

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

WESCO AIRCRAFT HOLDINGS, INC., et al.,¹
Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

WESCO AIRCRAFT HOLDINGS, INC., et al.,
Plaintiffs,

v.

SSD INVESTMENTS, LTD., et al.,
Defendants.

Adv. Pro. No. 23-03091 (MI)

SSD INVESTMENTS LTD., et al.,
Counterclaim Plaintiffs,

v.

WESCO AIRCRAFT HOLDINGS, INC., et al.,
Counterclaim Defendants.

LANGUR MAIZE, L.L.C.,
Crossclaim Plaintiff,

v.

PLATINUM EQUITY ADVISORS, LLC, et al.,
Crossclaim Defendants.

¹ The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/Incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



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LANGUR MAIZE, L.L.C.,

Third-Party Plaintiff,

v.

**UNNAMED PLATINUM FUNDS c/o
PLATINUM EQUITY ADVISORS, LLC, et al.,**

Third-Party Defendants.

LANGUR MAIZE, L.L.C.,

Counterclaim Plaintiff,

v.

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Counterclaim Defendants.

**DEBTORS' RESPONSE TO 2024/2026 HOLDERS' MOTION TO STRIKE THE
DEBTORS' SUPPLEMENT TO PROFESSOR MORRISON'S TESTIMONY**

At trial, the 2024/2026 Holders presented expert testimony from Professor Morrison to discuss the prevalence of the “adverse effect” and “lien release” provisions in a subset of indentures that Professor Morrison identified as the “*Benchmark Indentures*.” Morrison conducted a “counting” exercise (“*Expert Counting Exercise*”) regarding how many indentures in his sample contain language similar to certain specific language from Section 9.02 of the 2026 Indenture. Morrison did not choose what language to compare, and did not consider other parts of Section 9.02 or any other provisions in the 2026 Indenture or Benchmark Indentures as part of his analysis.² The myopic nature of Morrison’s “analysis” was the subject of cross examination, including his failure to account for (1) Benchmark Indentures having consent thresholds far greater than the 66% in the 2026 Indenture for lien releases and (2) the fact that some of the Benchmark

² ECF No. 1249 (Morrison) at 56:22-57:12.

Indentures also include language in the lien release provision that specifically refers to a “series of transactions.”³

During Morrison’s testimony, the Court asked parties to provide supplements with respect to this “series of transactions” language in the lien release provisions of the Benchmark Indentures. The Debtors and Counterclaim Defendants filed a supplement (“*Debtors’ Supplement*”),⁴ as did the 2024/2026 Holders (“*Holders’ Supplement*”).⁵ In the Holders’ Supplement, the 2024/2026 Holders conducted another counting exercise—(“*Non-Expert Counting Exercise*”)—to demonstrate the prevalence of rules of construction in the Benchmark Indentures, and particularly one rule of construction that the 2024/2026 Holders assert is relevant.⁶ The 2024/2026 Holders moved (after the close of testimony at trial) to strike the Debtors’ Supplement as inadmissible expert testimony.⁷ The Debtors write to respond to the 2024/2026 Holders’ mischaracterization of the Debtors’ Supplement and urge the Court to deny the motion to strike.

Given that Morrison failed to consider the “series of transactions” language (among other things), the Debtors’ Supplement sought to provide the Court with additional context including: (1) this language was employed in the 2026 Indenture in sections other than the lien-release provision, reflecting that the parties knew how to use that protective language when they wanted to, but did not do so as to lien releases; and (2) indentures and credit agreements have implemented

³ ECF No. 1249 (Morrison) at 66:21-69:23 (discussing Benchmark Indenture No. 143 which has a unanimous consent threshold governing the lien release provision containing “series of transactions” language); ECF No. 432-1 at 183 (Benchmark Indenture No. 143 in Morrison Appendix C).

⁴ See ECF Nos. 1288 (Debtors’ Supplement); 1288-1 (Debtors’ Supplement Exhibit A).

⁵ See ECF Nos. 1289 (Holders’ Supplement); 1289-1 (Holders’ Supplement “Rule 1006” Chart).

⁶ The “rule of construction” the 2024/2026 Holders are focused on is not remotely relevant. See ECF No. 1288, n. 10. This will be addressed in post-trial briefing.

⁷ See ECF No. 1349 (2024/2026 Holders’ Motion to Strike).

the “series of transactions” protection in lien-release provisions for more than 20 years. Given these legitimate purposes of the Debtors’ Supplement, the 2024/2026 Holders do not come close to meeting the standard for striking the Debtors’ Supplement. *See, e.g., Am. S. Ins. Co. v. Buckley*, 748 F. Supp. 2d 610, 626 (E.D. Tex. 2010) (holding that motions to strike “are viewed with disfavor and infrequently granted,” except where the material “has no possible relation to the controversy and may cause prejudice”).

Moreover, even if the 2024/2026 Holders were entitled to such relief, under their own logic, their own supplement must be stricken as well. *See infra* n.17. The 2024/2026 Holders’ Non-Expert Counting Exercise, while relying on Morrison’s Benchmark Indentures as a sample, is wholly disconnected from any opinion offered by Morrison. Indeed, Morrison made clear that he did not consider any parts of the 2026 Indenture or Benchmark Indentures other than specific portions of Section 9.02. *See supra* n.2. Instead, the Holders’ Supplement with its attached “Rule 1006” chart attempts to circumvent the limitations of Morrison’s analysis by using Morrison’s Benchmark Indentures as a sample to offer new data that is both unrelated to Morrison’s opinion and unresponsive to the Court’s request.

ARGUMENT

I. The Debtors’ Supplement Is Responsive To The Court’s Request And Provides Context For The “Series of Transactions” Language Ignored By Professor Morrison

The Debtors Supplement and the corresponding Exhibit A fairly respond to and provide context regarding Court’s question about the “series of transactions” language given Morrison’s failure to consider it. Debtors’ Exhibit A demonstrates, among other things, that the four examples in the Benchmark Indentures are not conclusive and that there is precedent for the “series of transaction” protection language in credit markets spanning more than 20 years. Where the Court sought to understand how this verbiage is utilized in lien release provisions, identifying where this

language *is used* is just as helpful to the Court as is understanding where it is *not used*. In other words, given the relatively few Benchmark Indentures that contain the provision in question, applying a wider lens better illustrates where the language's use in credit markets. This is, of course, in addition to the fact that the "series of transaction" language is used repeatedly in the 2026 Indenture in provisions other than the lien-release, which itself is important context.

Contrary to the 2024/2026 Holders' contention, the Debtors' Supplement is not (and does not purport to be) "rebuttal expert analysis."⁸ The Debtors did not purport to conduct a comprehensive survey of indentures or credit agreements in order to provide a statistical conclusion about the use of "series of transactions" language in lien release provisions.⁹

Furthermore, the Debtors' use of examples in their Supplement Exhibit A is not impermissible hearsay.¹⁰ The Debtors have not sought to admit these examples into evidence, but rather point to them to add context to the Court's question about the "series of transactions" language and to challenge any conclusions that may be drawn from relying on Morrison's Benchmark Indentures as the only purportedly relevant sample.

The 2024/2026 Holders apparently believe that an expert witness is required in order to discuss the results of the Debtors' searches on EDGAR and Google. The Debtors disagree. Nothing in the Debtors' Supplement was expert opinion, but to the extent the Holders would like the Debtors' "methodology,"¹¹ it was simply searching on EDGAR and Google for the phrase

⁸ See ECF No. 1349 at 10.

⁹ Thus, the 2024/2026 Holders' attempts to quantify the prevalence of this language using the Debtors' Supplement is misguided given the Debtors' Supplement made clear that the Exhibit A was a subset of non-exhaustive search results offered by way of example. See ECF No. 1349 at 11 n.5, 11 n.6.

¹⁰ The Debtors use of examples to challenge the results of Morrison's Benchmark Indentures is not hearsay as it is not being offered for the "truth of the matter asserted." FED. R. EVID. 801.

¹¹ See ECF No. 1349 at 13.

“collateral in any transaction or series of related transactions” or substantially similar language, and collecting a reasonable number of examples for the Court to consider alongside Morrison’s Benchmark Indentures.¹² There was no “rigorous sampling,” because the Debtors’ Supplement did not purport to offer a comprehensive or representative dataset.¹³

Nothing the Debtors did required expertise. Running a simple search for “series of transactions” language on EDGAR and Google does not require expertise.¹⁴ Also, to the extent “counting” is the proper subject for expert testimony, which is apparently the case only when convenient for the 2024/2026 Holders, the Debtors’ Supplement also did not purport to “count” the frequency of these examples in some larger dataset.

II. Unlike the Debtors’ Supplement, The Holders’ Supplement *Does* Offer Inadmissible Expert Opinion

The 2024/2026 Holders’ Motion is also at odds with their own proffered supplement. While the 2024/2026 Holders’ fault the Debtors for “disregard[ing] the bounds of the Court’s allowance,” their supplement sought to introduce a new “counting” opinion (but this time with no expert) on different provisions of the Benchmark indentures—the rules of construction.¹⁵ But Morrison never looked at the rules of construction,¹⁶ and they are unrelated to the “series of

¹² ECF No. 1288 at 4.

¹³ In fact, the contrary is true. The Debtors’ Supplement Exhibit A offered only examples that did contain the “series of transactions” language applied to lien release protections. This alone indicates that the Debtors’ Supplement did not include a sample by which one could evaluate the frequency of this language, and nothing in the Debtors’ Supplement suggests that the Debtors’ had conducted any frequency analysis. The Debtors also sought to make this clear by using a round number of examples (40). *See* ECF No. 1288-1.

¹⁴ If this were the case, every Boolean search on Westlaw could require an expert to explain the results. Lawyers run searches similar to the Debtors’ EDGAR search on a daily basis.

¹⁵ *See* ECF No. 1348 at 10; ECF No. 1289 at 4-5.

¹⁶ *See* ECF No. 432-1 at 116-254. Morrison’s Appendix C-2 contains only the text of Section 9.02 (or the equivalent thereof) from each of the Benchmark Indentures, as this was the only section that Morrison looked at for the purposes of his analysis. The Court confirmed that the Benchmark

transactions” language that was the subject of the Court’s inquiry. The Court rightly rejected the 2024/2026 Holders’ effort to admit this new opinion as evidence in the form of their new “Rule 1006” chart. *See* Rough Trial Tr. 38:10-6 (June 14, 2024).¹⁷ Furthermore, although the Debtors will reserve the substance of this discussion for post-trial briefing, the Debtors note that the 2024/2026 Holders’ desperate attempt to make the rules of construction relevant to their asserted theories is based on a strained, inaccurate interpretation of those rules.

III. The 2024/2026 Holders “Missed The Point” With Respect To The Flaws In Morrison’s Opinion

In their attempt to redirect the Court’s attention to the results of their Non-Expert Counting Exercise, the 2024/2026 Holders have seemingly “missed the point” of their own expert opinion.¹⁸ Professor Morrison opined that the relative infrequency of the “broad” lien release¹⁹ with the adverse effect provision in the Benchmark Indentures suggested that the language as it appears in

Indentures, apart from those admitted by the Debtors, are not “in evidence” at the hearing on Friday, June 14. Rough Trial Tr. 73:8-16 (June 14, 2024) (appended hereto as Exhibit A). *See* ECF Nos. 1359 (notice of filing preadmitted exhibits); 1359-1; 1263-2; 1216-4; 1358-2.

¹⁷ The Holders argue that the agreements cited to in the Debtors’ Supplement are the subject of “hearsay searches.” That is not so. *See supra* n. 10. But, by their own logic the 2024/2026 Holders’ use of the Benchmark Indentures for their new Non-Expert Counting Exercise is hearsay as well. Yet the 2024/2026 Holders moved to strike the Debtors’ Supplement, while simultaneously moving (albeit unsuccessfully) to admit into evidence their own non-expert hearsay analysis. To the extent the Court is inclined to strike the Debtors’ Supplement, the 2024/2026 Holders’ supplement should be stricken as well.

¹⁸ *See* ECF No. 1349 at 14.

¹⁹ The 2024/2026 Holders re-embraced “broad” and “narrow” language for classifying lien release provisions in the Holders Supplement, despite having previously represented to the Court that they were not offering such legal interpretations as part of Morrison’s opinion. *See* ECF No. 1173 (Morrison) at 168:3-169:13. Though the Debtors do not believe the change in terminology to “Variant 1” and “Variant 2” resolved the issue of Morrison’s legal conclusions, the Debtors object to this belated attempt to reinsert such conclusory language into Morrison’s opinion. Moreover, Morrison’s “broad” and narrow” classifications are not remotely reliable. Morrison acknowledged that he completely ignored the carveouts in the lien-release provisions in his analysis, and admitted that this would affect the scope of those provisions (*i.e.*, how broad and narrow they are). *See* ECF No. 1249 (Morrison) at 86:23-87:10.

the 2026 Indentures provides additive protection for creditors.²⁰ When applied to the “series of transactions” language which appears only in four Benchmark Indentures, Morrison’s logic indicates that this too would be an added protection—one which the 2026 Indenture does not contain. Thus, at best, the “series of transactions” language suggests that it is simply a protection that the creditors could have, but did not, negotiate for in the instant case.²¹

Also, for all their argument about the Debtors’ Supplement, the 2024/2026 Holders fail to address a critical point: that Professor Morrison’s opinion entirely ignored the fact that *thirty* of Morrison’s Benchmark Indentures have consent thresholds higher than the 2026 Indenture, including nine that make lien-releases “sacred rights” requiring unanimous consent.²² In evaluating indenture provisions that the 2024/2026 Holders argue should have called for their consent to effectuate the 2022 Transaction, Morrison stunningly ignored perhaps the most obvious way that the 2026 Indenture could have (but did not) require the consent of the 2024/2026 Holders—higher consent thresholds for lien release. The 2024/2026 Holders’ silence on this issue reflects the weakness in Morrison’s opinion and explains their last-ditch efforts to offer new (inadmissible) data about irrelevant rules of construction.

CONCLUSION

For the foregoing reasons, the 2024/2026 Holders’ Motion should be denied.

²⁰ The Debtors dispute that relative frequency of certain 2026 Indenture terms in *other contracts* should have any bearing on the interpretation or application of the instant indenture. Indeed, the 2026 Indenture itself expresses the intent to prohibit a comparative analysis to other company’s indentures. *See* ECF No. 601-8 § 13.08

²¹ ECF No. 1247 (Cook) at 76:1-14 (explaining that JPM was comfortable with the 2/3 lien release provision “as written”).

²² *See* ECF No. 1288 at 5 n. 15 (identifying the Benchmark Indentures with elevated consent thresholds, including those requiring unanimous consent).

Dated: June 17, 2024

Respectfully submitted:

/s/ Christopher D. Porter

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Response was served on the 17th day of June, 2024, via the Clerk of the Court through the CM/ECF system to all parties who have appeared in this case through counsel or who have submitted a request for service by CM/ECF.

/s/ Christopher D. Porter

Christopher D. Porter

EXHIBIT A

ROUGH DRAFT ROUGH DRAFT

1 UNEDITED, UNPROOFREAD, UNCORRECTED,
2 UNCERTIFIED ROUGH DRAFT

3 WARNING:

4 This unedited rough draft of the proceedings was
5 produced in realtime and is not certified. The
6 rough draft transcript may not be cited or used in
7 any way at any time to rebut or contradict the
8 certified transcription of the proceedings. There
9 will be discrepancies in this form and the final
10 form, because this realtime translation has not been
11 edited, proofread, corrected, finalized, indexed,
12 bound or certified. There will also be a
13 discrepancy in the page numbers appearing on the
14 unedited rough draft and the edited, proofread,
15 corrected, and certified final.

16

17

18

19 THE COURT: All right. Good morning.

20 We're here in the Wesco Aircraft case, Adversary
21 233091. When you are prepared to speak today,
22 please feel free to press five star on your line.
23 Mr. Bennett, good morning.

24 UNIDENTIFIED SPEAKER: Good morning,
25 Your Honor. Bruce Bennett with Jones Day.

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1 THE COURT: Mr. Heidlage, good morning.

2 UNIDENTIFIED SPEAKER: Good morning,
3 Your Honor.

4 THE COURT: I am trying to get you to
5 make a formal appearance so the court reporter can
6 hear your voice a little bit more.

7 UNIDENTIFIED SPEAKER: Sure. This is
8 Benjamin Heidlage for the PIMCO and Silver Point
9 noteholders. And I am here with my colleagues,
10 Mr. Lieberman and Ms. Maher, Sarah Maher.

11 THE COURT: Thank you. From
12 737-667-6102, who do we have? You may be -- your
13 own line muted. You are calling in from
14 737-667-6102, please go ahead and speak up.

15 UNIDENTIFIED SPEAKER: Sorry, Your
16 Honor. Matthew Scheck from Quinn Emanuel for the
17 debtors.

18 THE COURT: Good morning, Mr. Scheck.

19 UNIDENTIFIED SPEAKER: Good morning.

20 THE COURT: From 202-680-1787.

21 UNIDENTIFIED SPEAKER: Good morning,
22 Your Honor. This is Joe Catalanotto from Williams &
23 Connolly on behalf of Platinum. And I am here with
24 Ms. Oberwetter, also from Williams & Connolly on
25 behalf of Platinum.

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1 THE COURT: Your voice is very fuzzy
2 and I need to you try and fix that if you intend to
3 speak today.

4 UNIDENTIFIED SPEAKER: Thank you, Your
5 Honor. I will -- I will try to do that.

6 THE COURT: All right. Thank you.
7 That is actually a little better right there. I
8 think maybe the phone was a little far. And
9 212-488-1243.

10 UNIDENTIFIED SPEAKER: Good morning,
11 Your Honor. Darryl Stein and Zachary Rosenbaum from
12 Kobre & Kim on behalf of the 2024/2026 holders.

13 UNIDENTIFIED SPEAKER: Good morning,
14 Your Honor.

15 THE COURT: Good morning. From
16 214-909-8374.

17 UNIDENTIFIED SPEAKER: Good morning,
18 Your Honor. At -- mentioned, Sarah (unintelligible)
19 for (unintelligible).

20 THE COURT: Ms. Mayor I could see you
21 talking. About every other word was breaking up.
22 Do you want to just try that again?

23 UNIDENTIFIED SPEAKER: Is this better,
24 Your Honor?

25 THE COURT: Sounds better, yes.

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1 UNIDENTIFIED SPEAKER: Okay. Thank
2 you, Your Honor.

3 THE COURT: Why don't you go ahead and
4 restate your appearance if you don't mind.

5 UNIDENTIFIED SPEAKER: Sure. Sarah
6 Maher of Holwell Shuster & Goldberg for the
7 PIMCO/Silver Point noteholders.

8 THE COURT: Thank you. And
9 212-373-3248.

10 UNIDENTIFIED SPEAKER: Good morning,
11 Your Honor. Billy Clareman from Paul Weiss on
12 behalf of Carlyle and Spring Creek.

13 THE COURT: Good morning, Mr. Clareman.
14 From 347-834-5057 -- hold on. There we go. Go
15 ahead, please.

16 UNIDENTIFIED SPEAKER: Good morning,
17 Your Honor. Neil Lieberman from Holwell Shuster &
18 Goldberg on behalf of the PIMCO and Silver Point
19 noteholders.

20 THE COURT: Good morning,
21 Mr. Lieberman. From 212-506-3306.

22 UNIDENTIFIED SPEAKER: Good morning,
23 Your Honor. This is Andrew Kurland from Kasowitz
24 Benson & Torres on behalf of Senator.

25 THE COURT: Good morning. Mr. Noskov,

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1 good morning.

2 UNIDENTIFIED SPEAKER: Good morning,
3 Your Honor. Victor Noskov, Quinn Emanuel for the
4 debtors. Mr. Scheck is going to take the lead for
5 us today, but I would be remiss if I didn't say
6 hello.

7 THE COURT: Thank you. Good to hear
8 from you. 646-526-7947.

9 UNIDENTIFIED SPEAKER: Good morning,
10 Your Honor. Michael Birnbaum with Morrison Foerster
11 here on behalf of the UCC.

12 THE COURT: Good morning. And I think
13 we have one more, let's see. The last one,
14 614-469-3939.

15 UNIDENTIFIED SPEAKER: Good morning,
16 Your Honor. Matt Corcoran with Jones Day on behalf
17 of Langur Maize.

18 THE COURT: Good morning. All right.
19 If there is anyone else that needs to speak up, you
20 can press five star at any time. If I missed you,
21 please just wave on the screen and I will find you.

22 So let me start with the plaintiffs and
23 ask where we are with respect to proceeding with the
24 trial and the closing arguments. Mr. Rosenbaum?

25 UNIDENTIFIED SPEAKER: Good morning,

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1 again, Your Honor. Zachary Rosenbaum for the
2 2024/2026 holders: I am pleased to report that we
3 all -- I think I can speak for everyone -- are on
4 pace to submit our closing briefs on Monday the 17th
5 and have the first scheduled closing arguments on
6 the contract issues that have been discussed on the
7 24th and, potentially, the 25th.

8 I think all parties are prepared to
9 close evidence today with some minor caveats. And
10 most, if not all, parties have some evidence to move
11 in. I think most of it is without objection. And
12 there are a handful of items that will require Your
13 Honor's intervention. But if I missed anything, I
14 -- I have no doubt that others will speak up.

15 THE COURT: Yeah. Except that when you
16 started off by saying you will be pleased to hear,
17 that's not what I expected to hear. Mr. Bennett, go
18 ahead.

19 UNIDENTIFIED SPEAKER: I have nothing
20 to add, Your Honor. I -- it was not mentioned, but
21 also in the process of preparing the deposition
22 excerpts in accordance with Your Honor's direction;
23 that's going on, as well. I don't know when we
24 expect to be finished with that. I am sure someone
25 else on the phone will be able to tell you when they

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1 will be supplied to Your Honor for chambers.

2 We -- I would just remind you of our
3 request that at some point, we sent Langur Maize
4 (unintelligible) for the Langur Maize closing. I
5 expect to be appearing on the 24th, but for
6 listening only, I suspect.

7 THE COURT: So I would appreciate it,
8 Mr. Bennett, if you would think of dividing your
9 sought after relief into maybe two categories. One
10 is a category where you have claims solely against
11 third parties and that we would reserve -- to the
12 extent that your claims are against the debtor
13 itself, that might result in some change in the
14 debtor's capital structure, I would ask that you try
15 and contribute those early at the original opening;
16 is that possible to divide it up that way?

17 UNIDENTIFIED SPEAKER: Well, Your
18 Honor, let me remind you of that procedural setting
19 here. Our complaint was solely against third
20 parties and not against the debtor. The debtor --

21 THE COURT: I thought you had some
22 complaints against the debtor, as well. Okay.

23 UNIDENTIFIED SPEAKER: Let me finish.

24 THE COURT: All right.

25 UNIDENTIFIED SPEAKER: Then the debtors

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1 decided and is long thought that this was
2 inappropriate and a waste of a state of resources,
3 but the debtors decided to weigh in and file
4 declaratory relief actions against our clients.

5 THE COURT: Okay. Got it.

6 UNIDENTIFIED SPEAKER: And then -- and
7 that necessitated us filing a counterclaim against
8 the debtors. So that is -- that is the reason why
9 the debtors are on the caption. The only relief we
10 seek against the debtors relates to declaratory
11 relief because the flip side of the declaratory
12 relief they are seeking against us, but, otherwise,
13 it is a case against third parties.

14 THE COURT: But on the declaratory
15 relief issue, will you be speaking up at the 25th,
16 26th?

17 A. I intend -- I think it's 24th and 25th, but
18 I -- I intend not to, but I suspect it depends to
19 some degree on what others might say that implicate
20 things do I care about even though I am not
21 asserting claims against the debtors.

22 THE COURT: Okay. Thank you. Anyone
23 else want to pitch in before we then move into the
24 introduction of evidence? Mr. Clareman.

25 UNIDENTIFIED SPEAKER: Yes, Your Honor.

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1 Thank you. So just on that topic, I think it would
2 be helpful to clarify for all parties the scope of
3 the issues for the 24th and the 25th. One, just
4 addressing the Langur Maize claim specifically,
5 there are breaches that are now alleged by the
6 debtors that are the basis of tortious interference
7 claims.

8 So there are, in fact, at least at this
9 point based on the discussions we have been having
10 over the last couple of weeks, a couple of areas
11 where there is an alleged breach by the debtors that
12 serve as the basis for the tortious interference
13 claim. And so I -- I am personally, from my own
14 sake, agnostic as to when those arguments proceed,
15 but I just would -- would like to make sure I have
16 clarity on what --

17 THE COURT: So let me tell you my goal,
18 and maybe I need y'all to answer this question, is I
19 don't want to hold up planned confirmation any
20 longer than we have to. And to the extent that the
21 Langur Maize claims are third-party claims, it
22 probably don't hold up claimed confirmation issues.

23 And so what I was hoping to do is at
24 the end of 25th, there will certainly be some open
25 questions because we didn't try damages, but the

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1 structure of what the outcome is going to look like
2 should be known as soon as I can absorb what
3 occurred. For example, I mean, I could find no
4 breaches, at which point we don't need a damages
5 hearing. Or I could find that really what I think
6 we have is a 510 question and outline and here is
7 what I need to see under 510 in terms of fact on how
8 to implement that kind of an issue.

9 And try and do that really on the
10 shortest schedule that I can figure out so we're not
11 holding up confirmation. That's my goal. And since
12 I don't understand exactly where everybody is going
13 on their arguments, I would ask you to put me in a
14 position where I can advance confirmation as quickly
15 as possible after the 25th.

16 And, I guess, unless I am mistaken, we
17 don't need to resolve Langur Maize versus Platinum
18 disputes to do that; those will be in -- and those
19 may not be anything I can decide anyway, or maybe I
20 can make a report and recommendation about them, but
21 I am not going to decide that probably. So does
22 that answer your question?

23 UNIDENTIFIED SPEAKER: It -- it does,
24 Your Honor. Thank you.

25 THE COURT: Thank you. Anyone else?

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1 UNIDENTIFIED SPEAKER: Your Honor.

2 THE COURT: Yes. Go ahead.

3 UNIDENTIFIED SPEAKER: Yes. One item
4 that I just don't want to be overlooked. There is
5 -- both our clients and Langur Maize have asserted a
6 say sacred rights violation based on alteration of
7 the ranking or payment through the 2022 transaction,
8 which is not presently scheduled for the 24th, 25th
9 closing arguments. Perhaps we fold it in to those
10 days. To me, Your Honor, the desire to be able to
11 deal with my confirmation as soon as possible after
12 that portion of -- of the proceeding. But I do
13 think those contract claims might impact that
14 discussed next steps.

15 THE COURT: I am not so sure that if
16 the question is ex-party caused a violation, but
17 didn't perform the violation, that I would need to
18 resolve it in order to get that done. I do think,
19 by way -- and I have told y'all that I continue to
20 think 510 is probably where to look if we, in the
21 end, decide there have been some breaches. That may
22 create a new capital structure to result if we make
23 a 510-oriented decision.

24 So, I think, let's see how things go.
25 I think that says what I am trying to do. I am not

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1 hearing anybody disagreeing that we ought to try and
2 get the confirmation. And I would ask that if those
3 issues get joined -- I think what Mr. Bennett said,
4 if those issues are joined, he will know enough to
5 speak up, and so far he has not been bashful about
6 that.

7 UNIDENTIFIED SPEAKER: Your Honor,
8 Victor Noskov, Quinn Emanuel. Just wanted to say we
9 agree with Your Honor that the goal should be try to
10 resolve everything that can push us towards
11 confirmation as soon as possible. That's what we
12 have been trying to do. And I think the parties
13 have worked to get a list of -- of the issues that
14 we will be -- we will discuss at that hearing
15 together. I think we are all in agreement.

16 On the Langur Maize issue, just to
17 state on the record, from our perspective is there
18 are -- there are no actual claims against the
19 debtors seeking liability against the debtors, but
20 as Mr. Clareman pointed out, there are theories of
21 liability that are asserted. There is theories of
22 breach asserted, apparently, against the debtors now
23 that affect tortious interference claims, we think
24 those can be resolved later, but, of course, those
25 tortious interference claims go away if there is no

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1 breach found on the -- on the 24th or the 25th.

2 THE COURT: Right. And that makes
3 sense. If there is a required reordering of
4 priorities, that's part of the 24th and 25th, but
5 that will not resolve whether those were -- that
6 required reordering was something that would imposed
7 liability on a third party, and that's what we would
8 reserve for. We will have to figure out, I think,
9 what the coming-out priorities look like.

10 UNIDENTIFIED SPEAKER: Well, Your
11 Honor, just on that point, the -- my understanding
12 of 24th and 25th are we will determine whether there
13 is a breach of the contract, whether -- whether the
14 notes are properly issued, whether the amendments
15 were -- were done properly, the steps followed, all
16 of that.

17 To the extent that there is no breach,
18 obviously, that's easier. To the extent there is a
19 breach, I think we're going to have to -- it's my
20 understanding, at least, was there would be a second
21 -- you know, we need to figure out with the
22 implication of such a breach is and whether, for
23 example, if I attended applicable -- were, of
24 course, breaching those issues because we're
25 breaching all the issues that are important. But I

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1 didn't understand that we were arguing on the 24th
2 and 25th the applicability of 510.

3 THE COURT: So I have a pretty
4 extensive spreadsheet that shows to me -- not
5 anything that I am going share everybody, but just
6 so you know what my expectations are coming in --
7 that shows based on various potential breach issues
8 what facts are needed to determine coming out
9 priorities. It does not fill in numbers because
10 it's a spreadsheet that has hypothetical numbers
11 because I don't know amounts.

12 But I would probably think that you
13 should expect -- and I think you're right. If we
14 determine no breach, this is so easy, right? But if
15 we determine there is a breach at Step A or a breach
16 at Step X, it is likely that I am going to then say,
17 here are the facts that I need to know in order to
18 figure out the remedy. And I will tell you that as
19 soon as I can.

20 I think there is a zero possibility
21 that if there is a breach, that I would issue a
22 judgment without further hearings, but I may very
23 well. Again, I know that I am -- I don't want to
24 lock this in because it's not fair to y'all because
25 I could change my mind. If there is a breach, I

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1 continue to believe that the remedy is going to be a
2 reordering of priorities under 510. But I don't
3 know what that reordering is until I get more facts,
4 right?

5 For example, let's assume there is a
6 breach and exculpation goes away. I don't know how
7 much money that involves. I -- I don't have any
8 facts on what's been -- I don't mean exculpation. I
9 am sorry. The indemnification goes away. I have no
10 idea how much has been paid out in indemnification
11 claims. But if I decide to -- in fact, there was a
12 breach and, therefore, no indemnification was
13 appropriate, let's assume that for a moment. I
14 can't then reach a decision because I have no idea
15 whether anybody has been paid on indemnification for
16 various people or how much, and so those will be
17 facts that are open.

18 And I don't think you should expect as
19 limited of a finding as what you are telling me. I
20 am hoping I can do more. I think it will be helpful
21 to the parties if I do more.

22 UNIDENTIFIED SPEAKER: Well, Your
23 Honor, respectfully, I think our position will be --
24 and to the extent that you -- you find argument on
25 the -- on the 24th and 25th useful, we're certainly

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1 briefing it now. Our position would be that even if
2 there is a breach, that there should not be a
3 reordering of priorities because 510 is not
4 applicable. There aren't -- there are the vast
5 eight elements of 510 applicable here and -- and
6 that it doesn't -- it doesn't follow from the breach
7 necessarily that there should be a change to the
8 debtor's capital structure.

9 And I am sure that the '24/'26 holders
10 will argue otherwise. And, again, you will see that
11 in our papers. But we didn't understand that that
12 would be argued on the 24th, 25th. If Your Honor is
13 telling us it should be, we can certainly prepare
14 for that.

15 THE COURT: So I think you should
16 prepare for that.

17 UNIDENTIFIED SPEAKER: That's -- that's
18 very helpful, Your Honor.

19 THE COURT: Yeah. Look, let's assume,
20 for example, that the additional notes shouldn't
21 have been issued. Well, we've talked already about
22 what does that mean about the lien and the lien
23 notices, right? And so I am not so sure, frankly,
24 Mr. Noskov, that your side of the equation isn't
25 better off with 510 than we decided the consequence

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1 of wrongful lien release. So be careful what you
2 ask for.

3 I will tell you I have run the numbers
4 and 510 can create more fairness than deciding what
5 the legal consequences of that difficult environment
6 where the transactions took place a couple years ago
7 and whether you can, in fact, do things legally that
8 make any sense. So be sure what you want because I
9 think you are not thinking of the numbers the way I
10 am thinking of the numbers.

11 UNIDENTIFIED SPEAKER: Thank you, Your
12 Honor.

13 THE COURT: I don't want anybody
14 reading that I have already decided what to do,
15 because I haven't. But I have decided for sure
16 these are different possibilities and I have lived
17 with these things as long as you guys have lived
18 with it, you know, in this trial. And there is no
19 way to do that without thinking of the different
20 possibilities. And I want to be fair to y'all and I
21 shouldn't end that hearing and leave things open
22 where you don't know where things are likely to go.
23 Obviously, whatever we do at the end of that hearing
24 will be interlocutory, so it's not like you are
25 going to be bound by it, but I am thinking what

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1 would be the structure of a remedy along the way.
2 And that --

3 UNIDENTIFIED SPEAKER: That's very
4 helpful, Your Honor. We'll certainly prepare to
5 make the arguments that you will -- that -- and you
6 will have the benefit of that in our -- in our
7 briefing regarding the proper remedy if there is a
8 breach.

9 THE COURT: That would be great. Thank
10 you. All right. Let's --

11 UNIDENTIFIED SPEAKER: Your Honor, I
12 want (unintelligible) --

13 THE COURT: -- initial basis. Go
14 ahead.

15 UNIDENTIFIED SPEAKER: Yes, this is Ben
16 Heidlage for the PIMCO and Silver Point noteholders.
17 I just wanted to echo what the debtor -- what
18 Mr. Noskov had said. You know, I think we will want
19 an opportunity either if it's going to be at the
20 25th and we will prepare for the 24th or 25th to be
21 able to speak to it, or -- or at a later date, you
22 know, what the appropriate remedy would be if there
23 is a breach. So I -- I do want -- I wanted to flag
24 that, but it sounds like Mr. Noskov had already
25 raised it. But I just wanted to make sure I got

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1 that on the record.

2 THE COURT: I am certainly going to be
3 (unintelligible) and I think -- I think what I
4 intended to reserve was sort of the damages hearing,
5 right? But that -- I was thinking of evidence about
6 that. What you are talking is about legal argument
7 of the consequences of the breach. Legal argument
8 about whether it's a contract remedy, whether it's a
9 510 remedy, but then not deciding what the actual
10 remedy is until later. But you should be prepared
11 to talk about that; it's only fair you'd be prepared
12 to talk about that.

13 UNIDENTIFIED SPEAKER: Understood, your
14 Honor. And I think the parties had -- had a
15 different understanding, so the clarification is
16 very helpful.

17 THE COURT: Thank you. Anyone else?

18 UNIDENTIFIED SPEAKER: Your Honor, this
19 is (unintelligible) -- this is -- I just want to
20 make sure I understand the 24th and 25th better,
21 mostly for my personal planning -- planning
22 purposes. It was my impression from prior hearings
23 that the subject that was going to be covered on the
24 24th and the 25th was the validity of the issuance
25 of \$250,000,000 of new 2026 notes, and -- and the

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1 contract issues that relate to that.

2 I was not under the impression that all
3 breach issues were going to be litigated that day.
4 I am okay either way. I would just like to know
5 because we don't have any issues that we would argue
6 if it's the former, meaning just the issuance of 26s
7 -- the new 26s. We, of course, do have issues if
8 it's any breach. And -- and so I need that
9 clarification.

10 THE COURT: If it's a breach -- third
11 party to third party, we're not going to be arguing
12 that on the 24th and 25th. If it's a breach by the
13 estate itself, then I need to hear those arguments.

14 UNIDENTIFIED SPEAKER: Okay. Well,
15 then -- then we will be making a presentation, then,
16 and we will need time, obviously.

17 THE COURT: That's fine. Thank you.

18 UNIDENTIFIED SPEAKER: Okay.

19 THE COURT: All right. Anyone else?
20 Otherwise, I want to move into having people
21 introduce evidence today. Okay. Let's start with
22 Mr. Rosenbaum, then we will go to Mr. Bennett, and
23 then we will go to the committee. And we will close
24 out that side's evidence. I think those are the
25 only three parties on that side. And then we will

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1 take up evidence from the other parties. So,
2 Mr. Rosenbaum, you go first in terms of instruction
3 evidence.

4 UNIDENTIFIED SPEAKER: Certainly.
5 Thank you, Your Honor. I am going to hand the baton
6 to Mr. Stein for the agreed-upon evidence reissues.
7 There is one exhibit made, I believe, that has been
8 objected to, and I think it makes sense to deal with
9 that last. I think, as we go, we will air out
10 whether there are any other objections, but our
11 understanding is that based upon meet and confer
12 objections to other documents, besides the one I am
13 going to speak to, have been resolved.

14 THE COURT: All right. Mr. Stein.

15 UNIDENTIFIED SPEAKER: Thank you, Your
16 Honor. Darryl Stein of Kobre & Kim for the
17 2024/2026 holders. There are several topics that
18 we're going to address today and will be referring
19 to them all by ECF numbers so that you can bring
20 them up on your screen. And I think, if necessary,
21 we can give control to the 2024/2026 holders' tech,
22 but we spec that these should be relatively
23 straightforward.

24 I would like to begin with a
25 stipulation that was filed at ECF 1362. This

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1 concerns DCT authorizations, which are listed on the
2 appendix of that filing on Pages 8 through 11 of ECF
3 1362, which the parties have agreed are admissible
4 as business records.

5 In addition to that, the parties have
6 also agreed to the admission of seven exhibits that
7 are attached to that filing ECF 1362 as Attachments
8 1 through 7 on the terms that are set forth in that
9 stipulation. I am not sure if Your Honor would like
10 to so order that stipulation or if that's necessary,
11 but it's all included in the filing at ECF 1362.

12 THE COURT: So my general position
13 throughout this trial has been if the parties
14 stipulates to the admission of something, I am going
15 to admit it. If that's what we have here, I don't
16 see much reason for me to read it because it's going
17 to come in.

18 Does everyone agree that 1362 should
19 come in along with Exhibits 1 through 7 on the terms
20 of the stipulation that are outlined in it? All
21 right. 1362 as stated. It's in evidence.
22 Xxx admitted

23 UNIDENTIFIED SPEAKER: Thank you, Your
24 Honor. We would like to move on, now, to certain
25 requests for admission that were filed on the

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1 docket. I will provide the numbers for those now.

2 With respect to the debtors, this is ECF 783-7.

3 We're seeking --

4 THE COURT: Sorry, 783-7?

5 UNIDENTIFIED SPEAKER: That's correct,
6 Your Honor.

7 THE COURT: Okay.

8 UNIDENTIFIED SPEAKER: And we're
9 seeking to admit here the -- the request for
10 admission and the Response Number 6. And we're
11 going to be doing the same for the Request for
12 Admissions Number 4 for PIMCO, Silver Point,
13 Platinum and Senator. And PIMCO's RFA is found at
14 906-1. Silver Point's is found at 782-19.
15 Platinum's is found at 783-2. And Senator's is
16 found at 783-3.

17 THE COURT: I'm --

18 UNIDENTIFIED SPEAKER: Your Honor --

19 THE COURT: -- I'm not sure I am
20 understanding. Are you moving for all of those or
21 just for some of those admissions?

22 UNIDENTIFIED SPEAKER: Just for the
23 response to request for admission number -- for the
24 debtor and for Request for Admission Number 4 for
25 PIMCO, Silver Point, Platinum and Senator.

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1 THE COURT: All right. Any objection?
2 Those pages are admitted. Xxx admitted

3 UNIDENTIFIED SPEAKER: Thank you, Your
4 Honor. We, now, like to move to some responses to
5 interrogatories. With respect to Citadel, we would
6 like to move to admit (unintelligible) party
7 opponent the response to Interrogatory Number 5, and
8 that's filed ECF 1305-3. We would like to do the
9 same for the debtor's response to Interrogatory
10 Number 11, which is found at 1305-4.

11 With respect to PIMCO, the response
12 Interrogatory 8, which is found at 1305-5. Senator,
13 Interrogatory Number 5, ECF 1305-6. Silver Point,
14 Interrogatory Number 8 at 1305-7. Carlyle,
15 Interrogatory Number 5 at ECF 1305-9. Platinum,
16 Interrogatory Number 5 at 1305-10. And, finally,
17 the debtor's Amended Responses to Interrogatories
18 Number 13 and 14, which are found at ECF 1313-5.

19 THE COURT: Any objection to the
20 admission of those various items that have been
21 offered? I can read them back if you need me to.
22 They are all admitted. Xxx admitted

23 UNIDENTIFIED SPEAKER: Thank you, Your
24 Honor. Moving on to some documents. We would like
25 to move into evidence ECF 1363-1, which is an

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1 extract report, which we are moving in for
2 completeness with respect to some testimony given on
3 May 1st and for notice purposes as the JP Morgan
4 recipient.

5 THE COURT: Is that it, just 1363-1, or
6 more documents?

7 UNIDENTIFIED SPEAKER: There will be
8 more documents. I can list them all out. All these
9 have been discussed with the parties, so I can list
10 them all out if that works for Your Honor.

11 THE COURT: I think you either need to
12 list them all out or you can file something in
13 writing if all the parties agreed to it. But
14 somehow I need a written -- either a written or an
15 oral record of precisely what deal is that you are
16 offering.

17 UNIDENTIFIED SPEAKER: We will list off
18 all of the documents here and we will get the
19 opportunity for the parties to respond, but all this
20 has been discussed on the in converse xxx.

21 The next documents are emails from
22 Davis Polk at ECF 716-15 and at ECF 1305-1 and -2.
23 And we would just note for the record these are
24 complete previously admitted documents that --
25 documents that were filed at ECF 619-6, -7, 619-8

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1 and 619-9.

2 We are also moving into evidence ECF
3 1363-2. This is a spreadsheet that was attached to
4 a family xxx incomplete document that was admitted
5 at ECF 5838-68 and -69. We're also moving in as
6 statement of a party opponent ECF 1152-1.

7 THE COURT: I'm sorry, 1153 or 2?

8 UNIDENTIFIED SPEAKER: Sorry. 1152-1.

9 THE COURT: Thank you.

10 UNIDENTIFIED SPEAKER: And this is a
11 draft of the closing cost that was discussed with
12 Mr. Osornio xxx. We're also moving in for
13 demonstrative purposes only a black line of ECF
14 1152, which was the agenda that Mr. Osornio
15 testified to; and 1152-1, which is the draft that we
16 just -- we just referred to. And that demonstrative
17 is filed at ECF 1152-2.

18 THE COURT: Sorry --

19 UNIDENTIFIED SPEAKER: Next, we have --

20 THE COURT: Hold on. I have got
21 something wrong here. I thought you offered 1152-1
22 substantive evidence and, now, you are offering it
23 again as demonstrative evidence. I didn't
24 understand that. I want to be sure the record is
25 right.

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1 UNIDENTIFIED SPEAKER: I can clarify,
2 Your Honor. The closing call agenda that
3 Mr. Osornio testified about was filed at 1152. What
4 we are moving in as -- is 1152-1, which is an
5 earlier draft of that document; and 1152-2, which is
6 being -- we're asking to admit for demonstrative
7 purposes only is a comparison between the draft and
8 the later version.

9 THE COURT: Okay. Got it. Thank you.

10 UNIDENTIFIED SPEAKER: Next, is ECF
11 1349-1, which is -- we're offering as a matter of
12 judicial notice, which is a document available from
13 the SEC's website. Next is 1124-3, Pages 1 and 6
14 only, which are Moody's ratings symbols and
15 definitions.

16 Next, Your Honor, we move to admit the
17 documents at a ECF 592-5, 592-10, 592-11 and 592-12,
18 which are all being admitted as statements of a
19 party opponent.

20 The next item on my list is with
21 respect to a document that was admitted at ECF
22 538-47. This document was admitted as a statement
23 of a party opponent by Langur Maize. We conferred
24 with Langur Maize and apprised the other parties.
25 Hearing no objection, we would move that that

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1 document be instead admitted for notice purposes
2 only. And that was ECF 538-47. I would --

3 THE COURT: Wait. --

4 UNIDENTIFIED SPEAKER: -- like --

5 THE COURT: Hold on a second. That one
6 is complicated and going do take me a minute.

7 UNIDENTIFIED SPEAKER: Sure.

8 THE COURT: All right. Go ahead.

9 UNIDENTIFIED SPEAKER: So, Your Honor,
10 I would like to pause there because I think the last
11 item on my list relate to exhibits related to
12 Senator and PSAM xxx, which I know we -- other
13 parties are also going to be addressing. And with
14 respect to the expert witness, sent some
15 expert-related items. So before moving to
16 Mr. Rosenbaum, I just wanted to confirm with the
17 other parties who we discussed who was actually
18 moving this in. I think Holwell Shuster on behalf
19 of PIMCO and Silver Point was planning to address
20 the PSAM exhibits. The parties agreed on the
21 admissibility of the PSAM and Senator exhibits, and
22 I am happy to address those now if no parties have
23 an objection to me doing so, and correct me if I
24 stated incorrectly.

25 THE COURT: Before we get there, is

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1 there any objection to the admission of the
2 documents identified by Mr. Stein starting at 1363-1
3 in this offer; he then went through about 15 other
4 admissions ending at 538 -- excuse me -- ending at
5 592-12. And then on 538-47, he is asking us to
6 withdraw the prior admission for all purposes and,
7 now, admitted for notice purposes only. Any
8 objection to that motion by Mr. Stein?

9 All right. Without objection, all of
10 those are admitted on the basis that you set forth,
11 Mr. Stein. And the change in the admission is also
12 granted as to 538-47. Xxx admitted.

13 UNIDENTIFIED SPEAKER: Thank you, Your
14 Honor. One other item before I move on to the
15 Senator and PSAM items. We also move to
16 provisionally admit ECF 1363-3. This is an exhibit
17 that was shown to a witness in a deposition. Those
18 deposition transcripts are going to be submitted, to
19 Your Honor, I believe, on Monday. And to the extent
20 that testimony related to that exhibit comes in, we
21 would ask that this exhibit be provisionally
22 admitted. That will be evidence from the face of
23 the transcripts that Your Honor will receive.

24 THE COURT: I accept the offer and I
25 will determine its admissibility after I read the

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1 deposition.

2 UNIDENTIFIED SPEAKER: Thank you, Your
3 Honor. Math --

4 THE COURT: I am sorry --

5 UNIDENTIFIED SPEAKER: Can I be heard
6 on Matthew (unintelligible).

7 THE COURT: Absolutely.

8 UNIDENTIFIED SPEAKER: We do object to
9 that regardless of on the face of the depo
10 transcript. The witness in question, this is a Bank
11 of New York witness, is not on the email and it was
12 never authenticated in the deposition. We're not
13 sure what it's being offered, but (unintelligible)
14 double. I want to note those objections Your Honor
15 is going to read the transcript and -- and maybe
16 decide based on that, but we don't think the
17 transcript will allow (unintelligible) for the
18 reasons I described.

19 THE COURT: I am not sure, Mr. Scheck,
20 how that's different than what I said I'm suggesting
21 I do, which is accept the fact it's been offered
22 right now and the determine its admissibility after
23 I read the deposition. And I think you are saying
24 that's not the right way to go about it, but I
25 didn't tell the difference. Could you just repeat

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1 that?

2 UNIDENTIFIED SPEAKER: No, I am -- I am
3 suggesting that is the right way. I did want to
4 flag, however, that we have objections to that
5 document and what those objections are because I
6 don't think the transcript properly authenticates
7 the document. And we also believe there is hearsay.
8 So I am flagging those objections, but I agree that
9 Your Honor's process makes sense.

10 THE COURT: Okay. Thank you.

11 UNIDENTIFIED SPEAKER: Thank you, Your
12 Honor. I was just briefly respond to that as I
13 think that the deposition transcript makes it clear.
14 And we're offering that document only for purposes
15 of notice. And I am not sure if that resolves
16 Mr. Scheck's hearsay objection, but I think, again,
17 Your Honor can address this when he has the
18 transcripts.

19 THE COURT: Thank you.

20 UNIDENTIFIED SPEAKER: I would like,
21 then, to move on to the Senator and PSAM documents.
22 And I am going to read these off and I will -- so
23 some of these documents, the joint defense group is
24 offering; some of them, the 2024/2026 holders are
25 offering. The parties agreed on which these can be

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1 admitted into evidence. So I will begin with
2 Senator.

3 The first document is available at ECF
4 1364-19, which the parties have agreed may come into
5 evidence except for one -- except for the following
6 three things which may not come in for the truth,
7 which are, one, the information concerning Senator's
8 note holdings; and, two, any factual assertions in
9 Pearson's February 15th, 2022 email, which is found
10 on Pages 2 to 3 of 9 of that document.

11 The next document is 1364-15 and, I
12 think, 1364-16, 13 -- and those two, I think, if
13 there is no objections to those coming into evidence
14 for all purposes. 1364-14, there -- the parties
15 have agreed this may come into evidence except that
16 the information concerning Senator's holdings should
17 not come in for the truth of the matter asserted.

18 1364-17, which the parties have agreed
19 may come into the same terms as 1364-14. And
20 1364-18, where there is no objection to this exhibit
21 coming into evidence except for the February 2022
22 cleansing presentation that's attached, which may be
23 admitted on the same terms as duplicative of that
24 presentation that was previously admitted on the
25 record at ECF 610-7.

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1 And I will pause there before moving to
2 the next set in case there are objections or
3 comments on that.

4 THE COURT: Any objections to those
5 offers? All right. They are all admitted on the
6 terms set forth. Xxx admitted

7 UNIDENTIFIED SPEAKER: Next, Your
8 Honor, the 2024/2026 holders seek to move the
9 following documents. We have 1363-4, 1363-5, -6,
10 -7, -8 and -9. Next, we have 1363-10, -11 and -12,
11 which we seek to admit as statements of a party
12 opponent and the attachments on the same terms as
13 duplicates of those attachments that have previously
14 been admitted on the record at 610-7.

15 Next, we seek to admit 1363-13 and
16 1363-14. Next, 1363-15 and -16, which we seek to
17 admit as statements of a party opponent except for
18 the attachment which may be admitted on the same
19 terms as duplicate that was admitted on the record
20 at 610-18.

21 Next, 1363-17, -18, -19, -20. Next,
22 1363-21, which we seek to admit as statements of a
23 party opponent except for the non-Senator statements
24 which are admitted only for context.

25 Next, 1363-22 and 1363-26. And I think

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1 that --

2 THE COURT: I'm sorry, you said 22
3 followed by 26; is that right?

4 UNIDENTIFIED SPEAKER: Sorry. That
5 was, yeah, 1363-22 and 1363-26.

6 THE COURT: All right. Any objection
7 to those offers? They are all admitted on the terms
8 identified by Mr. Stein. Xxx admitted

9 UNIDENTIFIED SPEAKER: Next, Your
10 Honor, we have exhibits from P. Schoenfeld Asset
11 Management. Again, just for the sake of the
12 order --

13 THE COURT: Mr. Stein, before you go
14 any further, I am trying to take good notes, but you
15 are you reading from a written document that the
16 parties have agreed to and what we are doing is
17 formally admitting them now? But you can submit the
18 written documents so that my notes are more
19 accurate?

20 UNIDENTIFIED SPEAKER: I think we can
21 do that, Your Honor.

22 THE COURT: My notes are taken awfully
23 fast and I think -- I do want to formally admit them
24 today on this basis. If there is any contradiction
25 between what you submit in writing and what you

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1 said, we will do it on what was said, but I think it
2 would be helpful to have the writing also filed, if
3 I can impose on you to do that.

4 UNIDENTIFIED SPEAKER: We will, of
5 course, do that, Your Honor. And then, if I may, I
6 will finish with -- this is the last piece of paper
7 I have in front of me. I can submit that one and
8 then move on to the other parties.

9 THE COURT: Okay.

10 UNIDENTIFIED SPEAKER: Thank you, Your
11 Honor. So the first document is 736-27, which the
12 parties have agreed can be admitted except for the
13 statement, there is rumors in the market that three
14 large bondholders began a dialogue with the company
15 liquidity solutions, which may come in for notice
16 only. And this will be in the document that we
17 file, so the Court will have a clear record of that
18 quote.

19 Next is 736-28, which, again, the
20 parties have agreed to come into evidence except for
21 the following statement, which may come in for
22 notice only, quote, rumors spread that recent buyers
23 PIMCO, Waddell and Silver Point could reach the
24 two-thirds threshold necessary to strip means and
25 execute a further style transaction.

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1 Next -- next is 736-30, which the
2 parties have agreed may come into evidence except
3 for the financial tables on Pages 2 to 4, which are
4 hearsay and they come in for notice only.

5 The next ones are all much more simple.
6 They are 725-37, 736-31, 1364-21, 1364-22, -23 and
7 -24. Then 725-27, 736-31. And that is the list
8 that I have with respect to PSAM.

9 THE COURT: Any objections to the
10 admissions starting with identification of 736-27
11 and ending with the identification of 736-31 from
12 the terms offered? They are all admitted. Xxx admit

13 UNIDENTIFIED SPEAKER: No objection.

14 THE COURT: Thank you.

15 UNIDENTIFIED SPEAKER: Thank you very
16 much, Your Honor. With that, I think that concludes
17 what I have on my list. I am going to turn this
18 over to my colleague, Mr. Rosenbaum, to address the
19 last items.

20 UNIDENTIFIED SPEAKER: Good morning,
21 again, Your Honor. Zachary Rosenbaum. We offer
22 into evidence Document 1289-1 on the docket under
23 Rule 1006, which is a summary of voluminous evidence
24 that we submitted as part of the supplemental
25 submission following Professor Morrison's testimony,

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1 specifically regarding accounting language in the
2 benchmark indentures.

3 That summary provides two additional
4 pieces of information that were not in the original
5 summary under 1006 that was admitted during
6 Professor Morrison's testimony. One is counts
7 provisions in the benchmark indentures where
8 lien-release language is accompanied in some form
9 with a series of transaction language. There are
10 four such benchmark indentures. I don't think there
11 is any dispute as to which ones they are. They are
12 likely be disputed as to what they mean, but, you
13 know, today isn't the day for that dispute.

14 And additionally, this summary includes
15 our counting of benchmark indentures where there was
16 an indenture available offered in -- Miranda didn't
17 contain this level of detail, but where there was
18 indenture available that had the success -- success
19 of events and transactions rule of construction that
20 is present in the governing indentures. And, you
21 know, that was accounting exercise by -- by counsel
22 with assistance by an Alice xxx group that is not a
23 proper expert opinion by Ms. -- by Professor
24 Morrison.

25 There -- we met and conferred on this

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1 and I understand there is an objection to its
2 admission that Mr. Scheck can speak to if I have a
3 moment to respond. But I will note for the record
4 that I -- there is no dispute that all of the -- the
5 underlying documents that create the bases for this
6 1006 summary have been made available to all parties
7 pursuant to the rule. And on -- on that basis, we
8 would seek the admission of the summary itself into
9 evidence, as well.

10 Separate from that, we also would
11 proffer -- and at this point, I am not sure if there
12 is an objection to this -- the -- all of the
13 benchmark indentures by way of a thumb drive to the
14 courts, they are extremely voluminous, but in -- in
15 the back-and-forth in the last day or so, it appears
16 that parties might wish to draw from provisions of
17 those benchmark indentures, you know, that were not
18 the subject of expert testimony, but are the subject
19 of the evidence in this case.

20 And our -- our view is if they are
21 going to come in or at least be available to the
22 Court, the extent arguments are made from them, then
23 they should all be available. And we would
24 undertake to do that in the most efficient way
25 possible with thumb drives; that would be the answer

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1 to that.

2 On this latter part, we -- we did have
3 some discussion of it yesterday, Mr. Scheck and I.
4 And, frankly, I don't know whether there was any
5 disagreement on -- on it, but I will stop there and
6 I have no doubt Mr. Scheck would like to be heard.

7 THE COURT: Mr. Scheck?

8 UNIDENTIFIED SPEAKER: Yes. Thank you,
9 Your Honor. We do object -- and if I could provide
10 just a minute of context. Your Honor may recall
11 that the 2024/2026 holders offered parts of
12 (unintelligible) and he testified as to the opinion
13 regarding certain language in Section 9.02 of the
14 company indentures. He purported to compare that to
15 certain benchmark indentures and it was
16 (unintelligible) as Mr. Rosenbaum described it,
17 accounting exercise that we heard about last month
18 during his testimony.

19 He relied on the benchmark indentures
20 to form his opinion, but solely Section 9.02. That
21 section came in as -- as excerpts -- his appendix in
22 his report came into evidence as of Rule 1006. And
23 at that time, Your Honor invited us to sit certain
24 benchmark indentures if we wanted (unintelligible)
25 left in all --

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1 THE COURT: Mr. Scheck, Mr. Scheck Heck
2 I better get you to pick up your phone. I am
3 missing an occasional word there.

4 UNIDENTIFIED SPEAKER: I apologize,
5 Your Honor. Is this better?

6 THE COURT: That is better. Thank you.

7 UNIDENTIFIED SPEAKER: Okay. At that
8 time, Your Honor invited us to submit additional --
9 or full benchmark indentures for those that we
10 wished to; it didn't have to be all. We have
11 submitted those. We're going to get to those. They
12 are preadmitted, I believe. And I don't think there
13 is objection.

14 But what we do have an issue is, now,
15 they filed a new 1006 summary. They contained the
16 column of a purported accounting exercise. That's
17 not the one Your Honor asked for, which we don't
18 have objection to the fact that they counted how
19 many of benchmarks had the series of transaction
20 language. What --

21 THE COURT: I am looking at -- I am --
22 I have got 1287-1 open -- I am sorry -- 1289-1 open.
23 Which column is the problem?

24 UNIDENTIFIED SPEAKER: I think it's the
25 last column on the right, purported to count a rule

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1 of construction, which we think relevant.

2 THE COURT: Are you saying literally
3 count or --

4 UNIDENTIFIED SPEAKER: Yes.

5 THE COURT: I am not seeing that. I
6 don't see it. I just want to be sure I am looking
7 at the right thing.

8 UNIDENTIFIED SPEAKER: Sure. In
9 1289-1, on the far right, there is a column,
10 successive events and transaction language.

11 THE COURT: Yes.

12 UNIDENTIFIED SPEAKER: That is --

13 THE COURT: I see where it says yes or
14 no. I don't see the count, is my --

15 UNIDENTIFIED SPEAKER: Yes. I am
16 sorry. They -- what they have done is counted up by
17 saying yes or no and then submitted a supplemented
18 tally.

19 THE COURT: Where -- where is the
20 supplemented tally?

21 UNIDENTIFIED SPEAKER: Your Honor,
22 that's still --

23 UNIDENTIFIED SPEAKER: Go ahead.

24 UNIDENTIFIED SPEAKER: That was -- this
25 Document 1289-1 was -- was covered by a Notice of

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1 Submission where -- where we counted -- tallied them
2 up. We're not seeking to admit that document into
3 evidence. It was our summary of what this summary
4 shows, but if this -- if this 1006 summary is in
5 evidence, we -- you know, we could all -- do
6 counting and --

7 THE COURT: You are -- you are -- you
8 are not, today, offering a count. You are only
9 offering a yes or a no?

10 UNIDENTIFIED SPEAKER: We're only
11 offering a yes or no. And we are --

12 THE COURT: Okay.

13 UNIDENTIFIED SPEAKER: -- we are --

14 THE COURT: Let me -- let me --

15 UNIDENTIFIED SPEAKER: --

16 (unintelligible) --

17 THE COURT: Let's go back to
18 Mr. Scheck. Go ahead.

19 UNIDENTIFIED SPEAKER: Your Honor, I
20 think the issue is this table is a -- is a form of
21 table or chart that was previously admitted with
22 respect to Professor Morrison's testimony for stuff
23 he looked at and, a big part of our
24 cross-examination, of things he did not look at.
25 That column is the thing he did not look at. And so

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1 we're left a little puzzled as to which counting
2 exercises the 2024/2026 holders are asserting are
3 expert testimony versus what ones do not need to be
4 expert testimony.

5 We think this is adding -- it renders
6 this charge misleading because it's not part of
7 Professor Morrison's opinion. It's something he
8 didn't do. This was brand-new exercise; not the one
9 Your Honor asked for, which was the series of
10 transaction language. And that's our objection to
11 this.

12 UNIDENTIFIED SPEAKER: Your Honor, if
13 this helps, we -- there is a separate document
14 that's been admitted into evidence, which is 432-1
15 that Mr. Scheck referenced, which is, in fact, the
16 document under 1006 that came in to Professor
17 Morrison. 1289-1 is a different exhibit. And
18 however we need to, we are very much willing -- I
19 think we already have -- to put on the record that
20 nothing -- 1289-1, the column referring to success
21 of events in transaction is not being proffered as
22 expert opinion. It is simply a yes or a no. And we
23 do expect to draw to that in closing as to the
24 count, but that's simply a count.

25 So -- so I just want to be clear on

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1 that because we're not offering it as Professor
2 Morrison's opinion, but, nonetheless, we do think
3 that it is probative from the benchmark indentures
4 and, therefore, that's the basis for our proffer.

5 THE COURT: All right. I am sustaining
6 the objection. I am not going to allow this success
7 of events column to be there. This is a summary of
8 voluminous documents where one has to use a judgment
9 call to determine whether that last column is a yes
10 or a no. And Professor Morrison used judgment
11 calls. He told us that during his testimony on
12 other parliamentaries as to whether they did or
13 didn't contain the language. I had to look at it; I
14 had to read it and decide whether it fit there.

15 And so I don't have enough to know
16 whether that column is accurate unless it is
17 sponsored by someone. The opportunity to
18 cross-examine him has passed. I agree that you can
19 have the documents there and you can refer to them,
20 Mr. Rosenbaum. And I am not going to keep out the
21 documents, but I will keep out some document like
22 the summary that, I think, has testimonial
23 inclusions in it given the expert testimony that I
24 had as to whether these things do or do not exist.
25 You will just have to deal with that how you deal

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1 with it.

2 So I am not allowing that column. Are
3 the other columns -- do they have any changes from
4 what was previously admitted or is it only that
5 column we shouldn't admit, Mr. Scheck? Are you okay
6 with admitting everything other than that column?

7 UNIDENTIFIED SPEAKER: Your Honor, the
8 only other column that was added is the series of
9 transactions column. That is what Your Honor
10 requested, but I think we have -- can even stipulate
11 that of the benchmark ventures, four have that
12 language. The issue we have is just confusion
13 because what's previously been admitted during
14 Professor Morrison's testimony is ECF 432-1, and
15 that's a chart of the things he actually looked at.

16 So we don't think this chart is
17 necessary at all. And there should be one thing of
18 what Professor Morrison looked at. We can stipulate
19 that there was four benchmark indentures.

20 THE COURT: All right. 1289-1 is
21 admitted striking the far right column. The record
22 is pretty clear what he testified about. It's clear
23 what I asked for. And it does matter which ones do
24 it so that we can then refer back and read them.
25 That part is a summary, so I am striking the far

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1 right column. I am admitting 1289-1 not as a
2 substitute for the previous document, but in
3 addition to the previous document. The record is
4 clear what he was cross-examined about. Let's go to
5 the next issue. What do we have next? Xxx admitted

6 UNIDENTIFIED SPEAKER: I am sorry, Your
7 Honor --

8 UNIDENTIFIED SPEAKER: Your Honor --

9 THE COURT: Mr. Scheck.

10 UNIDENTIFIED SPEAKER: Sorry. There is
11 one further issue. It's actually the two far right
12 columns; they are both related to the rule of
13 construction that they added.

14 THE COURT: And those were both added?

15 UNIDENTIFIED SPEAKER: Yes.

16 UNIDENTIFIED SPEAKER: Yes, Your Honor.

17 And based on Your Honor's ruling, we have no
18 objection to those being stricken.

19 THE COURT: We will strike those.

20 Thank you. Admit the last -- the right two end
21 columns do not come in for any purpose.

22 Let me clarify, though, that you are
23 not objecting, Mr. Scheck to the use of the actual
24 documents that are referenced both in 432-1 and here
25 from which these summaries were drawn? I think

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1 under Rule 1006, I can require them be presented in
2 court as long as you were presented with the
3 underlying documents. I am inclined to them being
4 presented in court so that if we have a dispute, I
5 can look at them. Any problem with that?

6 UNIDENTIFIED SPEAKER: No, Your Honor.
7 I think we would have an issue if there were similar
8 sort of expert conclusions trying to be drawn at
9 closing, but not with the documents coming in.

10 THE COURT: Well, look, the documents
11 come in if Mr. Rosenbaum thinks he can persuade me
12 that what that means is X, and he thinks it means X
13 and you can say it doesn't mean X, that's just
14 argument. I mean, neither of y'all can give me a
15 valid opinion about it because you are biased,
16 right? So --

17 UNIDENTIFIED SPEAKER: That is -- we
18 can give you legal opinion, but it's -- it might --

19 THE COURT: It will come in -- it will
20 not come in as expert opinion -- existing one.
21 Okay. Let's move on.

22 UNIDENTIFIED SPEAKER: That's -- that's
23 all from us, Your Honor, thank you.

24 THE COURT: Thank you. So,
25 Mr. Bennett, do you have any additional documents

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1 you wish to introduce? Mr. Bennett, you have muted
2 yourself. Maybe dial back in. I don't know. Let's
3 see. Hold on a second.

4 UNIDENTIFIED SPEAKER: Your Honor, we
5 have a short list that we are happy to do in
6 whatever order makes sense.

7 THE COURT: Just then, I was able to
8 hear -- hold on. There is Mr. Bennett.
9 Mr. Bennett, welcome back.

10 UNIDENTIFIED SPEAKER: Thank you, Your
11 Honor. And, yes, Your Honor, for some reason, I
12 just dropped at one point. So if it happens again,
13 just wave your hand and I will dial it again.

14 Your Honor, there is just five
15 documents. Three are -- are -- I don't think there
16 is any objection to at all. And as to the remaining
17 two, I suspect will be an objection, but let's --
18 let get the easy ones first.

19 First, we will introduce ECF 538-97,
20 which is Platinum's interrogatory responses. And
21 the responses that we seek to admit are Numbers 1,
22 2, 8, 9, 10, 13, 15, 16, 19, 21 and 22.

23 THE COURT: Any objections to the
24 admission of 538-97 with respect to the identified
25 interrogatory responses? It's admitted. Xxx admit

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1 UNIDENTIFIED SPEAKER: Okay. The
2 second is ECF 538-98. It's also interrogatory
3 responses, these from Carlyle. It is responses
4 Number 1 through 11 inclusive.

5 THE COURT: Any objection to the
6 admission of 538-98, Responses 1 through 11? It's
7 admitted. Xxx admit

8 UNIDENTIFIED SPEAKER: Thank you. And
9 the third is ECF 534-136, which is interrogatory
10 responses by Senator. And it's Responses 1 and 3
11 through 10 inclusive.

12 THE COURT: Any objection to the
13 534-136, Response 1, 3, 4, 5, 6, 7, 8, 9, 10? It's
14 admitted. Xxx admit

15 UNIDENTIFIED SPEAKER: Okay. And, now,
16 Your Honor, I would like to move the admission of
17 two documents. And one -- the first is ECF 1361-1
18 and it is the rules, bylaws and organization
19 certificate of the depository trust company in a
20 form that has been approved by the SEC on its
21 website; that's number one. I will take them
22 together because I think the parties want to take
23 them together. The second is ECF number 1361-2, and
24 that document is Asset Services Reorganizations
25 Service Guide issued by the DTC. Also, we believe,

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1 approved by the SEC. I will have more in terms of
2 specific sites to give you if there is an objection
3 that's relevant to them.

4 Now I have a brief introduction, but I
5 don't really want to anticipate the objection.
6 There is actually two interrelated issues that may
7 come up today. First, Your Honor, as for the
8 parties to come up with a joint submission to
9 describe the procedures to get an authorization to
10 sue from DTC. Meet and confers have occurred on
11 that topic and, regrettably, there has been no
12 agreement.

13 It is -- it is our view that the
14 documents that are responsive to Your Honor's
15 requests are the ones that we're moving to admit.
16 Our adversaries, for whatever reason, would submit
17 to you nothing. On our submission to this, which is
18 really kind of separate from your request in a way,
19 is just to admit these documents into evidence. We
20 believe they are admissible for multiple reasons.

21 And, again, I don't want to anticipate
22 the objection, but I do want to appropriately create
23 the foundation from our point of view. These are
24 referred to and referenced and cross-referenced and
25 incorporated by the actual indenture a document

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1 that's already been admitted into evidence. And,
2 again, if I have to, I will take your Your Honor
3 through the relevant parts of indenture to show
4 that.

5 And, second, as I indicated, at least
6 the first document -- but we think the second one,
7 as well -- was approved by the SEC. It's,
8 therefore, on government website. The first one is
9 actually on the government's website. It's on the
10 SEC's website. And there are cases that they,
11 basically, say those documents should be admitted as
12 judicial notice purposes under Rule 201.

13 I have more to say about those things,
14 but I think, at this point, I will let the
15 objectors, if there are any, raise their objections
16 and then I would like time to respond.

17 THE COURT: Thank you.

18 UNIDENTIFIED SPEAKER: Your Honor, this
19 is Billy Clareman from Paul Weiss on behalf of
20 Carlyle and Spring Creek. I do have an objection to
21 the admissibility of the proffered documents. And I
22 also have a proposal that I would like to make that
23 I previewed with Jones Day about how to address the
24 specific question that the Court asked the parties
25 to make a joint submission about.

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1 So just to address the grounds for my
2 objection, these documents are inadmissible because
3 they have not been properly authenticated. They are
4 not properly the subject of judicial notice. They
5 were downloaded from a website and I would cite to
6 the Court *Weinhoffer versus Davie Shoring, Inc.*,
7 23rd F.4th 579, 5th Circuit of 2022 describing the
8 inappropriate nature of judicial notice under these
9 circumstances.

10 I also had an objection on hearsay
11 grounds. And my final objection is a relevance
12 objection. I know that the Court is, perhaps, a bit
13 skeptical at the outset of the relevance objection,
14 but I want to just articulate it for the record and,
15 as promised, I will come back to my proposal for how
16 to address the -- the specific question posed by the
17 Court.

18 So the reason why these documents are
19 being proffered is because there was a contention
20 that prior holders that sold to Langur Maize would
21 be unable to get a DTC authorization letter under
22 the DTC's rule. So, number one, I don't think the
23 documents show that, but we will come back to that
24 issue specifically.

25 The reason why we believe that this is

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1 irrelevant is because this is addressing the
2 question of standing of someone else that is not
3 Langur Maize. And I would cite to the Court a
4 decision that was entered by the Supreme Court
5 yesterday reversing a decision of the 5th Circuit
6 that's in the FDA versus -- versus Alliance for
7 Hippocratic medicine, which specifically addressed
8 the theory of standing, which is, if not us, who?
9 And explained that that is not an appropriate basis
10 to argue for standing. So that --

11 THE COURT: Let me -- let me deal with
12 that, Mr. Clareman. That was not the issue or the
13 reason towards the inquiry. The argument was what
14 -- that it was not possible to bring a claim if all
15 these allegations were right. And that no one could
16 bring a claim. I wanted to understand this because
17 it goes to whether the interpretation that I am
18 being asked to apply is absurd. And so this -- this
19 deals with whether Mr. Bennett's client's rights can
20 be interpreted in the way that others are arguing or
21 whether that would simply give somebody a free walk,
22 which would make no sense to me just because of
23 security had been traded. So it's not to bring
24 about other people's rights; it's to understand how
25 to interpret by what the requirements are.

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1 So this is not what the 5th Circuit did
2 in the FDA case; it's completely different and I am
3 overruling that part. I am worried about the
4 admissibility, but what is your proposal?

5 UNIDENTIFIED SPEAKER: So the proposal
6 that I made is that, you know, I actually don't
7 agree with Mr. Bennett's the parties have adequately
8 met and conferred on this issue. We were provided
9 with these -- with these documents earlier this
10 week. We asked the Jones Day firm on meet and
11 confer to explain how these specific documents
12 describe the procedure for obtaining an
13 authorization letter. We were cited provisions
14 which were many pages long that we don't agree have
15 that purpose.

16 We provided to them four -- four
17 documents that we located on the DTC's website.
18 They had the same admissibility problem of
19 authentication, but they, to our reading, were more
20 directly responsive to the question that had been
21 posed by the Court. So what we suggested as a
22 procedure for this is that the parties prepare a
23 joint letter with all of these exhibits in which we
24 explain exactly how they address the Court's
25 inquiry, which was what is the process for getting

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1 an authorization letter.

2 We would have a section that is --
3 well, we may agree after further discussion, but I
4 don't think we had sufficient meet and confers about
5 the actual particulars of this, but assuming we have
6 a difference of opinion about the document, we would
7 articulate our respective interpretation in a, you
8 know, defendant section and a plaintiff section and
9 attach all the documents and address the
10 admissibility issue in that letter if we continue to
11 have a disagreement about whether or not these
12 documents are properly authenticated or are properly
13 the subject of judicial notice.

14 We believe that was the best way to
15 address the Court's question most directly and also
16 to facilitate a process whereby the parties may
17 achieve a meeting of the minds as to how exactly
18 this is done. Because I think one of the points
19 that Your Honor made, which is absolutely right, is
20 that these letters are obtained every day of the
21 week. There is many, many versions of them that are
22 in the evidentiary record. There is a process. And
23 I think we can probably make some progress on -- on
24 a joint basis if we put in a little bit more effort
25 to understanding each other's views on how this

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1 specifically works, and then present that to the
2 Court that could be filed in a letter, I would
3 propose, at the end of next week, a maximum of five
4 pages that have, you know, allocated --

5 THE COURT: But if there is a
6 disagreement, can I then look at the six documents?

7 UNIDENTIFIED SPEAKER: Well, that --

8 THE COURT: What you're telling me that
9 you are not going to stipulate and come in, look at
10 the six documents.

11 UNIDENTIFIED SPEAKER: The -- well, we
12 would address the admissibility issue and put it in
13 that submission, so there would be --

14 THE COURT: So the letter argument is
15 going to make no sense if it says this document says
16 X and I can't look at the document.

17 UNIDENTIFIED SPEAKER: You --

18 THE COURT: (Unintelligible) -- this is
19 something that we have all known has been around
20 for, now, a few months. Can I just issue the
21 court's order requiring DTC to turn over the six
22 documents in authenticated fashion; can I do that?
23 And then you can also submit your letter. I don't
24 have a problem with the letter, but I have got to
25 have the documents to make sense of this.

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1 UNIDENTIFIED SPEAKER: I would -- if
2 the Court were to embrace the procedure we allowed,
3 I would be happy to stipulate to the admissibility
4 of all of the documents for the purposes of
5 understanding the parties' respective arguments on
6 this issue. But I -- I do have a concern, which is
7 that I never heard from Jones Day how it ends that
8 the documents in the provision actually address the
9 process for --

10 THE COURT: Okay. Wait. I do want to
11 understand this. You are suggesting that I either
12 get one or two letters, it won't really matter,
13 setting out the parties' submissions; and that you
14 would then stipulate to the admission of their two
15 documents if they will stipulate to the admission of
16 your documents, right?

17 UNIDENTIFIED SPEAKER: That's the
18 proposal that I am making, yes.

19 THE COURT: Mr. Bennett.

20 UNIDENTIFIED SPEAKER: Your Honor, what
21 I think I just heard is a request for more briefing
22 other -- because we were going to base the issues in
23 the context of the 100 pages that we've already been
24 allowed; an additional five pages won't hurt
25 anybody. I will accept his offer so that all six

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1 can come in and it's just fine. And I find myself a
2 little bit misfiled as to how we got here, but that
3 works for me.

4 UNIDENTIFIED SPEAKER: Well, if I
5 may --

6 THE COURT: No. I don't care how we
7 got here. It's just hard. And I am glad we got
8 here. We'll take in all six documents along with up
9 to five-page letters of explanation, one letter from
10 each Mr. Clareman and Mr. Bennett. Any objection to
11 that by any party?

12 Okay. Thank you. What do we have
13 next? Mr. Bennett, that concludes your evidentiary
14 offer? I am submitting all six documents. Xxx admit

15 UNIDENTIFIED SPEAKER: Thank you, Your
16 Honor. That concludes -- I -- Mr. Clareman, are you
17 -- are your documents in the ECF system? And if
18 they are, can you please give me the numbers so I
19 make sure I have them?

20 UNIDENTIFIED SPEAKER: Yes. ECF
21 numbers 1364-27, 1364-28, 1364-29 and 1364-30.

22 THE COURT: Thank you. All right.
23 Does the committee have any documents that they --
24 or evidence that they wish to offer?

25 UNIDENTIFIED SPEAKER: Yes, Your Honor.

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1 Michael Birnbaum of Morrison Foerster. Can you hear
2 me?

3 THE COURT: Yes, sir.

4 UNIDENTIFIED SPEAKER: Okay. We have a
5 short less. ECF 1314-4 and 1314-5, those are
6 debtor's responses and objections to our
7 interrogatories and supplemental or amended
8 responses and objections specifically to Numbers 13
9 and 14 in the amended case. We don't understand
10 that there is any objection.

11 Next is ECF 1313-8 through 1313-17.
12 Those are Quinn Emanuel's first through tenth
13 monthly fee statements. To be clear, we're putting
14 those in for the amounts; not to question any entry.
15 Then is ECF 548-11, that's consent of directors in
16 lieu of meeting, Wesco Aircraft Holdings, Inc. And,
17 finally, ECF 548-32, which is an email from a
18 Ms. Sigler (phonetic) to Mr. Holland regarding 2022
19 monitoring fees, Platinum to Platinum, so we offer
20 an admission of a party opponent.

21 THE COURT: Mr. Birnbaum, was that
22 548-32 or 540-32?

23 UNIDENTIFIED SPEAKER: The former,
24 548-32.

25 THE COURT: Any objection to the

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1 documents offered by Mr. Birnbaum? They are
2 admitted. Xxx admit?

3 UNIDENTIFIED SPEAKER: Your Honor.
4 Sorry, Your Honor.

5 THE COURT: Go ahead. No, go ahead.

6 UNIDENTIFIED SPEAKER: Matthew Scheck.
7 And I apologize, my camera stopped working. But we
8 do have a relevance objection to the fee statements.
9 I think they are on the document and Your Honor can
10 obviously take note of them. I'm not sure what the
11 relevance is of the fee statements in this
12 litigation.

13 THE COURT: Mr. Birnbaum, can you
14 address that?

15 UNIDENTIFIED SPEAKER: Sure, Your
16 Honor. And I think you mentioned earlier when you
17 were talking about how this -- how the remedies may
18 play out, you mentioned you need to know the numbers
19 including certain indemnification. When everybody
20 sat and read to a deal in 2022, they either did or
21 did not consider the benefit or detriment of what
22 this case might eventually cost. What it eventually
23 cost does have some importance as to what value the
24 company got. We don't need to argue what the value
25 is today; we can brief that. But Your Honor should

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1 have the benefit of seeing -- and debtors are saying
2 they brought a certain amount in -- what went out.

3 UNIDENTIFIED SPEAKER: And, Your Honor,
4 these aren't for indemnification. They are the
5 debtor's fee statements. The experts, to my
6 knowledge, didn't get them for REV or solvency. I
7 just -- I don't know what the relevance is to the
8 fee statements.

9 UNIDENTIFIED SPEAKER: One of the
10 things -- well, one of issues back in 2022 is what
11 will the company look like if we take one deal
12 versus the other? There was information both in the
13 press and it's been admitted earlier about the
14 potential for litigation that this would -- that the
15 deal would invite. That potential for litigation
16 also invited certain costs, whether indemnified or
17 not. To be clear, we are not questioning
18 proprietary of the bill and wouldn't suggest
19 otherwise. I am --

20 THE COURT: I'm admitting the
21 documents. I think they are relevant to the issues
22 as raised by Mr. Birnbaum. I don't think they are
23 dispositive about it. The parties may have had much
24 different expectations in the beginning of these.
25 Reality is a measure of what expectations might have

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1 been. So they are admitted. Xxx admit

2 Anything further?

3 UNIDENTIFIED SPEAKER: Thank you, Your
4 Honor. Nothing.

5 THE COURT: I think that takes care of
6 the whole right side of the room, right? Is there
7 any other offer from the right side of the room --
8 the right side put up for 30 days of trial, put
9 anymore offers. Okay. Let's take the left side
10 offers, then. All defendants, have any documents
11 you wish to offer?

12 UNIDENTIFIED SPEAKER: Thank you, Your
13 Honor. Matthew Scheck from the debtors again. We
14 are solely offering from the debtors some documents
15 that I have described earlier, the few of the
16 benchmark indentures pursuant to Your Honor's
17 invitation during the testimony. And I can give
18 those ECF numbers. I believe this is agreed to.
19 That is ECF 1358-1, ECF 1263-2, ECF 1216-4, and ECF
20 1358-2.

21 THE COURT: Any objection to the
22 admission of those four documents? They are
23 admitted. Xxx admit

24 UNIDENTIFIED SPEAKER: Thank you, Your
25 Honor. And I think I will pass it to others on this

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1 side.

2 THE COURT: Thank you. Any other
3 defendant have any documents you wish to offer or
4 other evidence? I think your line is open.

5 UNIDENTIFIED SPEAKER: Your Honor, this
6 is Andrew Kurland for Senator. Can you hear me?

7 THE COURT: I can, but hold on a
8 second. I think that other lawyers were trying to
9 get my attention first. I saw you earlier. Can you
10 just re-press five star? There we go. All right.
11 Yeah. Go ahead, please.

12 UNIDENTIFIED SPEAKER: Yes, Your Honor.
13 Thank you. And, hopefully, you can hear me. I have
14 taken out my headset; it was causing some issues, as
15 well. So just a couple of items on behalf of
16 Platinum. And I will speak briefly before I pass it
17 over to my colleague, Joe Catalanotto, who is going
18 to move in some individual exhibits, a couple of
19 which are, I believe, unopposed and some of which
20 may have some opposition from Langur Maize. Before
21 he does that, I just wanted to update the Court
22 briefly on the issue pertaining to Will Wang's
23 document from Golden Gate that we spoke about the
24 last time we were in court.

25 THE COURT: Right.

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1 UNIDENTIFIED SPEAKER: So -- yes, Your
2 Honor. So Mr. Rosenbaum noted at the outset that we
3 had wrapped up pretty much everything but close of
4 evidence today with a couple of caveats. A caveat
5 is the Will Wang/Golden Gate materials. There have
6 been additional materials produced to us over the
7 last week. We anticipate that they are still
8 working out potentially producing a -- still of more
9 documents out of material that was overlooked
10 previously.

11 So we are expecting to go forward with
12 a deposition of Will Wang this coming week that will
13 be remote as we currently understand it. What that
14 will mean, we don't have time and date set for that
15 yet, but we all understand time is of the essence.
16 So there will be that deposition. And then we have
17 discussed with Kobre & Kim having short supplemental
18 submissions to address what comes out of that
19 deposition. Obviously, from their standpoint
20 predominately going to be hearsay, but we believe
21 will be able to use some of that material if some of
22 it proves to be relevant, along with some additional
23 handful of documents.

24 So we believe we have a tentative -- we
25 have an agreement with them on those issues, but I

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1 just didn't want the Court to be surprised at the
2 end of next week when there is this supplement in
3 light of the late discovered documents.

4 THE COURT: Any objection by Mr. Stein
5 or Mr. Rosenbaum that the Wang documents and further
6 deposition are subject to admissibility offered at
7 later date?

8 UNIDENTIFIED SPEAKER: No objection,
9 Your Honor.

10 THE COURT: All right. I appreciate
11 your -- I had forgotten about that and I thought was
12 going to close the evidentiary record today, so I'll
13 leave it open as to Wang matters.

14 UNIDENTIFIED SPEAKER: Yes. Thank you.
15 I am going to mute my phone and pass it over to mr.
16 Cattalanotto now.

17 THE COURT: Thank you.

18 UNIDENTIFIED SPEAKER: Good morning,
19 again, Your Honor. Can you hear me all right?

20 THE COURT: I can. Thank you.

21 UNIDENTIFIED SPEAKER: Your Honor,
22 Platinum would like to move in about a dozen
23 documents this morning.

24 THE COURT: All right.

25 UNIDENTIFIED SPEAKER: And as the other

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1 parties have done, I think I will just go through
2 the list by ECF number. The first, Your Honor, is
3 at ECF Number 1317-4, which is certain -- I should
4 say 1317-4 except for Pages 17 of 26, 23 of 26 and
5 25 of 26. This is certain of the demonstratives
6 that were shown during Mr. Morrison's testimony.

7 The remaining documents are all
8 documents produced by certain of the counterclaim
9 plaintiffs. They are -- well, with the exception,
10 ECF Number 1364-1, which we would like to move in
11 only for notice purposes. ECF 1364-2, 1364-3,
12 1364-4, 1364-5, which, again, we would move in only
13 for notice purposes. ECF 1364-6, 1364-7, 1364-8,
14 1364-9, 1364-10, 13 -- 1364-12.

15 THE COURT: Just to be sure, there was
16 a bit of break, you did not offer 11, right?

17 UNIDENTIFIED SPEAKER: I apologize,
18 Your Honor. I did intend to offer 1364-11.

19 THE COURT: Okay. There had been a
20 break and I think I missed that. So you are
21 offering 9, 10, 11 and 12. Go ahead.

22 UNIDENTIFIED SPEAKER: Yes, sir.
23 That's right, Your Honor. And then, lastly, ECF
24 Number 736-13, again, only for purposes of notice.
25 And then I do have one last note, which is mainly

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1 for the benefit of the parties, but we had at one --
2 at one point, we were discussing offering ECF Number
3 1364-13, but after meeting and conferring, we have
4 decided to withdraw the offer of that document.

5 THE COURT: All right. Is there any
6 objection to the admission of the identified
7 documents that started with 1317-4, went through
8 1364-12 and then 736-13 with the limitations that
9 were identified on the record by counsel? All
10 right. Those are all --

11 UNIDENTIFIED SPEAKER: Your Honor, this
12 is --

13 THE COURT: I am sorry. Go ahead.

14 UNIDENTIFIED SPEAKER: Sorry, Your
15 Honor. Darryl Stein for the 2024/2026 holders. I
16 just wanted to confirm that 1317-4 is being admitted
17 for demonstrative purposes only?

18 THE COURT: 1317-4 was offered for all
19 purposes except for Pages 17, 23, and 25, according
20 to my notes. Did I miss that? Is it for notice
21 only?

22 UNIDENTIFIED SPEAKER: Your Honor, we
23 had intended to introduce it solely as
24 demonstrative. I may have forgot to mention that.
25 And thank you, Mr. Stein, for that reminder.

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1 THE COURT: So it's demonstrative only
2 except for those pages. Any objection, Mr. Stein?

3 UNIDENTIFIED SPEAKER: No objection.
4 Thank you, Your Honor.

5 UNIDENTIFIED SPEAKER: Thank you, Your
6 Honor, Mr. Catalanotto

7 THE COURT: All right. Those are all
8 admitted. Mr. -- xxx admit

9 UNIDENTIFIED SPEAKER: Your Honor, I'm
10 sorry, (unintelligible) with Jones Day. Just two
11 very minor caveat objections.

12 THE COURT: All right.

13 UNIDENTIFIED SPEAKER: 1364-6, there
14 are some charts on Pages 4 or 5 -- at 4 and 5 of
15 that document that looked to be cut and paste from
16 other sources. As with other documents, we would
17 ask that those be admitted for only notice purposes.
18 And the same with respect to 1364-9, there is
19 appendix attached which looked -- what looks to be
20 sourced from third-party information. And we would
21 ask that that appendix, which is at Bates number
22 15070-75, be admitted for notice purposes only.

23 UNIDENTIFIED SPEAKER: Your Honor, I'm
24 just very briefly taking a look at the charts
25 that --

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1 THE COURT: All right. Take your time.
2 Take your time.

3 UNIDENTIFIED SPEAKER: --
4 (unintelligible). Your Honor, we're -- we're fine
5 with admission on those charts that Mr. Corcoran
6 just laid out.

7 THE COURT: We will add those two
8 limitations identified by Mr. Corcoran to the
9 admission. Thank you.

10 UNIDENTIFIED SPEAKER: Thank you, Your
11 Honor.

12 THE COURT: Mr. Kurland.

13 UNIDENTIFIED SPEAKER: Thank you, Your
14 Honor. Good afternoon.

15 THE COURT: Good afternoon.

16 UNIDENTIFIED SPEAKER: Yesterday --
17 yesterday evening, Senator -- joint defense group,
18 rather, filed seven Senator-produced exhibits.
19 Mr. Stein at the outset of this hearing went through
20 six of those. And just for the record, we agree,
21 again, with the admission of those on the terms he
22 set forth. Those are at 1364-14 through 16 --
23 1364-19.

24 The seventh Senator document that the
25 joint defense group filed is at 1364-20, and we

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1 request conditional admission of that document. The
2 circumstances of that one are slightly different.
3 That was a deposition exhibit at the deposition of
4 the Senator witness specifically used as Exhibit
5 Number 28 in that deposition. And we were under the
6 impression that that was -- that a portion of the
7 transcript has been designated for the Court's
8 review which will be submitted to the Court along
9 with the other designations on this coming Monday at
10 the parties' agreement.

11 We understood that the portion of that
12 transcript with that exhibit was addressed is
13 included in the designations. A question arose
14 about 15 minutes before this hearing as to whether
15 or not that is the case or not, with that
16 designation will actually stand or not. And we
17 still need to sort that out amongst the parties. So
18 I just want -- if -- with the Court's indulgence, to
19 have that exhibit -- which, again, 1364-20 --
20 conditionally admitted in the event that that
21 designated portion of the testimony is included for
22 the Court's consideration because it will be
23 necessary for the Court to understand that
24 testimony.

25 THE COURT: Mr. Stein?

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1 UNIDENTIFIED SPEAKER: Thank you, Your
2 Honor. And thank you, Mr. Kurland. We do object to
3 this document coming into evidence. I agree with
4 Mr. Kurland that this might be resolved as the
5 parties meet and confer about the definition
6 designations. But our position of this document is
7 hearsay and not admissible on a proffer by the joint
8 defense group.

9 I think that perhaps the way to resolve
10 this is akin to the Bank of New York melon document
11 that we previously discussed where if the Court does
12 need to address this, I can rule on the issue and
13 will address the objection in the course of
14 deposition transcripts. I haven't discussed that
15 with Mr. Kurland, but I propose that
16 (unintelligible).

17 THE COURT: I am taking the offer and
18 the objection of 1364-20 under advisement. I will
19 rule on them once I read the deposition segment. If
20 it's submitted and the deposition segment is not
21 submitted, then it will become irrelevant; does that
22 work for everyone?

23 UNIDENTIFIED SPEAKER: Thank you, Your
24 Honor. It does.

25 THE COURT: Thank you. All right. Any

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1 other evidence offered by any party?

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 THE COURT: Mr. Clareman.

4 UNIDENTIFIED SPEAKER: Thank you, Your
5 Honor. Billy Clareman from Paul Weiss on behalf of
6 Carlyle and Spring Creek. We have two documents
7 that we move into the record. I don't believe there
8 are any objections to either. The first is the
9 proposed plan of reorganization that is -- we filed
10 exhibit list as 1364-25. It was originally on the
11 docket at ECF Number 1223, but we filed it as an
12 exhibit nonetheless.

13 We've also -- we also seek to move into
14 the evidentiary record the RSA, which is on -- which
15 is at ECF Number 1364-26; that is the execution copy
16 of the RSA. The original RSA was a schedule or
17 exhibit that (unintelligible) at ECF Number 1224-6.
18 Thank you.

19 THE COURT: Any objection to 1364-25 or
20 26? They are admitted. Xxx admit

21 Further evidentiary offers by anyone?
22 All right. Then, I believe, we're going to -- I am
23 going to make a statement. I want to take
24 objections to it. The evidentiary record is closed
25 with the exception of the Wang deposition and

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1 exhibits that may be offered and considered at a
2 later time. Any objection to that ruling? All
3 right. That is the ruling. Okay.

4 UNIDENTIFIED SPEAKER: No, Your Honor.
5 No objections. Just subject to the submission of
6 the thumb drive with all of the benchmark
7 indentures.

8 THE COURT: All right. I've ordered --
9 what I have ordered under Rule 1006 was that thumb
10 drive has to be present at closing arguments for the
11 Court's review, if appropriate. I think that's the
12 way that that summary rule works. So I am not
13 admitting them all, but anything you want to refer
14 to, I'm ordering that you have them here so that we
15 can, then, show them to any party that wants it
16 shown. I made that at the hearing, but we will see.

17 UNIDENTIFIED SPEAKER: Thank you, Your
18 Honor.

19 UNIDENTIFIED SPEAKER: Your Honor --

20 UNIDENTIFIED SPEAKER: And, Your Honor,
21 I apologize. Just the one other caveat that I think
22 we need on the record is that the parties will be
23 submitting deposition designations on Monday. And I
24 believe the record should be left open for those
25 designations, as well.

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1 THE COURT: Good point. You are
2 correct. So we had talked about some of those are
3 going to come in by video and some are going to be
4 come in in writing; have we worked through that
5 detail?

6 UNIDENTIFIED SPEAKER: Yes, Your Honor.
7 I believe there are going to be two videos that will
8 be provided to chambers and the rest will be
9 provided on paper -- paper designation. And the
10 parties are comparing those for submission on
11 Monday.

12 THE COURT: All right. Everyone agree
13 with that? We will take those on Monday. And,
14 again, just for clear record, y'all talked about
15 wanting to view the videos in open court. I
16 suggested I do them at home. Does anybody -- that
17 said, if somebody wants them in open court, I will
18 view in open court. Is there any party that wants
19 the video deposition excerpts done in open court
20 rather than me looking at them at home?

21 UNIDENTIFIED SPEAKER: No, Your Honor.
22 Our understanding is that all parties are
23 comfortable with Your Honor viewing the videos at
24 your leisure.

25 THE COURT: Okay. Thank you. What

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1 else can we accomplish today? That's it, huh? All
2 right. Next time you tell me you are going to bring
3 the good news, Mr. Stein, why don't you do that?

4 UNIDENTIFIED SPEAKER: That was me,
5 Your Honor. And I --

6 THE COURT: Sorry. All right.

7 UNIDENTIFIED SPEAKER: I'll let Mr.
8 Stein off the hook on that one.

9 THE COURT: Okay. We will see y'all in
10 a couple weeks. Thank you. We are in recess.

11 (End of Proceedings, 12:09 p.m.)

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