IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:	.	
	.	
LAVIE CARE CENTERS, LLC, ET AL.,	.	Docket No. 24-55507-Pmb
	.	
Debtors.	.	
	.	Atlanta, GA
. . . . .	.	November 14, 2024
	.	1:12 PM
LAVIE CARE CENTERS, LLC, ET AL.,	.	
	.	
Plaintiffs,	.	Adv. Proc. 24-05127-pmb
	.	
-against-	.	
	.	
HEALTHCARE NEGLIGENCE SETTLEMENT RECOVERY CORP.,	.	
	.	
Defendant.	.	
. . . . .	.	

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE PAUL BAISIER
UNITED STATES BANKRUPTCY COURT

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Occilien Motion. Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Related Relief [Docket No. 278]

Motion to Dismiss. Recovery Corp.'s Motion to Dismiss or Convert Florida DivestCo Reorganizations [Docket No. 310]

Ormond Motion. Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Related Relief [Docket No. 328]

Sifrit Motion. Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Related Relief [Docket No. 358]

Almonte Motion. Motion for Relief from Automatic Stay [Docket No. 417]

Iezzoni Motion. Motion of Mary Ann Iezzoni, as Agent-in-Fact for Angeline Lamana for Relief from Automatic Stay [Docket No. 419]

Garrett Motion. Motion for Relief from Automatic Stay to Proceed Against Insurance with Waiver of 30-Day Requirements of 11 U.S.C. Section 362(e) [Docket No. 425]

Recovery Corp.'s Standing Motion. Recovery Corp.'s Motion to Establish Standing to Challenge Final DIP Financing Order [Docket No. 433]

Combined Disclosure Statement and Plan. Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Docket No. 481]

Transcribed by: River Wolfe

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Also Present (Cont'd):

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Chapman and Cutler LLP

M. Benjamin Jones
Ankura Consulting

Jennifer Westwood
KCC/Verita

Michael Krakovsky
Stout Capital, LLC

Narendra Ganti
FTI Consulting

I N D E X

EXHIBITS:

No.	Description	Marked	Admitted
DEBTORS':			
--	Declaration of Jennifer Westwood		21
--	Declaration of Benjamin Jones		21
--	Declaration of James Decker		21
--	Declaration of Michael Krakovsky		21
--	Declaration of Narendra Ganti		21
--	All debtors' exhibits are admitted		31

THE CLERK: The court will come to order. Good afternoon, Your Honor. Today is November 14th, 2024 and the time is now 1:12 p.m. We are here for the specially set hybrid hearing for case number 24-55507, LaVie Care Centers, LLC, et al., and the specially set hybrid hearing in adversary proceeding 24-5127, LaVie Care Centers, LLC, et al., v. Healthcare Negligence Settlement Recovery Corp.

There are ten matters on the calendar. Pursuant to the agenda. The following matters are contested and will proceed as a status conference today. In the main case, the Occilien motion at docket number 278. The Ormond motion at docket Number 328. Sifrit motion at docket number 358. Almonte motion at docket number 417, however, movant's counsel filed a notice rescheduling hearing at docket number 674, continuing this matter to December 10th, 2024 at 9:30 a.m. The Iezzoni motion at docket number 419. And the Garrett Motion at docket number 425.

Pursuant to the agenda, the following matters are to be withdrawn. In the main case, the motion to dismiss at docket number 310. Recovery Corp.'s standing motion at docket number 433.

Pursuant to the agenda, the following matters contested and will proceed today. In the main case is the combined disclosure statement and plan at docket number 481, as amended and supplemented to date.

And finally, the adversary proceeding motion at docket number 2 for case 24-5127 will be considered at the end of the calendar.

Debtors' counsel, is this your understanding?

MR. SIMON: It is. Thank you.

Good afternoon, Your Honor. Dan Simon, McDermott Will & Emery, on behalf of the debtors. I'm joined here today by Ms. Emily Keil. On the Zoom room, we have Jack Haake, who will be addressing the Court as it relates to certain of the insurance matters and potentially motions for relief from stay. My partner, Mr. Bull, is also on. Fortunately, he will play a lesser role than he anticipated.

If it's okay, I'll make a few introductions in the courtroom. We have a bit of a packed house today. Starting with Mr. James Decker, the debtors' independent manager. To his left, we have Larry Halperin, Chapman and Cutler, counsel to the independent manager. To his left, Mr. Ben Jones, debtors' chief restructuring officer. We're also joined in the next row behind by Mike Krakovsky from Stout Capital, the debtors' investment banker. And then two rows back, we have Ms. Jennifer Westwood from the debtors' claims and noticing agent KCC/Verita.

With Your Honor's permission, how I'd like to proceed would be a brief introduction. We do have a demonstrative we filed a couple hours ago. I believe we have provided Your

Honor with copies. We do have copies in the courtroom. If you want and with Your Honor's permission, we'll have Ms. Keil put it on the screen so that those in the Zoom room can see it.

We'll walk through that. We'll talk about the evidence, including the declarations, and then I'll kind of go objection by objection. We'll probably wrap up with some isolated arguments. Hopefully today is a streamlined hearing, Your Honor. We're pleased to be here on a, I'll say, nearly consensual plan of confirmation.

THE COURT: Let me ask one thing. With respect to the motions for relief and the matter in the adversary, are we not going to set till to the end? Is that the plan?

MR. SIMON: If that's okay, Your Honor, I think we'll start with the main event. I think that will obviously address Mr. Anthony and the Florida claimants issues which relate to the withdrawal of those. Our position, and I think we've been in touch with many of the claimants, is that once confirmation occurs, we have a procedure in place, but if there needs to be limited argument, we'll save that to the end. And Mr. Haake will address the Court at that time.

THE COURT: Okay.

MR. SIMON: Is that okay?

THE COURT: That sounds fine.

MR. SIMON: Thank you, Your Honor. So we'll put the

presentation on the screen. For those following on Zoom, this was filed this morning at docket 684. And on slide 2 of that, we have a bit of a roadmap of just how we're going to kind of walk the Court through today's hearing. And in order to do that, I just wanted to start very briefly. I think, obviously, Your Honor is very familiar with these cases, but just take a few minutes to talk about how we got where we are today.

We commenced these cases on June 2nd. We were in Newnan, actually, and we identified a few key objectives for Your Honor. First, the goal was to stabilize the business focus on resident care, and we did that through a twenty-million-dollar DIP financing that, Your Honor approved on an interim basis on that first day. We also began a comprehensive marketing and sale process led by Stout and Mr. Krakovsky, who is in the courtroom.

And then on June 2nd, when we filed the case, or June 3rd, I believe, when we showed up in Newnan, we were already looking forward to today. We didn't know it would be November 14th, but we were looking towards an exit. And we pointed Your Honor to Mr. Jones and his declaration that SNF cases in particular do not linger well in Chapter 11. So there was an enormous amount of work from June 2nd to November 14th, and we'll kind of walk through that. But we view today as the culmination of that hard work.

During the case, you'll see we -- I'm not going to go through all of them, but significant developments. By way of example, we had an adversary proceeding where Your Honor approved the automatic stay extension with respect to the Miami action. As the sale process picked up in kind of late summer, the litigation and kind of the heat from the creditors committee picked up. And so we kind of had a fork in the road where we could choose litigation and bringing contested issues before Your Honor, depositions, discovery, and what we did instead was we worked with the committee about putting off potential dates, extending milestones at the consent of the DIP lenders, and approaching the Court about a mediation process.

And you've heard quite a bit about the process under which Judge Cavender achieved a global settlement. I'm not going to go through it, but needless to say, it was hard fought. It went way beyond the two in-person days of mediation. And there was a nonconsensual plan filed in the middle of that that would have been heavily litigated by the committee.

Shortly thereafter, we had standing issues with respect to Recovery Corp. And I'll go through that a little bit when we talk about Recovery Corp. and the Florida claimants. And obviously, the plan process itself was heavily contested and negotiated. I'd say over a dozen key

stakeholders all having their hand in that, and that's partly why what you'll see is iterations of the plan, iterations of the plan supplement, a confirmation order, and a revised plan that was filed late last night.

That's not us staying up late to file. That's all the parties working collectively to continue to narrow the issues. And each iterative version of that provided more consensus. And we can talk about those changes, but I think showing those iterations is simply a testament to the hard work done by the stakeholders in this case.

And just on that point, I want to take a moment to say, I'm going to try not to speak for everyone in the courtroom. They're all going to have their opportunity. We believe today is a very significant day. Not all cases end up here.

This case in particular was a challenging case. Real lives at stake. Hundreds of millions of dollars in unsecured claims, issues between the debtors', DivestCo, KeepCo, and a very active tort plaintiff community. And what we have today is a plan that's confirmable. And it now has the support of the creditors committee and the Florida claimants.

And so we're not only grateful for the professionals involved. There were a lot of late nights in this case, not just over the last two weeks -- not sure Ms. Keil has slept in the last two weeks -- but throughout the case, significant

negotiations and creative solutions. I would name names, but then I would leave someone out. But virtually everyone in this courtroom is a testament to that.

And on that note, we obviously want to extend our thanks to Ms. Marchant-Lessa, Your Honor, the Court, and all of your staff. You've been flexible at every turn, and we appreciate it. The folks at Synergy, they've been running the back office management. They've been behind the scenes, but they deal with vendor issues and real issues on the ground every day. We appreciate their efforts.

With that, Your Honor, I just want to do a brief summary of the plan, beginning on slides 4 and 5. The first bullet on the right, I believe, is the most important. We've covered it, but it's critical. It provides the debtors with a clear path to exit on their facilities, providing continuity of care and resident safety.

I do want to make one footnote to that. You'll hear today from the landlord to Harts Harbor, which is one of the facilities. There are ongoing discussions. We'll come to it when we get to their objection. The debtors do intend to reject that contract. That lease ends in about a year, and we're working collaboratively with the landlord. That'll be subject to a future motion to approve an OTA, but I just wanted to make that point.

The plan provides for payment in full or assumption

of all admin and priority claims. And then obviously the third bullet, and we'll talk about, was born out of that extensive mediation with Judge Cavender. The last bullet says it puts an end to all remaining litigation. And I just want to take a moment to talk about the Florida claimants, who you probably expected to be here at least a few days ago.

We were ramping up for a heavily contested hearing today, and I assure you tomorrow, with six witnesses, at least some of whom were deposed last week. And we kind of rolled up our sleeves, as did Mr. Anthony, and we reached a resolution. That is a settlement agreement that is between the nondebtors who are party to the Miami action and the Florida claimants. The Florida claimants are remaining in class 6B. They get their treatment and their claims that are provided under the plan. And pursuant to that agreement, the Miami action will be dismissed. This is encapsulated in the proposed form of confirmation order.

As part of that, the Florida claimants, all 101, have agreed to change their votes. They initially voted to reject the plan. They now vote to accept the plan. They have agreed, instead of opting out of the third-party release, to opt in to the third-party release. And with that, whether it's Mr. Anthony or Mr. Lafalce, I just wanted to make sure that they didn't have any issues or have any concerns with what I addressed on the record or anything else they wish to

say on that point.

MR. LAFALCE: Thank you. Nicolas Lafalce on behalf of the Florida claimants. I can concur with Mr. Simon's statements about the resolution that's been reached. Mr. Anthony wanted to be here, at least on the Zoom, but he unfortunately had a flight scheduled for this afternoon, anticipating this hearing will be this morning.

But we did want to take the opportunity to thank the Court, Judge Cavender for participating at mediation, the creditors committee and its fine professionals, Mr. Simon and his colleagues, and especially our clients for their patience and their thoughts throughout this process. But we do have a signed documentation that we understand is going to be exchanged at the hearing. And the resolution that has been reached could not have been done without the Court's continuous desire to move this case constructively forward. And so we appreciate everybody's participation in the process.

THE COURT: All right.

MR. SIMON: Thank you. Moving on to slide 6, we'll go to the -- we'll go to the next slide. Slide 6 just outlines planned treatment under the plan. And slide 7 provides the voting. I just wanted to make a few points on the voting. Ms. Westwood is here from Verita/KCC, and she did submit a voting declaration that reflects what's on here.

A few notes. First, we have four impaired consenting

classes. That's MidCap in class 3, Omega in class 4, class 6A, and class 6C. I'll just note class 5 is effectively a null set. That was titled as go-forward trade claims. Powerback is one of the largest creditors, but they ended up voting in class 6. And there is language at paragraph 53 of the confirmation order that was agreed to with Powerback as respect to their claim.

Class 6B, as you can see, voted to reject the plan. This was prior to the settlement with the Florida claimants. Mr. Anthony filed or submitted ballots for many more than 101. The settlement with the claimants shifts the vote of the 101 from accepting to rejecting. The schedule doesn't change that. But it doesn't change -- it gets the vote very close. But if you shift 101 claimants from accepting to rejecting, it is still a rejecting class. And obviously, we have in our brief kind of the cramdown standard with respect to class 6B. I think, importantly, I'm not aware of any class 6B creditors objecting to confirmation today.

With that, Your Honor, on evidence in support of the factual basis of 1129, we do have five witnesses. They are listed here. They are all in the courtroom.

Ms. Jennifer Westwood, as I mentioned, from KCC in support of the voting declaration. Mr. Jones, with a declaration that really goes through not only the 1129 factors in detail but also talks about some of the settlements

reached. The waterfall analysis that has been so critical. Mr. Decker submitted a declaration in connection with the investigation and a lot of detail there with respect to the determination to ultimately approve the compromises in the plan. Mr. Krakovsky, with respect to the sale process and some detail there about that. And then lastly, FTI consulting Narendra Ganti, which was submitted, I believe, as a statement -- as an attachment to a statement in support, which kind of goes through the committee's deliberations around these issues.

Again, all five of them are in the courtroom. All five of them are available to be cross-examined, should any party wish to cross-examine them. And we believe that with those five declarations, that would provide the factual basis for confirmation today. And we would ask Your Honor to submit those declarations into evidence.

THE COURT: All right. As I usually do, does anyone object to submitting the affirmative declarations of the witnesses in support of confirmation via the declarations, understanding that all of the relevant witnesses are here to be cross-examined on their statements?

MR. LAWALL: No objection, Your Honor.

THE COURT: I see no objections in the courtroom. Do I have any objections online?

All right. Hearing none, they're admitted.

(Declaration of Jennifer Westwood was hereby received into evidence as Debtors' Exhibit --, as of this date.)

(Declaration of Benjamin Jones was hereby received into evidence as Debtors' Exhibit --, as of this date.)

(Declaration of James Decker was hereby received into evidence as Debtors' Exhibit --, as of this date.)

(Declaration of Michael Krakovsky was hereby received into evidence as Debtors' Exhibit --, as of this date.)

(Declaration of Narendra Ganti was hereby received into evidence as Debtors' Exhibit --, as of this date.)

MR. SIMON: Thank you, Your Honor. Turning your attention to slide 9. I'm going to make a recommendation. Obviously, Your Honor can always overrule me. My recommendation would be I briefly walk through many of these at a high level. Some of the red, I believe, may be now turned green.

But for instance, on the U.S. Trustee, that is an open issue that we're probably just going to have to argue. And so rather than argue that now, I'll walk through. And maybe it makes sense, after I do that, to have any party on that list or any party who supports confirmation to talk, and then we can kind of talk about how to argue the remaining issues.

THE COURT: Okay. I think that makes sense.

MR. SIMON: Okay. So with respect to Recovery Corp.

and Florida claimants, we've covered that. And as part of that settlement, all of the pleadings and discovery has been or will be withdrawn by agreement. As I noted, the U.S. Trustee is principally, although they may have other statements, focused on the opt-out provision of the third-party release. And we can kind of put a pin in that and address that before Your Honor.

The IRS, I'm going to spend a couple of minutes on that near the end. There might be some argument appropriate or at least vetting of certain issues with that. So I'll just address that at a different point.

The Department of Justice, Mr. --

I don't want to mispronounce your last name but --

MR. LEUNG: [Lee-ong].

MR. SIMON: Leung. Thank you.

They've been incredibly cooperative, collaborative with us. Very responsive. And we have worked out all remaining issues. There were many. The principal issue that we were prepared to litigate before Your Honor was the free-and-clear nature of provider agreements. We have resolved this through agreed language that is now found in the confirmation order that we laid out yesterday.

As part of some of that, and it relates not just to the Department of Justice, but a few others, we did modify the plan last night. At a high level, what it does is it

effectively makes this an asset sale done through the plan. And so previously, there was an issuance of equity interests at the top level. This is going to be done through an asset sale. And there was already wide latitude under restructuring transactions in the memorandum. And so we've kind of modified it that it is not intended -- we put this in the notice, and I want to be clear, it's not intended to modify any party's treatment or recovery under the plan. And it's merely technical to address some of these issues.

5 and 6 on this are various unions. This was resolved by assuming, really assuming and assigning those union contracts, and I believe those are resolved.

Cigna has been resolved with respect to proposed language in the confirmation order around the timing of assumption or rejection of their contracts.

Chubb is one that my colleague Mr. Haak will address, which may, may, and I have some optimism, may have shifted to red to green in the last twenty minutes before we got in, and the committee has been heavily involved on addressing those issues.

Harts Harbor is one that I mentioned earlier. They filed a limited objection. With respect to that, again, we're focused on patient care. We'll work with the landlord and we'll have to come before you somewhere between confirmation, should Your Honor approve, and the effective date to address

the transition there.

Mary Iezzoni has been resolved, I believe, through revisions to the plan supplement. I believe there is a stipulated order coming.

And there's a host of various informal objections that you never saw. And you'll start to see the confirmation order build up near the end to provide language to address that they've all been informally resolved.

So let me just see if I have anything else. And again, to the extent you think it's an appropriate time, we can have the various parties make whatever statements they have, at least the ones that are in support of the modifications made. And again, I'll just bracket the U.S. Trustee, the IRS, and I believe Chubb, and we can address those shortly.

THE COURT: Okay. Could you maybe explain to me a little maybe more fulsomely about the switch overnight from a reorganization of the existing debtors to an asset sale, which I'm not sure how much of a difference that makes. I don't know. That strikes me, among other things, that the parties whose contracts are being assumed and assigned, now they're being assigned, whereas before they were not. They were just being assumed by the existing parties. And haven't really thought through whether that makes a lot of difference but --

MR. SIMON: Yeah, I think our view is it, for all

practical purposes, it doesn't. It's effectively the difference between an equity sale and an asset sale. It relates a little bit to the discharge and relates a little bit to the assumption of the provider agreements and kind of with respect to unknown liabilities that may exist. And it was in discussions with various governmental agencies, as well as the plan sponsor, that it would just provide a little bit more protection with respect to free-and-clear language around that.

THE COURT: Okay. And I think, if I recall correctly, the plan previously said, and maybe it still says, that the executory contracts are all being assumed by the plan sponsor or its assignee. Isn't that what -- think that's the language it used previously.

MR. SIMON: Yeah, I would need to check the language. I believe there is flexibility for either assumption or assumption and assignment. There may be some cleanup changes around this, just to make sure that we've captured it all. But the effect would be the same. It would be, rather than assumed by the reorganized debtors, it would be assumed and assigned. And again, I think our view is it's a technical modification that does not adversely impact any creditor, and certainly not materially. And obviously, we've been in discussions with the committee and many other parties about that.

THE COURT: Okay. And I don't necessarily want to -- although maybe I'm -- I'm sorry she made the trip all the way here, but your claims agent. I did have a couple of questions that she might have the answer to, but you might also. I was just curious. I note you know how many ballots you sent out, and do you have any idea of what percentage of the ballots you got back?

MR. SIMON: I only know the answer to that because Mr. Adams asked me this morning, and I provided him the answer. I believe it's 6,240 ballots were sent out.

THE COURT: Okay. And I haven't counted the ones in it.

MR. SIMON: So as a percentage basis, it's probably roughly ten percent --

THE COURT: Okay.

MR. SIMON: -- would be my -- more than that. I apologize. More than that. And keep in mind, there are a lot -- there's a lot of duplication in there. What I don't have is kind of deduped. So for instance, the Florida claimants filed multiple claims, and I believe they filled out multiple ballots. And that was deduped as part of this process. But what I don't know is if you dedupe the 6,240, how many unique ballots? I guess I have Mr. Westwood in the courtroom, to the extent she knows.

MS. WESTWOOD: Those were the unique ballots. There

actually were thousands and thousands of claims more than that, but that was the unique value here.

THE COURT: Could you hear that?

THE COURT: Yes. Is that ones returned, or ones sent out of --

MS. WESTWOOD: So the 6,000 number is the ones sent out.

THE COURT: Okay. But deduped, you might say?

MS. WESTWOOD: Yes.

THE COURT: Okay. And it's probably a similar answer, but the voting summary shows billions of dollars of claims.

MR. SIMON: Yes.

THE COURT: First off, there must have been some three extra digits put in some place, but it was in so many places. And then I read a footnote that I think suggested that that's the -- that things were filed in multiple cases were counted every time they were included.

MR. SIMON: Correct. So obviously that caught everyone's attention, so we added that footnote. So by way of example, Omega has a -- I don't know the exact amount. Let's say a thirty-plus-million-dollar claim against each of the debtors. Given that we were at the time potentially fighting substantive consolidation, we instructed the debtors' claims agent to make sure that they could show balloting at each

debtor. And so what you see is basically the aggregation. So I imagine the claim that Omega showed was in the billions, ad obviously that's not the case.

Does that make sense, Your Honor?

THE COURT: It does.

MR. SIMON: Okay.

THE COURT: All right. Well, I guess we should hear from other people.

MR. SIMON: Yeah. And again, I think the purpose of this just is to make sure that we've captured some of this before we kind of get into argument, to the extent there are open issues, and we're happy to address that.

THE COURT: All right. I guess, if other people are going to come forward, what I'm trying to get my arms around is I know we've admitted the declarations for the purposes of essentially their direct examinations, but I guess I'd like to know if anybody is going to want to cross-examine the witnesses or if what we're going to have for the remainder of the day is just argument so --

MR. SIMON: We're not aware of any party that has asked. We've asked affirmatively of most parties in the courtroom. So I'm not aware. We would actually -- and we could do it at the end or now. We would ask the Court to actually admit all of the debtors' exhibits listed on the exhibit list. But again, happy to do that at housekeeping.

THE COURT: Are those the ones here in my binder?

MR. SIMON: I believe so, Your Honor. And many of those -- many of those are really described in the declarations. So for instance, in Mr. Krakovsky's declaration, he describes a transaction protocol. Well, that transaction protocol is subsumed within the exhibit list so --

THE COURT: Is the one that's in here the current one, except that didn't that change overnight?

MR. SIMON: Didn't the exhibit list change overnight?

THE COURT: No, the transaction protocol, whatever you call it, used to be --

MR. SIMON: So you're thinking of the restructuring transactions memoranda.

THE COURT: That's what I was thinking of.

MR. SIMON: That changed. That's not on our exhibit list.

THE COURT: Okay.

MR. SIMON: The transaction protocol that I referenced is actually something we put in place early on in the sale process, just to make sure that there was kind of even playing field amongst all bidders. And it's just something that's referenced in Mr. Krakovsky's declaration.

THE COURT: Okay. And all right. So I guess at this point you're proposing we admit all of your exhibits, is it, I guess to the extent everyone has seen all your exhibits?

MR. SIMON: That would be the -- that would be the request, Your Honor.

THE COURT: I guess that'd be a question. If anybody has that question, we can address that. But just as a global matter, does anybody object to the admission of the debtors' exhibits?

MR. LAWALL: No objection, Your Honor.

THE COURT: Okay. No objection from the committee. I see no objections in the room.

Any objection from the folks attending online?

All right. They're admitted.

(All exhibits on debtors' exhibit list were hereby received into evidence, as of this date.)

THE COURT: That maybe then raises one more question for you. The basis of a lot of what's in here is the settlement that was reached at the mediation. But what I don't have in a document anywhere that I'm aware of is a settlement agreement. Does such a thing exist and --

MR. SIMON: It does not, Your Honor. There was a mediator's proposal, which effectively served as the forum. And then once that was agreed upon, I'd say it took about ten days of extensive negotiations to build that into the plan. So the settlement agreement effectively are the compromises contained in the plan.

THE COURT: Okay.

MR. LAWALL: Yes. That is correct, Your Honor.

THE COURT: Okay. Because among other things, the documents talk about, with regard to the releases, which I know we're going to -- we're going to get to later, that if they're not provided the plan sponsor may not put in the money, et cetera, et cetera. But I don't have an agreement where the plan sponsor says under what conditions they're putting in the money, so what do I know about that? What am I ever going to know about that?

MR. SIMON: Well, the conditions that the plan sponsor and both DIP lenders -- the concessions and consideration is all again set forth in the plan. So the effective date of the plan, all of the conditions precedent outlined in there would effectively be the conditions. There's no other -- there's no other document that kind of outlines that, other than what's subsumed within the plan.

THE COURT: Okay. All right. We have the evidence we have. So any thoughts as to what order we ought to have other people speaking?

MR. SIMON: I don't have any thoughts to that. Maybe we can --

THE COURT: We'll start with the --

MR. SIMON: -- form a line.

THE COURT: We'll start with the committee.

MR. LAWALL: Did you want to go through the

objections, Dan? You were talking about doing that. I didn't know whether you wanted to do that and then have comments from other parties. You had started down the objection list, and there were certain resolutions I think that we talked about may have occurred. Do you want to do that or do you -- certainly willing to make some basic remarks, Your Honor. How we do that -- however you would you like to see it.

THE COURT: Yeah, I thought he got to the end of the -- well, subject to wanting to talk about some of them further, but I think he went through all the exhibits on --

MR. SIMON: Yeah. I think, to the extent parties who have objected want to raise issues or confirm, to the extent parties who do support confirmation want to speak, I think I'll defer to Your Honor whether you want to separate the two or not.

THE COURT: Okay. Well --

MR. LAWALL: There we a couple of resolutions that has been assigned to indicated want to bring that, as Mr. Simon indicated went to green. Right. And I guess, for purposes of fulsomeness of the record, it might be worth putting those on so that you have those established. But I leave that to you.

THE COURT: That would be fine.

MR. LAWALL: So Your Honor, I'm sorry. Let me approach.

THE COURT: No, go right ahead.

MR. LAWALL: And again, for the record, Fran Lawall, Troutman, on behalf of the committee. Your Honor, I see that, at least from the committee's perspective, there was the Iezzoni and the Chubb objections, which have been resolved. And I don't know whether you wanted to know what those resolutions were. I guess, with respect to Chubb, that was partially resolved, which I think now has been fully resolved. With respect to Iezzoni, I believe that has been fully resolved, which will be handled through an order, a separate order, which will be handed up to Your Honor.

THE COURT: Okay. And does that all relate to the claims resolution process or those procedures?

MR. LAWALL: Yeah, somewhat, Your Honor. Iezzoni is a lift stay, which had to do with the unliquidated claims procedures --

THE COURT: Right.

MR. LAWALL: -- that are part of the plan. And then there were some other remarks that we would make, Your Honor, but just in order to keep this in some kind of order, I thought -- those were the two from the committee perspective, unless my partner tells me I missed one.

Is that it for from the committee perspective?

MS. KOVSKY-APAP: Sorry, Your Honor. Deb Kovsky for the committee. We had a number of comments that we received

on the unliquidated claim procedures. And we have done our best to take into account all of those comments. We believe we now have a completely consensual unliquidated claim procedures, subject to final wordsmithing and that will get uploaded.

We have taken into account a number of comments with respect to the GUC trust agreement, primarily from the United States Trustee. There is still one more comment that we received, I believe, last night, and we've agreed to make those changes. So that will also get finalized and uploaded.

And then with respect to Iezonni, as Mr. Lawall said, there are additional changes that were made. The stipulation is still being finalized. So we won't be able to hand it up to Your Honor today, but we will be able to upload it shortly.

THE COURT: Okay.

MS. KOVSKY-APAP: So from the committee's perspective, we think that all of the issues that impacted the GUC trust, the unliquidated claim procedures, or anything that affects the unsecured creditors post-confirmation, we believe we're on the right track. There were also a number of changes that were made to the plan with respect to the Medicare provider agreements and how those would be treated, which was very much a moving target. We kind of had a lot of language thrown at us very late in the game.

But following extended discussions with the

government, with debtors' counsel, the committee has been able to get comfortable that once those Medicare provider agreements are actually assumed and assigned or that the buyer takes assignment in whatever format that ends up being, which we understand is the intent, that there won't be any blowback to the trust. There won't be any rejection damages claims. There won't be any claims related to those Medicare provider agreements that somehow become the problem of the unsecured creditors. And with that understanding that we've been able to get comfortable with, the committee's all set.

THE COURT: Okay.

THE COURT: So with respect to the -- so that turns the Chubb agreement green, although I'll certainly wait to hear from them regarding that. The Iezzoni one is already indicated as being green on our little chart. And I understand that now there are two elements to that, one element relating to the unliquidated claims procedures, and the other element, apparently a stipulation. I assume, that has to do with the motion for relief from stay.

MR. LAWALL: It does, Your Honor.

THE COURT: Okay. Now, I think I got it. I do have one question about the GUC trust agreement.

MR. LAWALL: Yes.

THE COURT: So I looked at it, and I just wondered, is there anything in there that requires the debtors to

cooperate with the trust with regard to the resolution of the claims? Like, provide information. I assume that the people for the trust aren't going to know anything or will know less about all those things.

MR. LAWALL: It's a fair point. That's an issue that has come up probably in the last twenty-four hours, given the press of what has occurred. There have been informal conversations about document exchanges and things of that sort. I have been assuming the debtor will cooperate. I'm sure Mr. Simon will agree with that so that we won't have to resort to formal discovery against Synergy or others for that information.

THE COURT: Right. I mean, you're going to need the assistance of the debtors' employees to verify or not verify claims of various kinds, I would expect.

MR. LAWALL: Yeah, there certainly will be a significant claims resolution process, Your Honor. And the committee, in anticipation of what would have been a contested confirmation hearing today, has already started going through at least the personal injury claims, trying to winnow them down into some category. And the debtor has provided some additional information to help us, along with insurance information, to try and figure out exactly what we're dealing with.

With respect to the trade claims side, the general

GUCs, the expectation is between a combination of the schedules, conversations with the debtors, and Mr. Reininger (ph.), who is an experienced trustee in this area, our expectation is he'll be able to try and do that pretty efficiently.

And I wasn't planning on making my full remarks here, but I can give you a little more background if you would like it now, in terms of just our overall view of how this is going to go forward, or I can wait. I know we're started with respect to objections and it kind of morphed, but I didn't want to upset Mr. Simon's well-orchestrated confirmation hearing.

THE COURT: Why don't you -- I'm happy to hear everything you want to say.

MR. LAWALL: That'd be great. All right. Well, thank you, Your Honor. As I indicated weeks ago, this was probably one of the hardest deals as professionals that we have done because ultimately, it doesn't necessarily result in a huge recovery for creditors one way or the other. But the committee, in supporting this deal looked at a number of factors, including the fact that there was probably -- there has been estimated a hundred-million dollars of priority secured administrative claims that might have come ahead of all of these creditors.

Then, in addition, Your Honor, as part of this, which

may not be clear, there was a deal cut with Powerback. You may see that in here, which was a significant unsecured creditor, maybe as much as a hundred-million dollars. Their claim will not be part of this overall distribution, which is a significant event which wouldn't have occurred but for this deal.

THE COURT: What's their claim about?

MR. LAWALL: I understand it's rehabilitation services and other things that they performed.

THE COURT: Okay.

MR. LAWALL: But it is a significant claim. And of course, Your Honor, as you may know, there are several creditors, including Healthcare Services Group. They are very significant creditors in this case owed tens of millions of dollars. And so this is obviously important to a lot of folks, not just the personal injury claimants, but to trade creditors as well.

But we also looked at that, plus how we were going to try and do this in an efficient way. And the committee looked at both the DivestCo and the OpCo side and tried to come up with a fair allocation of proceeds based upon where we thought the assets were, which was explained in the disclosure statement.

The expectation at this point is we have the D&O policy, as well as approximately 3.50-million dollars on the

DivestCo side, which will be used first to try and basically monetize the D&O claims. And then on the OpCo side, there is nine-plus-million dollars, which will be used for purposes of liquidating the claims matrix, as well as for purposes of making a distribution. We have found that there is probably more insurance for personal injury claims on the OpCo side than on the DivestCo side. But we have found some indication there may be little bits of insurance that might be there on the DivestCo side, but it's still early in the investigation.

But one of the points I wanted to assure you Your Honor on is though we're not -- I don't want to stand here and say we're thrilled with this deal because we're not. In most of my cases, we get substantially greater recoveries than this. But we're also realistic given the 280 debtors, given the fact that if we were to turn this into a litigation fight as it was heading, it might have been that unsecured creditors got nothing at all. And that weighed heavily on the committee in terms of making this decision to try and put an orderly process to this in a way which, again, protected health, safety, and welfare of the residents, preserved the going concern, but at the same time created a process for liquidating claims and a potential recovery for unsecured creditors.

One of the things that threw us in the last forty-eight hours, Your Honor, was the fact that this switched, as

you identified, from a straight reorg to a sale process. And as Mr. Simon has indicated on the record, and we will hold the debtor accountable on this, is that notwithstanding that switch, that there will not be any increased liabilities flowing to the GUC Trust. And that's been said, and we want to make sure that that occurs because we understand why they're doing it for purposes of the Medicare side. And in order to deal with certain liabilities that might trail. But at the same time, we don't want this to increase the liabilities to the GUC trust because it was that structure that was put to the creditors for purposes of voting and getting us to here today. And so that will be an important issue.

There is another issue, Your Honor, that's come up, which I'm sure Mr. Simons will discuss, but since I'm here, the employee tax credit, the IRS apparently has reached out to the debtor and said there is a potential claim here for thirty-million dollars as a priority unsecured claim. And what they're saying is that they -- and this appears to be a normal audit, challenging some of the monies that were paid as a result of the pandemic. However, if that claim were to come to fruition, which I'm assuming will be before Your Honor in litigation shortly, and the committee is certainly going to have to participate in this, that the ask is going to be possibly as much as a thirty-million-dollar priority claim.

If that occurs, this plan is not feasible.

Now, we think that they probably won't be successful. But at the same time, it's an issue from the unsecured creditors that we want to be careful here that that claim not become an unsecured claim because if it did become an unsecured claim, which just came on the radar screen now, that could change the overall distribution dynamic with respect to creditors. Not significantly, but it would have an impact. So it's an important issue.

THE COURT: Which part of it would it -- it is that a OpCo or a DivestCo claim?

MR. LAWALL: Both.

THE COURT: Okay.

MR. LAWALL: It's both. From what we've seen -- actually, this has been some of the great work that FTI has done. Even last night when this came up, I asked him to go back and check, and again with the help of the debtor trying to trace these numbers. But it is on the OpCo and DivestCo side from what we're seeing. So it has an impact on both sides of the house.

But again, actually we don't think this is a general unsecured creditor, and we hope it's not a priority claim at all. And we hope the IRS is simply wrong on this issue. But it is an issue that's out there, and it's one that we're going to have to keep an eye on as things move forward.

Nevertheless, the committee, as we said, once we made this deal, Your Honor, we have supported this deal. We will continue to support this deal. We'll look for ways to maximize the recovery of the monies that we have for distribution to creditors.

I'm sure we're going to be back before Your Honor with respect to claims objections. But also on the DivestCo side, we'll be looking for an efficient way of trying to liquidate these personal injury claims. We are very sensitive to them. We want to get them a distribution. We intend to get them a distribution. We have winnowed it down. At this point, preliminary numbers are probably about 500 unliquidated personal injury claims from what we have seen so far, and those are the ones that we're going to have to work through. The debtor has provided us a bunch of information, which will be helpful. But then again, with the help of Mr. Reininger and others, we'll try and liquidate that in an efficient way. We may be coming to you for some creative ways to quickly liquidate that to get a distribution, as opposed to engaging in, quite frankly, lawyer-wasting fees, as opposed to trying to get the money to these creditors.

So that's kind of where the committee is on this case, Your Honor. We support the confirmation. We appreciate what the debtor has done. Mr. Simon has done an excellent job working this through for his client. We'd love to have seen a

much better recovery, but we do believe, at the end of the day, this does result in a recovery for the unsecured creditors, which, if it had gone to litigation, you can only imagine how this would have played out, Your Honor. We would have had to have challenged the plan, basically tank the case, taken it to Chapter 7, and then hope that a trustee would have pursued this litigation, all the while not having a DIP, not having any funds for litigation, and no guarantee whatsoever with respect that these claims would be successful.

That was all part of the witch's brew. That took us to the point of getting to this resolution. It's not pretty, it's not perfect, but it does get something to the creditors. And it's really what Chapter 11's about.

THE COURT: Is the tax claim something we have to resolve before we can confirm the case?

MR. LAWALL: Your Honor, I'll let Mr. Simon -- I expect we're going to have to have a proof of claim filed, and I expect we're going to have to ask Your Honor for an expedited hearing on that so that we can make sure we can get to an effective date some time reasonably in the future.

MS. JONES: And Your Honor, Vivieon Jones for the United States on behalf of the IRS. I'm happy to speak to this issue and to this status of the IRS objection when the Court is there.

THE COURT: Okay. Let's let Mr. Lawall finish, and

maybe we'll go to you next.

MR. LAWALL: So Your Honor, I think that's -- unless my partner kicks me and tells me I've missed something, I think that's everything. We want to say thank you to everyone, your clerk, your staff, Your Honor, for being as flexible as you are and have been. And obviously, we will still be in front of you over the coming months to try and get to the end point here. But thank you, Your Honor.

THE COURT: Okay. Thank you.

All right. Ms. Jones, you want to just take your turn, I guess?

MS. JONES: Um-hum.

MR. LAPOWSKY: I'm sorry. Did I --

THE COURT: Yeah.

MR. LAPOWSKY: -- cut in line?

THE COURT: Well, I think she may have cut in line, but I'm going to let her so if you don't mind --

MR. LAPOWSKY: I'm going to be very, very --

MS. JONES: Thank you, Your Honor.

MR. LAPOWSKY: -- quick. But I can sit down if you'd --

THE COURT: All right. Hang on, Ms. Jones.

Yes, sir. Go ahead.

MR. LAPOWSKY: Robert Lapowsky, Stevens & Lee, for Healthcare Services Group. Your Honor, Healthcare Services

Group is a very large creditor in these cases. Claims totaling close to seventy-million dollars, split both on the OpCo side and the DivestCo side. Healthcare Services is also the chair of the committee, so we've been actively involved in these cases from the beginning. And I wanted to stand and tell you that we support confirmation of the plan. We're, as Mr. Lawall mentioned, not thrilled with the likely percentage recovery here, but we're realistic, and we think that under the circumstances, this is as good as we can do as unsecured creditors. Thank you, Your Honor.

THE COURT: Very good. Thank you for your service on the creditors committee. It's very much appreciated.

All right. Sorry about that, Ms. Jones.

MS. JONES: Thank you. And good afternoon, Your Honor. Vivieon Jones on behalf of the IRS. And I have three issues I want to present to the Court today a bit of clarification and to bring the Court up to date on the status of the IRS plan objection.

At first, as noted in the filed objection, the IRS had opted out of the debtors' third-party leases and the injunction provisions of the plan. And though you'll hear that the IRS has largely resolved the pending objection, through which terms of the debtors with respect to the IRS objections, the opt out remains operative.

The two issues that I do want to raise before the

Court today do pertain to the calculation of the priority tax claim amount. As has been noted, this is in fact a confirmation issue. And those two issues with address the unfiled tax returns, as well as the employee retention credits, or ERCs.

As to the unfiled returns, the IRS records reflect that there are a number of outstanding payroll tax returns, largely by DivestCos. In short, Your Honor, where a DivestCo has ceased operations but failed to properly and formally inform the IRS, the meter, if you will, kept running as to payroll taxes. And that resulted in some significant priority tax claims that were estimated and are reflected on the claims that were filed by the IRS. The debtors have agreed to filing the outstanding federal tax returns within thirty days after the effective date or provide proof that the filing was not required. And language to that effect has been included in the proposed confirmation order, and that resolves the issue on the unfiled return priority tax problem with the IRS.

The second issue again relates to the employee retention claims or the ERCs. And these, I've indicated, are a function and a feature of the COVID-19 relief legislation and provide a refundable credit to eligible employers. And as indicated in the IRS objection, the debtors previously received approximately thirty-two-million dollars in ERC refunds and pending ERC claims of approximately 3.7 million.

Those are the ERC claims and refunds that are subject to review by the Internal Revenue Service. And any associated liabilities the IRS does contend would, in fact, have priority status.

It is imperative that the IRS performance its review to ensure that the substantiated claims are in fact valid and that the IRS has determined that the debtors are in fact entitled to the previously refunded ERC amounts, as well as the those that remain pending. The debtors and IRS have had discussions and agreed to preserve those issues related to the ERC claims for resolution post-confirmation. And again, I do believe that we'll need to do that on an expedited basis. But that is the reason why the IRS objection remains partially unresolved. There will be some work that will be needing to be done post-confirmation in terms of discovery and perhaps some litigation, in order to have that issue resolved formally. However, the IRS has negotiated confirmation order language with the debtors. And setting aside the issue of the previous and pending ERC claims, the issues raised by the Internal Revenue Service in its objection have been resolved.

THE COURT: Okay. So I want to -- I don't want to put words in your mouth. I want to make sure I understand. I think Mr. Lawall said something about, and maybe Mr. Simon too, about this being a thirty-million-dollar issue. And it's a thirty-two-million-dollar issue, I think, based on what you

just said, in the sense that the debtors got thirty-two-million-dollar issue in ERC credits. I'm going to presume, hope that an operating business proceeding in good faith didn't get all thirty-two-million dollars by mistake, or that it's overpaid. And there might be some dispute about how much they're entitled to, but it's probably not a thirty-million-dollar issue.

MS. JONES: And so clearly, I can't speak to what the ultimate dollar amount will be. But certainly, Your Honor has generally described the situation accurately. And yes, the Internal Revenue Service must complete its review of those previously refunded ERC claims.

THE COURT: Sure. So I understand you got to look at it all. And so theoretically, all of it could be due back, but maybe it's not quite that much.

But go ahead, Mr. Simon.

MR. SIMON: Thank you, Your Honor. Again, Dan Simon, McDermott Will & Emery, on behalf of the debtors. I was going to raise this. It's obviously a huge issue, and it's one that came across our desk on Tuesday. There's a letter sent to us on November 12th that identifies the issue and that the IRS has not filed a proof of claim on this. The government claims bar date has not passed. I believe that goes until November 29th.

They have asked for an extension. To date, we have

not provided it. They have had six months. We've given them additional information about this. And because it came across our desk two days ago, it is a looming issue as to whether this plan is effective and whether the last six months of negotiations that you've just heard is all for naught, which obviously would benefit no one, including the IRS because I'll just note the irony, of course, is that if it's not a priority claim, then the IRS is not paid anything. But if it is, no one's going to close over a thirty-one-million-dollar priority claim. Presumably, these cases will fall into Chapter 7. And the secured lenders will be paid before the IRS.

We provided information to the IRS. We'll will continue to provide information to the IRS. But obviously, we've had a number of discussions over the last forty-eight hours. We will need an accelerated adjudication of this. This is a new and relatively novel program and issue. And to the extent it's impacting the debtors, it's going to impact virtually every Chapter 11 debtor.

And we were, needless to say, very surprised when they said they will be filing a protective proof of claim. We're going to need more than that, and we're going to provide whatever documentation there is. The debtors retained a consultant on this issue. They retained a law firm. There's documentation. So obviously, this is a -- this is a critical issue. This case hangs in the balance, and we will probably

be filing either a claim objection to the extent their claim has been filed or a motion under 505 to address this and address it in a way that provides the parties with certainty, one way or the other, so that they can go about their regulatory requirements and proceed with employee communications and everything like that towards an effective date and towards everything that we have resolved in this case.

I just want to note, for the record, with respect to the unfiled claims, it's something that we have been pressing with the IRS. The debtors believe all of their claims have been filed, the IRS has --

THE COURT: You mean their returns?

MR. SIMON: The returns. Thank you.

THE COURT: Okay.

MR. SIMON: The IRS has identified payroll tax returns that have been filed, but a box hasn't been checked. The debtors have been in constant discussions with their IRS agents, who I think are in discussions with Ms. Jones, but maybe the messages aren't always there. We're working on those issues, but we believe everything is done. We believe everything has been filed. We continue to be very responsive to Ms. Jones. But again, this ERC issue is one that has taken us aback.

And there has always been contemplated a period of

time between confirmation and the effective date, more than a week or two. The regulatory requirements would probably require at least sixty or maybe even ninety. So we do have some time, but I don't want to wait sixty or ninety days because there's a lot of work that has to get done. An ABL line has to be signed up with MidCap, Omega lease extension amendments, and things like that. So we are going to tee it up before, Your Honor, we're going to have to address it. And obviously, it's going to be a critical issue because I don't see how a thirty-one-million dollar priority claim erases all the hard work that's been done thus far. And that's kind of all we have to say about that at this point.

THE COURT: Okay.

MS. JONES: If I may, Your Honor.

THE COURT: You may.

MS. JONES: Okay. Thank you. Your Honor, counsel indicates that this is a brand new issue. However, this is specifically set out in the objection that the IRS filed on November 4th, with footnote 2 specifically talks about the potential need for a protective claim. These are the issues that we have been approaching and addressing with the debtors through this case.

It is unfortunate that we have received information in an iterative fashion from the from the debtors. The initial reports about the ERC claims that we received from the

debtors only referenced the pending 3.7-million dollars. And so we had to seek some additional information from the debtors in order to get the adequate information about the pending and previous ERC claims.

I would point out to the Court, as was noted in the objection, that the debtors' filings in the case have been absolutely deficient and deficient with respect to the substance of the priority and other tax claims in these cases. So we really had to do a lot of discovery work to get to this point and have presented these issues as quickly as possible to the debtors and counsel. We are certainly committed to resolving the issues surrounding the ERC claims as quickly as possible. However, they are not resolved today. And what we can provide is the agreement to pursue a quick litigation schedule following confirmation to resolve these issues. I believe that's the best possible result and what the Court should adopt today.

THE COURT: All right.

MS. JONES: I will say one more. On the claims -- excuse me, the unfiled returns, again, these are set forth in all of the proofs of claim that the IRS had been filing for the past few months, and the IRS has repeatedly approached the debtors about unfiled returns. It appears that the debtors take a perspective and the position that they are not required to make the terminal filings to notify the IRS that a entity

has ceased operations and that whatever previous filings were made are sufficient. The IRS does not adopt that position, but we're prepared to work with the debtors to ensure that any necessary corrective filings are made within thirty days of the effective date and that we'll continue to engage with the debtors to establish any particular situations where a return or form is not required. Thank you, Your Honor.

THE COURT: Thank you.

MR. SIMON: I'll just note, Your Honor, we disagree with the statements by -- many of the statements by Ms. Jones. We don't need to go into it. There's no evidence today. There's nothing before Your Honor. But obviously, Your Honor understands the importance of the issue and the fact that a letter was received on November 12th as we were preparing for today.

THE COURT: Yeah. I'm not sure I have that in evidence either, but at this point, it doesn't much matter how we got here. The point is we are here, and the job from here is to get whatever the issue is resolved as quickly as we can, and we're certainly available to do that. I guess been a lot of talk about doing things between confirmation and the effective date. We have a thirty-million-dollar problem. Can we confirm the plan?

MR. SIMON: Your Honor, we can. We have resolved language with the IRS that effectively makes the -- it's a

condition precedent that that issue is adjudicated. So like any other issue, the plan can be confirmed. It just can't --

THE COURT: It just won't go effective?

MR. SIMON: -- go effective. Correct.

THE COURT: Okay.

MR. SIMON: So we would still, at the end of the hearing, ask Your Honor to confirm the plan and approve the proposed confirmation order that provides for those concessions that we made over the last twenty-four to forty-eight hours with Ms. Jones.

THE COURT: Okay. Very good. Gee, who's next? Got my list of who's here.

Well, let's see. We've heard from Recovery Corp./their various and respective clients. I guess why don't we go to the extent they want to be heard? And I don't mean to make anybody have comments that doesn't have any, but the various lender parties, I'll call them, if any of them want to say anything. Well, all right.

MR. AIKEN: Your Honor, Leighton Aiken on behalf of the Omega parties. We are obviously in support of the plan. We just found out about this IRS issue, so we're concerned about it as well. And I think expeditious consideration of that would be welcome.

THE COURT: Very good.

MR. MUENKER: Good afternoon, Your Honor. James

Muenker of DLA Piper on behalf of TIX 33433 LLC, also one of the coDIP lenders, as well as the plan sponsor in this case. Obviously, Your Honor, as plan sponsor, we are supportive of the plan. We've worked with the debtors and the committee and other parties over the last forty-eight hours to try to resolve, I think, all of the remaining objections, except for, as I understand it, the U.S. Trustee. And those agreements are reflected in the in the form of the order that will shortly be submitted because I think there's some final edits that are being made from the version that was submitted last night.

To just piggyback on something that Mr. Simon raised and that was just discussed with the Court, we too were recently informed about the issue with respect to the priority tax claim. Obviously, that is a huge issue in a couple respects. One, there are conditions to the effectiveness of the plan that have to deal with liquidity and certain funds that are available at the time of the effective date that would need to be satisfied.

There's also a requirement that there's sufficient funds available without the plan sponsor having to put in additional money beyond the plan sponsor contribution to satisfy all administrative and priority claims, other than those claims that are expressly assumed by the plan sponsor. A thirty-two-million-dollar priority tax claim is not one that

the plan sponsors agreed to assume. Part of the language that was agreed to with the IRS and the debtors last night to address this issue does require that that issue be resolved in a manner that is satisfactory to the plan sponsor in its sole discretion.

So we're obviously supportive of this being resolved. Hopefully, it will be. Hopefully, it will be resolved consensually without a lot of litigation because a lot of litigation has with it costs, and that could impact other issues associated with the effective-date conditions. But with those comments, Your Honor, we're supportive of the plan. Thank you.

THE COURT: Very good. Okay. The plan is in so many ways condition on the plan sponsor desiring to proceed that I'm not sure adding another one really adds much to the calculus but --

MR. DALE: Your Honor, Charles Dale from Proskauer Rose on behalf of MidCap Funding. Your Honor, you've heard consistent comments from the lenders in this case. We, too, are supportive of the reorganization. We've worked very hard with Mr. Simon and his colleagues to get to a point where we've got the terms agreed upon for exit ABL financing.

Obviously, we're learning about this IRS issue in real time. We're concerned about it as everyone else is. We encourage Your Honor and the parties to work to resolve it

quickly. And we're here to support an exit, Your Honor. And with any luck this will get resolved quickly. We can do that. Thank you.

THE COURT: Very good.

MR. SIMON: Your Honor, I just want to make one clarification, for the record, at least with respect to the debtors understanding of this issue. This is not the IRS saying that they have or they believe they have a priority tax claim for the entire amount of the ERC. This is them saying they don't know, and because they don't know, they're filing a protective claim.

THE COURT: Sure. But they're saying you got thirty-two-million dollars, and we haven't looked at it yet so we don't know how much of it we agree we're entitled to.

MR. SIMON: Correct. There's obviously an ongoing -- whether it's an audit process or an enforcement process, in hindsight, by whether it's DOJ or IRS with respect to the billions and billions and billions of dollars that were refunds of employee retention credits in connection with COVID relief. But I just wanted to make that point. I don't believe at any point the IRS has said we have a priority tax claim. They have said, after five-plus months, we just don't know. And our point to them is we're going to need to know soon on an expedited basis. I think Ms. Jones agrees, at least with the need to expedite.

THE COURT: All right. I did wonder, having read Ms. Jones' objection, not about the 32-million dollars as much as about the 3.7-million dollars that might still be coming and whether that had been considered as part of the parties' deliberations or whether all of this is news to everyone.

MR. SIMON: All of this is fresh news, and over the last forty-eight hours, we've been addressing every other objection. So we'll need some time to kind of evaluate it. Determine the best way to tee it up for Your Honor. Hopefully agree with the IRS on a briefing schedule to address it quickly.

THE COURT: All right. Ms. Furr, I saw you standing in the back waiting for your turn patiently so --

MS. FURR: Good afternoon, Your Honor. Katie Furr on behalf of Jacksonville Nursing Home, Ltd. I didn't want to jump the line while the IRS issue was being sorted out. Let me start by saying that my client is not here to derail confirmation. Notwithstanding, I wanted to be heard on the record as to concerns relating to the operations for the only facility that the debtor is intending to turn over, surrender, reject as part of its proposed plan.

The facility at issue is Harts Harbor. It's located at 11565 Harts Harbor Road in Jacksonville, Florida. Per the patient ombudsman, whom I spoke to yesterday, there are 117 patients at this facility, although the facility is licensed

to have up to 180 beds. My client is a landlord for the property where this facility operates. Debtor Epsilon Health Care Properties, LLC's the lessee, and debtor 11565 Harts Harbor Operations LLC is the debtor that's actually operating and managing this facility. It's certified to provide Medicaid and Medicare eligible residents, along with third-party payor residents. And it predominantly houses geriatric residents.

Now, I'll turn to the bankruptcy and the plan that's before the Court today. In its initial filings, debtor intended to assume or assume and assign this contract. And then in late October, the debtors filed its plan supplement, indicating -- we were not listed and thereby indicating we were going to be rejected.

As the Court may or may not know, given the nuances of the SNFs industry, if the lease and its related operations where the patients received care as rejected, the debtor, 11565 Harts Harbor Road Operations, LLC as operator, has two options. It can incur the expense to move patients to new facilities to ensure seamless care, or it can work with us -- work with us to find -- like, for the parties to collectively find a new interim operator or a new permanent operator that will take over from the current operations. Here, the parties, since that rejection notice essentially was filed, the debtors' counsel and I have worked in good faith in

continual conversations to discuss this upcoming transition and the logistics related thereto.

My concern here today and why I wanted to be heard is that, and as outlined in my objection, the rejection language is sort of your plain vanilla rejection language you would find in any other plan, like an empty warehouse, for example. And here we have a very different type of scenario. There are no guardrails as to how this transition will occur or ensure that there will be a seamless transition of patient care with no lapses in care or licensure. In short, the plan does not prohibit the debtor from simply throwing up its hands, throwing us the keys, or eventually, if there is a money issue here, simply just not cooperating and saying this is your problem, not our problem.

While I'm not asking the debtor to include or commit to every detail -- as you can expect in this industry, these type of negotiations and transactions are very detail oriented and highly regulated -- I am asking or requesting of the Court that the debtor agree, at a minimum, for reasonable cooperation here as to the transition from the debtor, and either an interim or a new permanent operator agree to what's called, Mr. Simon referenced it before, an OTA, which is called an operations transfer agreement. It's an industry-standard agreement that outlines all of the specifics that I won't get into today.

THE COURT: All right. We're quite aware of --

MS. FURR: Okay. There you go.

THE COURT: The debtors' got a lot of experience --

MS. FURR: So there you go.

THE COURT: -- with such things.

MS. FURR: And so we would ask that the parties would enter at least or the debtor would commit to entering into a commercially reasonable form of an OTA, agree to transfer the existing Medicare and Medicaid provider numbers and all patient and employee records, and to assume and assign the Medicare -- or I'm sorry, to assign to the transferee the Medicare or Medicaid provider agreements. And I think that's largely it.

So I think the parties are certainly aligned that patient care here is critical. And so we just wanted to bring this up to the Court and be heard on the record as to what is not contained in the plan and our concerns related thereto.

THE COURT: All right. Mr. Simon, you want to respond?

MR. SIMON: My only response, Your Honor, is we certainly agree that patient care is critical. We've been working with Ms. Furr. We have provided a form OTA. We have not received comments. What we said is we understand rejection is not a warehouse or a widget factory. These are people will file a motion before Your Honor, hopefully with an

agreed form. If not, we'll raise whatever issues there are, and we'll have a safe transition once the landlord identifies the new operator, which I know they're in the process of doing. So again, this is one of those issues that will have to be addressed between now and an effective date. And we'll continue to work with Ms. Furr and her client on that.

THE COURT: Okay. I mean, you've got some time. You were talking about, I don't know, sixty or ninety days, at least, for an effective date so --

MR. SIMON: Correct, Your Honor.

THE COURT: -- got some time to work all that out.

MR. SIMON: The work doesn't end today, of course.

THE COURT: Well, that is11/18/2024 true.

All right. I know I've already heard from Omega and the other landlord parties. Again, I'm not requiring a -- it's not a command performance. It's only a performance if you want to have one. I guess either the insurance companies Cigna or Chubb.

UNIDENTIFIED SPEAKER: Sorry, Your Honor. Give us one second here.

THE COURT: Sure. If you want, I can come back to you.

UNIDENTIFIED SPEAKER: I think this -- I think this will be pretty straightforward. I this the Chubb issues are largely resolved. I think there's a question of just whether

it gets put on the record, I -- they might as well --

THE COURT: Right. Well, I think they're just trying to confirm, I think, that they're on the same page. And while they're doing that, I'm happy to hear from somebody else, if anybody else --

UNIDENTIFIED SPEAKER: Okay.

THE COURT: -- wants to be heard from.

Any of the personal injury claimants? And I think we probably have some online as well as in the room.

MS. SMITH: Hi, yes. This is Atty. Nicole Smith. I represent Sharon Nwanze. Can you hear me okay?

THE COURT: I can.

Actually, if I can ask, can we take the presentation down so I can see these people? there we go.

MS. SMITH: Oh, and I couldn't get my -- I had to remove my computer for the hurricane. And ever since, I haven't gotten my camera to work again, so I apologize. I just wanted to make sure just -- I just want to be very honest with all of you very intelligent attorneys here. But I work in personal injury, and I know zero about bankruptcy. So I've been trying my best to keep up. And it seems like we're all going in a good direction.

But I just want to make sure, before I -- moving forward, my client is Sharon Nwanze. She has a judgment in favor of her personal injury that she sustained while at the

nursing home. She was set to be paid in 2025. (Indiscernible) judgment was entered into the court. And I just want to make sure that -- and it sounds like it is, but I just wanted to make sure so I can communicate to my client that she is set to still receive that money and everything is going to go through.

THE COURT: Does anybody want to respond to that?

MR. LEUNG: Your Honor, again, for the record, Fran Lawall, Troutman, behalf of the committee. I'm not familiar with this particular claim. Assuming a proof of claim was filed, whether it falls into the DSA or the OpCo side, it would be -- if it's a judgment that's already been liquidated, then it will be treated along with all the other similarly situated unsecured claims and receive a percentage of the consideration in the plan for recovery.

I don't want to mislead anyone, as we haven't from the beginning. This is not a full recovery case. And the ultimate percentage recovery remains very much unclear until there's more information gathered, claims liquidated, and assets liquidated. So it's hard to say right now exactly what the recovery will be. But if a proof of claim has been filed or if it's been scheduled in this amount and not disputed, contingent, or liquidated, then it's in the queue and it will be processed.

THE COURT: I'm not sure if that answered your

question. Did your client -- or did you or your client on behalf of -- you on behalf of your client vote on the plan ?

MS. SMITH: We did file a proof of claim in the beginning.

THE COURT: Okay. Okay.

MS. SMITH: But we have not voted, no.

THE COURT: Okay. Okay.

MR. LAWALL: Well, then, if the proof is filed, Your Honor, then it's in line with the others for processing, and that will proceed once the effective date occurs.

THE COURT: All right. But depending on which -- well, actually, regardless of which bucket your client's claim is in, the estimated ranges top out at about ten percent.

MR. LAWALL: Right.

MS. SMITH: So she's only going to be receiving about ten percent of what she's owed.

THE COURT: That's what the plan says.

MS. SMITH: Okay. Thank you, Your Honor.

MR. LAWALL: Okay. Thanks, Judge.

THE COURT: Any of the other personal injury claimants?

MR. REZAC: Good afternoon, Your Honor. John Rezac for Stephanie Sifrit and the estate of Janet Smith. We are also one of the stay relief parties. And I've had my office withdraw that motion. We think that the debtor has proposed

a good procedure for dealing with these unliquidated claims, and we look forward to working with the debtor on that. And just want to congratulate everybody for all the hard work.

THE COURT: Thank you, Mr. Rezac.

MR. BRANNICK: Good afternoon, Your Honor. Nicholas Brannick with Ballard Spahr on behalf of Mary Ann Iezonni. We both have a lift stay motion and an objection to the plan. Our objection to the plan was directed almost entirely to the unliquidated claims procedures. The debtors -- well, actually, the committee, I suppose, did a lot of hard work, took into consideration a lot of our objections, and we appreciate that and in revising those procedures. And I believe that we have a stipulated order that's going to be submitted that will both address the lift stay motion and resolve all of our objections to the plan. And I think that that's pretty well finalized and should be heading your way shortly. So thank you.

THE COURT: So very good. So let me say two things about that. First, we were here last time, and we had some stay relief motions that I think the debtor thought were going to be resolved by an order. But they hadn't been shown to the committee yet. So I want to make sure that we weren't working in reverse this time, where he's agreed with the committee, but they haven't talked to the debtor. Are we all in agreement on whatever it is the Iezzoni stipulation is going

to say?

MS. KOVSKY-APAP: Your Honor, Deb Kovsky for the committee. Certainly, from the committee's perspective, we are in agreement. We want to -- we appreciate the hard work on the part of the debtor and Ankura, as well as FTI, getting us to a point where we could be comfortable. And as Your Honor may recall, the committee's primary concern here, we did not want to block anybody from accessing insurance proceeds. Quite the opposite. We would love it if every unsecured claim in this case were insured, and not the problem of the GUC trust. Unfortunately, that's not the case.

Our big concern was ensuring that if there were multiple claimants against a single policy, against that are all trying to get at the same limit, that one party was not benefited to the detriment of others, where the first one to reach a judgment --

THE COURT: Right.

MS. KOVSKY-APAP: -- would get all of the insurance proceeds, and everybody else would be left with nothing. So that was really the entirety of the committee's concern. We were able to get comfortable that that, in fact, is not at all the case with respect to this specific claim. And so we're very comfortable stipulating to let them go forward and wishing them the best of luck.

MR. HAAKE: Your Honor, this is Jack Haake for the

debtors. We have seen the order. We've participated in the discussions. There was some fine tuning this morning, but I believe we have a final order. And we expect to be submitting that as soon as we're able after the hearing.

THE COURT: Okay. And I guess my second point in that I just wanted to thank you, Mr. Brannick, and your client for, I guess, picking up the mantle of all people sort of similarly situated in taking a hard look at the procedures and looking at it from someone in your position. I know the committee can do what they what they want and think is fair, but until you sit in the chair of someone who has a personal injury claim and needs to have it liquidated, maybe you don't see all the all the issues that you have identified and helped us resolve. So thanks for that.

All right. I'm not sure if I have left anyone out. I've gone through quite a number of groups, but I guess to the extent anyone else wishes to be heard before we sort of circle back and start addressing whatever objections remain --

Go ahead.

MS. BONTEQUE: Your Honor, Jessica Bonteque on behalf of the Chubb Companies. I just wanted to rise to say that I think we're very close. We're just tweaking a little bit of discussion. So I didn't want to let this go by without saying that. So if I could just have a few minutes to make sure we're on the same page, and then I think we could put an

agreement on the record, subject to a full reservation of rights to see final language. And for me, I will need to get final client approval regarding that language.

THE COURT: Okay. Well, we're going to be here for a little while, so I think you've --

MS. BONTEQUE: Thank you.

THE COURT: -- got some time to chat.

All right. Anybody else?

All right. Hearing none. Mr. Simon, you want to get back to -- well, I guess, I really haven't heard from the U.S. Trustee and maybe the last remaining objector.

MR. SIMON: Yes, Your Honor. If it's all right, I believe that's the only remaining issue. It is the third-party release. I think it's probably appropriate for us to start, since it's our confirmation, and then hear from Mr. Adams. But will that be all right?

THE COURT: That's fine.

MR. SIMON: So I'll walk through our argument. Obviously, we did brief the issue at length in our confirmation brief filed a couple of days ago. And I'll start by saying, I think this is an issue that's being addressed in bankruptcy courts all across the country. It was an issue that split bankruptcy courts prior to Purdue, and Purdue has sparked, I think, new arguments around it.

So I'll start by talking about Purdue, what Purdue

did, what Purdue didn't do, and then we'll talk about the specific arguments around state law consent. I will maybe provide a warning for the Court, which is because this issue has been addressed time and time again, again, in various ways, I'm going to borrow heavily from the words of the courts because I think they are often more eloquent than my own. So I will quote liberally from them.

Purdue was obviously a monumental bankruptcy decision in a lot of respects in the bankruptcy world, but it really impacted only a small subset of cases, those relating to nonconsensual third-party releases. And the court's opinion by Justice Gorsuch stated exactly that. And again, I want to quote, because I think it's important, Justice Gorsuch indicated very clearly that it was a narrow issue. And as part of that opinion, he said, and I quote:

> "As important as the question we decide today are ones that we do not. Nothing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorg plan. Those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual releases, in this case, being Purdue. Nor do we have occasion today to express a view on what qualifies as a consensual release, confining ourselves to the question

presented."

And then they hold that nonconsensual third-party releases are unavailable. So the Supreme Court knew at the time of oral argument and briefing that this was an open issue in court, and they said specifically, we are not commenting on that, we are not changing prior practice, and we're not making an opinion on that. Purdue change nothing on the topic of what constitutes consent, and this was picked up most recently by Judge Lopez, the venerable judge in the Southern District of Texas, in a case called Robertshaw in August. We cite this in our brief, and there, Judge Lopez overrules the U.S. Trustee and says specifically on the issue of what did Purdue do, he says the plan does not include nonconsensual third-party releases, like the ones addressed in Purdue. It contains consensual ones. So the Purdue decision does not apply here.

THE COURT: Right.

MR. SIMON: The U.S. Trustee provided comments on the plan solicitation materials that were approved by the Court. Now it objects to the consensual third-party releases on the basis of Purdue. The Trustee wants to use the Purdue holding as an opportunity to advance its long-held position. That consensual third-party releases in a plan should require an opt-in feature rather than an opt-out.

There was no occasion for the Supreme Court to

express a view on what constitutes a consensual release. The Supreme Court can find its decision to the question presented.

"This court", this is Judge Lopez speaking, "will not narrow or expand the scope of the Supreme Court's holding. These words must be read literally. And what constitutes consent, including opt-out features and deemed consent, has long been settled in this district. Hundreds of Chapter 11 cases have been confirmed in this district", again, this is Judge Lopez's words, not mine, "with consensual third-party releases with an opt out. And again, Purdue did not change the law in this circuit."

Judge Lopez in that case, went through detailed findings about facts and circumstances and noted for the record that it was in evidence that over a hundred parties affirmatively opted out and found those to be appropriate under the circumstances.

I want to talk about state law consent. Numerous courts have rejected the fact of state law consent. State law is about what forms an agreement. What forms a contract. Federal bankruptcy law does not necessarily follow state law. This issue was addressed down the hall a year ago before Judge Cavender. And Judge Cavender stated there, and I quote:

"I do not find traditional notations of state contract law to fit the bill. For one, I am not

convinced one state's substantive contract law would be appropriate to apply to every creditor's claims because the creditors and the law on which their claims are based is likely quite diverse, jurisdictionally speaking."

THE COURT: Okay. So maybe I'll stop you there say a few things about that. And then I think I raised this question earlier. The contract law, of course, deals with an agreement or a contract, and none of the verbiage in this area ever talks about having a release by agreement or by contract. The word used is "consent", and is that different?

MR. SIMON: It is. It is different, Your Honor. Consent can be manifested in many ways. So for instance, in bankruptcy, and everyone knows bankruptcy moves quickly, the wheels of bankruptcy have to keep turning. So in the proof of claim context, debtor sends out proofs of claim. If you don't respond, you're bound at zero. A cure notice goes out. Could have hundreds of amounts. In very small text, it might say zero. If the creditor does nothing, they're bound.

This is no different. We mail out a plan. If you don't object, you're bound. If you have an option to fill out a ballot and you check a box on releases and you fill it out and you fail to do that, you are bound. If --

THE COURT: Okay. Well, then, maybe you can respond to Judge Goldblatt and his university-funding hypothetical

that if the plan said, and you shall send 500 dollars to my favorite university and you didn't respond, are you obligated?

MR. SIMON: So Judge Goldblatt -- and obviously, there are courts on both sides. We have read the Judge Goldblatt opinion. I think there's three things wrong with that.

First of all, Judge Goldblatt identifies Purdue as the change. Right. And so for the reasons I just stated, we don't believe Purdue changes anything. But on that point, right, you have case law in the Fifth Circuit, and I'm just using the Fifth Circuit as an example. Nonconsensual third-party releases were always, or at least since, I think, 2010, not available in the Fifth Circuit.

So what Judge Goldblatt says in that opinion is that the consent between opt in and opt out changed because Purdue no longer allowed a debtor to seek it. Well, in the Fifth Circuit, that was always the law. And yet, in the Fifth Circuit, the opt-out mechanism was always available.

The point you raise about Judge Goldblatt, where he says there's no limiting universe to this, I think he said if you don't opt out, you have to pay, whatever, a hundred dollars.

THE COURT: Right, or you have to do whatever. But it says there's no limiting principle between waiving claims and some affirmative obligation to do X or Y.

MR. SIMON: And I would say this, which is the facts before you are not about -- they're not about payment. Right. If those facts were before you, you might find -- you probably would find that it's a step too far. Our request is narrow. Our request is focused on what is allowed in many bankruptcy acrosses the country -- across the country. And so to say we can't allow this narrow request because if you take it to its extreme, it's too far. And I think parties would agree, yeah, that is too far. But those aren't the those aren't the facts before you.

And so I think his opinion focused so much on the shift in Purdue, and yet his opinion said in all of the cases he found, I think, five instances of nonconsensual third-party releases. So what Judge Goldblatt is saying is in all of those, the parties had some potential expectation that those were available, and yet he could find five instances over twenty-five years. So I guess what I would say is, because he can't find a limiting principle shouldn't mean that on the narrow issue of opt out, that on those facts and circumstances and on the relief that we're seeking, which is not you have to pay if you don't do anything, we would submit that that's just not appropriate under these facts --

THE COURT: Okay.

MR. SIMON: -- and what we're asking.

THE COURT: All right. I would also note as to Judge

Cavender's oral ruling in his case that he relied not insignificantly on Judge Goldblatt's prior case, which he abrogates, in Smallhold, that new case.

MR. SIMON: Yeah. Look, I mean, that is one example. I'm also going to note, as we're on the topic of Judge Cavender, I mean, one thing he relied on and other courts have relied on is the conspicuous nature. And normally, it is conspicuous in a long plan. Here, we have something that no other court has seen, in my view, which is this. It's a one-pager in front of every ballot, in front of every plan, that is very clear. And by the way, again, in discussions with the Office of the United States Trustee, this was born. And I'm just going to say a couple of things on here in size 14 font.

"Caution. If you do nothing, your rights may be compromised. Please pay careful attention to the below disclosure. And if you do not understand or have further questions, please consult your attorney. You have the choice as to whether you will be bound by the third-party release, and the choice is yours alone."

It describes the procedure. It says opting out of the third-party release will not otherwise modify your treatment or recovery under the plan.

And then again, with respect to the concern that that parties simply don't do anything, I think that has been

addressed by multiple courts, where they say, "There is no state analog" -- and this is Judge Dorsey, a fellow judge of Judge Goldblatt in Delaware. "There is no state law analog. Third-party releases in Chapter 11 are quintessentially federal in nature. Shareholders and creditors have an obligation to read their mail."

Judge Sontchi says, "I don't believe this is necessarily a contractual point as much as it is a point of notice under the Code and the Rules." And he says, "And I don't think it's appropriate to assume they made a mistake. If they didn't follow the directions to opt out, so be it."

And so again, consent is not agreement. Consent can be manifested in many ways, particularly in bankruptcy court, and that's what Judge Cavender ruled. I think he would have ruled the same way, relying on other cases elsewhere other than Judge Goldblatt.

We don't believe Purdue is the seismic shift. In fact, if we read the Supreme Court decision, they say specifically that it has no opinion on that. The issue was not even briefed before the Court.

THE COURT: Any other cases in the Eleventh Circuit I should think about, other than consulting Judge Cavender, who's right down the hall? But I can't talk to him about this case.

MR. SIMON: I do believe we cite a couple from --

I'll have to check our brief. I believe we cite some from earlier, not more recent, decisions. But we can provide those cites if they're not already in the brief. I'd have to check.

THE COURT: Yeah, because I think in the Red Lobster case, which just wrapped up, Judge Robson required opt-in releases, if I remember them, but that's what the debtor went with. But I think they did that earlier in the process.

MR. SIMON: I believe Ms. Keil has created a chart of all the cases that have come out. It's probably fifty/fifty.

THE COURT: They're all over the -- and I think Judge Cavender said that if you want -- if you have a position about a particular set of facts, we can find a case that goes either way, probably.

MR. SIMON: With that, Your Honor, we'll, I think, cede the podium to Mr. Adams, and we can address any arguments in rebuttal.

THE COURT: Okay. Very good.

MR. ADAMS: Afternoon, Your Honor. Jonathan Adams on behalf of the United States Trustee. Your Honor, the United States Trustee timely filed an objection to the debtors' amended disclosure statement back on September the 20th of 2024. That was docket 445. The United States Trustee also timely filed an objection to the debtors' plan on November the 4th, 2024. That's docket number 623.

In addition to the formal objections that we raised,

we had some informal concerns that we've discussed with both the debtor and the unsecured creditors committee regarding the trust. I am happy to report those issues have been resolved. We do appreciate Mr. Simon and the creditors committee working with us to address those concerns but did want to let the Court know that we had had a few things that had also come up, but those were resolved.

So to the matter at hand, Your Honor, I don't wish to bore you by rereading our brief. It was quite lengthy. I know that it was. And I can tell from the Court's commentary that the Court's already carefully read and considered it, and we appreciate that very much.

I think, if you listen to Mr. Simon, you read our brief, you read the other opinions around the country, what you see is this comes down to a question of what theory are we going to apply. Are we going to apply a default theory, or are we going to apply a contract theory? I've heard the Court's concerns regarding the contract theory thus far, and I'd like to start maybe by addressing that.

THE COURT: Is there really a contract theory? Because the only thing I ever hear about with regard to the contract theory are offer and acceptance. And there are no other elements of the contract -- of a contract that are discussed. And in fact, I think a few of the cases in footnotes dispense with the idea that consideration, for

example, might be necessary. So is it really a contract theory, or are we just employing the model of offer and acceptance from contract law?

MR. ADAMS: Your Honor, I think that's a correct characterization. It's offer and acceptance. And Your Honor, why do we do that? Because, Your Honor, there's nothing else. As we suggest, if the default remedy, if nonconsensual third-party releases are no longer available, then the stool under which the default theory sits is gone. And so there is no bankruptcy relief that the debtor can say they can get on a default basis. So there's nowhere to go from a default perspective. And so as a result, we contend that the Court must go to those consistent, traditional state law notions of offer and acceptance in order to get that right.

And Your Honor, we also point out, when Mr. Simon was talking about whether we take default as a mechanism in other matters, he mentioned proof of claims, but this is an important point that we need to raise. A proof of claim deadline is as to the debtor. The other default issues that come up into a plan is as to the debtor. Your Honor, it is reasonable for a party to understand that if an entity files bankruptcy, there's going to be deadlines that affect that entity. There's going to be a plan that's going to affect that entity. And a party should be on notice that if they don't properly participate in that case, then as to that

debtor, their rights could be abrogated.

The problem here, the problem with these releases, is it's not as to the debtor. It's as to the third-party releases. And I think if you read Judge Goldblatt's decision in Smallhold, he directly speaks to this. It is not -- after Purdue, it is not reasonable to expect that as a default matter that a debtor, will be able to get a third-party or a nonparty, I think, is an accurate explanation, a nonparty release. And that's why we think the Court must go to those contract principles.

And again, Your Honor, we'll just lay those out. And I agree with Judge Cavender's point regarding no particular state law's view of offer and acceptance works. I understand where Judge Cavender is coming from there. But that's why we helpfully have a treatise that helps us with that. It's the second restatement of contracts, as we all learned in first year of law school that deals with offer and acceptance and how that works.

And so Your Honor, I briefly go through how we think that works. Your Honor, a mere receipt of an unsolicited offer does not impair the offeree's freedom of action or inaction to impose on him any duty to speak. Further, the mere fact that an offeror states that silence will constitute acceptance does not deprive the offeree of its privilege to remain silent without accepting. Again, that's the

restatement of contracts. Again, each state law is a bit different, but that general treatise is the general understanding of offer and acceptance that courts use around the country.

And apply that here, Judge. What we have here is an extremely sophisticated debtor with some of the best lawyers in the country before Your Honor. They mail out to a group of creditors, approximately, if I had my numbers right, 6,240 creditors, a 170-page plan, and a fifteen-day -- and a 15-page ballot. And they give these folks twenty-eight days, excluding mailing time, to make a decision. And they're saying, well, if you don't do anything, sorry, you've accepted. That's it. Your Honor, that's just not reasonable. It's not reasonable to believe that those folks gave what, what the restatement of contracts would say an acceptance through their mere silence. And I guess that's kind of the crux of what we're getting to there.

And so going through, again, we see the default theory is the debtors' primary argument here. And we just disagree with the debtors' contention that Purdue is in this small box. I agree with the language that was quoted regarding Judge Gorsuch's opinion, that the opinion says what it says, but there are second order consequences to Purdue that the court must address. And I think the Smallhold case, I think, is cited in our papers -- I'll be glad to give the

citation if the Court would like it -- handles that very well.

THE COURT: Oh, you can trust that I have it.

MR. ADAMS: Thank you, Your Honor. And the debtors could not file an adversary proceeding against each creditor seeking a release as to nondebtor parties, and if the creditor failed to respond, receive a default judgment. Post-Purdue, there is no legal mechanism to obtain a default. The default theory rests on the principle that the debtor could go and do that, and here in the Eleventh Circuit, that would also be true.

Before Purdue, we had Seaside, right. And before Purdue, in the Eleventh circuit, if certain factors, certain elements were met, a debtor could come in and ask for a nonconsensual third-party release. Purdue changes that. But not only did Purdue change that, Purdue changes the second order consequences, or what would happen in the in the event of a default. And that's why the default theory just falls apart.

I appreciated that Your Honor asked Mr. Simon about the interesting hypo that Judge Goldblatt has in his opinion there about, I think it was, a hundred dollars having to be paid to the CEO's children for their college education. And I would suggest Mr. Simon didn't really answer that question. He moved on and let it go by. Your Honor, there is no limiting principle. The difference between a third-party

release before Purdue was that there was an ability for the debtor to seek that as default. That limiting principle has been removed.

THE COURT: But there might be. I mean, there's a difference a waiver, which can be implied from conduct or can be occasionally applied from silence and an affirmative obligation.

MR. ADAMS: I suppose, Your Honor. Though what I would say in --

THE COURT: Judge Goldblatt didn't find that, but it occurred to me.

MR. ADAMS: I don't want to take it too far. You're right about that, Your Honor. I think what I'm saying is, with respect to consent, there's no limiting principle. Perhaps with that qualifier on there --

THE COURT: Okay.

MR. ADAMS: -- that that works better. And I think that's right. And again, I know, as the Court is well aware, Judge Cavender addressed opt-out provisions at great length in Envistacom. That's been discussed by debtors' counsel already. But as Your Honor pointed out, on page 27 of the transcript of that oral ruling, he specifically states that his primary rationale for the decision, the opinion that he thought most centered on his own, was Arsenal. And I want to make sure and I think that's in our papers as well.

Of course, Arsenal was abrogated by Smallhold post-Purdue. And that's our point, Your Honor. I think the ground today is much different post-Purdue than it is pre-Purdue. We can't put Purdue in this little box and say that, well, it just deals with this narrow set of releases. That's just simply not true. There are second order consequences to that decision --

THE COURT: Well, I think it says it leaves the law of consensual third-party releases alone, whatever that is. And Judge Lopez finds in the Fifth Circuit that that law was very well developed, and he continues to apply it. I think it's probably a little less well developed here, isn't it?

MR. ADAMS: Yes, Your Honor. It is less well developed here. And we believe Judge Lopez, respectfully, is incorrect. We believe that if you don't have the ability on a default basis to seek that third-party release, the default theory dies. It goes away. Because again, as Judge Goldblatt pointed out, there's no limiting principle. Where does it end?

THE COURT: Well, let me ask you about -- so given, what, the voting we've had here and the opt-ins and opt-outs or maybe the opt-outs that we've had, from the U.S. Trustee's perspective, who is bound by the release?

MR. ADAMS: Well, Your Honor, we would state that as it's currently -- as currently constituted, only the folks who

accepted the plan and checked the box that they were -- that they would opt in or left it blank. I think they would have anybody who opted in who gave an affirmative consent --

THE COURT: Well, there was no opt in.

MR. ADAMS: Exactly. So no one, I guess, is what I would say. No one.

THE COURT: What the plan said was that if you vote for the plan, you accept the release, and you cannot opt out.

MR. ADAMS: Yes, that's true, Your Honor. And if you noted, I don't know if Your Honor went through the balloting, but I did. And of the 339 creditors who accepted this plan, plus the Anthony claims that are flipping, that's another 101, but of those 339, 12 creditors and claim in class 6A and 23 creditors in class 6B both accepted the plan and then opted out --

THE COURT: Right.

MR. ADAMS: -- even though the plan didn't allow them to do that. What I would suggest, Your Honor, is this shows the fallacy of the default theory. These folks didn't --

THE COURT: Well, that just shows that a few people didn't read it carefully.

MR. ADAMS: Well, just a few people, that's thirty-five people who didn't, Your Honor. I would say that's more than -- that's more than a few. Your Honor, we had 850 creditors respond globally.

So let's go down to the next possibility. You have creditors who voted to reject the plan, yet didn't opt out. How many creditors do we have in that class? We had 511 creditors, minus Mr. Anthony's client. Again, those will flip with this change today. 511 creditors voted to accept the plan.

THE COURT: To accept or to reject?

MR. ADAMS: Reject. Excuse me. I'm sorry, Your Honor.

THE COURT: It's all right.

MR. ADAMS: They voted to reject the plan. Thank you for correcting me. I appreciate it. Seventeen of those creditors in class 6A and seventy-four of those creditors in class 6B did not opt out. What logical explanation could there be for these ninety-one creditors to reject all the benefits that would come through the plan, the nominal payout, et cetera, and then for some reason not opt out? I would suggest, Your Honor, they didn't understand what they received.

THE COURT: Well, I mean, it's also possible they thought, I don't like it, but if the plan gets confirmed over my objection, I understand that the plan sponsor, wherever he is around here, might make some determination about how many people released and how many people didn't. And my one vote might matter in that regard, so if we're going to have the

plan, then I'll give the release so we get the benefits of the plan but --

MR. ADAMS: Your Honor, I would just respectfully disagree with that. I think the --

THE COURT: I think it's possible someone could make that relatively sophisticated determination but --

MR. ADAMS: Your Honor, I suppose it is hypothetically possible for that to occur. It's hypothetically possible that I'll be six-foot-six in the morning, but I highly doubt it. More likely than not, what we're looking at is we're looking at a creditor body who is either, frankly, unsophisticated, elderly debtors or trade creditors who just simply did not understand what they were given. And now, the debtor is asking this Court to believe that they somehow consented to a release. Your Honor, that just doesn't -- that just doesn't pass the smell test. It doesn't pass the common sense test.

And Your Honor, while we're going through the potential classes of creditors, there's really five subclasses. We've talked about two. Let's go to class number 3. The potential subclass 3 would be a creditor who was entitled to vote but did not cast a ballot, including those who may not have received the solicitation materials unless they checked an opt-out box, et cetera.

As Mr. Simon pointed out to the Court, there were

approximately 6,240 ballots sent out. There were approximately 850 ballots returned. If you do the math, so approximately 13.62 percent of the unique ballots that were sent out actually were returned. So that means there's about 5,390 creditors that if the Court confirms the debtors' plan, is going to say, well, they've lost their rights as to a third-party, as to a party that's not here before the Court in bankruptcy today, to ever sue any of those folks and that they've -- and moreover, that they've consented to that.

Your Honor, I just don't believe that -- I just don't believe that that's true. I don't believe they have given that affirmative consent, again, under the contract theory concepts that we've already discussed. And again, with the default theory knocked out, with Purdue no longer applicable here, Seaside being abrogated by Purdue, I think that's just not reasonable to take that position.

Your Honor, the fourth class of creditors would be those that are deemed to accept or reject. And again, with respect to those who deem to reject the plan, that's a double whammy, right? I mean, under the plan, under plan --

THE COURT: Well, we can talk about those classes in theory, but those three classes are all affiliates of the debtors or the debtors themselves. So I'm not sure what difference it makes whether they give a release or don't give a release. I mean, I said as a theoretical matter, it might

be interesting, but as a practical matter, I'm not sure it matters very much.

And if you look at classes 1 and 2, which are the other two that didn't get to vote because they're deemed to accept, there's nobody in class 1. So I'm not sure that really matters. And in class 2, I think -- I mean, there may be -- there may be other creditors, but I think the IRS is the primary creditor. It may be the only creditor that's included in the projected dollar amount for that class. And they've opted out.

So I think the real -- and 3 and 4, they have lawyers here. I'm sure they're all well taken care of.

So it really is a matter about who in class 6 is or isn't giving releases.

MR. ADAMS: Your Honor, I do try to be thorough, but I think you're right.

THE COURT: No, I agree and --

MR. ADAMS: This is a hypothetical at best.

THE COURT: If we had other kinds of classes that had been deemed to have voted, those might be more interesting questions in this case. But they're less interesting in this case.

MR. ADAMS: Certainly. Your Honor, I would like to mention one other classification or one other subgroup of claim, and I mention this just because I'm not really sure who

this applies to. But if you read who the releasing parties are, the debtor states that if there are any unclassified claims but they do not file a written objection to the third-party releases through the plan-confirmation process, Your Honor, first, I don't know who the unclassified claims would be. Leave that to Mr. Simon. But that's what his definition says.

But Your Honor, how could it be that a creditor would have to object to the plan in order to preserve its rights and the release be consensual? I don't see how that could -- how that's possible post-Purdue. They didn't receive anything to act upon. So in other words, they have to -- they have to --

THE COURT: Well, I think that's based on a default theory, but not one that presumes you can give a nonconsensual release but one that operates on the notion that your failure to respond to a notice in a case makes you in default if you don't.

MR. ADAMS: Perhaps. But as Judge Cavender pointed out in Envistacom, Your Honor, if a creditor has to hire a lawyer and filed an objection -- and file an objection to confirmation to deal with the release, that's not consensual. It's something else.

I mean, again, we're calling this a consensual release. And again, I'm not sure who the unclassified claims are. I don't want to waste a ton of time on something that --

THE COURT: Right.

MR. ADAMS: -- frankly, may not exist. And I don't want to speak for Mr. Simon. I don't know who they are. But I don't think there's any way that that subgroup of creditors gave consent.

THE COURT: I think that's a class like class 1, which is we don't think there are any such people, but it's other.

MR. ADAMS: It's the whole rest of the world, perhaps. Right.

THE COURT: Right.

MR. ADAMS: Yeah.

THE COURT: And I assume none of "other" got a solicitation package because otherwise we'd know who they were and they'd be in a class.

MR. ADAMS: Exactly, Your Honor. But again, that's a pretty broad definition of unclassified claim. And so we wanted to mention that and make sure that we were clear.

Your Honor, the other two objections that we raised kind of dovetail with this discussion about contract versus default theory. And so I don't want to belabor them too long, but the plan does include an injunction. Your Honor, we would say if this really is a consensual release, why would the injunction be necessary? Why would they need it?

If there was an agreement between two parties is

always going to be an affirmative defense to any subsequent litigation that might occur. Why would you need the injunction if what you were getting in the plan itself was a consensual release? I think the fact that the injunction exists belies the point here. And so as a result, we do think that that release is also inappropriate.

And again, the final objection we made was again kind of dovetailing with the same general theory. The debtor is trying to construe this opt out as some sort of settlement agreement, as is the whole plan, frankly. And Your Honor, that's just not true. There's no agreement. That's the point we're making. There's no way that --

THE COURT: But the whole remainder of the plan, releases aside, certainly is a settlement.

MR. ADAMS: I'm sorry.

THE COURT: It's the embodiment of a mediated settlement.

MR. ADAMS: Certainly, but not between all of these creditors who didn't respond or all of the creditors who perhaps objected, let's say, but didn't opt out and the debtors. It may be a mediation between the debtor and the committee and the debtor and its lenders. We'd readily acknowledge that, Your Honor. I think that's true. But it's not a settlement as to this issue as to the releases.

And so if the Court would or otherwise inclined to

confirm but for the release language, we would say that that language need to be amended because that's not what the releases are. They're not really consensual. That's the point. There's no agreement. That's the point. Your Honor, just, so to conclude --

THE COURT: Well, I guess that whatever releases we have will have to be consensual, right, because that's the whole premise of them, determined however that's determined.

MR. ADAMS: And Your Honor, we say that none of them are. And that's the flaw in the mechanism.

THE COURT: To the extent I disagree with you that those would then also fall in the settlement category.

MR. ADAMS: Understood, Your Honor. Understood. And I guess, just to conclude, Your Honor, from our point of view, default is not consent. Procedural machinations by experienced lawyers and sophisticated debtors should not be used to imply consent where it simply does not exist. And that's what's happening here, Your Honor.

We think Purdue changed the game with respect to this issue. We think Purdue changed the game because it changed what the debtor could default to. And since that default relief is no longer there, we think the Court should go to those traditional notions of offer and acceptance that we've discussed at length in both our brief and our oral argument today.

And Your Honor, you did ask -- we do think the Red Lobster decision is appropriate to address here as we're as we're closing out. As the Court pointed out in the Middle District of Florida, the debtors agreed to use an opt-in provision instead of an opt-out in that case, after the court plainly told parties that they would not -- that she would not agree to an opt-out provision.

I want to make sure I go over my notes and make sure I addressed all of the other commentary the Court had in its discussion with Mr. Simon. And Your Honor, I believe I've done that. So unless the Court has any further questions, I have nothing to add.

THE COURT: I don't, but thank you.

MR. ADAMS: Thank you, Your Honor.

MR. SIMON: Again, Dan Simon, McDermott Will & Emery, on behalf of the debtors. I'll make a few brief points.

Number 1, the U.S. Trustee says that these are trade creditors. He didn't say it, but I think he's inferring that they're less sophisticated than the lawyers in the room. And at the same time, he's pointing to the Judge Goldblatt decision to say that that changed the game and that creditors before Purdue had a reasonable expectation that there would be nonconsensual third-party releases. But after, they don't.

And so on the one hand, he's saying these poor creditors can't understand what's before them. But Purdue

changed the game because they had a reasonable expectation, which would necessarily mean that they're sophisticated enough not only to understand the law in the area, but the murky nature of nonconsensual third-party releases. The U.S. Trustee has always argued against opt out. Purdue didn't change anything for them, but they're using it to say that it changed the reasonable expectation of creditors, which I think infers too much, when at the same time they're arguing that they're less sophisticated parties.

Number 2, on the limiting principle, he says, there is no -- Mr. Adams says there is no limiting principle. Judge Goldblatt says there isn't. There actually is. There's other factors that a court determines whether a plan is confirmable or not confirmable. Presumably, a judge would find that a plan that provides an opt-out provision where you have to pay the CEO a hundred dollars to the trust fund is not provided in -- is not presented in good faith. There are other procedural mechanisms for plans, and just because they've identified something, they haven't shown that that plan could even be confirmed under that theory.

Mr. Adams talks a lot about numbers on the voting declaration. I think what the numbers show is that the opt-out actually worked. Yes, there are some creditors who accepted the plan but did not -- but sought to opt out. That's, by my calculation, three percent. And I think if you

send out ballots like that, no matter how clear they are, you're going to have a little bit. But I think a percentage like that should not imperil the entire theory.

He also says that there's creditors who rejected the plan but did not opt out, so he's inferring why would they do that. Your Honor, we don't know. There's no evidence to show that it was coercive. There's no evidence to show that the creditors did not understand. Presumably, they did understand. And what the balloting shows is that roughly 450 parties opted out. They knew what they were doing. It actually shows that there was a process, and that process worked.

I don't think we can infer, based upon the percentage of creditors who actually voted or submitted a ballot or didn't submit a ballot, that all of a sudden parties are confused. There is no evidence of coercion. That was important in Judge Lopez's decision.

Mr. Adams talks about why would you need an injunction if it's consent. Well, consent today may not be consent tomorrow. It may be that creditors change hands in five years down the road. I mean, an injunction is always necessary to preserve the compromises in the plan. And so I don't think, on that topic, it doesn't really address it.

And then lastly, and I'll just note, we haven't really hit it, but I think it's an important point, which is

the policy argument. And I don't want to go too far because I'm not talking to Congress. I'm talking to Your Honor. And Your Honor has to rule as Your Honor rules. But again, Mr. Lawall said it earlier. Chapter 11 worked exactly how it should in this case. There was a mediation. Part of that mediation, and it's in evidence, that the third-party release was critical to get to that point. There are --

THE COURT: Where is that in evidence?

MR. SIMON: Mr. Jones's declaration and I believe Mr. Decker's declaration as well.

THE COURT: Okay.

MR. SIMON: In order for Chapter 11 to work best the way it ought to, it's going to require parties like the plan sponsor to contribute funds. Now, Purdue changed that on the margins, but the ability to have opt-in or opt-out releases does change that. The ability for the parties to get together and consideration to flow to unsecured creditors, not just in this case, but other cases, is an important component of compromise and settlement that happens every day in Chapter 11 courtrooms.

And so I would submit that, under the facts of this case, but also what Chapter 11 is emblematic of, exactly the parties here today would support the opt-out provision of the release. It's consistent with the cases that we've cited but not the cases Mr. Adams cites. It's obviously a difficult

decision. Courts obviously see it different ways. But we would submit, just on that point alone, if you look at Chapter 11 as a compromise vehicle, it goes a long way and it went a long way in this case. Thank you, Your Honor.

THE COURT: Thank you. Let me ask you one sort of -- I want to make sure that I'm putting your argument on the right box. And it's a little -- for me, anyway, it's a little complicated because of the Purdue case because the Purdue case says that under 1123(b)(6), apparently a nonconsensual third-party release is not an appropriate provision to be included in a plan because what can go in a plan, right, is governed by 1123(b). Those are all the things that can be in a plan. So if it goes in a plan, it's got to be in there somewhere. And so they said that it doesn't fit in the first five. And they said in their case that it didn't fit in (6).

But my question then becomes, where does the consensual release fit in that same section? And so it must be, I think, that it does fit they, they think, in (b)(6). Not clear, based on how they decided the case, how one fits and one doesn't, but that's not for me to decide because they said nonconsensual, bad. Consensual, okay. So is what you're arguing that it is an appropriate provision and that that's the standard that I'm supposed to apply, and then using the sort of -- we'll call it the default theory.

MR. SIMON: Yes, Your Honor. 1123 talks about what

shall go in a plan, and then it talks about what may go in a plan.

THE COURT: Right.

MR. SIMON: And so there are many things you can do in a plan with consent. Many things that you wouldn't find in here that fit within 1123(b)(6). It is a bit circular, but the reason it fits in 1123(b)(6) is because it's done with consent, based upon all the case law that we've discussed. But that would be the reason.

THE COURT: Right. Well, as opposed to sort of some sort of federal common law notion created by a bunch of bankruptcy judges, it's really an interpretation of what's appropriate under 1123(b)(6).

MR. ADAMS: Correct, Your Honor, because it's with consent.

THE COURT: I want to make sure I got it in the right.

MR. SIMON: We just disagree about what consent means.

THE COURT: Right. Seems to be a lot of disagreement about that.

MR. SIMON: There is, Your Honor.

THE COURT: All right. Is there anything else? I think we've been over the objections, and we have evidence. No one wanted to cross-examine any of the witnesses. So I

think our evidentiary record is complete with their declarations and the exhibits that I have. I've heard argument on that objection.

Mr. Lawall, you look like you want to say something.

MR. LAWALL: Just one thing, Your Honor, housekeeping. We uploaded a document 662, the Narendra declaration, which was attached to the committee statement in support. And we would just like to have that entered as an exhibit. I have extra copies here, but again, it's again document 662, if that would be okay. Would you like a copy of it, Your Honor, or --

THE COURT: All right. I would, but let me see if anyone objects to its admission. If not, I'm happy to have it admitted to the record.

MR. LAWALL: Sure. May I approach, Your Honor?

THE COURT: I'll take a look at it. Sure. Thank you. I'll confess, I've read all the other ones so far.

MR. LAWALL: Thank you, Your Honor.

THE COURT: Sure. All right.

MR. SIMON: I was just going to rise to say, we don't have anything else, Your Honor. Obviously, the confirmation order has moved. To the extent Your Honor would desire, we'd probably upload an order tomorrow, but obviously, Your Honor has to rule.

THE COURT: Okay.

MR. SIMON: But I just wanted to note, for the record, that language has moved, and we'll continue to work with the parties to just make sure that everyone is signed off on the proposed form of order.

THE COURT: Okay. Well, I'm going to -- I'm going to take a little time to consider the release issue. I do have a -- oh, I'm sorry. Someone --

MS. BONTEQUE: Yeah. Sorry, Your Honor.

THE COURT: Oh, you're back.

MS. BONTEQUE: Jessica Bonteque on behalf of the Chubb Companies. I just wanted to make clear that we are still negotiating a hopeful resolution of the Chubb objection. I was actually just passed language right now that I need to read. So I want to make sure that we're clear that that objection is still alive, and we're hopeful to resolve it shortly.

THE COURT: Okay. Well, why don't you keep working on that? So I spend maybe an inordinate amount of time reading over the plan. And not surprisingly, it generated a few questions that I might have. So we can go over those while you continue to talk about or take a look at the language, and we can take a recess if you need to do that. Might be a decent time for that.

But Mr. Simon, if I can chat with you about a few things. I note, like plans do, it has an administrative claim

bar date. I always wonder how that's supposed to work, or more accurately, how administrative creditors are supposed to get notice of an administrative claims bar date since most -- well, since at least some of them are probably not pre-petition creditors and thus won't have gotten a plan or anything else.

MR. SIMON: So Your Honor, when the effective date occurs, we file a notice of effective date. We serve that, I believe, on all creditors. That notice provides --

THE COURT: Will that include the administrative creditors though? That's my --

MR. SIMON: It would. It would, Your Honor.

THE COURT: Because I'm not sure they're -- well, they wouldn't be on a court matrix, but maybe your noticing agent has a better system than we do.

MR. SIMON: They actually would be because we continue to do business. So even if they're owed zero as of the petition date, we have that catalog available. And they would get -- they would get service of that.

There are a number of -- I'm trying to find the language in the plan, but the reorganized debtors, the purchaser entities, are assuming a lot of that in the ordinary course. So the expectation would be that they're paid in the ordinary course, and if they're not, they're going to get notice of the bar date.

And then Ms. Keil and I field inquiries all the time just to make sure that the payments go out. And usually, we route that to the right people, and the payment goes out in case there's any issue. But that would be done through the notice of effective date.

THE COURT: Okay. And if we get -- oh, yes.

MR. LAPOWSKY: Your Honor, Robert Lapowsky, Stevens & Lee for Healthcare Services Group. I just wanted to point out I haven't been able to find the language yet. But the post-petition trade creditors, and Healthcare Services Group is a massive post-petition trade creditor, are accepted somewhere in this plan from the need to file claims by the bar date. And they get paid, as Mr. Simon said, in the ordinary course.

So I think the universe of claims that you might be concerned about, which is the people that have been dealing with the debtors' post-petition, how do they know that they need to file? Most of them, I think, are going to fall into the category that Healthcare Services falls into, which is they're dealing with it on a trade basis of ordinary course. And I don't think they're going to be subject to this administrative claims bar date.

MR. SIMON: That's correct, Your Honor. And the debtors included language at Mr. Lapowsky's request to address that.

THE COURT: Okay. Just to be clear, if some

administrative creditor shows up six months from now and says I didn't make the bar date because I never got notice, I didn't know even was a plan or that it was in bankruptcy, they may find a receptive audience.

MR. SIMON: We're not trying -- I guess this goes back to the to the opt in, opt out. We're not trying to say that someone who didn't get notice is -- obviously, they have the right to come before Your Honor and say, I didn't get notice, my rights weren't affected, and we're not trying to compromise those rights.

THE COURT: Okay. With regard, I guess, to the new board of directors, officers and directors, I know the plan supplement filed overnight had some language about that. I'm not sure I exactly understood how that complies with 1129(a)(5), so maybe you can help me with that because that changed from prior iterations.

MR. SIMON: Yeah, I think the -- I'll just say, virtually all or all of the debtors are LLCs. And the LLCs don't have a board of directors. The LLCs --

THE COURT: True.

MR. SIMON: -- basically, are member managed for the most part. Mr. Lehner is the CEO of CMC III. I believe he is expected to be an officer of the reorganized debtors. And obviously, to the extent they above that have a board similar to FC XXI, that's a nondebtor. I don't think those decisions

had been made. But I think the intent would be effectively the officers, and including Mr. Lehner, would continue kind of on the other side of the transom, if you will.

And I'll just stop for a moment and see is that correct.

(Counsel confer)

MR. SIMON: Okay. The plan sponsor confirmed that that's the current expectation. And obviously, to the extent -- there will probably be, again, between now and sixty, ninety, whatever, days, there might be additional tweaks to the plan supplement on the restructuring transactions memorandum or anything like that. But obviously, to the extent a creditor has an issue, we can address that at that time.

THE COURT: Okay. Well, how significantly do you think you can tweak the plan supplement after the plan is confirmed?

MR. SIMON: Only technical issues, if any. If any.

THE COURT: At some point, it does have to stop. At some point, it's got to be done and --

MR. SIMON: Yeah. I think the expectation is it has stopped. But for instance, if there was an officer who resigned, we would have to address that or just hypothetically, some issue change that requires a disclosure.

We could also, to the extent Your Honor wants, note

in the notice that if no one objects within fourteen days, it's deemed the plan supplement. And that way, it provides that notice. But there's no intention to make anything kind of material that would change anything.

THE COURT: Okay. Few other things. Well, so speaking of things that have to stop, I think we talked about assumptions and rejections and exactly when you had to decide what it is you were going to assume or reject. And I think the Bankruptcy Code would require you to decide by, well, confirmation, whenever that is. So I just wanted to make sure that you settled on the contracts and leases that you do and don't want.

MR. SIMON: Yeah. Look, the expectation is that we have. In other words, we've worked hard with the plan sponsor to identify that recognizing today is the date. Now that they won't go effective, rejection wouldn't occur.

THE COURT: Sure. Yeah. They won't be effectively assumed or rejected until there's an effective date, if there is one.

MR. SIMON: Correct.

THE COURT: But you can't change who they are.

MR. SIMON: You can change it with their consent.

THE COURT: Sure.

MR. SIMON: So obviously, if there's an issue, we'll raise it. We don't expect any issue. But if we have a

modification, we'll seek their consent. If we don't have their consent and we want to address it, we can address it or --

THE COURT: Okay. Because the plan right now says you can change it up to forty-five days after the effective date, which I don't think you can say.

MR. SIMON: Yeah, and we have studied the issue in numerous other courts. I think this is commonplace, recognizing that there's always that time period. But I certainly appreciate and understand what the Code says. That limits that. And I think the expectation would be, any modifications to it, we would go get that consent.

MR. LEUNG: Your Honor, for the record, Fran Lawall. This issue was in part due to the unknown with respect to the insurance structure of the plan, and we haven't been able to get complete information. And so there was an issue of which policies were executory and which weren't. And the concern that, assuming certain policies might impose certain liabilities, which may not be one -- which is why that issue was pushed the way it was. And it was negotiated with the debtor in terms of the forty-five days.

From my experience, it is fairly common, where there'd be almost a period of time after which you could make a decision to assume or reject. I appreciate what the Code provides. But as a matter of practice, I've been involved in

many cases where that date has been pushed.

THE COURT: Well, I think we talked about last time, so much of what we do anymore are 363 sales --

MR. LAWALL: Right.

THE COURT: -- where there's still a debtor to hold the contract or lease for as long as you need to after the sale. I mean, you can assume or reject it sometime later but --

MR. LAWALL: There still will be a debtor here. If you recall --

THE COURT: But we have a confirmed plan, and 365(d) speaks to when --

MR. LAWALL: Um-hum.

THE COURT: -- what the deadline is in terms of a confirmed plan.

MR. LAWALL: Well, that's an interesting question. I mean, even during -- prior to the effective date of a plan, I'd always assumed you remained a debtor-in-possession until such time that the plan became effective and your status changed.

THE COURT: Right. I mean, the contracts and leases aren't assumed until the effective date.

MR. LAWALL: Right.

THE COURT: But as to when you have the right to assume or reject or make decisions about assumption or

rejection, I think the Code proposes a pretty firm deadline, which will not be today because I'll still be thinking about things but --

MR. LAWALL: Yeah. Understood. Your Honor, if we -- look, I know Mr. Simon was thinking maybe a confirmation order uploaded tomorrow, but I know Your Honor is probably going to mull over this release issue. We might need a couple of days just to try and work through that mechanic to make sure that we're not stepping into something we don't want to step into.

THE COURT: And that's fine.

MR. LAWALL: And I appreciate that. Thanks, Judge.

THE COURT: It never pays to read all the way to the end of a plan, but I --

MR. SIMON: if you're going to test me on the tax implications of the plan --

THE COURT: No.

MR. SIMON: -- I may not have answers.

THE COURT: Thankfully, I'm not. But I am going to ask you about the medical records provision in article 6, which authorizes the debtor to destroy medical records after a year if the debtor can't afford to maintain them. And I'm hoping in this case that that's not where we are, and thus that's not something we need to do.

To the extent that maintaining them is otherwise required by federal or state or other law, I mean, 351 is

entitled to get a trustee out of having to maintain records for a long time when there's no money in the estate to do it. I don't think it's really intended to apply to a reorganizing, at least as to the OpCos, Chapter 11 debtor.

MR. SIMON: So the intent of this provision, Your Honor, and there's a whole host of lawyers who have tried to address this from the operating side is that the divested operations, oftentimes those books and records go to the new operator, but not always. And so there's a large amount of medical records that either have to be destroyed, which is very costly, or maintained, which is very costly. And so the intent was to comply largely with 351 -- trying to find it right now -- but also to recognize that there's a large cost, either to the reorganized debtors with respect to the disposal of patient records. And so this language was discussed, and negotiated around that concept.

THE COURT: Understood. I think 351 was predicated on your inability to afford it, and I don't think I know anything about that.

MR. SIMON: Well, yeah, I mean, I'll just say the costs are substantial. Yearly costs. Very substantial so --

THE COURT: Well, the cost of having somebody's medical records destroyed is reasonably substantial to them, and that's why it's permitted in a relatively narrow circumstance.

MR. SIMON: Understood, Your Honor. I don't know enough about -- I'd have to go back to the debtors to discuss the issue and maybe come up with a workaround. And maybe that's something we can address while we have that time.

THE COURT: Well, got few days to think about that too. All right. Oh, it's some language in 7(b) that talks about relieving the debtors and the reorganized debtors of all liability under the assumed and assigned contracts, which made sense when they were all being assigned. I don't know. I mean, I presume they're all going to be assumed and assigned back to -- well, I think what the plan says is to new entities, who are then defined as being the reorganized debtors, and they can't be relieved of liability for contracts that they're taking an assignment of. Anyway, just look at that language at 7 --

MR. SIMON: You said 7(b), Your Honor.

THE COURT: 7(b). I'm not sure, given the change from the reorganization to the sale, that that language quite made a smooth transition.

MR. SIMON: I'm just trying to find it, Your Honor.

THE COURT: Oh.

MR. SIMON: Yeah, I'm sorry. 7(b)'s longer than I thought. Which paragraph?

THE COURT: Oh, I'm going to -- then I'm going to have to find my copy of the plan.

MR. SIMON: Sorry.

THE COURT: That's all right. Is the plan in here somewhere? Of course not (indiscernible) where it is.

MR. SIMON: Oh, I see. The last paragraph. I think the overall point, and maybe we need to clean up the language, but the overall point is that once the entity who is taking a contract, we'll call it the reorganized debtors, once they assume the contract, there's no additional liability outside of that entity that takes the contract.

THE COURT: Right. But that language seemed to relieve the reorganized debtor that was taking the contract of liability under the contract. So anyway, something to --

MR. SIMON: Yeah, we'll clean that up.

THE COURT: Something to think about. Oh, maybe this is a question for Mr. Lawall, but I looked. The definition of confirmation order requires the review of a bunch of people, but not Mr. Lawall or the committee.

MR. LAWALL: Well, Your Honor, that --

THE COURT: Was that intentional?

MR. LAWALL: That was a fail on my part, Your Honor. But I will say, we have been -- the debtor has been sharing and reviewing the confirmation order with us. And I, more than I will assume that they will continue to do so. And so with that understanding. But yes, we have seen multiple iterations, and there has been negotiation over various terms.

And again, Your Honor, there's one point here too, is that which is why I brought a couple of extra days, although I know Mr. Simon won't be happy with this. Given the toggle from the reorg to a quasi-sale, we wanted to make sure that a number of the nits, actually, that Your Honor is picking up were actually picked up because people have been moving at lightning speed trying to get this in --

THE COURT: Sure. Reading 125-page plan that you've read ten times already --

MR. LAWALL: Right.

THE COURT: Sometimes, you just don't see things unless you have a little bit of time to sit down and look at them so --

MR. LAWALL: No, you got it. Thanks, Judge.

THE COURT: Do you have your plan handy?

MR. SIMON: I do.

THE COURT: Oh, 6(d).

MR. SIMON: 6(d).

THE COURT: Hopefully, that's not a long provision.

MR. SIMON: 6(d), 6(d), as in dog?

THE COURT: Yes.

MR. SIMON: All right. Hold on.

THE COURT: It's something about, I think, settling and compromising, among other things, the avoidance actions, and then there's a "provided however" that talks about somehow

using the avoidance claims defensively against people who opted out, I think is -- I think is the idea.

MR. SIMON: Do you want to speak to -- yeah.

THE COURT: But I couldn't figure out what in the world it meant or how the debtors would be able to use avoidance claims defensively against claims against people who are not debtors.

MR. LAWALL: I was pretty. Confused by this myself, and this was a negotiated point with the debtor. First of all, let's start with the Chapter 5s are generally not being pursued. And so there's been enough harm to the unsecureds to --

THE COURT: Which make the creditors feel good -- unsecured creditors feel good.

MR. LAWALL: Well, maybe a little better. I'm not sure good.

THE COURT: Slightly better.

MR. LAWALL: Right. But on this particular point, the debtor wanted to say that to the extent that someone basically opted out and wanted to go after the debtor or one of the released parties for whatever, which I can't even say for what right now, they wanted to be able to assert this up to the point of a set off, not an affirmative recovery, against such creditor in order, theoretically, to blunt it.

THE COURT: Right. But the person being sued is a

nondebtor. How is the debtor asserting a defense for anything?

MR. LAWALL: That's a fair point, Your Honor. Yep.

THE COURT: I just, I read that, and I just couldn't wrap my head around it.

MR. LAWALL: It's almost, Your Honor --

MR. SIMON: Your Honor, let me clarify on that point. The way that the plan functions is effectively that the causes of action, whatever causes of action they may be, including Chapter 5 causes of action, would vest or transfer to -- really transfer now to the reorganized debtor. So they hold as purchaser the bucket of rights that the debtors had. And so if there's, then, a suit, they can pursue it. But it was important to the committee that those preference actions or those Chapter 5 causes of action were not used affirmatively. So this is just kind of used more as a shield than a sword because although it was previously a cause of action of the debtors, that is now transferred to the reorganized debtors. Did I confuse you more, or did I clarify?

THE COURT: Yeah, but the debtors -- well, anyway, it doesn't matter. If it can't work or it doesn't work, then I suppose it doesn't matter.

MR. LAWALL: Right.

MR. SIMON: Correct.

THE COURT: All right. I think that gets me to the

end of the -- make sure -- it gets me to the end of my questions, and hopefully I've filibustered long enough that other folks can have talked about some language or --

MR. LAPOWSKY: Your Honor, as we were going through this, I realized that I probably neglected to address something for Healthcare Services Group in its capacity as an administrative creditor, not a pre-petition creditor. And we started talking about the toggle from the reorganization, reorganization of the debtor to the sale, where now the -- so my client is providing 7 or 800,000 dollars a week of services to the forty-three debtors that are in the OpCo silo that are still operating nursing homes.

With the change -- so without the change, we were going to have an administrative claim for anything that was left on the effective date that we could assert against the reorganized debtors because it was the same entity. Now, it's changing. I'm assuming that the confirmation order will make clear that the reorganized debtor, now new, separate entities, are taking on the responsibility to pay the administrative expenses that had accrued through the effective date. So in other words, we're not going to be left with an administrative expense that's asserted against the shell entity that no longer has any assets.

THE COURT: Okay.

MR. LAPOWSKY: I'm assuming that's not the intent and

that that would be covered.

THE COURT: That's not a question for me. That's a question for those people over there.

MR. LAPOWSKY: But so I guess my point is, I'm assuming that will be covered in the confirmation order. If it won't -- if that's not the intent, then I guess we have an issue.

MR. SIMON: I think it's certainly not the intent, from our perspective, that's what the plan says, which requires the reorganized debtors to be responsible for those. And because the reorganized debtors, whether as a purchaser now or as the new equity owner previously, the responsibility is still the same. We can look at the language with Mr. Lapowsky to confirm.

THE COURT: Okay.

MR. LAWALL: And Your Honor, that goes back to the point we had made earlier and Mr. Simon had confirmed that the toggle from the reorg to the sale would not in any way impair the recoveries or the ability to recovery of those creditors. So I think Mr. Lapowsky's probably covered, but I think we can fix it in the confirmation order or clarify it.

THE COURT: All right. Anything else? Oh, I guess where are we on having worked out that language? Still working?

MR. LAWALL: Do you want to (indiscernible) or --

MS. KOVSKY-APAP: Ms. Bonteque went out to the hall. I'm not sure what the status is. I can try to find her.

THE COURT: Maybe make a phone call.

MS. KOVSKY-APAP: Maybe a fifteen-minute recess, and we can go find her?

THE COURT: Okay. Let's do that.

THE CLERK: All rise.

(Recess from 3:46 p.m. until 4:10 p.m.)

THE CLERK: Good afternoon, Your Honor. Today is November 14th, 2024. Time is now 4:10 p.m. We are coming back for recess for the specially set hybrid hearing for case number 24-55507, LaVie Care Centers, LLC, et al., and the specially set hybrid hearing regarding adversary proceeding 24-5127, LaVie Care Centers, LLC, et al., v. Healthcare Negligence Settlement Recovery Corp.

THE COURT: All right. Well, welcome back. We made progress on our -- what I guess is our last outstanding objection.

MS. BONTEQUE: Good afternoon again, Your Honor. Jessica Bonteque from Duane Morris appearing on behalf of the Chubb companies, if I may, as we -- I think the last standing objection. If I may --

THE COURT: Last statement between people and departures.

MS. BONTEQUE: And the airport or the bar, never a

good thing.

For the record, Your Honor, Chubb filed an objection at docket number 637 to confirmation of the plan and the combined disclosure statement. To resolve that objection, Chubb has worked with the debtors, their counsel, and the committee to agree to a five paragraph confirmation order language, the substance of which is in the draft that was sent from me this morning at 11:00 a.m. And it's my understanding that the agreed language in subparagraphs, A, B, and E of that draft is substantially agreed to in C and D. There are two concepts I would like to put what is C and D in that draft. There are two concepts I would like to put on the record.

The concept in C, and again, this all remains subject to the parties reviewing a final version of the confirmation order, which includes this language consistent with the agreements being reached that are in that language. But with regard to subsection C, there is a provided further, however, that discusses certain obligations that may be transferred, if any, under the Chubb Insurance program as that term is defined in the agreed language. And those monetary obligations, if any, under the Chubb Insurance program transferred to the GUC Trust, shall be satisfied by the GUC Trust -- the monetary obligations shall be satisfied under the Chubb Insurance Program, pursuant to the provisions of subsection A hereof of the agreed language and the nonmonetary obligations. And this

may be subject to some wordsmithing, but the concept is that the nonmonetary obligations, if any, under the Chubb Insurance Program that are transferred to the GUC Trust under this provision, the GUC Trust shall satisfy such obligations using commercially reasonable best efforts, provided that such commercially reasonable efforts will not incur more than minimal expenses to the trust unless a further agreement is reached with the Chubb companies regarding the payment of such expenses.

The point being that the trust will not incur significant expense unless there is an agreement with Chubb, where Chubb will pay for it. But that's of course subject to a further agreement.

And the next provision, which is provision d, the -- here provides for the avoidance of doubt, any and all claims that may be covered by or related to the Chubb Insurance Program, again as defined in the language that was in my 1:00 a.m. email this morning, are brought by or against Chubb, again as Chubb is defined in the language I circulated this morning, shall be exempted from and not subject to the unliquidated claims procedures.

Notwithstanding the foregoing, in the event that either the GUC Trust or Chubb with Chubb using reasonable -- commercially reasonable best efforts, become aware that more than one personal injury claimant is pulling from the same

general liability or professional liability policy that the GUC Trust on one hand, or Chubb, again using reasonable best efforts, shall give notice to the other and agree to confer in good faith regarding the administration of such claims.

So that is the agreement exempting Chubb from the unliquidated claims procedures as discussed, and then the Chubb treatment of its claim in the language as I described is in subparagraph A of that language, which essentially provides for nonmodification of the Chubb Insurance Program, as well as an agreement as to the Chubb treatment, such that Chubb can pull from and use its collateral to pay any expense -- any amounts under the Chubb Insurance Program, and that to the extent that collateral is not sufficient, they shall participate in the claim process either by -- via the proof of claim that's been filed, amending that claim, filing administrative claim, et cetera.

There is more specific language, of course, in the order. B is a way -- a lifting of the automatic stay and the injunctions in the plan to allow certain claims to go forward, specifically, workers' compensation claims that need to need to be processed, as well as other provisions in that language.

Similarly to that, E of the language exempts Chubb to the extent Chubb needs to take actions needed to administer, handle, defend, et cetera, their claims. Again, this is a summary of the language. The language, I understand, has been

agreed to in what I circulated at 1:00 a.m. this morning with some wordsmithing to what is C and D consistent with what I've put on the record.

I'll pause there to make sure I'm not out in front of anybody else, but that is how I understand the agreement. And of course, it's subject to final review and approval by Chubb of the final confirmation order, the plan, the plan supplement that there's nothing inconsistent with this agreement.

MR. SIMON: Your Honor, I'll just note, thankfully for me, Mr. Haake from the from McDermott will be handling this and can confirm.

MR. HAAKE: Your Honor, this is Jack Haake for the debtors.

To provide a little bit of context, because there was a lot of things said there, I realize. The context for this is that Chubb was the insurer for the worker's comp policy that concluded in the year 2012. So we're talking about old policies here and some other insurance policies, the majority of which are very old. So a lot of the issues that we're solving for here are pretty theoretical, the debtors believe.

But in any event, we have spent quite a bit of time on the language that was discussed. We have reviewed the language that was circulated this morning. Our understanding is that there was one issue that remained outstanding as of the beginning of this hearing, which had to do with the

intersection of this language and the unliquidated claims procedures. My understanding is that the committee and Chubb have continued to negotiate throughout this hearing, and I understand that the parties have reached an agreement, and the terms of that agreement, as I understand them, are acceptable and that the language tracks with that that agreement.

MR. LAWALL: Fran Lawall again for the committee on the -- with Troutman.

We're going to have to see the final language, as counsel indicated. Once we see that, we'll get it to Your Honor. I doubt that there will be a disagreement, but we just need to see the language. There was an awful lot said there, and it's hard to digest after a long day.

THE COURT: And so I think I can -- I think I have a workaround for this to allow you all to go figure out the language, but we can talk about that in just a minute.

MR. LAWALL: Okay.

THE COURT: But so we still have so we have the stay relief motions that were on for today and the adversary. So tell me, now that we're at this juncture what we can or should do about that?

MR. SIMON: Well, I'll take the adversary. And to the extent Mr. Haake can take any remaining issues with the relief from stay. The adversary is our adversary stay in the Miami action. It's the expectation of the parties. I'm not

sure if Mr. LaFalce is still on, that that Miami action will actually be dismissed in the near term.

So given that, I think the automatic stay ends as of the confirmation date, as my expectation, that we would simply push that out.

THE COURT: I think the stay ends today.

MR. SIMON: Today. A definitive date.

THE COURT: A I haven't gone back to look at the order, but I would expect to just continue to the next hearing.

MR. SIMON: Yeah. Let's -- we can continue it. I think -- I'm just trying to think maybe thirty days after.

Your Honor, I don't think it matters much, as long as it remains in place that the expectation will be that --

THE COURT: I just don't want -- thinking about this, I don't want this, whatever our stay order says, to inhibit a recovery court from being able to dismiss the case, you know, if it says something, I take any action in the case. I haven't looked at it to see what it says, but if there's a settlement with them, do you need a stay anymore?

MR. SIMON: You finally stumped me, Your Honor. Let me -- I'm just thinking about it.

THE COURT: It's been a long afternoon.

MR. SIMON: Yeah. I think -- why don't we work with Mr. LaFalce on that? But I mean, we would we would ask it to

be extended past today, just out of an abundance of caution. I don't think there's any concern.

THE COURT: Okay. I don't have any problem doing that, whatever you -- just submit an order signed by both of you and whatever you want to do with it, you can -- we can continue to stay. We can dismiss the lawsuit. We can do whatever you want.

MR. SIMON: We'll do it consensually with them. And we'll submit that to you.

THE COURT: Okay.

MR. LAFALCE: And I -- for the record, I am -- Nicholas LaFalce on behalf of Recovery Corp and Florida claimants. Yeah. We have no objection to extending the stay.

THE COURT: Okay. If you want to submit an order doing that and want to look at the language, if there's any possibility it could be interpreted to say they can't dismiss the case, just put a sentence in there that says this order shall not prevent them from dismissing the case.

MR. SIMON: That's a very good point, Your Honor, we will do that.

THE COURT: Okay.

MR. SIMON: Thank you.

THE COURT: And then stay relief. Is that somebody else's job?

MR. SIMON: Thankfully, yes.

MR. HAAKE: Your Honor, this is Jack Haake on behalf of the debtors for the stay relief issues.

Your Honor, by my count, there are six motions for relief from stay. Three of those, I think are resolved as we sit here.

THE COURT: I think one was reset. One was withdrawn.

MR. HAAKE: Well, correct. For today's purposes --

THE COURT: Right.

MR. HAAKE: -- what I mean by resolved. So the Sifrit -- what we call the Sifrit motion was withdrawn during this hearing or at the very beginning of this hearing. So that leaves five. The Iezzoni motion for lift stay, we're going to be submitting an agreed order which resolves that issue. The -- what we call the Almonte motion was reset to December, and that leaves the motions at Docket Nos. 328, 425, and I believe 278.

Your Honor, as to all of these motions, because the plan contemplates a procedure and a process to deal with these kind of claims, we believe that it would be most efficient to deny without prejudice and have those claims go through the unliquidated claim process. Most of those claimants are seeking to either liquidate their claim or reach some resolution with the estate, and that's exactly what the unliquidated claims procedures are set up to do.

Once the plan goes effective, the Trustee interacts and engages with these parties with settlement discussions. And so rather than keep kicking the can on these issues, we think it's probably cheaper, better, faster for all parties to just deny those motions at this point in time, have those parties go through the procedures, and at the tail end of those procedures, if there's not an agreement, they might -- by virtue of those procedures, they get the ability to go back to the state court anyways. And so we think it's a better use of Your Honor's time as well.

THE COURT: Okay. Well, are any of or any of those movants in attendance either virtually or really?

MR. NASON: Yes, Your Honor. Frank Nason for the Occilien movants and the Ormond movants.

This is the first time we've heard of them in this denial. We thought it was going to be kicked down the road. It seemed the plan was going to be confirmed. We understand that the plan is confirmed, that's going to impact whether we need to get stay relief or not.

THE COURT: All right. Do you want to just reset yours to the 10th of December also?

MR. NASON: Yes.

THE COURT: I don't have any problem with that.

MR. HAAKE: Yes, Your Honor. That's fine as well, if we want to continue all of them to December and see what

happens, I think that that's the -- you know, it's a similar outcome.

THE COURT: Okay. And that's -- is that everybody or that was only two, right?

UNIDENTIFIED SPEAKER: Your Honor, Ms. Erin Quinn, who is counsel -- I apologize -- for the Mary Garrett MFR noted that she had a hard stop at 4:15, and her objection for the MFR is still pending and not resolved. So she said that she would also reset her matter to December 10th.

THE COURT: Okay. Done.

So the three pending MFRs are now reset, or the remaining ones that hadn't been reset for the last five minutes are now reset to December 10th.

MR. HAAKE: Thank you, Your Honor.

THE COURT: All right. As I indicated, I want a little time to ponder on the release issue. Other than our general desire to get things done just as soon as possible, as there -- are there any deadlines we're running up against any need for expedited consideration?

MR. ADAMS: None from the United States Trustee's point of view.

MR. LAWALL: Not from the committee, Your Honor.

MR. SIMON: Yeah. I mean, Your Honor, we'll obviously have to address milestones and things like that in the DIP, but that shouldn't stop you from taking your time on

this.

THE COURT: Okay. Also, I saw your confirmation order is eighty-five pages long or something, so I would like to read that.

MR. SIMON: We would absolutely allow you to --

THE COURT: Well, and you're not done with it.

MR. SIMON: -- take as much time.

THE COURT: I think is what you told me today. So --

MR. SIMON: We're hopefully very, very close.

THE COURT: Okay. Well, obviously you have to incorporate some things that have occurred today.

So I think what I'd like to do is -- well, my plan ultimately is to give you an oral ruling. I'd like to do that next week. I can let you know on Monday what day next week? Probably Wednesday or Thursday is what I'm presently thinking.

And so my thought is for the remaining objection, to the extent that cooler heads don't prevail and somehow the wordsmithing doesn't work out, which I don't really expect, but to the extent that actually occurs and we need to actually hear the objection, I can just hear the objection before the oral ruling. So does that make sense?

MR. SIMON: It makes sense to us. Would it be all right if parties attended that virtually?

THE COURT: Oh, yeah. I don't expect anybody to be here. Well, we can just do that all virtually.

MR. SIMON: Okay. That makes sense. Thank you, Your Honor.

THE COURT: Sound like a reasonable plan?

UNIDENTIFIED SPEAKER: Yes, sir.

THE COURT: All right. Well, I'm sure people have flights to make and such things, places to get, children to pick up. Who knows what.

THE CLERK: Your Honor, just for --

THE COURT: Wait a minute. Yes, yes. What do we have?

THE CLERK: Just for the record, just to confirm the motion to dismiss at docket number 310 and the recovery court standing motion at docket number 433, just to confirm, will those matters be withdrawn?

MR. SIMON: I'll answer if Mr. LaFalce doesn't. That's the expectation.

THE COURT: He's there, but he's on mute. I see him, he's pretending to be John Anthony today.

MR. LAFALCE: I'm sorry. Which were the docket numbers?

THE COURT: It's the motion for standing and the motion to dismiss or convert.

THE CLERK: Docket number 310 and docket number 433.

MR. LAFALCE: Yes. Those can be withdrawn.

THE CLERK: Thank you.

THE COURT: Okay.

THE CLERK: Your Honor, I believe that concludes all matters.

THE COURT: Okay. Very good.

THE CLERK: All rise.

Thank you, Zoom parties. We're going to stop the recording and the conference. Have a good day.

(Whereupon these proceedings were concluded at 4:30 PM)

C E R T I F I C A T I O N

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

November 18, 2024

RIVER WOLFE DATE

TTA-Certified Digital Legal Transcriber, CDLT-265