COURT: All right. But in the meantime, you're
7 okay with the second interim order --

8 MR. ANTYPAS: That's right, Your Honor. We have --

9 THE COURT: -- as it has been discussed?

10 MR. ANTYPAS: That's right, Your Honor.

11 THE COURT: Do you wish to see the final version and
12 have an opportunity to endorse that order before it's
13 submitted?

14 MR. ANTYPAS: We wish to review and sign off, but we
15 do not need to endorse it at this time, Your Honor.

16 THE COURT: All right. Well, then, I will assume that
17 you have reviewed it if the order's submitted with the U.S.
18 Trustee's endorsement.

19 MR. ANTYPAS: That will be all right --

20 THE COURT: All right?

21 MR. ANTYPAS: -- Your Honor.

22 THE COURT: Mr. Pyeatt, is that acceptable?

23 MR. PYEATT: That would be fine, Your Honor.

24 THE COURT: All right. Very well, then. That motion
25 will be granted on a second interim basis.

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1 MR. PYEATT: Thank you, Your Honor. With that, I will
2 pass the podium off to my colleague, Ms. Peet.

3 THE COURT: Okay.

4 MS. PEET: All right. Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MS. PEET: For the record, Jessica Peet, Vinson &
7 Elkins, proposed co-counsel for the debtors.

8 I'm back here on scheduling, so do you, in review --

9 THE COURT: So now we're getting to the back part, all
10 the --

11 MS. PEET: Yes.

12 THE COURT: -- adjourned matters. And we've got some
13 that have dates for the next omnibus, which is May 9th?

14 MS. PEET: We do, Your Honor. So --

15 THE COURT: And some that we need to pick a date?

16 MS. PEET: Exactly right.

17 THE COURT: Okay.

18 MS. PEET: So the retention applications for Vinson &
19 Elkins for Lazard and for PwC, the parties have agreed or the
20 judge has otherwise ordered that those will to May 9th, as Mr.
21 Meyer previewed at the outset, which is our next scheduled
22 omnibus hearing.

23 THE COURT: All right. So Vinson & Elkins'
24 application -- okay, you've got that designated on the agenda.

25 MS. PEET: Yes.

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1 THE COURT: All right.

2 MS. PEET: Correct. It's not -- I don't believe --
3 yes, I believe it is. And the same will be true for Lazard and
4 for PwC, and the parties are -- that's been aligned with
5 everybody at this time.

6 (Court and clerk confer)

7 MS. PEET: So --

8 THE COURT: Well, the ones on the agenda that have
9 been designated for May 9th, then those will be adjourned until
10 May 9th.

11 MS. PEET: Correct.

12 THE COURT: And so we need to find a date --

13 MS. PEET: Yes.

14 THE COURT: -- for the DIP motion --

15 MS. PEET: Um-hum.

16 THE COURT: -- the cash management motion and --

17 MS. PEET: Vendors and wages, I believe, Your Honor,
18 as we've now, following Mr. --

19 THE COURT: Oh, the other two that were --

20 MS. PEET: Exactly, that were --

21 THE COURT: -- second interim?

22 MS. PEET: -- on the interim.

23 THE COURT: All right. And we want to pick a date.
24 And it needs to be in April?

25 MS. PEET: Yes, Your Honor. We would greatly

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1 appreciate that accommodation. We've been working with the
2 parties on the motions that you've heard about today and also
3 with respect to the DIP motion, as you heard from Mr. Meyer and
4 Mr. Alberino and Mr. Schiff, on UCC getting diligence. We
5 think that the week of April 22nd would be a great result. We
6 appreciate that Chambers have been working with us a bit in
7 advance of the hearing, but we have just struggled to find a
8 date that worked for all parties.

9 THE COURT: Right.

10 MS. PEET: We would request, if it works for Judge
11 Kenney and his schedule, that Wednesday, April 24th would align
12 with the parties in interest and witness availability, if
13 that's at all available. But --

14 THE COURT: Well, I don't want to --

15 MS. PEET: -- that was our purpose today.

16 THE COURT: -- schedule something that's going to be a
17 problem for Judge Kenney, although I would volunteer to come
18 back up if he needs for me to do that.

19 (Court and clerk confer)

20 MS. PEET: We did unfortunately have a significant
21 conflict with the 25th in terms of party availability, so that
22 was what led us to file our statement at docket 245 and
23 hopefully seek to speak with the judge today. But if that's
24 the date that's available, then, of course, we're happy with
25 whatever result we can get that week.

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1 THE COURT: Well, apparently, the 24th is not
2 available, so I would take the 25th if I were you. And then
3 certainly if Judge Kenney can modify that somehow when he's
4 back, I'm sure you can work that out with him.

5 MS. PEET: We appreciate it, Your Honor.

6 (Counsel confer)

7 MR. BAIN: Your Honor, may I be heard?

8 THE COURT: Well, let me first see where we are
9 with -- okay. So are we looking right now at the 25th?

10 MS. PEET: I believe --

11 THE COURT: And then --

12 MS. PEET: -- I need to request a brief --

13 THE COURT: -- if he can adjust that date, he --

14 MS. PEET: -- recess if possible.

15 THE COURT: All right.

16 MS. PEET: If that would be acceptable, Your Honor?

17 THE COURT: I just want you to have a date before I
18 leave, and then you can work with Judge Kenney to move it if
19 everybody agrees with that. I just don't want to pick a date
20 where I know he may not be available.

21 MS. PEET: Thank you.

22 THE COURT: If he says he'd like for me to cover that
23 date as well, and he says -- he's okay with me coming up on the
24 24th, I can check my calendar, too. We can, perhaps --

25 (Court and clerk confer)

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1 THE COURT: So the 25th at 2 o'clock is what I'm
2 hearing.

3 MS. PEET: Understood, Your Honor. If it would be
4 possible to request a brief recess to just talk with the
5 parties, but then I think that will be where we are. And I
6 would turn the podium to others who are requesting to speak as
7 well.

8 THE COURT: I'm fine with taking a short break to do
9 that.

10 And sir, you wanted to be heard? What is your name?

11 MR. BAIN: Yes, Your Honor. I'm sorry. For the
12 record, Joseph Bain of Jones Walker.

13 Your Honor, we represent a group of creditors,
14 interest holders, who have filed an objection to the DIP. And
15 unfortunately, on April 25th, we have a witness, a fact
16 witness, that would testify to the need for equitable
17 protection.

18 You've heard the term referenced to the Epes plant
19 about four or five times. Our group has the first lien on the
20 Epes plant. And our witness, who is based in Alabama, is not
21 available on the 25th, unfortunately.

22 THE COURT: All right. Well, why don't we take a
23 break. And you can confer with our courtroom deputy. Maybe
24 there's another date that works for everybody that also works
25 for Judge Kenney. But if not, then I would submit that we keep

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1 it on the 25th with the idea being that maybe it's going to be
2 moved.

3 MS. PEET: Thank you very much. Let's do that if that
4 works for everyone.

5 THE COURT: All right. So then, five minutes --

6 MS. PEET: Yes, please.

7 THE COURT: -- ten minutes?

8 MS. PEET: We don't need more than that.

9 THE COURT: All right. Then we will take a short
10 recess.

11 MS. PEET: I appreciate it.

12 THE COURT OFFICER: All rise. This Honorable Court is
13 now in recess.

14 (Recess from 2:55 p.m. until 3:05 p.m.)

15 THE COURT OFFICER: All rise. This Honorable Court is
16 back in session.

17 THE COURT: Everybody got a date that works for
18 everybody?

19 MS. PEET: Your Honor, we've talked to the parties.
20 The calendars are a bit in conflict. I think it may be
21 necessary to talk further in chambers, but we will -- unless
22 there were any updates from anyone on this end in the interim,
23 I think we'll put down the 25th for the time being and then
24 work with that among the parties.

25 THE COURT: Yeah. I'm reluctant to pick a date that I

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1 know Judge Kenney hasn't approved. But I did tell his
2 assistant that I'm willing to come back on the 24th if I can
3 cover something that conflicts with what you want to do.

4 So maybe if you follow with chambers after today when
5 Judge Kenney is back, you can pick that date or a date that
6 works for everybody. But I think for now, let's put the 25th
7 at 2 o'clock down as the placeholder.

8 MS. PEET: Thank you very much, Your Honor. We'll do
9 that, and I appreciate your offer. And we'll follow up with
10 the chambers about that.

11 THE COURT: Okay. Now, that would be the cash
12 management motion, the DIP motion, the application for -- oh,
13 no, those applications are on the May 9th docket, except for
14 the PwC application. That will --

15 MS. PEET: It will be the critical vendors and the
16 wages, I think, are the other two. It's really the balance of
17 the first day relief. The retention applications will move out
18 to May 9th.

19 THE COURT: Okay. All right. Well, is that
20 everything we need to cover today? Does anyone else wish to be
21 heard?

22 MR. ALBERINO: Briefly, Your Honor. Scott Alberino
23 from Akin on behalf of the committee again.

24 With respect to the dates, Your Honor, we are working
25 through issues on the DIP. We have or -- we are at the

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1 beginning stages of some formal discovery with the company on
2 this. We're hoping that if all parties can move quickly to
3 complete discovery in time that we'll be prepared for a
4 contested hearing, if necessary, on the DIP by the 25th. But I
5 just wanted it to be on record that if we have issues with
6 that, we may be back in front of the Court asking for some
7 additional time.

8 THE COURT: All right.

9 MR. ALBERINO: But we'll try to work with the company
10 and the --

11 THE COURT: Well, I know --

12 MR. ALBERINO: -- other stakeholders on this.

13 THE COURT: -- there's witnesses that need to be
14 accommodated and so forth, and 2 o'clock seems kind of late to
15 start a contested DIP hearing. Is that something you might
16 want to consider moving as well, an earlier time?

17 MR. ALBERINO: I think, given some of the comments to
18 date and the fact that there should be some more dialoguing
19 occurring behind the scenes on the dates, and apparently we're
20 not the only party that has issues here on dates as well, so
21 I'm going to hold that in reserve for now, but --

22 THE COURT: So we'll leave that as the date and then
23 see if we can accommodate the parties so that everybody's
24 schedule can work out.

25 MR. ALBERINO: All right. Thank you, Your Honor.

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1 THE COURT: And is there anything else?

2 MR. MEYER: No, Your Honor. Mr. Alberino is right
3 that we received document requests last night. We intend to
4 work through those. And I think that's the end of our agenda
5 today, and thank you for stepping in today, Your Honor, as
6 well.

7 THE COURT: Well, it's my pleasure, and I'm glad to
8 see everyone working together. And I wish everyone success and
9 a successful outcome to this case, and maybe I'll see you
10 again.

11 MR. MEYER: Fantastic.

12 THE COURT: All right. Thank you.

13 MR. MEYER: Thank you, Your Honor.

14 THE COURT OFFICER: All rise. This Honorable Court is
15 now adjourned.

16 (Whereupon these proceedings were concluded at 3:09 PM)

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I N D E X

EXHIBITS:	DESCRIPTION	MARK	ADMIT
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1-19	Various documents		27
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	Insurance Motion granted	31	9
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	Retention Application for Kutak Rock approved	33	6
	Interim Compensation Motion granted	34	15
	Retention Application for Alvarez & Marcel approved	35	17
	Debtors' Ordinary Course Professionals Motion granted	37	11
	Debtors' Bar Date Motion granted	39	20
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C E R T I F I C A T I O N

I, Tabitha L. Jones, the court-approved transcriber,
do hereby certify the foregoing is a true and correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.



April 12, 2024

TABITHA L. JONES

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